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ALBANY, NEW YORK

June 23, 1993

3:20 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT FARLEY: The
3 Senate will come to order. Senators will please
4 find their seats. If you will please rise with
5 me for the Pledge of Allegiance to the Flag.

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

8 Today in the absence of visiting
9 clergy, we'll bow our heads in a moment of
10 silent prayer.

11 (A moment of silence was
12 observed.)

13 The Secretary will begin by
14 reading the Journal.

15 THE SECRETARY: In Senate,
16 Tuesday, June 22nd. The Senate met pursuant to
17 adjournment, Senator Farley in the Chair upon
18 designation of the Temporary President. The
19 Journal of Monday, June 21st, was read and
20 approved. On motion, Senate adjourned.

21 ACTING PRESIDENT FARLEY: Hearing
22 no objection, the Journal will stand approved as
23 read. We'll go out of order with the report of

1 standing committees.

2 Presentation of petitions.

3 Reports of standing committees.

4 Senator Present. Senator Present.

5 SENATOR PRESENT: Do we have
6 one?

7 ACTING PRESIDENT FARLEY: Want to
8 recognize Senator Mega?

9 Senator Mega.

10 SENATOR MEGA: Yes, Mr.
11 President, thank you. The Senate Judiciary
12 Committee met this morning and this afternoon to
13 consider the nomination or the reappointment of
14 three nominations made by the Governor to the
15 Court of Claims.

16 From the Governor dated April 8,
17 1993: I hereby nominate as judge of the Court
18 of Claims, Herbert J. Lipp of New York City,
19 reappointed for a term expiring on May 29th,
20 year 2001.

21 Mr. President, after due
22 deliberation by the Committee of the
23 investigation that was conducted relative to

1 Judge Lipp's reappointment, the Committee
2 unanimously voted to appoint the judge,
3 reappoint the judge, as indicated, to a term
4 which will expire on May 29th, year 2001.

5 The investigation that was
6 completed is a very positive investigation. We
7 contacted people who appeared before the judge,
8 who worked in the court system on both sides of
9 litigation. The judge has sat mostly in
10 criminal cases and we contacted the district
11 attorneys and the defense attorneys who appeared
12 before the judge, and all of the information was
13 very positive, that the judge does an
14 outstanding job and this house should reappoint
15 him as indicated.

16 And at this point, I would state
17 that the judge is present today with his wife,
18 Diane, and I would yield to Senator Goodman who
19 will move the nomination.

20 ACTING PRESIDENT FARLEY: Senator
21 Goodman.

22 SENATOR GOODMAN: Mr. President.
23 Thank you, Senator Mega.

1 Mr. President, Judge Lipp is a
2 constituent of mine and, therefore, it gives me
3 special personal privilege to be able to
4 nominate him before this body. He was born in
5 Brooklyn, served in the United States Navy,
6 attended Pennsylvania State University, NYU Law
7 School, was an adjunct professor of business law
8 at Nassau County Community College, and a law
9 lecturer, and has other academic distinctions.
10 He has extensive legal experience, having served
11 first on the Nassau County District Court, then
12 was -- served on the County Court, then was
13 confirmed by the Senate in 1988 subsequent to
14 nomination by Governor Cuomo as a judge of the
15 Court of Claims.

16 Today is the third occasion on
17 which the judge's name has come before us and
18 I'm delighted to say that on all three occasions
19 he has gone through our screening process with
20 flying colors.

21 A warm salute to his wife, Diane,
22 and to the judge himself, and on that note, Mr.
23 President, I wish to place his nomination before

1 the Senate.

2 ACTING PRESIDENT FARLEY: On the
3 -- on the nomination. All in favor, say aye.

4 (Response of "Aye.")

5 Those opposed nay.

6 (There was no response.)

7 The nomination is confirmed.

8 Judge Lipp is with us in the gallery. Congrat
9 ulations on behalf of the New York State
10 Senate.

11 (Applause.)

12 Senator Mega.

13 SENATOR MEGA: Mr. President, the
14 Judiciary Committee also considered the
15 reappointment of the following judge: From the
16 Executive Chamber April 8, 1993: I hereby
17 nominate as a judge of the Court of Claims,
18 Ronald H. Zweibel of New York City, reappointed
19 for a term expiring on May 6th, year 2001.

20 The vote was unanimous to
21 recommend the reappointment by the entire
22 Judiciary Committee. The judge is present in
23 the gallery with his wife Eleanor and his ten

1 year-old son, Robbie.

2 The investigation that was
3 conducted relative to the manner in which the
4 judge conducts himself was extremely positive
5 from all the people who were interviewed as
6 indicated before. We contacted those people who
7 appeared before the judge and we secured infor
8 mation that indicates that the judge is doing an
9 outstanding job.

10 The Committee, by unanimous vote,
11 has recommended his reappointment and at this
12 time I would yield the floor to Senator
13 Leichter.

14 ACTING PRESIDENT FARLEY: Senator
15 Leichter.

16 SENATOR LEICHTER: Mr. President,
17 good. Thank you, Senator Mega.

18 It's my distinct pleasure to move
19 the nomination of Judge Ronald H. Zweibel. One
20 of the benefits of reapportionment is that I
21 found that the good judge was one of my
22 constituents. It's a particular pleasure to
23 move that nomination because Judge Zweibel has

1 such extensive experience in the law, but he
2 also worked in the Legislature. It's nice to
3 see one of the people who labored in this
4 granite building to be recognized for a position
5 on the bench.

6 Before that, Judge Zweibel was
7 chairman of the Crime Victims Compensation Board
8 and acquitted the responsibilities of that
9 important office with great distinction.

10 He has experience both on the
11 defense and the prosecution side. He worked as
12 an assistant district attorney, Bronx County,
13 and he was the Director of Legal Affairs for the
14 New York City Department of Correction. He has
15 served on the Court of Claims since 1987.

16 I just want to say, Senator Mega
17 has already pointed out that his wife, Eleanor,
18 and his son, Robert, is here. I met Robert and
19 Robert said that he came to Albany to see the
20 dinosaurs. His father was quick to point out,
21 at the museum, not in the chamber. So we're
22 happy that they're here to join us.

23 Let me just say, Mr. President,

1 the point was well made yesterday by Senator
2 Galiber how very fortunate we are that we do
3 have really such dedicated, distinguished hard
4 working members of the judiciary, people who
5 serve with great understanding, skill and
6 sensitivity, and that's certainly true of Judge
7 Zweibel.

8 Let me say something else while I
9 have the floor. I'm the ranking member of the
10 Judiciary Committee. I guess I've been known
11 once or twice to be a bit critical of this
12 chamber of the Legislature, but let me say how
13 proud I was to be part of the Judiciary
14 Committee because of the exemplary professional
15 way in which Chairman Mega ran the confirmation
16 hearings, the care in which the investigations
17 were conducted, the fairness of the proceedings,
18 the non-partisan nature of the proceedings, the
19 openness of the proceedings, the fact that it
20 was inclusive, inclusive of Democrats,
21 Republicans, really the very supportive work
22 that we had of the staff, Ned Cole, and other
23 members of the staff. It's really what we ought

1 to be doing all the time.

2 I guess it's difficult to achieve
3 that sort of level of excellence. But let me
4 say there is no legislative committee anywhere
5 in the country, and I include Congress and
6 particularly Congress, that could have acquitted
7 the responsibilities that it had in regard to
8 the confirmation of these judges in a more
9 appropriate, fitting and successful manner than
10 we did under Chairman Mega, and he deserves all
11 the world of credit, and the thanks of the whole
12 body for the way he did this.

13 Thank you. I move the nomination
14 of Judge Zweibel.

15 ACTING PRESIDENT FARLEY: On the
16 nomination of Judge Zweibel, Senator Gold.

17 SENATOR GOLD: Mr. President,
18 thank you. We're talking about the Zweibel
19 family, and I came here prepared to say how
20 intelligent, compassionate R. Zweibel is, and
21 then I realize it's not Robbie we're talking
22 about, we're talking about your father, right,
23 Robbie? All right.

1 Well, Robbie says he wants to go
2 to college. He's ten years old. Understand
3 today he wants to go to college, not in the
4 future he wants to go to college. Robbie, if it
5 was up to me, I'd send you right away.

6 Ron Zweibel is a wonderful
7 gentleman and certainly deserves to be on the
8 court. His experience, as we all know by now,
9 is unique. There are not that many people on
10 the bench who have worked for Legal Aid and
11 worked for the prosecutor's office and also
12 represented the crime victims of this state so
13 well and so wonderfully as Ron Zweibel did for
14 so many years as the chair of a New York State
15 Crime Victims Compensation Board.

16 I know what his colleagues think
17 of him, and he should be proud of that. I know
18 what his neighbors think of him, and he should
19 be proud of that also. He is a wonderful,
20 wonderful gentleman and has those qualities of
21 compassion, patience, understanding and
22 intellect which we want on the judiciary, and
23 I'm really proud to be one of those people who

1 has a chance to cast a vote in favor of this
2 continued nomination.

3 SENATOR VELELLA: Mr. President.

4 ACTING PRESIDENT FARLEY: On the
5 nomination, Senator Velella.

6 SENATOR VELELLA: Yes, Mr.
7 President. I, too, would like to rise to second
8 the nomination of Ron Zweibel. I worked with
9 him in the district attorney's office many, many
10 years ago, much longer than I like to think
11 about, and matter of fact, in looking at the
12 confirmation, it starts to make me realize how
13 old we are when we're confirming people who will
14 serve to the year 2001 and 2004 in some cases.

15 But certainly Ron, as Senator
16 Gold has pointed out, has always demonstrated
17 judicial temperament and has a well balanced
18 approach to the problems that confront the court
19 having worked both with the Legal Aid and the
20 district attorney's office. He will be a credit
21 to the judiciary, and I'm proud to second his
22 nomination.

23 ACTING PRESIDENT FARLEY: On the

1 nomination, all in favor say aye.

2 (Response of "Aye.")

3 Those opposed nay.

4 (There was no response.)

5 The nominee is confirmed, and
6 Judge Zweibel is with us in the gallery with
7 also his wife and son, Robbie. Congratulations
8 on behalf of the New York State Senate.

9 (Applause)

10 Senator Mega.

11 SENATOR MEGA: Mr. President,
12 from the Governor of the state of New York Mario
13 M. Cuomo, dated April 8, 1993: I hereby
14 nominate as judge of the Court of Claims Dorothy
15 A. Cropper, of New York City, reappointed for a
16 term expiring on April 28, year 2001.

17 Judge Cropper appeared before the
18 entire Judiciary Committee, both this morning,
19 and the hearing went into the afternoon. Much
20 testimony was taken, a record was made, and a
21 vote was taken, and the vote for reappointment
22 and confirmation was 15 to 2. There were two
23 Senators who felt they could not vote for the

1 confirmation, the reappointment.

2 The Committee very judiciously
3 looked at all the information that was before
4 the Committee. Some of the information were
5 allegations and not founded, some of the infor
6 mation was perception. But there is a record
7 which clearly indicates that the majority of the
8 Committee felt that Judge Cropper should be
9 reappointed.

10 The record should note that she
11 was found approved -- her renomination was
12 approved by the Association of the Bar of the
13 City of New York, and I have a letter dated June
14 17th, 1993 which so indicates, that the
15 Governor's New York State Judicial Screening
16 Committee viewed and reviewed her record and
17 interviewed her, and recommended and found that
18 she was well qualified to continue as a judge of
19 the Court of Claims.

20 She serves in the First
21 Department and the Presiding Justice of the
22 First Department, Justice Francis T. Murphy,
23 indicated that she should be reappointed as a

1 judge by letter dated June 22nd. In addition to
2 that a sitting Appellate Division judge in the
3 First Department, Theodore R. Kupferman, by
4 letter dated June 22nd, also indicated as such.

5 Justice of the top court of this
6 state, the Court of Appeals, Associate Justice
7 George Bundy Smith, came to the hearing and
8 testified on the record concerning the ability
9 of Judge Cropper.

10 There's no question that the
11 judge is qualified by knowledge to be a judge.
12 There was some question concerning her
13 temperament and the manner in which she
14 conducted her courtroom. But after a complete
15 investigation and as indicated, the record will
16 clearly state what was done to make the
17 Committee ultimately feel that the judge should
18 be reappointed and we voted accordingly.

19 At this time, I would yield the
20 floor to Senator Galiber who will speak to the
21 reappointment.

22 SENATOR GALIBER: Yes, thank you,
23 Mr. President.

1 ACTING PRESIDENT FARLEY: Senator
2 Galiber.

3 SENATOR GALIBER: First off, let
4 me again reiterate, as my colleagues on the
5 Judiciary Committee have made crystal clear, I
6 want to congratulate the chairman for creating a
7 solid record in this matter, and the way in
8 which it was handled and the interest of the
9 Committee for the first time in all the years
10 that I have served on the Judiciary. I have
11 never seen as complete meeting as we had and
12 involvement and meaningful involvement, so I
13 congratulate you as I did at the hearing, and
14 also your staff for an excellent job.

15 Mr. President, I have -- or I'd
16 like this body to know that I am extremely proud
17 and privileged to move the nomination of someone
18 who I have known for a long, long while. I wish
19 there was the opportunity to read back the
20 record on the other two occasions where I spoke
21 on the nomination of Judge Cropper. My mind has
22 not changed at all.

23 Judge Cropper, we recognize some

1 things come a little harder on occasion, but we
2 have before us a strong, no-nonsense person, has
3 been that way for along, long while. Percep
4 tion, demeanor, a number of things which are not
5 judged objectively have been done subjectively.

6 Colleague, she has been the same
7 person as I have known her through the years
8 when we worked together while she was at Legal
9 Aid, and I was with the Youth Council Bureau in
10 the district attorney's office in Bronx County.
11 I've watched the growth of an American dream, if
12 you will, families who come to this great
13 country of ours and say to themselves, and the
14 family says to their children, work hard, make a
15 success of yourself.

16 In the process of doing that, it
17 becomes somewhat difficult from time to time.
18 There is a highly qualified judge who happens to
19 be a woman, who has excellence in terms of her
20 work ethic, as far as her excellence is
21 concerned in terms of what she has produced.
22 There was never any question, if I remember
23 correctly, Mr. Chairman, of the quality of work,

1 and we have to say that over again and again,
2 the quality of work.

3 But in the process of doing
4 things, there is another criteria, and I suspect
5 that the fairness in which this hearing has been
6 held. There were many who were concerned as I
7 was about certain aspects of it. But I sat at
8 the hearing this morning, and I heard judges and
9 administrators and had letters read to me, none
10 saying horrible things or even suggesting,
11 people who went out of their way to come and
12 testify not merely out of friendship, but
13 because this person is a qualified person to sit
14 but a third time in a Court of Claims.

15 So, Mr. President, I am proud as
16 I started out and privileged to offer the
17 nomination of justice -- Judge Dorothy Cropper,
18 and with her today is her husband, Gene, who I
19 had the occasion of going to City College
20 together many, many years ago, and I might add
21 to my colleagues, I've known this hard-working,
22 sincere family for a long while, and the judge
23 is deserving of our support and in nominating

1 her for the third occasion to the Court of
2 Appeals.

3 I so move the confirmation, Mr.
4 President.

5 ACTING PRESIDENT FARLEY: On the
6 confirmation, Senator Velella.

7 SENATOR VELELLA: Mr. President,
8 it's not a pleasant task when one has to rise to
9 speak against a nomination for judicial appoint
10 ment'. I serve on the Judiciary Committee. I'm
11 a relatively new member of that Committee, and I
12 want to make it very clear that my comments do
13 not go to the integrity or to the competence of
14 the judge about to be confirmed by the Senate.
15 There has been no question that her legal
16 knowledge and her integrity are unblemished in
17 her career and are admirable.

18 But as we note when we have
19 judicial confirmations, we hear the abstracts of
20 the comments that are made by attorneys who
21 appear before the judge and very often you will
22 hear the chairman get up and speak about what
23 those comments are by the very attorneys who try

1 cases every day in the courthouse before a
2 judge.

3 As a practicing attorney, I
4 myself have had a great deal of experience in
5 the courts and, when I hear my colleagues at the
6 bar making comments that have been made about
7 this particular candidate, I seriously question
8 whether or not the candidate possesses the
9 judicial temperament -- comments that come from
10 the lawyers that try cases every day, such as
11 the judge is rude, sarcastic, discourteous to
12 jurors and witnesses and attorneys. She does
13 not appear to pay attention to testimony in
14 court. She has testimony read back when there
15 is an objection because she is not listening.
16 The judge occasionally reads magazines and
17 catalogues during trial testimony and frequently
18 mumbles when speaking from the bench and when
19 jurors or attorneys complain berates them
20 publicly.

21 There is serious question about
22 the time and the amount of time that this judge
23 spends on the bench, and we have -- we have

1 reports from attorneys that have given this
2 testimony to the investigators, that she has
3 arrived -- she requires attorneys to arrive at
4 9:30 a.m., but does not take the bench until
5 10:30 and 11:30. When jurors are deliberating
6 and seek a question, she's nowhere to be found
7 in the courthouse. She frequently adjourns
8 cases early in the afternoon and leaves the
9 courthouse. Lawyers comment that this is an
10 outrageous waste of money.

11 The judge has publicly been
12 criticized for low bench time by various
13 publications and has been rated by one
14 publication as one of the ten worst judges.

15 While I'll agree that her
16 integrity is unquestioned, and I agree that her
17 competence is there, I certainly have a serious
18 problem when these allegations come forward from
19 attorneys who I know personally and attorneys
20 who practice in Manhattan who would never say
21 these kinds of things about judges knowing that
22 they will probably have to reappear before her.

23 Certainly, I think this causes a

1 very serious question and regretfully, I will
2 have to vote against the confirmation.

3 ACTING PRESIDENT FARLEY: On the
4 confirmation, all in favor say aye.

5 (Response of "Aye.")

6 Those opposed nay. Negatives
7 please raise your hands. Incidentally, the
8 negatives are going to have to -- how do we
9 handle that? You'll have to announce your
10 negative vote for the record.

11 SENATOR MALTESE: Mr. President,
12 may I be recorded in the negative on this
13 confirmation?

14 ACTING PRESIDENT FARLEY: Senator
15 Maltese is in the negative.

16 SENATOR SALAND: Mr. President,
17 for those reasons which I stated during the
18 course of the hearing of the Judiciary Committee
19 earlier today, I, too, would vote in the
20 negative.

21 ACTING PRESIDENT FARLEY: Senator
22 Saland is in the negative.

23 Senator Spano.

1 SENATOR SPANO: Please record my
2 vote in the negative on this nomination.

3 ACTING PRESIDENT FARLEY: Senator
4 Mega.

5 Well, Senator Pataki.

6 SENATOR PATAKI: Mr. President
7 please record my vote in the negative as well.

8 SENATOR MEGA: May I explain my
9 vote?

10 ACTING PRESIDENT FARLEY: Senator
11 Mega to explain his vote.

12 SENATOR MEGA: I would not like
13 to leave this confirmation process with the
14 comments that were just made by Senator
15 Velella. I want the record to very clearly
16 indicate that there was a stenographer present
17 this morning, a hearing was held for close to
18 three hours, that the nominee testified and she
19 answered these allegations, perceptions and
20 whatever, remembering that many of these
21 statements are made in confidence and it's
22 difficult to disprove some of the statements and
23 if individuals wanted to come before the

1 Committee and testify, they had every
2 opportunity to do so.

3 Again, remembering that the
4 associate justice of the highest court who was
5 an Appellate Division judge at the time, came in
6 and testified on behalf of the nominee,
7 remembering that Judge Joan Carey, who is the
8 administrative judge of the court where this
9 judge sits and works, came in and testified
10 about the productivity of this judge and the
11 work that she does, again, remembering that when
12 you make a record, whatever that record is, you
13 can take anything out of the record and deal
14 with it in the abstract, and it may not sound
15 proper, but in order to evaluate a record,
16 whatever that record is, it all has to be
17 considered.

18 You have to consider the
19 testimony of the witness, in this case the
20 judge, her demeanor. You have to consider the
21 testimony of the individuals I just indicated.
22 You have to consider the information that was
23 given to you and how it was given and after you

1 look at all of it and you put it together, you
2 make a determination, and 15 of the members of
3 the Committee felt that this judge should be
4 reappointed.

5 I have no problem with people
6 voting against the reappointment for whatever
7 reasons they have, but I want the record to be
8 very clear that this reappointment was not done
9 in the abstract. It was done securing all the
10 information and covering all the allegations
11 that were made and, based on that, we
12 recommended reappointment.

13 I vote yes.

14 ACTING PRESIDENT FARLEY: Senator
15 Galiber, then Senator Dollinger.

16 SENATOR GALIBER: Mr. President.

17 ACTING PRESIDENT FARLEY: Explain
18 his vote.

19 SENATOR GALIBER: Mr. President,
20 my chairman has said it all just about, and I
21 just want to add on that the number of people
22 who came before us, those who object to confir
23 mations at a time on this floor historically in

1 the 20 years that I've been here or more, it's
2 always been a troublesome process because as we
3 go through the Committee, and this does not take
4 the right away, I'm not suggesting that, but
5 it's just sad that we have to go through this
6 because we do not have the opportunity to list
7 the number of people who said good favorable
8 things, and the trouble with this process is
9 that my hope is that none of the spirit is taken
10 away from the person who has to now go back on
11 the bench, because those of us who know and
12 might have heard there's a person named Medeus
13 in the court of Alexander the Great who used and
14 enforced the notion of false accusations, on the
15 theory that even if the bitten person's wound
16 heals, the accusation remains, the scars
17 remain.

18 So, Judge, I don't want this to
19 happen, and I want you to go forward because as
20 we weigh it out, there was much much more good
21 than allegations that were made, unproven
22 allegations. But it's just horrible that we
23 have to use this process, which is not a perfect

1 process, to object to a confirmation of someone
2 who has such quality as far as the work is
3 concerned, excellence and strong family ties,
4 and epitomizes what our system in America is
5 really all about.

6 So I thank you again, Mr.
7 Chairman, because you said it much better than I
8 could ever have said it.

9 ACTING PRESIDENT FARLEY: Senator
10 Dollinger.

11 SENATOR DOLLINGER: Mr.
12 President, I rise to echo the comments of my
13 colleague, Senator Galiber, and our chairman,
14 Senator Mega.

15 I, too, want to commend him on
16 the process utilized in this nominee's review.
17 I think that when we review the nomination of a
18 candidate, we set a certain standard for
19 fairness, for justice, and for making sure that
20 there's an opportunity to air concerns, give the
21 nominee an opportunity to respond.

22 I think that was done in this
23 case. I think it was done fairly, and I echo

1 the commendations of the chairman for his hand
2 ling in this case.

3 But I also share Senator
4 Galiber's view of the limitations, the necessary
5 limitation, built into our process. This was
6 not a trial. This was not an opportunity to
7 cross-examine those who raised concerns about a
8 nominee's courtroom demeanor or time on the
9 bench, which were issues that were raised by
10 Senator Velella.

11 We never had an opportunity to
12 cross-examine those people who had raised ob
13 jections. Our nominee never had an opportunity
14 to stand there and look people who were
15 questioning her on these issues, look them in
16 the eye, the same thing that would happen in a
17 courtroom.

18 We have a process that is not a
19 courtroom. It's not a trial. I think it's
20 grossly unfair to raise complaints made in an
21 anonymous and confidential fashion to the level
22 of, frankly, some kind of conclusion reached by
23 someone or, frankly, by anyone on the Judiciary

1 Committee or by this body.

2 I, for one, am not willing to
3 credit them to that extent because of the
4 limitations built into our process, and I think
5 it would be unfair for anyone to draw an
6 inference from those that would affect their
7 judgment in this debate.

8 I, for one, stand in favor of
9 this nominee. I think that the concerns raised
10 in the Judiciary Committee, I have confidence
11 will be attended to, that this is a woman of
12 character, a woman of legal competence who can
13 perform adequately and well in the position of
14 Court of Claims judge in this state, and I stand
15 to vote in the affirmative, Mr. President, and I
16 believe it's my pleasure to do that, and I'm
17 privileged to be a member of this body to
18 confirm this candidate.

19 ACTING PRESIDENT FARLEY: On the
20 nomination.

21 SENATOR STAFFORD: Mr. President.

22 ACTING PRESIDENT FARLEY: Senator
23 Stafford.

1 SENATOR STAFFORD: As one who has
2 been chairman of the Judiciary Committee, I
3 think I can probably as well as anyone
4 compliment the chairman on the very fine job
5 that he has done.

6 I would like to submit that I
7 talked with a number of people, colleagues of
8 Judge Cropper. They all had the highest praise,
9 they respected her. She gets her work done. I
10 would only say, Mr. President, that there is in
11 this system, in this system, we have to
12 compliment those who are willing to be in it and
13 I think today is an example when coming to
14 Albany.

15 The judge has taken part in the
16 system and, frankly, I think we're most
17 fortunate and I, too, and I can only second what
18 the chairman has said, what Joe -- Senator
19 Galiber has said. I underline, I emphasize it,
20 and finally, as they pointed out, as they
21 pointed out, I think what they were saying none
22 of us are perfect, but when we have evidence so
23 overwhelmingly in favor of a candidate, I

1 certainly think the candidate deserves our
2 support, and I vote aye.

3 ACTING PRESIDENT FARLEY: On the
4 nomination, all in favor say aye.

5 (Response of "Aye.")

6 Those opposed nay.

7 (There was no response.)

8 The nominee is confirmed. Judge
9 Cropper is in the gallery with us with her
10 husband, and congratulations on behalf of the
11 New York State Senate.

12 (Applause)

13 Senator Present, we have a
14 message from the Governor. Can we take that
15 up?

16 SENATOR PRESENT: Take the
17 message.

18 ACTING PRESIDENT FARLEY: The
19 Secretary will read the message from the
20 Governor. Senator Nolan will not be happy.

21 THE SECRETARY: The Governor
22 returned without executive approval, Senate Bill
23 Number 3438-A, Veto Number 6, by Senator Nolan,

1 an act to amend the city charter of the city of
2 Cohoes, in relation to proceedings for
3 collection of delinquent taxes, sewer and water
4 rents, and repealing certain sections of such
5 charter relating thereto.

6 ACTING PRESIDENT FARLEY: Lay the
7 bill on the table.

8 I think we did messages from the
9 Assembly. There were none. There were no
10 petitions. Reports of standing committees. Do
11 we have a report? Secretary will read a report
12 of a standing committee.

13 THE SECRETARY: Senator Marino,
14 from the Committee on Rules, reports the
15 following bills directly for third reading:

16 Senate Bill Number 756, by
17 Senator Waldon, city of New York to reconvey its
18 interest in certain real property;

19 1779-A, by Senator Holland,
20 amends Chapter 537 of the Laws of 1976;

21 2241, by Senator Paterson,
22 authorizing the city of New York to reconvey its
23 interest in certain real property;

1 3211-A, by Senator Padavan,
2 Administrative Code of the city of New York;.
3 3355, by Senator Stachowski,
4 re-opening of 20-year retirement plan;
5 3718, by Senator Kuhl, Public
6 Officers Law;
7 3747, by Senator Spano, to allow
8 Robert Lee to make application for disability
9 retirement;
10 3763, by Senator Holland,
11 allowing certain employees of the East Ramapo
12 Central School District to transfer previous
13 service credit;
14 3811-A, by Senator Wright, State
15 Administrative Procedure Act;
16 4492-A, by Senator Tully,
17 Insurance Law;
18 4593, by Senator Cook, making
19 certain findings and determinations;
20 4645, by Senator Spano, relation
21 to employees of the Mental Hygiene Legal
22 Service;
23 4669-A, by Senator Velella,

1 Retirement and Social Security Law;
2 4709, by Senator Trunzo, amends
3 Chapter 929 of the Laws of 1986;
4 4811, by Senator Stafford, Tax
5 Law, in relation to cooperative members;
6 5004, by Senator Larkin, Real
7 Property Tax Law;
8 5480, by Senator Cook,
9 authorizing the town of Rosendale discontinue
10 the use of certain park lands;
11 5567-A, by Senator Nozzolio, an
12 act to amend the Town Law;
13 5692, by Senator Pataki,
14 Retirement and Social Security Law;
15 5741, by Senator Spano, amends
16 Chapter 166 of the Laws of 1991;
17 5817, by Senator Wright, State
18 Administrative Procedure Act;
19 5818, by Senator Wright, State
20 Administrative Procedure Act;
21 5819-A, by Senator Wright, State
22 Administrative Procedure Act;
23 5820, by Senator Wright, State

1 Administrative Procedure Act;
2 5822, by Senator Wright, State
3 Administrative Procedure Act;
4 5825, by Senator Bruno,
5 allocation and utilization of certain monies;
6 5834, by Senator Seward,
7 Environmental Conservation Law;.
8 5835-A, by Senator Sheffer,
9 authorizing the village of LeRoy, county of
10 Genesee to discontinue the use of certain park
11 lands;
12 5838, by Senator Padavan, General
13 Municipal Law;
14 5841-A, by Senator Mega,
15 proposing amendments to the Constitution;
16 5891, by Senator Jones, certain
17 findings and determinations with respect to
18 certain revenue anticipation notes;
19 5909, by Senator Spano,
20 Commissioner of General Services to sell certain
21 lands in the county;.
22 5911, by Senator Stafford, an act
23 to amend the Tax Law;

1 5913, by Senator Volker, General
2 Business Law; and

3 5962, by the Senate Committee on
4 Rules, amends Chapter 1040 of the Laws of 1981.

5 All bills reported directly for
6 third reading.

7 ACTING PRESIDENT FARLEY: All
8 bills are reported directly to third reading.

9 Senator Skelos.

10 SENATOR SKELOS: Mr. President,
11 on page number 42, I offer the following
12 amendments to Calendar Number 1068, Senate Print
13 2048, and ask that said bill retain its place on
14 the Third Reading Calendar.

15 ACTING PRESIDENT FARLEY:
16 Amendments are received; the bill will retain
17 its place.

18 Senator Tully.

19 SENATOR TULLY: Mr. President, on
20 page 29, I offer the following amendments to
21 Calendar Number 1188, Senate Print Number 5602,
22 and ask that said bill retain its place on the
23 Third Reading Calendar.

1 ACTING PRESIDENT FARLEY:

2 Amendments are received; the bill will retain
3 its place.

4 Senator Mega.

5 SENATOR MEGA: Mr. President, on
6 behalf of Senator Volker, I wish to call up his
7 bill, Senate Print Number 3576-A recalled from
8 the Assembly which is now at the desk.

9 ACTING PRESIDENT FARLEY:
10 Secretary will read.

11 THE SECRETARY: By Senator
12 Volker, Senate Bill Number 3576-A, an act to
13 amend the Retirement and Social Security Law.

14 SENATOR MEGA: Now move to
15 reconsider the vote by which this bill was
16 passed.

17 ACTING PRESIDENT FARLEY: Call
18 the roll on reconsideration.

19 (The Secretary called the roll on
20 reconsideration.)

21 THE SECRETARY: Ayes 50.

22 SENATOR MEGA: I offer up the
23 following amendments.

1 ACTING PRESIDENT FARLEY:

2 Amendments are received; the bill will retain
3 its place.

4 Senator Libous.

5 SENATOR LIBOUS: Mr. President, I
6 wish to call up my bill, Print Number 5439-B,
7 recalled from the Assembly, which is now at the
8 desk.

9 ACTING PRESIDENT FARLEY:
10 Secretary will read Senator Libous' bill.

11 THE SECRETARY: By Senator
12 Libous, Senate Bill Number 5439-B, an act to
13 amend the Vehicle and Traffic Law.

14 SENATOR LIBOUS: Thank you, Mr.
15 President. I now move to reconsider the vote by
16 which this bill was passed.

17 ACTING PRESIDENT FARLEY: Call
18 the roll on reconsideration.

19 (The Secretary called the roll on
20 reconsideration.)

21 THE SECRETARY: Ayes 54.

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

1 ACTING PRESIDENT FARLEY:

2 Amendments are received; the bill will retain
3 its place.

4 Senator Padavan, do you have a
5 motion back there?

6 SENATOR PADAVAN: Mr. President,
7 I wish to call up my bill, Print Number 5572,
8 recalled from the Assembly.

9 ACTING PRESIDENT FARLEY:
10 Secretary will read Senator Padavan's bill.

11 THE SECRETARY: By Senator
12 Padavan, Senate Bill Number 5572, an act to
13 amend the General City Law.

14 SENATOR PADAVAN: Mr. President,
15 I now move to reconsider the vote by which this
16 bill passed.

17 ACTING PRESIDENT FARLEY: Call
18 the roll on reconsideration.

19 (The Secretary called the roll on
20 reconsideration.)

21 THE SECRETARY: Ayes 54.

22 ACTING PRESIDENT FARLEY: Bill is
23 before the house.

1 SENATOR PADAVAN: I now offer up
2 the following amendments.

3 ACTING PRESIDENT FARLEY:
4 Amendments are received, the bill will retain
5 its place on the Third Reading Calendar.

6 Senator Kuhl.

7 SENATOR KUHL: Yes, Mr. President.
8 On behalf of Senator Daly, would you place a
9 sponsor's star on Calendar Number 1228, Senate
10 Print 5530.

11 ACTING PRESIDENT FARLEY: Bill is
12 starred at the request of the sponsor.

13 SENATOR KUHL: Thank you.

14 ACTING PRESIDENT FARLEY: Senator
15 Saland.

16 SENATOR SALAND: Mr. President,
17 on page 27, Calendar Number 1137, Senate 5499-A,
18 I'd like to place a sponsor's star on that.

19 ACTING PRESIDENT FARLEY: Bill is
20 starred at the request of the sponsor.

21 Are there any other motions on
22 the floor?

23 We have some substitutions.

1 SENATOR GOLD: Mr. President.

2 ACTING PRESIDENT FARLEY: Is
3 there another motion? So many people standing
4 here.

5 Senator Gold.

6 SENATOR GOLD: Thank you.
7 Senator Dollinger, you have those numbers?

8 SENATOR DOLLINGER: Yes.

9 SENATOR GOLD: Yes, I'd ask you
10 to please recognize Senator Dollinger, Mr.
11 President.

12 ACTING PRESIDENT FARLEY: Senator
13 Dollinger.

14 SENATOR DOLLINGER: Mr.
15 President, yesterday I was not in the chamber
16 when three items were approved, and I just want
17 the record to reflect that had I been present in
18 the chamber, on Calendar Number 794, Printed
19 Number 1099, I would have voted in the negative,
20 and on 1069, Calendar Number 1069, Print Number
21 2275, I also would have voted in the negative,
22 and then on Number 1107, Calendar Number 1107,
23 Print Number 1313, I would have also voted in

1 the negative and finally there's one more, Mr.
2 President, Calendar Number 1150, Print Number
3 5832, I would have also voted in the negative
4 had I been present.

5 ACTING PRESIDENT FARLEY: The
6 record will so state.

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

9 ACTING PRESIDENT FARLEY: We have
10 some substitutions. Secretary will read the
11 substitutions.

12 THE SECRETARY: On page 16,
13 Senator Spano moves to discharge the Committee
14 on Rules from Assembly Bill Number 3562 and
15 substitute it for the identical Third Reading
16 773.

17 ACTING PRESIDENT FARLEY:
18 Substitution ordered.

19 THE SECRETARY: On page 31,
20 Senator Espada moves to discharge the Committee
21 on Rules from Assembly Bill 3646 and substitute
22 it for the identical Third Reading 1240.

23 ACTING PRESIDENT FARLEY:

1 Substitution is ordered.

2 THE SECRETARY: On page 31,
3 Senator Tully moves to discharge the Committee
4 on Finance from Assembly Bill Number 4135 and
5 substitute it for the identical Third Reading
6 1241.

7 ACTING PRESIDENT FARLEY:
8 Substitution ordered.

9 THE SECRETARY: On page 32,
10 Senator Farley moves to discharge the Committee
11 on Rules from Assembly Bill Number 6023 and
12 substitute it for the identical Calendar Number
13 1246.

14 ACTING PRESIDENT FARLEY:
15 Substitution is ordered.

16 THE SECRETARY: On page 33,
17 Senator Wright moves to discharge the Committee
18 on Rules from Assembly Bill Number 6840 and
19 substitute it for the identical Calendar Number
20 1258.

21 ACTING PRESIDENT FARLEY:
22 Substitution is ordered.

23 Senator Present.

1 SENATOR PRESENT: Can we take up
2 the non-controversial calendar, please.

3 ACTING PRESIDENT FARLEY:
4 Non-controversial.

5 THE SECRETARY: On page 5,
6 Calendar Number 165, by Senator Maltese.

7 SENATOR STACHOWSKI: Lay aside.

8 ACTING PRESIDENT FARLEY: Lay it
9 aside.

10 THE SECRETARY: On page 7,
11 Calendar Number 322, by Senator Farley, Senate
12 Bill Number 2730-A, an act to amend the Banking
13 Law, in relation to interstate branching.

14 ACTING PRESIDENT FARLEY: Read
15 the last section.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 55.

22 ACTING PRESIDENT FARLEY: The
23 bill is passed.

1 THE SECRETARY: Calendar Number
2 395.

3 SENATOR STACHOWSKI: Lay aside.

4 SENATOR KUHL: Lay aside for the
5 day, please.

6 ACTING PRESIDENT FARLEY: Lay
7 aside for the day.

8 THE SECRETARY: Calendar Number
9 456, by Senator Saland.

10 SENATOR STACHOWSKI: Lay aside.

11 ACTING PRESIDENT FARLEY: Laid
12 aside.

13 THE SECRETARY: Calendar Number
14 746, by Senator Sears, Senate Bill Number 4345,
15 an act to amend the Real Property Tax Law.

16 ACTING PRESIDENT FARLEY: Read
17 the last section.

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

20 ACTING PRESIDENT FARLEY: Call
21 the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 55.

1 ACTING PRESIDENT FARLEY: The
2 bill is passed.

3 THE SECRETARY: Calendar Number
4 753, by member of the Assembly Pillittere,
5 Assembly Bill Number 5546-A, amends Chapter 766
6 of the Laws of 1992, amending the Canal Law.

7 ACTING PRESIDENT FARLEY: Read
8 the last section.

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

11 ACTING PRESIDENT FARLEY: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 54, nays
15 one, Senator Sears recorded in the negative.

16 ACTING PRESIDENT FARLEY: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 1051, by Senator Sears.

20 SENATOR PRESENT: Lay aside for
21 the day, please.

22 ACTING PRESIDENT FARLEY: Laid
23 aside for the day.

1 THE SECRETARY: Calendar Number
2 1185, by Senator Masiello.

3 SENATOR STACHOWSKI: Lay aside
4 for the day.

5 ACTING PRESIDENT FARLEY: Laid
6 aside.

7 THE SECRETARY: Calendar Number
8 1213, by Senator Padavan, Senate Bill Number
9 4704-A, Administrative Code of the city of New
10 York?

11 SENATOR PADAVAN: Lay that aside,
12 please.

13 ACTING PRESIDENT FARLEY: Laid
14 aside.

15 THE SECRETARY: Calendar Number
16 1217, by Senator Hannon, Senate Bill Number
17 4972, making an appropriation to the Department
18 of Transportation.

19 SENATOR DOLLINGER: Lay aside,
20 please.

21 ACTING PRESIDENT FARLEY: Laid
22 aside.

23 THE SECRETARY: Calendar Number

1 1227, by Senator Levy, Senate Bill Number
2 5487-A, relation to authorizing a review of
3 current drug impaired driving education.

4 ACTING PRESIDENT FARLEY: Read
5 the last section.

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

8 ACTING PRESIDENT FARLEY: Call
9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 55.

12 ACTING PRESIDENT FARLEY: The
13 bill is passed.

14 THE SECRETARY: Calendar Number
15 1232, by Senator Levy, Senate Bill Number 5684,
16 an act to amend Chapter 268 of the Laws of
17 1989.

18 ACTING PRESIDENT FARLEY: Read
19 the last section.

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

22 ACTING PRESIDENT FARLEY: Call
23 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 55.

3 ACTING PRESIDENT FARLEY: The
4 bill is passed.

5 Senator Padavan, why do you rise?

6 SENATOR PADAVAN: I rise because
7 I'm trying to see.

8 ACTING PRESIDENT FARLEY: Just
9 stretching.

10 THE SECRETARY: Calendar Number
11 1234, by Senator Seward, Senate Print 5808, an
12 act to amend the Public Service Law.

13 SENATOR STACHOWSKI: Lay it aside
14 for the day.

15 SENATOR PRESENT: Lay it aside
16 for the day, please.

17 ACTING PRESIDENT FARLEY: Laid
18 aside for the day.

19 THE SECRETARY: 1236, by Senator
20 Stafford, Senate Bill Number 5866,, create a
21 motor carrier advisory council.

22 SENATOR STACHOWSKI: Lay aside.

23 ACTING PRESIDENT FARLEY: Lay that

1 bill aside.

2 THE SECRETARY: 1239, by Senator
3 Stachowski, Senate Bill Number 1132-A, authorize
4 the city of Buffalo to discontinue the use as
5 park land of a portion of land as Tyler Park.

6 ACTING PRESIDENT FARLEY: Senator
7 Stachowski has a home rule message at the desk.
8 You can read the last section.

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

11 ACTING PRESIDENT FARLEY: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 55.

15 ACTING PRESIDENT FARLEY: The
16 bill is passed.

17 THE SECRETARY: Calendar Number
18 1240, substituted earlier today, by member of
19 the Assembly Diaz, Assembly Bill Number 3646,
20 authorizing the city of New York to reconvey its
21 interest in certain real property.

22 ACTING PRESIDENT FARLEY: Senator
23 Espada has a home rule message here at the

1 desk. You can read the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 55.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 1241, substituted earlier today, by member of
12 the Assembly John, Assembly Bill Number 4135, an
13 act to amend the Executive Law.

14 ACTING PRESIDENT FARLEY: Read
15 the last section.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 55.

22 ACTING PRESIDENT FARLEY: The
23 bill is passed.

1 THE SECRETARY: 1242, by Senator
2 Johnson, Senate Bill Number 2475, an act to
3 amend the Banking Law.

4 ACTING PRESIDENT FARLEY: Read
5 the last section.

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

8 ACTING PRESIDENT FARLEY: Call
9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 56.

12 ACTING PRESIDENT FARLEY: The
13 bill is passed.

14 THE SECRETARY: Calendar Number
15 1243, by Senator Spano, Senate Bill Number
16 3012-A.

17 SENATOR STACHOWSKI: Lay aside.

18 ACTING PRESIDENT FARLEY: Lay
19 that bill aside.

20 THE SECRETARY: Calendar Number
21 1244, by Senator Present, Senate Bill Number
22 3104, Administrative Procedure Act.

23 ACTING PRESIDENT FARLEY: Read

1 the last section.

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

4 ACTING PRESIDENT FARLEY: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 56.

8 ACTING PRESIDENT FARLEY: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 1245, by Senator Cook, Senate Bill Number 3180,
12 an act to amend the Real Property Tax Law.

13 ACTING PRESIDENT FARLEY: Read
14 the last section.

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

17 ACTING PRESIDENT FARLEY: Call
18 the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 56.

21 ACTING PRESIDENT FARLEY: The
22 bill is passed.

23 THE SECRETARY: Calendar Number

1 1246, substituted earlier today.

2 SENATOR STACHOWSKI: Lay aside.

3 ACTING PRESIDENT FARLEY: Lay
4 that bill aside.

5 THE SECRETARY: Calendar Number
6 1247, by Senator Present, Senate Bill Number
7 3674, an act to amend the Real Property Tax
8 Law.

9 ACTING PRESIDENT FARLEY: Read
10 the last section.

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

13 ACTING PRESIDENT FARLEY: Call
14 the roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 55, nays
17 one, Senator Pataki recorded in the negative.

18 ACTING PRESIDENT FARLEY: The
19 bill is passed.

20 THE SECRETARY: Calendar Number
21 1248, by Senator Goodman, Senate Bill Number
22 3930, an act to amend the Vehicle -

23 SENATOR STACHOWSKI: Lay aside.

1 ACTING PRESIDENT FARLEY: Lay
2 that bill aside.

3 THE SECRETARY: Calendar Number
4 1249, by Senator Cook, Senate Bill Number 4220,
5 Real Property Tax Law.

6 ACTING PRESIDENT FARLEY: Read
7 the last section.

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

10 ACTING PRESIDENT FARLEY: Call
11 the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 56.

14 ACTING PRESIDENT FARLEY: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 1250, by Senator Hannon, Senate Bill -

18 SENATOR PRESENT: Lay aside for
19 the day, please.

20 ACTING PRESIDENT FARLEY: Lay
21 that bill aside for today.

22 THE SECRETARY: Calendar Number
23 1251, by Senator Lack, Senate Bill Number 55 -

1 SENATOR PRESENT: Lay aside for
2 the day.

3 ACTING PRESIDENT FARLEY: Laid
4 aside. For the day or just -

5 SENATOR PRESENT: For the day.

6 ACTING PRESIDENT FARLEY: For the
7 day.

8 THE SECRETARY: Calendar Number
9 1252, by Senator Masiello, Senate Bill Number
10 5362, an act to amend the Local Finance Law.

11 ACTING PRESIDENT FARLEY: Senator
12 Masiello has a home rule message here at the
13 desk. You can read the last section.

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

16 ACTING PRESIDENT FARLEY: Call
17 the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 57.

20 ACTING PRESIDENT FARLEY: The
21 bill is -- the bill is passed.

22 THE SECRETARY: Calendar Number
23 1253, by Senator Farley, Senate Bill Number

1 5411-A, an act to amend the General Municipal
2 Law.

3 ACTING PRESIDENT FARLEY: Read
4 the last section.

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

7 ACTING PRESIDENT FARLEY: Call
8 the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 57.

11 ACTING PRESIDENT FARLEY: The
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 1254, by Senator Holland, Senate Bill Number
15 5626-A, an act to amend the Social Services
16 Law.

17 ACTING PRESIDENT FARLEY: Read
18 the last section.

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

21 ACTING PRESIDENT FARLEY: Call
22 the roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 57.

2 ACTING PRESIDENT FARLEY: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 1255, by Senator Holland.

6 SENATOR HOLLAND: Lay aside for
7 today, please.

8 ACTING PRESIDENT FARLEY: Lay it
9 aside for today.

10 THE SECRETARY: Calendar Number
11 1256, by Senator Holland, Senate Bill -

12 SENATOR STACHOWSKI: Lay aside.

13 ACTING PRESIDENT FARLEY: Laid
14 aside.

15 THE SECRETARY: Calendar Number
16 1257, by Senator Bruno, Senate Bill Number 5805,
17 an act to amend the Public Authorities Law.

18 ACTING PRESIDENT FARLEY: Read
19 the last section.

20 THE SECRETARY: Section 2. This
21 act -- hold on before you do it. There's a home
22 rule message here at the desk. You can -- now
23 you can read it.

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

3 ACTING PRESIDENT FARLEY: Call
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 57.

7 ACTING PRESIDENT FARLEY: The
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 1258, substituted earlier today, by member of
11 the Assembly Seabrook, Assembly Bill Number
12 6840, State Administrative Procedure Act.

13 ACTING PRESIDENT FARLEY: There's
14 -- is this Senator Volker's -- read the last
15 section.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 57.

22 ACTING PRESIDENT FARLEY: The
23 bill is passed.

1 THE SECRETARY: Calendar Number
2 1259, by Senator Volker, Senate Bill Number
3 5852, enable the county of Livingston to acquire
4 sites.

5 ACTING PRESIDENT FARLEY: I think
6 Senator Volker has a home rule message here at
7 the desk. Now, you can read the last section.

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

10 ACTING PRESIDENT FARLEY: Call
11 the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 57.

14 ACTING PRESIDENT FARLEY: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 1260, by the Senate Committee on Rules, Senate
18 Bill Number 5853, an act to amend the General -

19 SENATOR STACHOWSKI: Lay it
20 aside.

21 ACTING PRESIDENT FARLEY: Lay
22 that bill aside.

23 THE SECRETARY: Calendar Number

1 1261, by Senator Saland, Senate Bill Number
2 5881, an act to amend the the Family Court Act.

3 SENATOR STACHOWSKI: Lay aside.

4 ACTING PRESIDENT FARLEY: Laid
5 aside.

6 THE SECRETARY: Calendar Number
7 1262, by Senator Johnson.

8 SENATOR PRESENT: Lay aside for
9 today, please.

10 ACTING PRESIDENT FARLEY: Laid
11 aside for the day.

12 THE SECRETARY: 1263, by Senator
13 Johnson.

14 SENATOR PRESENT: Lay that aside
15 for the day.

16 ACTING PRESIDENT FARLEY: Lay
17 that aside for the day.

18 THE SECRETARY: Calendar Number
19 1265, by Senator Trunzo, Senate Bill Number
20 5961, an act to amend the Executive Law.

21 ACTING PRESIDENT FARLEY: Read
22 the last section.

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 SENATOR GALIBER: Lay it aside,
3 please.

4 ACTING PRESIDENT FARLEY: Senator
5 Galiber, you said lay it aside?

6 SENATOR GALIBER: Yes.

7 ACTING PRESIDENT FARLEY: Lay it
8 aside.

9 Senator Holland.

10 SENATOR HOLLAND: With unanimous
11 consent, I'd like to be recorded in the negative
12 on Calendar 1247, please.

13 ACTING PRESIDENT FARLEY: 1247,
14 Senator Holland will be in the negative.

15 Senator Present.

16 SENATOR PRESENT: Can we call up
17 Calendar 1256, please.

18 ACTING PRESIDENT FARLEY: 1256,
19 the Senate -- the Secretary will read.

20 THE SECRETARY: Calendar Number
21 1256, by Senator Holland, Senate Bill Number
22 5687, an act to amend the Social Services Law,
23 in relation to providing flexibility to social

1 services districts.

2 ACTING PRESIDENT FARLEY: Read
3 the last section.

4 THE SECRETARY: Section 2. This
5 act shall take effect immediately. Hold on.
6 Explanation. Well, we tried.

7 Senator Holland, an explanation
8 has been asked for.

9 SENATOR HOLLAND: Yes, sir.

10 Mr. President, the cost of
11 Medicaid is a powder keg that threatens the very
12 financial base of the state of New York. For
13 years we have watched the fuse burn, fueled by
14 health care cost increases, rapid growth in the
15 elderly population, and New York State's
16 generosity. Counties have experienced an
17 explosive growth in their Medicaid costs. The
18 program is the fastest growing portion of their
19 budgets and has been growing historically at an
20 average rate of 14 percent while some counties
21 have grown at 28 to 37 percent.

22 Today the time has come for us to
23 defuse the volatile bomb that could devastate

1 the wallets of every hard-working taxpayer in
2 the state of New York. With the passage of this
3 Medicaid legislation, the Senate begins its
4 attempt to truly reform this system and to save
5 taxpayers and local governments billions of
6 dollars.

7 This bill takes over half the
8 remaining share of local long-term care costs
9 over the first three-year period. It also
10 provides counties with the flexibility they need
11 to be true partners in the fight to control
12 Medicaid costs and, like the Governor's
13 proposal, it relieves a local share by the year
14 2000.

15 Medicaid was originally meant to
16 be a health plan in transition. It was not
17 designed for long-term care. It was meant to be
18 a temporary safety net, but has degenerated into
19 a security blanket. This security blanket has
20 left the average taxpayer unprotected from the
21 rising cost associated with long-term care.
22 Medicaid has become a bureaucratic giant with
23 its own agenda imposing burdensome mandates on

1 providers, localities and the state, which are
2 driving up the program costs. The sky-rocketing
3 increase in costs has captured the attention of
4 individuals, taxpayers groups and elected
5 representatives.

6 In February and March of this
7 year, I held statewide hearings to determine
8 first hand exactly how the people of this state
9 feel about the various Medicaid take-over
10 proposals. From these hearings, I heard Raymond
11 Meier, the County Executive of Oneida County,
12 describe Medicaid as, and I quote, "the monster
13 that's eating things like all the aid to
14 libraries and cultural organization and public
15 works projects."

16 Philips -- Philip Gile of
17 Westchester County, Director of Government
18 Relations, really summed it all up when he said,
19 and I quote, "I think the Senate is taking the
20 correct approach, that this debate is really a
21 historic opportunity for the Senate to insist on
22 cost containment control."

23 The legislation introduced today

1 is a result of those productive hearings.
2 Long-term care is the most burdensome Medicaid
3 component for local governments, and this
4 legislation addresses that problem first. As I
5 said before, this bill picks up half the
6 remaining local share for long-term care over a
7 three-year period. The county share presently
8 is ten percent or approximately \$650 million
9 annually.

10 This legislation also provides
11 local governments with much needed flexibility
12 when providing optional Medicaid services. This
13 flexibility, coupled with the incentives to
14 enroll individuals in managed care programs,
15 sets a firm base on which solid cost containment
16 programs can be built. Through these cost
17 containment programs localities will be able to
18 reduce their Medicaid growth to a level where
19 the state can responsibly assume Medicaid
20 costs.

21 Putnam County Executive Robert
22 Bondi states that, and I quote, this is a kind
23 of arrangement that gives us the kind of

1 flexibility and the type of service that is
2 needed in our county. Obviously, through this
3 legislation, county executives will be relieved
4 of their Medicaid-induced budget headaches. The
5 Senate Majority is proud to have designed a plan
6 that achieves real reform, not just the shifting
7 of costs.

8 We have worked long and hard in
9 order to assemble a fair, yet effective plan for
10 the state assumption of local Medicaid costs.
11 Through this program, we will be providing state
12 taxpayers with a shelter that will address their
13 needs, the needs of municipalities, and those of
14 the state.

15 I want to take this opportunity
16 to invite Governor Cuomo and the Assembly to
17 follow the Senate's lead, insist on real reform
18 in addition to this take-over.

19 Last section.

20 ACTING PRESIDENT FARLEY: Read
21 the last section.

22 SENATOR DOLLINGER: Mr.
23 President.

1 ACTING PRESIDENT FARLEY: Senator
2 Dollinger.

3 SENATOR DOLLINGER: I believe
4 there are a series of amendments to this bill
5 which are at the desk.

6 ACTING PRESIDENT FARLEY: They
7 are.

8 SENATOR DOLLINGER: I'd like to
9 address the amendments if I can.

10 ACTING PRESIDENT FARLEY: Senator
11 Dollinger on the amendments.

12 SENATOR DOLLINGER: Mr.
13 President, I rise today with a series of
14 amendments to the proposal from Senator Holland
15 that I think will create real Medicaid take-over
16 and real local property tax relief.

17 They are as proposed by Governor
18 Cuomo, I think, the important first step in
19 looking at our local communities and their
20 substantial reliance on the property tax to
21 cover this rising social service cost, and this
22 bill represents something that is not contingent
23 on a hypothetical cost reduction; it's not

1 contingent on something that might happen in the
2 future; it's not contingent on some hypothetical
3 cost containment tied to a, I think,
4 hypothetically resolved 6.6 percent rise in the
5 Consumer Price Index, the medical component of
6 that, but instead, I think offers immediate and
7 direct property tax relief for all the
8 overburdened counties and other payers in this
9 state.

10 It seems to me that, if what we
11 want to do is bring the process of Medicaid
12 take-over into reality, the only way to do it is
13 with an approach, Mr. President, in which we
14 trade the take-over for a trade of revenue back
15 from the payers, the current payers under the
16 system, and we also establish a hold harmless
17 provision that would protect them, so that
18 they're not exposed to additional cost, and we
19 allow this state, through what we hope will be a
20 series of other cost containment measures that
21 are better done at a state level.

22 It seems to me that all of these
23 things can be accomplished if this amendment

1 passes. If, instead, we don't pass this
2 amendment and we have to deal with the current
3 bill, we're going to have a system of Medicaid
4 take-over which is purely and simply contingent;
5 it's not real in any respect, it doesn't happen
6 until a cost containment figure, which as I
7 think the sponsor will even acknowledge, is much
8 less than the growth in the Medicaid cost over
9 the course of the last four or five years and is
10 much, much less than the projected increase
11 which will occur over the next four or five
12 years.

13 With all due respect to the
14 sponsor and I understand the sponsor's goal is
15 to achieve property tax reduction in our
16 communities as well, it seems to me that the
17 formula proposed in the underlying bill is
18 contingent, it is a hypothetical, it is one that
19 I don't believe there's any firm indication that
20 the current payors can meet.

21 Under the proposal of this
22 amendment, we simply swap the revenue of the
23 sales tax for the government -- the state

1 government's take over of the entire process.

2 That can be phased in over time.

3 SENATOR DALY: Mr. President.

4 SENATOR DOLLINGER: It can

5 achieve property tax relief over time.

6 SENATOR DALY: Mr. President.

7 ACTING PRESIDENT FARLEY: Sorry.

8 Senator Daly.

9 SENATOR DALY: Will the Senator
10 yield?

11 ACTING PRESIDENT FARLEY: Would
12 you yield, Senator Dollinger?

13 SENATOR DOLLINGER: Yes, I will
14 yield.

15 ACTING PRESIDENT FARLEY: Yes, he
16 will.

17 SENATOR DALY: Senator, are you
18 saying that this swap would be even up, in other
19 words, for the money that the state would take
20 from the counties in regards as far as the sales
21 tax, that it would be equal to the monies that
22 the county would save because they don't have to
23 pay Medicaid/welfare?

1 SENATOR DOLLINGER: Mr.
2 President, could I just ask the question be
3 repeated so I make sure I understand it? With
4 my apologies.

5 SENATOR DALY: Yes, sure. Well,
6 let me just give you a hypothetical example if I
7 may, Mr. President. Let us say that a county,
8 and this is an actual example, Senator
9 Dollinger, in western New York, takes in \$19
10 million for every penny in sales tax, the actual
11 cost that it would save in Medicaid take-over
12 would be \$12 million.

13 Now, here we have a county that's
14 giving the state 19 million, saving 12 million.
15 Now, is that what your bill -- your amendment
16 would do?

17 SENATOR DOLLINGER: It's my
18 understanding, Mr. President, that the bill
19 would take over the actual cost at the start
20 but, as that cost continues to grow, as in my
21 county where the cost of, I believe the Medicaid
22 -- the penny of sales tax revenue in Monroe
23 County generates about 70 to \$75 million, the

1 cost of the Medicaid take-over as proposed in
2 this bill is, I believe, the estimate is
3 somewhere in the vicinity of 110 to \$120 million
4 dollars. So we would assume greater costs in
5 exchange for take -- taking the penny on the
6 sales tax.

7 SENATOR DALY: Would the Senator
8 yield for one more question?

9 ACTING PRESIDENT FARLEY: Senator
10 Dollinger, would you yield to one more
11 question?

12 SENATOR DOLLINGER: I will, Mr.
13 President.

14 SENATOR DALY: Then what you're
15 saying, Senator, is that it's not an even trade,
16 that it's going to cost the state more than it
17 will get back through the sales tax it receives?

18 SENATOR DOLLINGER: In certain
19 instances, Mr. President, to respond to the
20 question, there is a possibility that it will
21 cost the state additional beyond what they will
22 obtain through the penny in sales tax.

23 The other critical component that

1 I think addresses the first part of the question
2 of is that the hold harmless and the savings cap
3 guarantees that no county will pay more than it
4 saves.

5 SENATOR DALY: Mr. President,
6 would the Senator yield?

7 ACTING PRESIDENT FARLEY: Would
8 you yield for another question.

9 SENATOR DOLLINGER: I will.

10 SENATOR DALY: Then what you're
11 saying, Senator, if I understand it, is that
12 this save harmless that you mention is a method
13 by which the state will assure that the county
14 will not lose any money; is that correct?

15 SENATOR DOLLINGER: Correct.
16 That's correct.

17 SENATOR DALY: Now, would you
18 tell me, Senator Dollinger, how much this save
19 harmless feature will cost the state of New
20 York?

21 SENATOR DOLLINGER: I believe the
22 estimated cost of the state take-over of the
23 Medicaid system is that the total cost to the

1 communities, current cost, and I'll have to look
2 that up to respond, so I make sure I'm
3 accurate.

4 SENATOR DALY: Please.

5 SENATOR DOLLINGER: Just want to
6 make sure, but my understanding is that in the
7 phased-in take-over of the tax the cost would be
8 about a billion dollars.

9 SENATOR DALY: How much?

10 SENATOR DOLLINGER: But we'd also
11 take in the penny revenue, the additional
12 revenue from the communities in the form of the
13 additional sales tax. It may also require, and
14 I think it is acknowledged that, depending on
15 the growth, what happens over time, it may cost
16 the state more money if the number of Medicaid
17 eligible people actually increases, and I'd
18 point out to the Senator that that number, the
19 Medicaid cost is growing, not only as a cost, as
20 a consequence of the increased cost per person,
21 but because of the increasing number of persons
22 that are in the system, particularly in the
23 long-term care system which continues to grow,

1 so I think from our point of view, the total
2 cost to the state would be somewhere in the
3 vicinity of about a billion dollars, and that
4 would be the savings that would accrue to the
5 local communities as well, but it's not hinged
6 on hypothetical cost containment, which I think
7 is very, very iffy, but instead the state would
8 simply assume the cost over time.

9 SENATOR DALY: Would the Senator
10 yield for one more question?

11 ACTING PRESIDENT FARLEY: Senator
12 Dollinger, would you yelled for one more
13 question?

14 SENATOR DOLLINGER: Yes, Mr.
15 President.

16 SENATOR DALY: Senator, would you
17 agree that the present cost of Medicaid/welfare
18 to the counties total is four and a half billion
19 dollars?

20 SENATOR DOLLINGER: That I don't
21 know as well, Senator. I don't have those
22 numbers right here in front of me.

23 SENATOR DALY: Well, Mr.

1 President, again, if the Senator will yield.

2 Senator, if you're going to
3 propose an amendment like that, don't you think
4 that we should know what this will cost the
5 state or cost the counties? We have, and I -
6 we have figures ourselves that we could present
7 to you, but you're proposing this amendment.

8 The problem, don't you have a
9 problem with the fact, Senator, that really you
10 don't present nor has the Governor, in his
11 proposal, presented to the state the exact
12 figures involved, and particularly
13 geographically in different parts of the state,
14 because remember, Senator, that over 70 percent
15 of this money goes to New York City, and if -
16 with the state take-over, rhetorical -- well,
17 I'll finish my question very -- in a brief way,
18 in a short period if I can, with a state take
19 over, that most of the savings would be in the
20 New York City area where probably, our figures
21 indicate that, for every dollar that New York
22 City would save, they'd only have to pay the
23 state back 58 cents.

1 Now, what does this mean to the
2 people in the other part of the State, Senator?

3 SENATOR DOLLINGER: I think, Mr.
4 President, the shorthand answer to that is that
5 the total cost to the state of New York in
6 Medicaid expenditure, the local cost was about
7 \$2.8 billion in 1992, and about \$800 million of
8 that cost was spent outside the city of New
9 York.

10 So the answer to Senator Daly's
11 question is that, if there were a take-over
12 under this plan if the state assumed that cost,
13 there would be an \$800 million tax savings in
14 the communities that he represents, that I
15 represent, I don't know what the number is in
16 Niagara County, I don't know what the number is
17 in Orleans County, I have a pretty good idea
18 what the number is in Monroe County, but all of
19 those communities would be seeing proper -
20 would see property tax relief because they would
21 be relieved of the obligation to pay through
22 property tax dollars the cost, the difference in
23 cost between the sales tax revenues they get

1 with the penny and the total cost of their
2 Medicaid, which is about \$50 million in real
3 property tax cost in Monroe County.

4 SENATOR DALY: Mr. President,
5 would the Senator yield for another question?

6 First of all, Senator, we have
7 different figures. I question the 2.8 billion,
8 question it, and let me tell you why I question
9 it. You take the total cost of Medicaid/welfare
10 and the counties pick up 17 percent. The state
11 picks up 34 percent and the fed's pick up 50
12 percent, that's of total spending.

13 But let's get back to Monroe
14 County.

15 SENATOR DOLLINGER: I'd like to
16 point out the difference there that maybe our
17 figures in Medicaid, not in Medicaid-slash
18 welfare number is the question that was asked.

19 SENATOR DALY: Anyay let's get
20 back to Monroe County. You say you know, you
21 have an idea of the figures in Monroe County.
22 Now, let me ask how much under this proposal,
23 how much would the -- would the county pay to

1 the state in sales tax and how much would the
2 county save in regards to the Medicaid/welfare
3 costs?

4 SENATOR DOLLINGER: My
5 understanding, Mr. President, and again I don't
6 have those figures right -- these are the
7 numbers -- the name of the game is figures.
8 Excuse me.

9 SENATOR DALY: I'm sorry. Go
10 ahead, Senator.

11 SENATOR DOLLINGER: Excuse me.
12 The actual numbers for the sales tax revenue,
13 penny in sales tax, I believe, generates about
14 \$70 million dollars and the total, the 1992
15 share, let me just double check this if I can.

16 Mr. President, through you, the
17 numbers that I have, and I want to make sure
18 that we pulled out the right numbers to review
19 this, is that the total cost of Medicaid
20 anticipated in year 1998-99, which I believe
21 would be the year of the final year of the
22 phase-in of the take-over, that cost would be
23 about \$124 million. The revenue that would be

1 generated by a penny on the sales tax in the
2 same year, assuming a reasonable increase in the
3 sales -- projected sales tax revenue would be
4 about \$95 million at that time, so the total
5 benefit to Monroe County taxpayers, if you had
6 just the sales tax revenue, but you had to pick
7 up the Medicaid cost, you'd use \$95 million
8 worth of sales tax revenue, you'd have to come
9 up with approximately \$30 million in real
10 property taxes to cover the difference between
11 the penny in the sales tax and the total cost of
12 your Medicaid.

13 The consequence of adopting this
14 amendment is, five years from now to give the
15 people of Monroe County a \$30 million tax saving
16 which, according to the current number, the
17 current number that's used for total real
18 property tax collections in Monroe County is
19 about \$235 million, so it would be about a 15
20 percent reduction in their property taxes if
21 this proposal took effect.

22 SENATOR DALY: Will the Senator
23 yield for one more question?

1 ACTING PRESIDENT FARLEY: Senator
2 Dollinger, would you yield for one more
3 question?

4 SENATOR DOLLINGER: Yes, Mr.
5 President, I would.

6 SENATOR DALY: Then you're
7 saying, Senator, that Monroe County would save
8 \$30 million in a year; is that correct?

9 SENATOR DOLLINGER: \$30 million
10 again, that's projected out, Mr. President, to
11 fiscal year 1999 -- 1998-99.

12 SENATOR DALY: And that's one
13 county in the 57.

14 SENATOR DOLLINGER: That's the
15 only question -- county I was questioned about,
16 Mr. President.

17 SENATOR DALY: What I'm saying,
18 57 counties, and you're saying it would save the
19 property taxpayers \$30 million that year; is
20 that correct, just so I understand you?

21 SENATOR DOLLINGER: Those are
22 what the numbers indicate for the only county I
23 was asked the question about, Mr. President.

1 SENATOR DALY: Where would the
2 \$30 million come from?

3 SENATOR DOLLINGER: From the state
4 of New York.

5 SENATOR DALY: Then we have the
6 state of New York picking up this additional
7 cost; is that correct?

8 SENATOR DOLLINGER: That's what
9 the take-over is all about, Mr. President;
10 that's correct.

11 SENATOR DALY: No, that's what
12 your take-over is all about, Mr. President,
13 that's correct.

14 SENATOR DOLLINGER: I apologize.
15 That's what the amendment would do. That's what
16 the take-over that's suggested in the amendment
17 would do.

18 SENATOR DALY: That's why your
19 take-over is different than our take-over plan.
20 Basically then, Senator, what you're saying is
21 New York State is going to have additional cost
22 statewide, statewide, because New York State is
23 only one of 57 counties, which means then that

1 the taxpayers of the state of New York are going
2 to have to pick up those additional costs; is
3 that right?

4 SENATOR DOLLINGER: Again, Mr.
5 President, I apologize to the questioner. I was
6 listening to someone else to get an explanation
7 and if you would repeat the question I'd be glad
8 to answer it.

9 SENATOR DALY: I understand,
10 Senator. I'll be glad to repeat the question.

11 Then what you're saying is the
12 state of New York is going to make up this
13 additional \$30 million in this hypothetical case
14 or in this case, and that means that that will
15 be spread throughout the entire counties down
16 into New York City and again realizing, Senator,
17 that 70, 75 percent of the costs are in New York
18 City, and we would estimate -- let me give you a
19 figure, Senator, and then you can comment on
20 it. We estimate that such a take-over as you
21 just proposed would cost the state of New York
22 in additional new monies, \$4 billion, and I
23 would ask the Senator, my last question: Where

1 would this money come from?

2 SENATOR DOLLINGER: Well, Mr.
3 President, I think it's the advantage of the
4 amended -- the amendments is that the same cost
5 -- type of cost containment that's talked about
6 in the underlying bill, the state of New York
7 would attempt to achieve the same level of cost
8 containment, that what would happen would be the
9 cost containment measures that I think there's a
10 growing consensus on the need for cost
11 containment, and those kinds of measures would
12 be a part of what this state, this Governor is
13 committed to do, and that is to try to reduce
14 that cost, to contain that cost.

15 The only difference, the major
16 difference between the plan in the underlying
17 bill and these amendments, is that it's not
18 contingent upon the achievement of an
19 unrealistic cost containment number, and I think
20 the most recent information that we have from
21 the Majority is that the 6.6 percent is
22 acknowledged to be all but an unrealistic
23 number.

1 This plan, as this plan stands
2 under the amendments proposed today, we would
3 achieve a take-over which will produce property
4 tax relief without having it be contingent on a
5 totally hypothetical ability for the counties to
6 achieve cost containment.

7 My hope continues to be, Mr.
8 President, I think that there is a growing
9 consensus on both sides of the aisle for need of
10 cost containment in the Medicaid area that can
11 be best done at the state level. It can be best
12 done with the unified system, with a single
13 payer, with not having the local communities
14 have to pick up the cost, and I think we've got
15 a more realistic chance to achieve it through
16 the amendments.

17 But the most important thing is,
18 let's give our local communities property tax
19 relief now. Let's begin the process, please
20 don't make it based on a hypothetical cost
21 containment that we're going to ask every county
22 to do that some may achieve, others may not
23 achieve, and we may end up in a very complicated

1 situation based on trying to figure out how we
2 calculate that 6.6 percent.

3 I would strongly urge the
4 adoption of the amendments, Mr. President, and I
5 would ask everybody in this chamber to give the
6 local communities a chance to take a sigh of
7 relief, to give those local communities an
8 opportunity to begin to realize that real
9 property tax relief is right around the corner.
10 If this is amended, it will hold them harmless.
11 We will give them an opportunity to reduce their
12 overall spending and their reliance on the
13 property tax base. It's what they've been
14 asking us for. These amendments represent a
15 clear opportunity to do that.

16 ACTING PRESIDENT FARLEY: Senator
17 Holland on the amendment or for a question?

18 SENATOR HOLLAND: No, I'd ask
19 Senator if he would yield to a question.

20 ACTING PRESIDENT FARLEY: Would
21 you yield to a question from Senator Holland?

22 SENATOR DOLLINGER: I would, Mr.
23 President.

1 ACTING PRESIDENT FARLEY: Senator
2 Holland.

3 SENATOR HOLLAND: Senator, we're
4 trying to do exactly what you described and
5 we're trying to do it through good management
6 and controlled costs. Now, you have attacked
7 the 6.1 percent cost containment. Do you know
8 what the Governor is recommending as the annual
9 increase in his proposal?

10 SENATOR DOLLINGER: My
11 understanding is, Mr. President, that with the
12 growing volume of people that will be in the
13 system, the growing need for long-term care and
14 for other reasons, that a more realistic
15 projection would be in the 12 percent area.

16 SENATOR HOLLAND: That's
17 correct. That's exactly what the Governor is
18 suggesting, 12 to 13 percent.

19 One more question, if you don't
20 mind. Do you know any tax in the state of New
21 York that is growing at 12 to 13 percent that we
22 can cover this expense with?

23 SENATOR DOLLINGER: No, not at

1 the current point, I don't.

2 SENATOR HOLLAND: So the real
3 question is, do we contain costs or do we let
4 costs get away from us with figures that we can
5 not control through increased taxation?

6 SENATOR DOLLINGER: Through you,
7 Mr. President, the real question that's posed
8 here is that if we need those additional taxes,
9 if for some reason cost containment doesn't
10 work, doesn't achieve the limitation that I
11 think both Senator Holland and I hope actually
12 happens, the question is where are we going to
13 get the revenue and who is going to benefit by
14 the proposal contained in these amendments?

15 The benefit will accrue to the
16 local communities in the form of reduced
17 property taxes. I'm sure everyone in this
18 chamber has heard the endless complaints about
19 rising property taxes. But this will -

20 ACTING PRESIDENT FARLEY: Senator
21 Holland.

22 SENATOR HOLLAND: What this will
23 do, just to finish Mr. President.

1 ACTING PRESIDENT FARLEY: Oh, I'm
2 sorry.

3 SENATOR DOLLINGER: This will
4 reduce the property tax and if additional
5 revenues are necessary, they'll come from the
6 state of New York through other broad-based
7 taxes.

8 SENATOR HOLLAND: Senator, I
9 heard you speak about the cost, the increased
10 costs of Monroe County. Do you know what the
11 total cost would be over the six-year period
12 under the take-over under the Governor's
13 proposal, to the localities and to the state?

14 SENATOR DOLLINGER: The total
15 cost -

16 SENATOR HOLLAND: -- of the
17 amended proposal.

18 SENATOR DOLLINGER: -- of the
19 Governor's recommendation.

20 SENATOR HOLLAND: To the
21 localities and to the state combined.

22 SENATOR DOLLINGER: It's my
23 understanding, and again I just want to make

1 sure I've got the absolute figures -- my
2 understanding is and again, Senator, I just want
3 to make sure of my numbers before I recite them,
4 that the total cost that would be taken over by
5 New York State under the amendments, the total
6 cost would be about 21.2 billion over seven
7 years.

8 The revenue that we would take in
9 by virtue of the swap for the sales tax would be
10 about 16.6 billion, and the net cost to the
11 state of New York would be about \$4.6 billion.

12 SENATOR HOLLAND: That's pretty
13 close. I have different figures, very similar,
14 14 million plus 4.4 million, 18-point -
15 billion, I'm sorry, thank you, John -- 18.5
16 billion approximately under the Governor's
17 plan.

18 If we have cost containment, on
19 the other hand, instead of the 18.2 billion, the
20 cost under our proposal with cost containment
21 which only makes sense in good management would
22 be \$6.6 billion less or approximately \$12.8
23 billion.

1 SENATOR DOLLINGER: Well, and,
2 Mr. President, I think the proposal put forth in
3 these amendments, we haven't ruled out cost con
4 tainment. Cost containment could substantially
5 reduce the \$4.5 billion overall cost.

6 SENATOR HOLLAND: Senator, that's
7 an excellent -

8 SENATOR DOLLINGER: Just that our
9 proposal wasn't contingent upon achieving that
10 cost. We did the property tax relief now and
11 have the state manage the question of cost
12 containment in the future.

13 SENATOR HOLLAND: Senator, that's
14 a excellent suggestion, but the Governor never
15 mentioned that. We've had three negotiating
16 meetings with him, but he has never mentioned
17 that or allowed that to come up, but your idea
18 is an excellent idea. If we can agree on cost
19 containment to some degree, then we can move
20 this bill.

21 SENATOR DOLLINGER: Well, the
22 question is whether we can agree on cost
23 containment as a condition of the take-over. I

1 think the position of this amendment is that
2 that shouldn't be the linchpin upon which we
3 provide the property tax relief to the
4 counties. We ought to go forward and give the
5 property tax relief now and have the state deal
6 with the question of whether, over the seven
7 year period we can achieve the cost containment
8 goals that I think your proposal addresses and
9 that the Governor in his proposal would like to
10 address as well.

11 The question is, do we make our
12 property tax relief contingent upon that. This
13 proposal says, don't do it that way. Let's get
14 the property tax relief first.

15 ACTING PRESIDENT FARLEY: On the
16 amendment, all in favor say aye.

17 SENATOR GOLD: Party vote in the
18 affirmative.

19 ACTING PRESIDENT FARLEY: Party
20 vote. Party vote, Senator Present.

21 SENATOR PRESENT: Negative.

22 ACTING PRESIDENT FARLEY: Call
23 the roll on a party vote.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 22, nays 35,

3 party vote.

4 ACTING PRESIDENT FARLEY: On the

5 bill. Read the last section.

6 THE SECRETARY: Section 2. This

7 act shall take effect immediately.

8 ACTING PRESIDENT FARLEY: Call

9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes -

12 ACTING PRESIDENT FARLEY: Senator

13 Jones to explain her vote?

14 SENATOR JONES: Yes. I just want

15 to say that I am going to support this bill, but

16 I do see good things in the Senate Republican

17 bill. I also see some things in the Governor's

18 bill that I would have liked to have seen. I

19 guess what I wish is that we could have had a

20 realistic compromise.

21 I have heard the same thing that

22 you have heard from our counties, this is a

23 tremendous drain, they are begging for this kind

1 of mandate relief. However, if there's one
2 thing I've learned, even in the short time that
3 I'm here if it isn't a bill that both the
4 Assembly and the Senate have agreed upon it's
5 kind of a -- what shall I say, lesson in
6 futility what we're doing.

7 So while I'm going to support it,
8 I think we're doing a disservice to our locality
9 if this isn't a bill that is really going to
10 come to pass and give our counties the relief
11 that they're asking for.

12 ACTING PRESIDENT VOLKER: Senator
13 Jones in the affirmative. Continue the roll.

14 I'm sorry. Senator Wright to
15 explain his vote.

16 SENATOR WRIGHT: Mr. President,
17 to explain my vote.

18 Having served in local government
19 and having put together a number of local
20 government budgets that have dealt with the
21 increasing costs of Medicaid and that increasing
22 annual burden, I can attest first hand to the
23 need for cost containment and to simply shift

1 the cost from local governments to the state of
2 New York really doesn't accomplish the under
3 lying reform that needs to be accomplished in
4 Medicaid.

5 The difficulty with the amendment
6 is very simply a question of shifting that cost
7 because you end up dealing with other local
8 property taxes. If the state of New York has to
9 take on additional burden, my concern very
10 simply is that we jeopardize funding in such
11 critical areas as school aid, which simply
12 shifts another burden of state government back
13 to the property tax; so while we may have
14 relieved county government, and that will
15 certainly please county officials, we've added
16 additional burdens to the local property taxes
17 in the form of school aid.

18 So I think the real issue is cost
19 containment. That's what this bill does. I
20 vote for cost containment and this bill. Thank
21 you.

22 ACTING PRESIDENT VOLKER: Senator
23 Wright in the affirmative. Senator Daly to

1 explain his vote.

2 SENATOR DALY: Explain my vote.

3 The point was made that the percentage, the
4 formula under this bill, is unattainable. I
5 take exception to that, and I can point to a
6 particular county which has held its increase in
7 costs down to under seven percent.

8 Now, I won't read the letter, but
9 I'll be glad -- it's Niagara County and, if
10 you'll check with Social Services you'll find,
11 Mr. President, that this is a model county and
12 they have truly implemented all the cost saving
13 programs that they can. They've done an
14 exceptional job. Their cost and increase, total
15 increase was 6.4 percent last year.

16 It can be done statewide, Mr.
17 President, and this bill can help us do it.

18 ACTING PRESIDENT VOLKER: Senator
19 Daly in the affirmative.

20 Senator DeFrancisco to explain
21 his vote.

22 SENATOR DeFRANCISCO: Yes, I
23 think it's extremely important to have cost

1 containment as a pre-condition. To leave the
2 state of New York as the sole vehicle for cost
3 containment is a little bit risky to say the
4 least, in view of the history of the state over
5 the last several years.

6 Moreover, what you do is reward
7 those counties who have been effective in the
8 cost containment and don't reward those who are
9 just going for the ride based upon sales tax
10 revenues that they're generating from other
11 counties and, lastly, when we have over 60
12 counties, I believe in this state, attempting to
13 do innovative things with respect to cost
14 containment, we may come up with an idea that
15 might be well worth using throughout the state
16 of New York. Rather than having one group, the
17 state of New York, responsible for this cost
18 containment, we have many different counties
19 coming up with locally innovative approaches,
20 some of which may work and at least there's a
21 better chance of getting something that works
22 when there are that many people that have vested
23 interests in doing so.

1 So I think it's extremely
2 important that this legislation pass as is
3 proposed.

4 ACTING PRESIDENT VOLKER: Senator
5 DeFrancisco in the affirmative.

6 Senator Dollinger to explain his
7 vote.

8 SENATOR DOLLINGER: Mr.
9 President, my views on the legislation are known
10 based on the debate. I would just rise in con
11 travention of the point made by Senator DeFran
12 cisco. He's correct there may be some counties
13 that get property tax relief as a result of this
14 bill, but there may be a lot of counties that
15 won't, including the one I live in that has
16 worked through a Democratic administration and a
17 Republican administration, that has worked as
18 aggressively on cost containment as it possibly
19 can, but because of the numbers of people on the
20 rolls and the rising volume which isn't taken
21 into account in the formula in the underlying
22 bill, the fact that there are going to be more
23 people on the rolls especially as the economy is

1 in a questionable state, they won't see any tax
2 relief as a result of this and the miracle that
3 you're looking for, I submit, Senator, is one
4 that has been looked at for a decade by
5 Democrats and Republicans in our county and we
6 can't get that cost down. It has defied our
7 ability to do it. What you'll have is you'll
8 have property tax relief in some counties, Mr.
9 President, but they'll be very, very few. They
10 won't be the counties that have significant
11 problems that require Medicaid funds.

12 So the bill that is going to be
13 passed today is not property tax relief in
14 Monroe County. It isn't property tax relief
15 where I live, and I suggest it won't achieve
16 statewide property tax relief which is what the
17 amendment would have done.

18 ACTING PRESIDENT VOLKER: Senator
19 DeFrancisco in the negative.

20 SENATOR DOLLINGER: Dollinger.

21 ACTING PRESIDENT VOLKER: I'm
22 sorry. Senator Dollinger in the negative.

23 SENATOR DeFRANCISCO: I take of

1 fense to that.

2 ACTING PRESIDENT VOLKER: I
3 apologize.

4 THE SECRETARY: Those recorded in
5 the negative on Calendar Number 1256 are
6 Senators Connor, Dollinger, Espada, Gold,
7 Halperin, Leichter, Montgomery, Ohrenstein,
8 Onorato, Smith, Stavisky, and Waldon. Also
9 Senator Oppenheimer. Ayes 44, nays 13.

10 ACTING PRESIDENT VOLKER: The
11 bill is passed.

12 Senator Present.

13 SENATOR PRESENT: Mr. President,
14 will you call up Calendar 1265, Senator Trunzo's
15 bill, which was inadvertently laid aside on the
16 first reading.

17 ACTING PRESIDENT VOLKER: Clerk
18 will read.

19 THE SECRETARY: Calendar Number
20 1265, by Senator Trunzo, Senate Bill Number
21 5961, an act to amend the Executive Law.

22 ACTING PRESIDENT VOLKER: Read
23 the last section.

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

3 ACTING PRESIDENT VOLKER: Call
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 57.

7 ACTING PRESIDENT VOLKER: The
8 bill is passed.

9 Senator Present.

10 SENATOR PRESENT: Mr. President,
11 can we take up the controversial calendar now,
12 please, in order.

13 ACTING PRESIDENT VOLKER: Clerk
14 will read the controversial calendar.

15 THE SECRETARY: On page 5,
16 Calendar Number 165, by Senator Maltese, Senate
17 Bill Number 2114, an act to repeal section 114-a
18 of the Correction Law.

19 SENATOR GOLD: Explanation.

20 ACTING PRESIDENT VOLKER: Senator
21 Maltese to explain his bill.

22 SENATOR MALTESE: Mr. President,
23 to refresh the recollection of my esteemed

1 colleagues, this bill was previously on the
2 calendar, and I laid it aside in order to obtain
3 additional information to respond to the
4 inquiries of some of my colleagues, my
5 Democratic colleagues.

6 The bill eliminates duplication
7 of records at correction facilities. The
8 section that it deletes requires correction
9 facilities superintendents to keep daily records
10 regarding rule infractions by employees,
11 punishments inflicted upon inmates, and inmate
12 complaints regarding food, clothing or cruel and
13 unusual punishment.

14 This provision was originally
15 enacted in 1929 and was intended for specific
16 use by the Commissioner of Correctional
17 Services. It is outdated and creates confusion
18 on the parts of inmates. Moreover, all the
19 records that it speaks about are kept on the -
20 in the facility itself, and those records are
21 available at the office of the superintendent.

22 In addition, Mr. President, I
23 visited correctional facilities and observed the

1 method of record keeping with respect
2 specifically to the areas that would be
3 deleted. One of the inquiries concerned whether
4 or not the entering of the data into computers
5 then necessitated or called for the destruction
6 of the original records.

7 I allay the fears of my
8 colleagues in that those records are not
9 destroyed and they are kept. I'd like to use as
10 an example the inmate grievance process. This
11 is a process that grew out of the post-Attica
12 reforms and is accredited by the Department of
13 Justice.

14 The grievance itself by the
15 inmate is put forth on a -- on a specific form.
16 I have here the form used by Shawangunk Correc
17 tional Facility which is one of the correctional
18 facilities that I visited. It is an involved
19 and lengthy form that is in writing and which is
20 retained. I have copies of the form here which
21 I would be glad to make available to any
22 colleague interested.

23 In addition, it spells out the

1 appellate procedure which goes through a
2 grievance resolution committee at the facility
3 itself and it is then subject to appeal to the
4 superintendent of the facility. All those
5 records are in writing prior to being entered
6 into the computer.

7 I do wish to point out to my
8 colleagues that the computer system that has
9 been inaugurated facilitates the checking,
10 cross-checking and retrieval of all these
11 complaints, which includes the unusual incident
12 reports, the hearing records, the inmate
13 disciplinary history, unusual incident reports,
14 a grievance log and grievance closed cases.

15 So I wish to point out to my
16 colleagues that this system is far superior to
17 anything that we had heretofore.

18 ACTING PRESIDENT VOLKER: Senator
19 Waldon.

20 SENATOR WALDON: Mr. President,
21 would the good Senator yield to a question?

22 ACTING PRESIDENT VOLKER: Senator
23 Maltese, will you yield? Senator Maltese

1 yields.

2 SENATOR WALDON: Senator, is
3 there any reason that we could not keep the
4 original written records in a repository
5 somewhere as reference material for that which
6 is placed upon the computer?

7 SENATOR MALTESE: Mr. President,
8 in response to the inquiry, there's no reason
9 that it can't be kept, but one of the things
10 that I did indicate is that they are, in fact,
11 kept so that it isn't that they're destroyed.
12 This section originally called for the keeping
13 of a daily log, and the phrase "daily log" has
14 not been kept strictly since the '30s as was
15 explained to me.

16 What we have, instead, in place
17 of a daily log are these different forms that
18 are, in fact, written forms that are kept in the
19 records of the correctional facility and are
20 subject not only to retrieval or access by the
21 inmate or the inmates involved in the grievance
22 committee procedure, or they're subject to being
23 obtained under freedom of information.

1 SENATOR WALDON: Mr. President.

2 ACTING PRESIDENT VOLKER: Senator
3 Waldon.

4 SENATOR WALDON: If I may
5 continue.

6 ACTING PRESIDENT VOLKER: Yes.

7 SENATOR WALDON: Senator, are you
8 saying that there is no chronological record of
9 events between correction officers and prisoners
10 maintained at the correctional facilities now?

11 SENATOR MALTESE: No, that isn't
12 exactly what I'm saying. What I'm saying is
13 that, if you wish to access the information, you
14 can obtain that information by keying in various
15 categories and, among those categories, they
16 tell me, and which I have samples of here, under
17 hearing dispositions -

18 SENATOR WALDON: Mr. President.

19 ACTING PRESIDENT VOLKER: Senator
20 Maltese.

21 SENATOR WALDON: Senator Maltese,
22 maybe I wasn't clear, and I apologize for that.
23 I'm trying to ascertain from you whether or not

1 there's a running record of the incidents which
2 cause prisons to erupt in violence, meaning
3 where there's an allegation or, in fact, an
4 occurrence where prisoners have acted out
5 behaviorally or the correction officers have
6 acted out behaviorally and -

7 SENATOR MALTESE: Yes.

8 ACTING PRESIDENT VOLKER: That's
9 the gist and thrust of my question.

10 ACTING PRESIDENT VOLKER: Senator
11 Maltese.

12 SENATOR MALTESE: Well, my
13 understanding is that there is an incident
14 record, and I have -- so it's more than an
15 understanding.

16 SENATOR WALDON: But not a log.

17 SENATOR MALTESE: Based in fact,
18 it is not a log. It is a series of incident
19 reports that can be accessed by date, so if you
20 wanted to obtain a series of incidents at a
21 specific correctional facility, all you'd have
22 to do is access the incidents record. You could
23 get them as they're spelled out here on the

1 sheets and, in addition, the hard copies are
2 retained at the correctional facility.

3 SENATOR WALDON: Mr. President,
4 if I may.

5 ACTING PRESIDENT VOLKER: Senator
6 Maltese continues to yield.

7 SENATOR WALDON: If I understand
8 you correctly, you're saying that there are
9 various and sundry incident reports prepared
10 from time to time as the incidents occur, but
11 there's no running daily log or record of
12 everything that transitions in a particular
13 day. It is very dissimilar, if I may -- if I
14 may draw an analogy.

15 SENATOR MALTESE: Sure.

16 SENATOR WALDON: What you're
17 saying is systemically, this is very dissimilar
18 to the memo book required of police officers
19 throughout the land.

20 SENATOR MALTESE: Mr. President,
21 I think the difficulty here is that I have maybe
22 the difficulty that a person of my generation
23 has with the new computer systems which is why I

1 went through chapter and verse the various
2 computer files and hard copy that was kept at
3 the correctional facility.

4 If a person wanted to go through
5 each incident at the time it is reported, is
6 given an incident number. That incident number
7 is arranged chronologically so, therefore, if
8 you wanted to, you could obtain hard copies of
9 each and every incident that takes place at that
10 facility in hard copy, but even better, you
11 could go directly to the computer, looking up
12 incident numbers, and let's say I assume
13 Incident Number 1 would be January 1st, 1993.
14 You could then obtain chronologically every
15 incident that took place from January 1st, 1993
16 on to date.

17 SENATOR WALDON: Mr. President.

18 ACTING PRESIDENT VOLKER: Senator
19 Waldon.

20 SENATOR WALDON: Is there support
21 for your bill from the defenders' association?

22 SENATOR MALTESE: Well, I haven't
23 received anything in opposition, Senator.

1 SENATOR WALDON: Those
2 organizations other than the defenders'
3 organizations which represent prisoners' rights,
4 are they supporting your bill or are they in
5 opposition?

6 SENATOR MALTESE: They -- Mr.
7 President, they have not communicated any
8 opposition.

9 I wish to point out to my
10 distinguished colleague, that in going through
11 these records, it's -- it appears to me as
12 somebody who isn't exactly computer literate as
13 they say, that the ease that you could cross
14 check incidents with dates and occurrences and
15 facilities and type of grievance report and
16 resolution of grievance committees and so on,
17 has been vastly facilitated by the entry into
18 these computers.

19 SENATOR WALDON: Mr. President,
20 on the bill, if I may.

21 ACTING PRESIDENT VOLKER: Senator
22 Waldon, on the bill.

23 SENATOR WALDON: My fear, Senator

1 Maltese, is that in this age of high technology
2 that a virus may attack the system in a
3 particular prison and information that has gone
4 onto the computer will be lost.

5 SENATOR MALTESE: Mr. President,
6 if I might address myself specifically to that.

7 ACTING PRESIDENT VOLKER: Senator
8 Waldon yield to Senator Maltese?

9 SENATOR WALDON: Yes, I'll suffer
10 the interruption, yes.

11 ACTING PRESIDENT VOLKER Senator
12 Waldon yields.

13 SENATOR MALTESE: In addition to
14 the incident reports which are not destroyed,
15 they make a daily tape, pull it from the
16 commuter, make a printout -- it's a printout and
17 then retain the printout. So if a virus
18 destroyed everything in the computer, at the end
19 of the day it would simply require going back to
20 the written -- to the written papers and again
21 putting it in on the day. So you do have hard
22 copy available both in the computer records and
23 in the -- in the original document submitted.

1 SENATOR WALDON: Mr. President,
2 if I may.

3 ACTING PRESIDENT VOLKER: Senator
4 Waldon.

5 SENATOR WALDON: I'm pleased with
6 that information. When we debated this bill the
7 last time, that substantive information was not
8 forthcoming. What you are, in effect, saying is
9 that there are several running records. There's
10 the incident report, seriatim, there's the tape
11 on a daily basis, and there are all of the
12 computer entries, so we have three records which
13 could be utilized as a daily log. That was not
14 my understanding when we debated this bill the
15 last time.

16 So, Senator Maltese, I must tell
17 you that I applaud your effort. I applaud your
18 stick-to-itiveness digging all of this
19 information out and edifying us who are your
20 colleagues, and I think that you have
21 sufficiently convinced me that I may change my
22 position in a few moments when we vote.

23 ACTING PRESIDENT VOLKER: Read

1 the last section.

2 SENATOR GOLD: Mr. President.

3 ACTING PRESIDENT VOLKER: Oh,
4 Senator Gold.

5 SENATOR GOLD: I just really -
6 Senator Maltese, you've been very generous with
7 your time, but I want to ask you one question. I
8 just want it clear in my mind, I don't care what
9 you call it, all right? It's not the name of
10 it, but, for example, a police officer in the
11 city of New York carries a book and you -- you
12 can see the day as that police officer walked
13 around and everything that happened in a chrono-
14 logical fashion. Now, if he makes an an arrest,
15 obviously that's a different report and you
16 could see what happened in that arrest.

17 Is there such a document that
18 will survive your legislation with regard to the
19 correctional department? In other words, you've
20 explained in detail what would happen if you
21 went to the computer and punched in various key
22 words, but if I wanted to know, for example,
23 what a particular correction officer was doing

1 or whether there were reports on a specific day,
2 will there be anything that chronologically
3 tracks, such as we were led to believe this
4 daily log was, after your bill?

5 SENATOR MALTESE: Mr. President,
6 the cross-check -

7 ACTING PRESIDENT VOLKER: Senator
8 Maltese.

9 SENATOR MALTESE: -- would
10 survive this bill, and it would survive it with
11 respect to incidents. It would survive with
12 respect to chronological report, and it would
13 survive with respect to prison -- to inmates' or
14 prisoners' names. They do not keep a separate
15 listing as to employee complaints; in other
16 words, there is not a listing by correctional
17 employee's names. That's the only thing that is
18 not kept.

19 By the way, I don't want to
20 misunderstand, that is not kept in -- in
21 inferring that it is destroyed. It is
22 accessible, but it is not accessible by simply
23 pressing a key on the computer. It is

1 accessible as far as the original documents are
2 concerned, and I also wish the record to reflect
3 that I will now have delivered to Senator
4 Waldon, this voluminous material that I have
5 gotten together now. I have retained a copy, so
6 that in the future, hopefully I will be able to
7 -- to answer his searching questions which will
8 be made even more searching after he peruses
9 these documents.

10 ACTING PRESIDENT VOLKER: Read
11 the last section.

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

14 ACTING PRESIDENT VOLKER: Call
15 the roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes -- those
18 recorded in the negative on Calendar Number 165
19 are Senators Connor, Espada, Gold, Hoffmann,
20 Ohrenstein, Solomon and Stavisky. Ayes 50, nays
21 7.

22 ACTING PRESIDENT VOLKER: The
23 bill is passed.

1 THE SECRETARY: Calendar Number
2 456, by Senator Saland, Senate Bill Number 3286,
3 an act to amend the Penal Law.

4 SENATOR GOLD: Will the Senator
5 yield for a question?

6 ACTING PRESIDENT VOLKER: Senator
7 Saland yields.

8 SENATOR GOLD: Senator, a similar
9 bill, I believe, passed and was vetoed. Is
10 there any difference in this bill?

11 SENATOR SALAND: Yes, there is.

12 SENATOR GOLD: Will you explain
13 that to us?

14 SENATOR SALAND: There is a
15 difference. The difference is found in the last
16 couple of lines of the bill. Last year's
17 version of the bill made reference to disposal
18 of a firearm, and it was done in the context of
19 providing the instructor who would be working
20 with the -- with the applicant, freedom from
21 liability as long as that person had a receipt
22 from the licensing authority within the prior
23 six months showing that the person did, in fact,

1 have a -- an application.

2 There was concern about the use
3 of the word "disposal" for fear that it
4 effectively would enable that instructor to sell
5 the gun. If you look at the current language,
6 the language has been changed to providing a
7 firearm for such use by such unlicensed
8 individual in an effort to get around the sale
9 portion.

10 We believe we've addressed one of
11 the problems, one of the significant problems.
12 There's another problem in the bill which we
13 think is a -- according to the Governor, which
14 we feel is a little unrealistic that somebody
15 who is predisposed to getting a gun for illegal
16 purposes would go, get an application, pay the
17 application fee and then attempt to then turn
18 that weapon on his or her instructor and then
19 use that weapon for nefarious purposes.

20 I think that's a bit of an
21 illusory problem, somewhat imaginary.

22 SENATOR GOLD: Thank you. With
23 that explanation, I just point out that Sendor

1 Mendez and Montgomery and Paterson, I think, had
2 some problems last year. Last section.

3 ACTING PRESIDENT VOLKER: Read
4 the last section.

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

7 ACTING PRESIDENT VOLKER: Call
8 the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 57.

11 ACTING PRESIDENT VOLKER: The bill
12 is passed.

13 SENATOR LEICHTER: Mr.
14 President.

15 ACTING PRESIDENT VOLKER: Senator
16 Leichter.

17 SENATOR LEICHTER: May I have
18 unanimous consent to be recorded in the negative
19 on Calendar 165, please.

20 ACTING PRESIDENT VOLKER: Senator
21 Leichter, without objection, in the negative on
22 165.

23 THE SECRETARY: Calendar Number

1 1185, by Senator Masiello.

2 SENATOR GOLD: Lay it aside for
3 the day.

4 ACTING PRESIDENT VOLKER: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 1213, by Senator Padavan, Senate Bill Number
8 4704-A, Administrative Code of the city of New
9 York.

10 SENATOR PRESENT: Lay it aside,
11 please.

12 ACTING PRESIDENT VOLKER: Lay the
13 bill aside.

14 THE SECRETARY: Calendar Number
15 1217, by Senator Hannon, Senate Bill Number
16 4972, an act making an appropriation to the
17 Department of Transportation.

18 SENATOR DOLLINGER: Can we get an
19 explanation.

20 ACTING PRESIDENT VOLKER: Lay the
21 bill aside.

22 SENATOR PRESENT: Lay it aside
23 temporarily.

1 THE SECRETARY: Calendar Number
2 1236, by Senator Stafford, Senate Bill Number
3 5866, create a Motor Carrier Advisory Council.

4 ACTING PRESIDENT VOLKER: Read
5 the last section.

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

8 ACTING PRESIDENT VOLKER: Call
9 the roll.

10 (The Secretary called the roll.)

11 SENATOR GOLD: Hold on a second
12 please. Explanation.

13 SENATOR PRESENT: Lay the bill
14 aside.

15 ACTING PRESIDENT VOLKER: Lay the
16 bill aside, withdraw the roll call.

17 THE SECRETARY: Calendar Number
18 1243, by Senator Spano, Senate Bill Number 1230
19 A, an act to amend the Civil Service Law.

20 ACTING PRESIDENT VOLKER: Read
21 the last section.

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

1 ACTING PRESIDENT VOLKER: Call
2 the roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes -

5 ACTING PRESIDENT VOLKER: Franz.

6 THE SECRETARY: Ayes 55, nays 2,
7 Senators Kuhl and Leichter recorded in the
8 negative.

9 ACTING PRESIDENT VOLKER: The
10 bill is passed.

11 THE SECRETARY: In relation to
12 Calendar Number 1243, it's ayes 55, nays 2,
13 Senators Galiber and Kuhl recorded in the
14 negative.

15 ACTING PRESIDENT VOLKER: Despite
16 Senator Leichter's support, the bill is passed.

17 THE SECRETARY: Calendar Number
18 1246, substituted earlier today, by member of
19 the Assembly Tonko, Assembly Bill Number 6023,
20 allowing Alexandra J. Burns to apply for
21 retroactive membership in the employees'
22 retirement system.

23 ACTING PRESIDENT VOLKER: Read

1 the last section.

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

4 ACTING PRESIDENT VOLKER: Call
5 the roll.

6 SENATOR GOLD: Mr. President, may
7 I have my name called?

8 ACTING PRESIDENT VOLKER: Senator
9 Gold to explain his vote.

10 SENATOR GOLD: Yeah, I told
11 Senator Farley that I was not going to debate it
12 and, Senator, I'm not but I just noticed in the
13 notes, this bill passed last year and was
14 vetoed, quotes, "because of failure to apply -
15 the membership was not -- it was failure of
16 evidence to show it was not the person's
17 fault."

18 I mean what we're doing assuming
19 the Governor is now undertaking this, is we've
20 made a court out of the Governor's office. I
21 mean this is just getting more and more absurd.

22 I vote in the negative.

23 ACTING PRESIDENT VOLKER: Senator

1 Gold in the negative, Senator Galiber,
2 Leichter.

3 THE SECRETARY: Ayes 54, nays 3,
4 Senators Galiber, Gold and Leichter recorded in
5 the negative.

6 ACTING PRESIDENT VOLKER: The
7 bill is passed.

8 SENATOR FARLEY: Just to explain
9 my vote on this, if I might.

10 ACTING PRESIDENT VOLKER: Senator
11 Farley to explain his vote. Withdraw the roll
12 call.

13 SENATOR FARLEY: You know, I do
14 that reluctantly, but the bill has been passed.
15 Incidentally, that evidence has been supplied
16 with this. The evidence that the Governor, as a
17 result of his veto. We addressed his veto.

18 ACTING PRESIDENT VOLKER: The
19 bill is now passed.

20 THE SECRETARY: Calendar Number
21 1248, by Senator Goodman, Senate Bill Number
22 3930, an act to amend the Vehicle and Traffic
23 Law.

1 SENATOR GOLD: Senator Goodman
2 yield to a question?

3 SENATOR GOODMAN: Yes, Senator.

4 ACTING PRESIDENT VOLKER: Senator
5 Goodman yields.

6 SENATOR GOLD: Senator, the only
7 question I have is, I was told -- and I wanted
8 to verify this with you -- that we have been
9 extending this, but that they don't put the
10 program in.

11 SENATOR GOODMAN: They don't
12 what?

13 SENATOR GOLD: Is there such a
14 program in existence now?

15 SENATOR GOODMAN: Program?

16 SENATOR GOLD: Yeah, it says a
17 traffic control signal; isn't this they're
18 supposed to submit a report? Somebody told me
19 that they weren't -- that it's not in effect
20 right now?

21 SENATOR GOODMAN: What I think
22 you're referring to, Senator, or, Mr. President,
23 that there is a demonstration program in effect

1 which has been reported upon and which was a
2 very significant success. It covered a 30-day
3 period in the fall of 1990, during which time
4 over a thousand summonses were issued and there
5 was over a 70 percent conviction rate based upon
6 the summonses.

7 So that the house knows what
8 we're talking about, let me just say that this
9 is in reference to an experiment in the city of
10 New York, which refers to the use of a red -
11 so-called red light camera. We've had a very
12 high incidence of red light running with the
13 result of some exceedingly serious accidents one
14 of which, for example, involved a car which went
15 through a red light, got hooked onto a baby
16 carriage, dragged the carriage with the baby in
17 it for some ten blocks, and the child was
18 killed.

19 The camera's purpose is to act
20 principally as a deterrent because if people
21 realize that, when they run red lights, which is
22 done with gay aban... with abandon in New York,
23 we have a situation which obviously creates

1 great danger, but in addition to the deterrent
2 aspect -

3 SENATOR GOLD: Mr. President, Mr.
4 President.

5 ACTING PRESIDENT FARLEY: Senator
6 Gold.

7 SENATOR GOLD: Yes. Senator
8 Goodman, I understand fully the intent and how
9 good it is. I was just asking the question -

10 SENATOR GOODMAN: I hope I've
11 responded.

12 SENATOR GOLD: -- as it was raised
13 in committee, is the program in effect?

14 SENATOR GOODMAN: The program or
15 as you call it -- as I call it, the demonstra
16 tion.

17 SENATOR GOLD: The
18 demonstration.

19 SENATOR GOODMAN: Now, what the
20 bill seeks to do is to have an additional two
21 year period to continue the demonstration on an
22 expanded basis. It will not become a totally
23 pervasive program.

1 SENATOR GOLD: I just wanted to
2 make sure that something was happening. The
3 impression given in the committee, and I'm sure
4 it was nobody's fault, is that they've done
5 nothing with it, and we keep extending it
6 waiting for them to do something.

7 SENATOR GOODMAN: That is not -

8 SENATOR GOLD: So they are doing
9 something.

10 SENATOR GOODMAN: That is
11 correct. Yes, they are.

12 SENATOR GOLD: That's all I want
13 to know. Thank you very much.

14 SENATOR GOODMAN: You're very
15 welcome.

16 ACTING PRESIDENT FARLEY: Read
17 the last section.

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

20 THE SECRETARY: Call the roll.
21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 57.

23 ACTING PRESIDENT FARLEY: The

1 bill is passed.

2 THE SECRETARY: Calendar Number
3 1260, by the Senate Committee on Rules, Senate
4 Bill Number 5853, an act to amend the General
5 Municipal Law.

6 SENATOR GOLD: Yeah. May we get
7 one day on this, please? Thank you very much.

8 ACTING PRESIDENT FARLEY: One
9 day. One day on it? Lay aside.

10 THE SECRETARY: Calendar Number
11 1261, by Senator Saland, Senate Bill Number
12 5881, an act to amend the Family Court Act.

13 SENATOR GOLD: Yeah.

14 SENATOR OPPENHEIMER:
15 Explanation.

16 ACTING PRESIDENT FARLEY:
17 Explanation has been asked for. Senator
18 Saland.

19 SENATOR SALAND: Mr. President,
20 this bill is a bill which we've entitled The
21 Family Protection and Domestic Violence
22 Intervention Act of 1993. Needless to say, and
23 I think we would all be familiar with the

1 reality, in fact, that domestic violence is and
2 should be treated much more as a crime than it
3 has been presently.

4 Domestic violence destroys the
5 illusion of the home as a safe place and a
6 nurturing place, and it basically renders
7 meaningless many of the things that we have
8 placed value about within the sanctity of the
9 home and despite the heightened public awareness
10 over the past several years, perhaps the past
11 six to eight years or more, it still to be an
12 alarmingly present phenomenon.

13 According to statistics from the
14 department -- the Division of Criminal Justice
15 Services, DCJS, there was nearly some 30,000
16 incidents reported to them within the last
17 reporting year, and nearly 70,000 family offense
18 related matters reported through OCA.

19 If you go into an emergency room
20 today, there's probably the likelihood that some
21 30 to 35 percent of the incidents that will be
22 reported in that emergency room will be in the
23 nature of domestic violence incidents.

1 If you'll look to some of the
2 national figures according to the F.B.I.
3 statistics, nearly 4,000 women in the United
4 States are killed every year in domestic
5 violence cases, and further, some 6 million
6 women, according to the United States Department
7 of Justice, are the subject of abuse by their
8 partners.

9 What we're proposing to do here,
10 Mr. President, is to take, in a very comprehens
11 ive fashion, the enormity of the problem with
12 which we're dealing and attempt to deal with it
13 on several levels. We are proposing here what
14 would amount to New York's first mandatory
15 arrest law. There is currently, under no
16 circumstances in the state of New York do you
17 have a situation in which a mandatory arrest
18 would occur.

19 We're proposing here also where
20 there are instances in which there's been the
21 use of physical force -- I'm sorry, where
22 there's been physical injury, serious physical
23 injury, the use of deadly physical force that

1 orders of protection which currently have a
2 one-year span to them be extended to three
3 years.

4 We're talking about enabling
5 courts to consider, in the course of their
6 deliberations whether or not they should remove
7 firearms, where there's been battering in the
8 course of a home. We're talking in addition,
9 Mr. President, to expanding the family offense
10 statute to include the stalking crimes. We're
11 talking of the ability in addition to provide
12 that, where there's been a violation of an order
13 of protection, the person who has been the
14 victim of that violation can go before the
15 Family Court and request that the Family Court
16 where there again has been an allegation of
17 physical injury, serious physical injury or use
18 of deadly physical force, to request that that
19 matter be transferred to a criminal court and
20 should that occur, the Family Court would still
21 retain jurisdiction over the contempt
22 proceeding.

23 We're also talking here about

1 dealing with children, children who are not the
2 victims of abuse but have the misfortune of
3 observing that abuse. Statistics will tell you
4 also, and these are national statistics, that
5 some 34 percent of people have viewed domestic
6 violence occurring in their home. That's far
7 more than the 19 percent of the people who have
8 viewed violent crimes such as muggings and
9 rapes.

10 What we're talking about here is
11 requiring greater training of police, State
12 Police and municipal police, to provide a
13 greater degree of awareness and sensitivity to
14 domestic violence.

15 This bill is, I would venture,
16 perhaps the most comprehensive bill dealing with
17 the subject of domestic violence that has been
18 seen within either of our houses of this
19 Legislature, certainly within my memory, and I
20 would suspect within the past couple of
21 decades.

22 It's a bill which I'm proud to
23 say all of my Senate Republican colleagues have

1 joined me in sponsoring. It's a bill which I
2 think is really and most appropriately an
3 enormous step in the battle against domestic
4 violence. It's a bill which I would hope that
5 we might see some action on before the end of
6 this session. It remains to be seen whether
7 that will occur.

8 Thank you, Mr. President. I'll
9 yield to any questions.

10 ACTING PRESIDENT FARLEY: Senator
11 Oppenheimer.

12 SENATOR OPPENHEIMER: Thank you,
13 Mr. President.

14 As Senator Saland notes, this is
15 an issue that we have been very interested in on
16 this side of the aisle too, taking a different
17 -- a different look at the -- at the problem,
18 basically looking at domestic violence from the
19 health care -- woman's health care point of
20 view, how we can intervene in the cycle which
21 you do address, how we might be able to provide
22 some relief to our emergency rooms where they
23 are continually seeing the same victim back

1 again, and I might add enormous cost, not just
2 hospital costs but, of course, a grave and
3 serious cost to the woman. It's normally a
4 woman, so we'll say woman.

5 And I must congratulate Senator
6 Saland. This is a fine bill. It has a lot of
7 very fine things in it which I will just briefly
8 mention. The mandatory -- the pro-arrest policy
9 is excellent as something we were looking into
10 as well. The extending the Family Court order
11 of protection, excellent. Really, a wonderful
12 piece -- piece of legislation would be the
13 removal of firearms from the batterer's home
14 because that is often the weapon of choice of
15 the batterer.

16 Particularly fine is compiling
17 and providing to victims of the information
18 concerning shelters, counseling, medical and
19 legal advocacy. But having said that, I have a
20 couple of questions.

21 If you would yield for a
22 question, Senator Saland.

23 SENATOR SALAND: Certainly, Mr.

1 President.

2 SENATOR OPPENHEIMER: As I read
3 this, it appears, and you'll have to correct me
4 if I'm wrong, that this only deals with married
5 couples or couples with a child, that it does
6 not apply to people who co-habitate, so if you
7 have co-habitation, and the man is beating up
8 the woman, there -- this doesn't apply, the
9 bill, is that true?

10 SENATOR SALAND: This is
11 basically the same definition that has currently
12 been used under the existing law. The law
13 provides not only for spouses, battering between
14 spouses, a -- people formally married, but also
15 with an instance in which there is -- there are
16 two people who are a -- who may have had a child
17 born out of wedlock as the statute reads.

18 SENATOR OPPENHEIMER: I would ask
19 if the Senator would yield again.

20 ACTING PRESIDENT FARLEY:
21 Senator, would you yield again?

22 SENATOR SALAND: Certainly.

23 SENATOR OPPENHEIMER: Then if two

1 people are living together and don't have a
2 child or if the man denies paternity of the
3 child, then those two people aren't covered
4 under this law. Do you think we should expand
5 it to cover these people, since it's a common
6 occurrence in today's society?

7 SENATOR SALAND: Well, we did a
8 bill a bit earlier, I believe. I believe we've
9 done the bill already which is going to, I would
10 also add, make it easier to establish paternity
11 which may bring a lot more people under the
12 ambit of the out-of-wedlock section.

13 I can recall that particularly
14 well because I introduced that bill back when I
15 was in the Assembly and the -- the problem
16 with -- with just dealing with people who may
17 be, quote/unquote, living together, is it's a
18 very hard term to define. Does that mean
19 somebody who may be together for an evening?
20 Does that mean somebody who is together for two
21 days? Does that mean somebody who is together
22 for a month, somebody who is together for three
23 or four or five months?

1 So we're working within the
2 construct of the existing statute, and we
3 believe that, other than the fact that we
4 reasonably expect it to be easier to establish
5 paternity based on some of the changes we've
6 made earlier on, which I think we're going to be
7 having three-way agreement on, by the way, that
8 the definitions will remain primarily as is.

9 SENATOR OPPENHEIMER: M-m h-m-m.
10 I believe -- I'm uncertain -- that there is an
11 Assembly bill that does determine or try and
12 define co-habitation and amounts of time and
13 that issue. Do you know if that's -- if there
14 is an Assembly bill like that? Are you aware of
15 that bill that tries to define co-habitation?

16 SENATOR SALAND: I'm -

17 SENATOR OPPENHEIMER: Oops, we
18 even have a number, if you would be good enough
19 to look into it, Senator. It's A. 3772.

20 SENATOR SALAND: Certainly take a
21 look at it.

22 SENATOR OPPENHEIMER: It tries to
23 deal with this problem because there are so many

1 couples now that co-habitate and don't marry.

2 It's not like when I was a kid.

3 I have another question -

4 ACTING PRESIDENT FARLEY: Senator
5 Saland, would you yield for another question?

6 SENATOR SALAND: Yes, Mr.
7 President.

8 SENATOR OPPENHEIMER: I see that
9 the pro-arrest section specifically states that
10 an officer can arrest if there is an obvious
11 evidence of abuse.

12 SENATOR SALAND: Basically -

13 SENATOR OPPENHEIMER: Yeah.

14 SENATOR SALAND: I'm sorry.

15 SENATOR OPPENHEIMER: But when a
16 woman has an order of protection and that order
17 is violated, will that officer be able to
18 enforce the order of protection when the man is
19 pounding on the door to come beat again or will
20 the woman have to be beaten again a second time?

21 SENATOR SALAND: There are four
22 instances in which the mandatory arrest would
23 apply.

1 The first would be where the
2 officer actually observes the occurrence of the
3 incident. The second would be where the officer
4 arrives at the scene in relative proximity to
5 the occurrence of the event and has reason to
6 believe that the victim is in danger. The third
7 would be where there is an evidence of, and
8 these terms are terms that are all defined in
9 the Penal Law, Article X, Section 10 of the
10 Penal Law, physical injury, serious physical
11 injury or use of deadly physical force, and the
12 fourth would be where that occurs where there's
13 an outstanding order of protection.

14 So in that instance, if, for
15 instance, that individual was in the process of
16 attempting to break down the door, there's a
17 question of whether or not that's the use of -
18 of the kind of force, the use of deadly physical
19 force, if he were to spray the door with
20 bullets, I mean, you know, there -- there is
21 certainly codified case law. There is certainly
22 codified case law that defines when that would
23 be applicable; so I would say that in most

1 instances where there was the threat of that
2 type of an injury, the ability to have a
3 mandatory arrest would occur.

4 SENATOR OPPENHEIMER: So then,
5 just to clarify, you're saying that, if the
6 woman has an order of protection and she's been
7 battered once and the batterer is again at the
8 door knocking very hard, that the opportunity
9 for pro-arrest would again occur?

10 SENATOR SALAND: You're going to
11 have to speak up just a little bit, Senator.

12 SENATOR OPPENHEIMER: That there
13 had already been a pro-arrest because of one
14 battery, and the woman had an order of
15 protection now, and the batterer was again at
16 the door pounding, that the police would come
17 and arrest again, pro-arrest?

18 SENATOR SALAND: The police could
19 come and, if they observed what was going on,
20 they would have the ability to make the arrest.
21 The question would be if they arrived at the
22 scene and the man had left and the woman -- and
23 we're talking women 95 to 98 percent of the time

1 here.

2 SENATOR OPPENHEIMER: Right.

3 SENATOR SALAND: -- and the woman
4 was to say, "The guy was at my door, he's my
5 husband, my ex-husband, and he was pounding away
6 at the door, I was fearful for my life, I
7 thought that the door was going to give," that
8 would be somewhere within the gray area as to
9 whether or not that amounted to deadly physical
10 force.

11 If he were shouting out and the
12 neighbors heard, I'm going to kill you, I'm
13 going to kill you, and, you know, he -- someone
14 saw him with the gun on his -- on his person or
15 perhaps some other -- some other weapon, then
16 you, I believe, have something that gets from
17 gray closer to black.

18 SENATOR OPPENHEIMER: What -
19 what concerns some of the women's groups is that
20 it sort of becomes a potential two-beating
21 process. You have to get beaten.

22 SENATOR SALAND: I'm sorry. I
23 heard you say "potential".

1 SENATOR OPPENHEIMER: Potential -
2 ACTING PRESIDENT FARLEY: Senator
3 Oppenheimer, if you could speak up a little
4 bit.

5 SENATOR OPPENHEIMER: Speak up!

6 SENATOR SALAND: May be more of a
7 problem of my hearing than your voice.

8 SENATOR OPPENHEIMER: Potentially
9 a two-beating instead of a one-beating procedure
10 and that's of concern to many women's groups.

11 Let me just mention one last
12 thing, if you will yield again. Only in our
13 state is it required that the woman choose
14 between Criminal and Family Court. Now, you
15 have put in a little more lenient time frames,
16 but it still requires the woman to make a
17 choice; she can not just bring it in Family or
18 just bring it in Criminal or bring it in both at
19 the same time as is available in every other
20 state.

21 Could you explain why that isn't
22 available?

23 SENATOR SALAND: Well, first let

1 me say that, going back to the examples I gave
2 you, briefly, where there has been evidence of
3 allegations of physical injury, serious physical
4 injury, or use of deadly physical force, at that
5 point you have the ability if you're the victim
6 who is alleging that that has occurred,
7 notwithstanding the fact that you started off in
8 Family Court and notwithstanding the fact that
9 the current three-day rule would prevent you
10 from asking for a transfer to criminal court,
11 under this bill whether it's three days, four
12 days, five days, ten days, twelve days, you have
13 the ability to make that application. The court
14 can do it on its own because the court believes
15 the allegations to be such as to warrant that
16 transfer, and the court can still retain
17 jurisdiction to handle the contempt for the
18 violation of an order of protection, were there
19 a prior order of protection, or you can do it
20 yourself. So the court can do it on its own
21 motion; the applicant can make the motion.

22 Now, under the two proceedings
23 are two different proceedings. There is the

1 Family Court proceeding which is a civil court
2 proceeding and the criminal court proceeding.
3 You have a different standard of evidence in the
4 Family Court proceeding than you do in the
5 criminal court proceeding.

6 You have the ability if you are
7 engaged in the Family Court proceeding to have
8 anything you say or do used in the criminal
9 court proceeding. So the reality is, such as
10 occurs in child neglect -- or child neglect -
11 more appropriately child abuse cases, that the
12 pending proceeding in a Family Court family
13 offense proceeding where there is any kind of
14 serious allegations will be stayed because,
15 number one, the defendant -- or respondent in
16 the Family Court proceeding is not going to go
17 forward because they have the risk of having
18 whatever it is that they will say or whatever it
19 is that they will admit in a court proceeding
20 with a lesser standard of evidence used against
21 them in a criminal proceeding.

22 So, as a practical matter, the
23 Family Court proceeding will not go forward.

1 What we're saying is there are cases that are so
2 outrageous that the victim -- and, again, I'm
3 saying 95 and 98 percent of the time it's going
4 to be a woman -- the victim should have the
5 ability, notwithstanding the fact that she may
6 have chosen Family Court initially, because of
7 the injury, because of the use of deadly
8 physical force, to not have to be forever bound
9 when the sanctions of the criminal court would
10 be more appropriate.

11 We think it's a blend of the two
12 systems that realistically recognizes the
13 practices as they occur in these courts today
14 and gives those victims who have truly sustained
15 the worst kinds of attacks, the worst kinds of
16 injuries, those victims who have met with the
17 use of deadly physical force, have sustained
18 serious injuries or physical injury, to say,

19 "We're out of here. You know, I was steered to
20 the Family Court or I went to the Family Court
21 on my own have volition, but this is more
22 appropriately a criminal court action and I want
23 to go there."

1 SENATOR OPPENHEIMER: Then, what
2 you are saying, if I understand, is that the
3 72-hour provision that after that time has
4 elapsed the victim can still choose to go to
5 another jurisdiction?

6 SENATOR SALAND: In these
7 instances that I discussed with you before.

8 That would not be the case, for
9 instance, in a harassment situation. If it were
10 harassment and you chose as your forum the
11 Family Court, if the 72-hour period ran, that
12 would not -- you would not be able to avail
13 yourself of that option to go to the criminal
14 court.

15 SENATOR OPPENHEIMER: If you
16 would just yield one more time?

17 ACTING PRESIDENT FARLEY: If you
18 would yield for one more question?

19 SENATOR SALAND: Yes. And let me
20 just add that in this bill we also change the
21 72-hour period to a three-day period exclusive
22 of court holidays and week ends. So it does
23 expand that three-day period a bit longer.

1 SENATOR OPPENHEIMER: I guess one
2 of the things that confounds me is why it isn't
3 simply open indefinitely like it is in every
4 other state?

5 I think I don't have a question.
6 I think I will just talk on the bill for a
7 moment.

8 This is a good bill, and I would
9 urge my colleagues to vote for it. I think it
10 can be improved. I am concerned that it is an
11 omnibus bill and, therefore, probably will not
12 be successful in the Assembly unless it is
13 broken out into -- you know, the individual
14 parts, because -

15 SENATOR SALAND: I can assure
16 you, Senator, that we are genuinely interested,
17 determined to negotiate. My fear is that given
18 the amount of time left in this session that
19 that might prove to be too difficult to
20 accomplish, but that doesn't mean that we're not
21 going to try.

22 SENATOR OPPENHEIMER: Well, I
23 certainly wish you well and hope that you can

1 address some of the questions that I have
2 raised. And also when you were -- I see in your
3 bill you talk about the training of police
4 officers which I think is very valuable because
5 there is a lot that isn't done, a lot of more
6 sensitivity that can be brought to this issue.

7 But I will be coming to you with
8 bills that also would entail training of the
9 medical profession and those people that see on
10 the first instance these victims, because they
11 need training too, and they have to be
12 sensitized to the kind of questions that should
13 be asked and the kind of help that you suggest
14 should be offered through a resource and a
15 referral system. So that's it.

16 SENATOR SALAND: Thank you.

17 ACTING PRESIDENT FARLEY: Senator
18 Goodman and then Senator Jones. He asked for
19 recognition first, Senator Jones.

20 Senator Goodman.

21 SENATOR GOODMAN: Mr. President,
22 I would like to add my warm congratulations to
23 Senator Saland for this very signal and

1 significant piece of legislation and to say that
2 the Senate Investigations Committee, of which I
3 am chairman, had occasion within the past two
4 years to make an investigation and to issue a
5 report on the matter of domestic violence.

6 It was the finding of this report
7 and of other material that had been gathered by
8 our committee that the largest single cause of
9 injury to women in the United States is domestic
10 violence.

11 I first became aware of this
12 problem when a few years ago I had in my employ
13 a secretary, and this secretary from time to
14 time would come to the office, the district
15 office, wearing sunglasses. On one particularly
16 cloudy day when there was no glare, I inquired,
17 "Why do I notice occasionally you are wearing
18 sunglasses?" and she removed her sunglasses to
19 reveal very heavy bruises about her eyes, and I
20 said, "What happened to you?"

21 At that point, she said, "May I
22 come in to see you privately for just a moment?"
23 and she revealed that she was the victim of

1 repeated wife battering. And listening to her
2 story was the first insight I ever had into the
3 nature of this type of problem in which there is
4 a curious ambiguity of sentiment that often
5 envelops particularly women in this type of
6 situation.

7 They cherish the original idea
8 they had of a marriage of two loving people, of
9 great reluctance to defend themselves in the
10 conventional sense of the word, but in this
11 particular case this involved a spouse, a
12 husband, who was a repeated drinker and every
13 time he imbibed beyond a certain point, he would
14 become violent and thrash his wife.

15 It was partly because of that
16 that we were impelled in the Investigations
17 Committee to have a look at the broader problem,
18 and we had a series of public hearings in which
19 certain women came before us requesting
20 anonymity so their identities were concealed,
21 and they told a shocking series of stories about
22 what had befallen them at the hands of their
23 husbands.

1 Mr. President, we then proceeded
2 to draft a package of bills, but upon learning
3 that Senator Saland and his very expert staff,
4 some of whom are alumni of Senator Mary
5 Goodhue's staff, had been working on the
6 problem, we readily acceded to them to take the
7 lead in this matter, and I must say I'm glad we
8 did because their expertise and the sensitivity
9 and care with which they assembled the omnibus
10 bill before us is an outstanding example of
11 legislative accomplishment.

12 Also, I feel quite confident in
13 suggesting that what will happen to this
14 legislation will be because of a bipartisan
15 understanding that this is a problem we cannot
16 allow to fester and to molder and to delay
17 further with a solution to. I think it's
18 imperative that before this session of the
19 Legislature concludes that we try to get some
20 sort of assistance in the passage of this bill
21 in both houses, because its approach simply
22 reflects the basic common sense necessity of
23 what to do to protect beleaguered women or

1 spouses. Indeed, there are about three or four
2 percent of total instances involving the reverse
3 situation in which the male is battered.

4 But the specific aspects of this
5 bill involving more aggressive police and
6 judicial intervention, involving longer orders
7 of protection, and the surrender of firearms,
8 immediate warrants of arrest and immediate
9 arrest warrants issued by the court and a
10 mandatory arrest policy for on-scene law
11 enforcement intervention, and the ability that
12 Senator Saland has just described very lucidly
13 of transferring between the criminal and Family
14 Court, principally from Family to criminal,
15 where there are particular characteristic of
16 violent -- characteristics of violence that
17 demand police intervention mark this as a very
18 major step forward in providing much needed
19 protection.

20 I end as I began. Violence to
21 women domestically is the largest cause of
22 injury to women in the United States. We know
23 the problem. We know what to do about it. It's

1 time to pass Senator Saland's excellent bill.

2 ACTING PRESIDENT FARLEY: Senator
3 Jones.

4 SENATOR JONES: Yes. On the
5 bill.

6 I, first of all, agree that
7 Senator Saland should be congratulated because
8 I'm told this is the first real effort on the
9 part of the Senate to deal with this issue.

10 I've also been working with
11 Senator Oppenheimer, including in my own city of
12 Rochester where we've had hearings on this
13 issue. I've not only found them enlightening
14 but as well frightening to me and all the things
15 that Senator Goodman said are certainly true.

16 What I have learned is it's not
17 unique to poor, it's not unique to any kind of
18 economic background, racial background. It's a
19 very pervasive thing in our society and a very
20 scary thing as it should be to all of us.

21 I'm a little concerned again that
22 it seems around here we keep working in the
23 vacuum. I've looked at some bills that have

1 already passed in the Assembly, and I guess I
2 still continue to be concerned why we can't seem
3 to get our efforts together here and really do
4 something for these people.

5 I'm hoping. I was encouraged by
6 hearing Senator Saland say that he is going to
7 keep working on this. There are three bills
8 that do deal with the issues that Senator
9 Oppenheimer brought up that have already passed
10 in the Assembly.

11 So, hopefully, we can either
12 incorporate these into this or pass those as
13 well that might tighten up some of the other
14 loopholes.

15 I think the future of our society
16 depends on us dealing with these issues now.
17 There are children in these families that this
18 cycle is going to continue if something isn't
19 done. We need to give these women every bit of
20 support we can, whether it's legally, medically
21 or emotionally.

22 And I'm very pleased to be able
23 to support this bill and hope it's only the

1 beginning of every effort we can make to correct
2 this situation and help the victims of domestic
3 violence.

4 ACTING PRESIDENT FARLEY: Read
5 the last section.

6 THE SECRETARY: Section 26.

7 ACTING PRESIDENT FARLEY: Oh,
8 just a moment.

9 Senator Saland.

10 SENATOR SALAND: Mr. President,
11 one comment if I may.

12 There are communities in this
13 state that have adopted pro-arrest policies, and
14 I just wanted the record to be clear that this
15 certainly does not preempt those communities
16 that have done that. Those that meet or exceed
17 what's in this bill certainly will be free to
18 continue those policies.

19 And I would be remiss if I didn't
20 thank Senator Skelos and Senator Goodman and
21 Senator Marino for their interest in this
22 measure and their assistance in putting together
23 the final bill.

1 ACTING PRESIDENT FARLEY: Read
2 the last section.

3 THE SECRETARY: Section 26. This
4 act shall take effect January 1, 1994.

5 ACTING PRESIDENT FARLEY: Call
6 the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 58.

9 ACTING PRESIDENT FARLEY: The
10 bill is passed.

11 SENATOR MENDEZ: Mr. President.

12 ACTING PRESIDENT FARLEY: Senator
13 Mendez.

14 SENATOR MENDEZ: To explain my
15 vote.

16 ACTING PRESIDENT FARLEY: To
17 explain her vote.

18 SENATOR MENDEZ: Thank you, Mr.
19 President.

20 I really want to congratulate
21 Senator Saland for beginning to deal with an
22 issue that is increasingly horrible in the homes
23 where women and children and lovers and whatever

1 do live, the problem of domestic violence.

2 I believe that this is a good
3 start. However, I have a preoccupation, Mr.
4 President, and that is that there are no
5 provisions here to ensure that the batterer is
6 removed, too, from the home and for the woman
7 and the children to stay there.

8 Everybody knows that children
9 that are growing up in a hell home of domestic
10 violence, they suffer tremendous anxiety;
11 however, they have their own little friends and
12 they go to school, and during those hours the
13 school serves as a buffer to the problems at
14 home. By removing them and the women from their
15 home and leaving the batterer there with
16 whatever comforts exist there, we are not
17 helping the children and we are not helping the
18 women.

19 So, therefore, I hope that in the
20 future Senator Saland would consider introducing
21 legislation or working with the different
22 women's groups to in fact ensure that the
23 batterer also do have an option to receive

1 psychiatric care rather than just jail. There
2 should be jail, but there should be the option
3 of psychiatric care. And the women and the
4 children should remain home.

5 So, Mr. President, I vote aye.

6 ACTING PRESIDENT FARLEY: We have
7 some housekeeping, Senator Present.

8 Senator Sears.

9 SENATOR SEARS: Mr. President, on
10 page 16, Calendar Number 753, Print Number
11 5546A, I inadvertently voted no on that bill. I
12 would like to be recorded in the affirmative.

13 ACTING PRESIDENT FARLEY: The
14 roll will so show.

15 Senator Marchi.

16 SENATOR MARCHI: Mr. President,
17 Calendar Number 1158, I wish to remove a star.
18 That is Assembly Print 2396A.

19 ACTING PRESIDENT FARLEY: 1158,
20 the star is removed at the request of the
21 sponsor.

22 Senator Johnson.

23 SENATOR JOHNSON: Mr. President,

1 I wish to call up bill Print Number 5540,
2 recalled from the Assembly, which is now at the
3 desk.

4 ACTING PRESIDENT FARLEY:
5 Secretary will read it.

6 THE SECRETARY: By Senator
7 Johnson, Senate Bill Number 5540, an act to
8 amend the Retirement and Social Security Law.

9 ACTING PRESIDENT FARLEY: Senator
10 Johnson.

11 SENATOR JOHNSON: Mr. President,
12 I now move to reconsider the vote by which this
13 bill was passed.

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

16 (The secretary called the roll on
17 reconsideration.)

18 THE SECRETARY: Ayes 58.

19 ACTING PRESIDENT FARLEY: The
20 bill is before the house.

21 Senator Johnson.

22 SENATOR JOHNSON: Mr. President,
23 I now offer the following amendments.

1 ACTING PRESIDENT FARLEY:

2 Amendments received. The bill will retain its
3 place.

4 Senator Saland.

5 SENATOR SALAND: Mr. President,
6 on page 15, I offer the following amendments to
7 Calendar Number 729, Senate 3105C, and ask the
8 bill retain its place on the Third Reading
9 Calendar.

10 ACTING PRESIDENT FARLEY: The
11 amendments are received.

12 Senator Seward.

13 SENATOR SEWARD: Yes. On behalf
14 of Senator Levy, I wish to call up his bill
15 Print Number 5684, which has been recalled from
16 the Assembly and now at the desk.

17 THE SECRETARY: By Senator Levy,
18 Senate Bill Number 5684, amends Chapter 268 of
19 the Laws of 1989.

20 SENATOR SEWARD: Mr. President, I
21 now move to reconsider the vote by which this
22 bill was passed.

23 ACTING PRESIDENT FARLEY: The

1 Secretary will call the roll on reconsideration.

2 (The secretary called the roll on
3 reconsideration.)

4 THE SECRETARY: Ayes 58.

5 ACTING PRESIDENT FARLEY: The
6 bill is before the house.

7 Senator Seward.

8 SENATOR SEWARD: Mr. President, I
9 now offer the following amendments.

10 ACTING PRESIDENT FARLEY:
11 Amendments received. The bill will retain its
12 place on the Third Reading Calendar.

13 Senator Mendez.

14 SENATOR MENDEZ: Mr. President, I
15 request unanimous consent to be recorded on the
16 negative on Calendar Number 165, 456 and
17 1-2-5-6. 165, 456, and 1256. Thank you.

18 ACTING PRESIDENT FARLEY: Thank
19 you. The rolls will be corrected.

20 Senator Kuhl.

21 SENATOR KUHL: Mr. President, on
22 page 12, I offer the following amendments to
23 Calendar Number 648, Senate Print 3283A, and ask

1 that said bill retain its place on the Third
2 Reading Calendar.

3 ACTING PRESIDENT FARLEY:
4 Amendments are received. The bill will retain
5 its place.

6 Senator Kuhl.

7 SENATOR KUHL: Yes. Also, Mr.
8 President, on behalf of Senator Larkin, I wish
9 to call up his bill, Print Number 4354, which
10 was recalled from the Assembly, which is now at
11 the desk.

12 ACTING PRESIDENT FARLEY: The
13 Secretary will read Senator Larkin's bill.

14 THE SECRETARY: By Senator
15 Larkin, Senate Bill Number 4354, an act to amend
16 the Education Law.

17 SENATOR KUHL: Mr. President, I
18 now move to reconsider the vote by which this
19 bill was passed.

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

22 (The Secretary called the roll on
23 reconsideration.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT FARLEY: The
3 bill is before the house.

4 SENATOR KUHL: I offer up the
5 following amendments.

6 ACTING PRESIDENT FARLEY:
7 Amendments are received. The bill will retain
8 its place.

9 SENATOR KUHL: Thank you.

10 ACTING PRESIDENT FARLEY: Are
11 there any other motions on the floor?

12 Senator Montgomery.

13 SENATOR MONTGOMERY: Yes. Mr.
14 President, with unanimous consent, I would like
15 to be recorded in the negative on Calendar 456.

16 ACTING PRESIDENT FARLEY: 456,
17 Senator Montgomery will be in the negative.

18 SENATOR MONTGOMERY: Thank you.

19 ACTING PRESIDENT FARLEY: Seeing
20 no other motions on the floor, I see Senator
21 Present.

22 SENATOR PRESENT: Mr. President,
23 I'd ask that the Senate stand at ease for a few

1 moments.

2 ACTING PRESIDENT FARLEY: The
3 Senate will stand at ease for just a few
4 moments.

5 (Whereupon, at 5:55 p.m., the
6 Senate was at ease.)

7 (Whereupon, at 6:10 p.m., Senate
8 reconvened.)

9 ACTING PRESIDENT FARLEY: Senate
10 will come to order.

11 Senator Present, we have a
12 message from the Assembly and from the Governor.

13 The chair hands down a message
14 from the Assembly.

15 The Secretary will read.

16 THE SECRETARY: The Assembly sent
17 the following bill for concurrence:

18 Assembly Bill Number 8645, by the
19 Assembly Committee on Rules, an act to amend
20 Chapter 576 of the Laws of 1974, amending the
21 Emergency Housing Rent Control Law.

22 ACTING PRESIDENT FARLEY: Without
23 objection, the bill goes to Third Reading.

1 Senator Present, there is a
2 message.

3 SENATOR PRESENT: Mr. President,
4 I understand there is a message from the
5 Governor at the desk, and I move we accept that
6 message.

7 ACTING PRESIDENT FARLEY: All in
8 favor of accepting the message from the
9 Governor, say aye.

10 (Response of "Aye.")

11 Those opposed, nay.

12 (There was no response.)

13 The message is accepted.

14 Read the last section.

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

17 ACTING PRESIDENT FARLEY: Call
18 the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 58.

21 ACTING PRESIDENT FARLEY: The
22 bill is passed.

23 Senator Present.

1 SENATOR PRESENT: Mr. President,
2 there being no further business, I move we
3 adjourn until tomorrow at 1:30.

4 ACTING PRESIDENT FARLEY: The
5 Senate will stand adjourned until tomorrow at
6 1:30.

7 (Whereupon, at 6:14 p.m., Senate
8 adjourned.)

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