Albany, New York

March 15, 1994

3:26 p.m.

REGULAR SESSION

SENATOR NICHOLAS A. Spano, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SPANO: The Senate will come to order. All please rise for the Pledge of Allegiance to the flag.

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

In the absence of clergy, may we please bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 14th. The Senate met pursuant to adjournment, Senator Spano in the Chair upon designation of the Temporary President. Prayer by Rabbi David Niederman of the United Jewish Organizations of Williamsburg, Brooklyn. The Journal of Friday, March 11th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Governor.

Reports of standing committees.

Motions and resolutions. Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Stafford, I have a motion to reconsider, substitute and amend here.

Mr. President, I wish to call up Calendar 222, Senate Print 8651.

ACTING PRESIDENT SPANO: Secretary will read the title. Secretary will read.

THE SECRETARY: By Senator Stafford, Senate Bill 8651, an act to amend the Public Finance Law and the Public Authorities Law.

SENATOR FARLEY: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Stafford's bill, Senate Print 6001 on March 8th.

ACTING PRESIDENT SPANO: Call the

roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT SPANO: Bill is before the house.

SENATOR FARLEY: And I now move that the Assembly Bill 8651 be recommitted to the Committee on Finance and Senator Stafford's bill, Senate bill, be restored to the order of the Third Reading Calendar.

ACTING PRESIDENT SPANO: So ordered.

SENATOR FARLEY: And I now offer the following amendments. This is -- that was a long, complicated motion.

ACTING PRESIDENT SPANO: It was a long story, you might say. Senator Farley.

SENATOR FARLEY: This one is more simple. On behalf of Senator Kuhl on page - nothing personal, but on page 15, I offer the following amendments to Calendar Number 331, Senate Print Number 3718, and I ask that that

bill retain its place.

ACTING PRESIDENT SPANO: Amendments received and adopted.

Senator Cook.

SENATOR COOK: Mr. President, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Bills Number 5757, 5864, 6045, 6938.

ACTING PRESIDENT SPANO: So ordered.

Senator Saland.

SENATOR SALAND: Mr. President, I'd like to star Calendar Number 324, Senate Print 943.

ACTING PRESIDENT SPANO: Without objection.

Any other motions, resolutions? Senator Present.

SENATOR PRESENT: Mr. President, I move that we adopt the Resolution Calendar, copies of which are on our desks.

ACTING PRESIDENT SPANO: Question

is on the adoption of the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, is there a report from the Finance Committee at the desk?

ACTING PRESIDENT SPANO: Yes, there is.

SENATOR PRESENT: May we have it read, please.

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

Member of the Small Business Advisory Board: Lynda Ireland, of Hempstead; Kathryn O'Donnell, of Tonawanda; Edward J. Panarello, of Larchmont, and Clarence A. Price of Harpursville;

Member of the Port of Oswego Authority: Mary Catherine Landrigan, of Oswego; Victor S. Oakes, of Oswego; Celia A. Sgroi, Ph.D., of Oswego, and James K. Thompson, of Oswego;

Member of the Advisory Council on Agriculture: Edwin D. Fessenden, of Kings Ferry; Janice S. Handy, of Fort Plain; Susan Machamer, of Holley;

Member of the Advisory Board on Public Work: Ross J. Pepe, of New City;

Member of the Mental Health Services Council: Miguel Vilaro, M.D., of Brooklyn;

Member of the St. Lawrence Easterm Ontario Commission: Donald I. Turcotte, of Clayton;

Member of the New York State Park Recreation and Historic Preservation Commission: Percy E. Patrick, Jr., of Fulton;

Member of the Finger Lakes State Park Recreation and Historic Preservation Commission: Clement N. Granoff, of Elmira;

Member of the Taconic State Park, Recreation and Historic Preservation Commission: Mary Kay Vrba of Fishkill;

Member of the Thousand Islands State Park, Recreation and Historic Preservation Commission: Bruce E. Dempster, of Watertown;

Member of the State Health Research Council: Dr. Lawrence S. Sturman, of Albany;

Member of the Council on Human Blood and Transfusion Services: Thomas D. Harrington, of Fishkill;

Member of the Board of Visitors of the Bronx Psychiatric Center: Sylvia Hershkowitz-Lask, of the Bronx;

Member of the Board of Visitors of the Elmira Psychiatric Center: Marion S. Lagonegro, of Elmira;

Member of the Board of Visitors of the Kirby Forensic Psychiatric Center: Mildred N. Fine, of Valley Stream;

Member of the Board of Visitors of Mohawk Valley Psychiatric Center: Dennis J.

Manning, of New Hartford and Mary Skorulski, of New Hartford;

Member of the Board of Visitors of Pilgrim Psychiatric Center: Manoj R. Shah, M.D., of Merrick;

Member of the Board of Visitors of the Queens Children's Psychiatric Center: Mary J. Holowin, of Rego Park;

Member of the Board of Visitors of the Rochester Psychiatric Center: Hilda E. Escher of Rochester, and Edward Edward J. Sardisco, of Rochester;

Member of the Board of Visitors of St. Lawrence Psychiatric Center: Patrick R. Rourk, of Norwood;

Member of the Board of Visitors of the Broome Developmental Disabilities Services Office: John E. Denny, Ph.D., of Maryland, and Mary C. Weidman, of Oxford;

Member of the Board of Visitors of the J. N. Adam Developmental Disabilities Services Office: Mitchell R. Burkowsky, Ph.D., of Fredonia, and Carol Bainbridge Gaiser, of

Jamestown;

Member of the Board of Visitors of the Staten Island Developmental Disabilities Services Office: Reverend Monsignor John T. Servodidio, of Staten Island;

Member of the Board of Visitors of the West Seneca Developmental Center: Maria Cruz-Torres, of Buffalo; Therese Mudd, of Lewiston, and Jessie B. Wells, of Buffalo;

Member of the Board of Visitors of the Wilton Developmental Center: Sharon Brooks, of Fort Johnson, and Robert F. Schulz, of Johnstown;

Member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford: Beverly P. Gardiner, of Amsterdam.

ACTING PRESIDENT SPANO: Question is on the confirmation of the aforementioned nominees. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed.

Senator Present.

SENATOR PRESENT: Mr. President, I believe Senator Tully has a privileged resolution at the desk. May we take that up and pass it at this time.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative resolution, by Senator Tully, commending the Elmont Memorial High School upon the occasion of being named the best high school in New York State in REDBOOK magazine's third annual "America's Best Schools" project.

ACTING PRESIDENT SPANO: On the resolution, all those in a favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, I believe Senator Volker has a privileged resolution at the desk. May we take that up.

ACTING PRESIDENT SPANO: Secretary will read.

SENATOR PRESENT: Senator Stafford.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative Resolution, by Senator Stafford, commemorating the 75th anniversary of the Hudson Falls American Legion Post Number 574, to be celebrated at a testimonial dinner March 19th, 1994.

ACTING PRESIDENT SPANO: On the resolution, all those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Would you recognize Senator Larkin, please.

ACTING PRESIDENT SPANO: Senator Larkin.

SENATOR LARKIN: Mr. President, on Resolution Number 2864, I'd like to open it up for anyone who would like to be -- this resolution is asking the Governor to proclaim April the 8th, 1994 in New York State as a day of remembrance to the victims of the Holocaust, and to pay special tribute to the people of Denmark for their efforts to rescue Danish Jews.

ACTING PRESIDENT SPANO: The resolution will remain open at the desk for all members to sponsor.

Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Mr. President. I ask permission to star a bill, Calendar Number 327.

ACTING PRESIDENT SPANO: Calendar 327 is starred at the request of the sponsor.

Senator Present, we're ready to begin the calendar.

SENATOR PRESENT: Let's take the non-controversial calendar up, please.

ACTING PRESIDENT SPANO: Secretary will read.

THE SECRETARY: On page 8, Calendar Number 13, by Senator Levy, Senate -

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

ACTING PRESIDENT SPANO: Laid aside for the day.

THE SECRETARY: Calendar Number 40, by Senator Bruno, Senate Bill Number 6300-B, an act to amend the Highway Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Levy, Senate Bill Number 191.

SENATOR ONORATO: Lay aside.

ACTING PRESIDENT SPANO: Laid aside.

SENATOR PRESENT: Lay aside for the day.

ACTING PRESIDENT SPANO: Laid aside for the day.

THE SECRETARY: Calendar Number 134, by member of the Assembly Ortloff, Assembly Bill Number 4490-C, an act to amend the County Law.

ACTING PRESIDENT SPANO: Read the last section.

SENATOR GOLD: Hold on a second. All right. May we have a brief explanation?

ACTING PRESIDENT SPANO: Lay Calendar Number 134 aside.

THE SECRETARY: Calendar Number 141, by Senator Stafford, Senate Bill Number 6318, an act to amend the Town Law.

ACTING PRESIDENT SPANO: Home

rule message is at the desk. Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 236, by Senator Maltese, Senate Bill Number 1053-B, an act to amend the Real Property Tax Law, in relation to an optional school tax exemption.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 242, by Senator Larkin, Senate Bill Number 6390, an act to amend the Public Officers Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Daly, Senate Bill Number 4583-B, an act to amend the Real -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT SPANO: Laid aside.

THE SECRETARY: Calendar Number

263, by Senator Padavan, Senate -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Laid aside.

THE SECRETARY: Calendar Number 265, by Senator Levy, Senate Bill Number 1707, in relation to requiring the Department of Motor Vehicles to compile information on driving while under the influence of drugs.

SENATOR PRESENT: Lay aside, please.

ACTING PRESIDENT SPANO: Laid aside for the day.

THE SECRETARY: Calendar Number 279, by Senator Wright, Senate Bill Number 5944, an act to amend the Real Property Tax Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Marino, Senate Bill Number 6602-A, authorizing the assessor of the county of Nassau to grant an exemption.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 281, by Senator Larkin, Senate Bill Number 6691, establish a public library district in the town of Esopus, Ulster County.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 293, by Senator Levy, Senate Bill Number 184, Criminal Procedure Law.

ACTING PRESIDENT SPANO: Read the last section.

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT SPANO: Lay aside.

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

ACTING PRESIDENT SPANO: Lay 293 aside for the day.

THE SECRETARY: Calendar Number 311, by Senator Johnson.

SENATOR JOHNSON: Lay aside for

the day.

ACTING PRESIDENT SPANO: Laid aside for the day.

THE SECRETARY: Calendar Number 312, by Senator Spano, Senate Bill Number 1642-A, Workers' Compensation Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 313, by Senator Spano, Senate Bill Number 4760 A, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT SPANO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50, nays one, Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 315, by Senator Farley, Senate Bill Number 718, authorize state aid to the town of Hadley, Saratoga County.

ACTING PRESIDENT SPANO: Local fiscal impact note is at the desk. Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT SPANO: The bill

is passed.

THE SECRETARY: Calendar Number -- Calendar Number 316, by Senator Libous, Senate Bill Number 1361, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 317, by Senator Skelos, Senate Bill Number 1985-A, an act to amend the Executive Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Skelos, Senate Bill Number 2094, an act to amend the Executive Law, in relation to making technical corrections.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 319, by Senator Goodman, Senate Bill Number 2654, an act to amount the Vehicle and Traffic Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays one, Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 320, by Senator Levy, Senate Bill Number 5487-B, an act in relation to authorizing a review of current drug-impaired driving education.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52, nays one, Senator -- ayes 51, nays two, Senators Daly and DeFrancisco recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 321, by member of the Assembly Feldman, Assembly Bill Number 61, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 322, by Senator Rath, Senate Bill Number 6676, an act to amend the Vehicle and Traffic Law, in relation to fees for certification as motor

vehicle inspector.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Party vote; party vote in the affirmative.

THE SECRETARY: Ayes 53.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 323, by Senator Levy, Senate Bill Number 6735, Transportation Law, in relation to the painting of school bus bumpers.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 326, by the Assembly Committee on Rules, Assembly Bill Number 8056, Education Law, in relation to absentee ballots for retired persons.

ACTING PRESIDENT SPANO: Read the last section.

Did you have a question on this bill, Senator Pataki?

SENATOR PATAKI: No, the prior one.

ACTING PRESIDENT SPANO: Read the last section on 326.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: The bill is

passed.

Senator Pataki.

SENATOR PATAKI: Was Calendar Number 324 passed, 324?

ACTING PRESIDENT SPANO: Starred.

SENATOR PATAKI: Starred, thank you.

ACTING PRESIDENT SPANO: That bill was starred, Senator Pataki.

Senator Daly.

SENATOR DALY: Will you reconsider the vote by which 323 passed.

ACTING PRESIDENT SPANO: 323, the Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT SPANO: Bill is before the house. Lay it aside.

SENATOR DALY: Call the vote - I'm not laying it aside. I just wanted to call my vote, please, change my vote.

ACTING PRESIDENT SPANO: O.K. On Calendar Number 323, the Secretary will read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52, nays 2, Senators Daly and Holland recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed again.

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT SPANO: Senator Holland.

SENATOR HOLLAND: With unanimous consent, could I be recorded in the negative on Calendar Number 319?

SENATOR GOLD: Without objection.

ACTING PRESIDENT SPANO: 319, without objection.

THE SECRETARY: Calendar Number

330, by Senator Holland, Senate Bill Number 880-B, an act to amend the Correction Law and the Insurance Law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 332, by Senator Cook, Senate Bill Number 4156, authorizing the Commissioner of General Services to sell and convey certain lands to the town of Ulster.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 335, by Senator Larkin, Senate Bill Number 6698, an act to amend the state law.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Controversial calendar.

ACTING PRESIDENT SPANO: Secretary will read controversial calendar.

THE SECRETARY: On page 8, Calendar Number 134, by member of the Assembly Ortloff, Assembly Bill Number 4490-C, an act to amend the County Law.

SENATOR GOLD: Last section.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Daly.

SENATOR GOLD: Explanation.

THE SECRETARY: Senate Bill Number 4583-B, an act to amend the Real Property Law.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: Yes, Mr. President.

This bill creates an advisory board for the Secretary of State to assist her in the matters of real estate. It creates a board of 15 members, one of whom will be the Secretary of State. The other 14 members are eight that will be appointed by the Governor. Three -- I'm sorry, two appointed by the Majority Leader of the Senate and the Speaker of the Assembly, and one each by the Minority Leader of the Senate and the Minority Leader in the Assembly.

This bill last year passed, I should say has been significantly amended over last year's version, and I do believe that the bill now should meet the objections of this house.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah. Mr. President, will Senator Daly yield to a question?

SENATOR DALY: Certainly.

ACTING PRESIDENT SPANO: Senator yields.

SENATOR GOLD: Senator, have you seen the letter from the New York State Consumer Protection Board that is dated June 22nd, and they say that they have opposition and also on the "B" print?

SENATOR DALY: But that is on the original bill, the unamended version. You'll notice that there is a "B".

SENATOR GOLD: No, it also says, "we also oppose a proposed 'B' version."

SENATOR DALY: No, I have not seen that. I have not seen that opposition memo.

SENATOR GOLD: Well, Senator, the only question I have is, unless there's any urgency, perhaps we could give you a copy of this and lay it over one day and you can -

SENATOR DALY: I don't think that's necessary, Mr. President. I've studied this bill pretty thoroughly, and I've also seen

other letters and memos in opposition and I, very frankly, feel that this bill is a good bill. Let me speak, if I may, speak a little further on the bill and perhaps convince my colleague that it is good legislation.

As I said, what we have done or what we are trying to do, Mr. President, is to give to the Secretary of State's office some expertise in the area of real estate. As we all know, how one works affects everything, and as we all feel, that since the promulgation and the administration of real estate laws generally comes under the Secretary of State's office, in many cases that she should have a functioning board made up partially of members of the real estate industry, but with a majority of the members being consumer oriented, non-members of the real estate industry.

We do this, Mr. President, by allowing the Governor, again, eight appoint ments, three of whom can be from the real estate industry; the Majority Leader, as I said, has two, one of whom will be from the real estate

industry; the Speaker the same and then the Minority Leader of the Senate and -- the Minority Leaders of both the Senate and the Assembly will make one appointment and it's at their discretion whom they appoint, so you would have a maximum of five members on this advisory board -- sorry, a minimum of five members of the advisory word from the real estate industry which is five out of 15 on the board, a maximum of seven, which is still one less than half of the members of the board.

We modeled this after the banking board. In fact, we have more than -- we have more members on the board who are not of that industry than the banking -- than the bank advisory committee has.

Very frankly, Mr. President, in law already, if you check Section 442 (j) of the Real Property Law, the Secretary of State already has the authority to establish a com mission, advisory commission of seven members, all from the real estate industry. The Secretary of State has not seen fit to do that

and so we feel that really, she is -- this committee or this advisory commission should be established.

We believe that the state will gain from the expertise given to the study of the real estate industry that is necessitated by the responsibilities of the Secretary of State. We also have given certain powers -- I'm sorry, we have not taken away from the Secretary of State some powers that we feel should be solely under her jurisdiction, and in the series of amendments, or I should say the amendments that we have made to the bill which I am -- I, hopefully, will find in my desk but thus far I have not -- we list those, the six specific responsibilities which, again, will not come under the jurisdiction or the domain of the advisory committee. They will continue to - they will continue to be solely -- solely under the administration of the Secretary of State.

I'm speaking specifically of some of the problems in listing that have occurred down particularly in the New York City area. We

do not give that, the administration of that or the implementation or promulgation of rules to the new commission. We continue to give that solely to the Secretary of State. That was one of the objections people had to the bill last year.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah, Mr. President.

There is a memorandum from the Department of State in opposition to the legislation and it was filed last year on the "A" print, and I'm informed by our counsel that they contacted the Department and they are still opposed to the "B" print.

The Department filed a fact sheet last year as to a number of states which have these boards; apparently they are underwhelmed by the concept. For example, in Ohio they point out that all -- and they have the word "all" underlined -- decisions made by the real estate board favor the real estate industry and there

are questions in their mind as to whether or not this board will do anything more than be a service to the real estate industry.

I would make the point that, while I believe the "B" print, Senator Daly, gives the Governor eight people -- appointments -- out of the 14 and theoretically gives the Governor the majority, I would imagine that, if the Governor's Department of State is this much opposed to it, that there is very little chance that the Governor would sign it, even though it has a majority -- he has the majority of the appointments.

I would also point out that there is opposition by the Department of Consumer Protection. Again, I don't know how realistic this bill becomes when we have that kind of opposition from two heads of two agencies in the department.

But let me say this, Senator Daly. I can understand you wanting to proceed with the bill, and I respect that. You are certainly a person who gives the greatest amount

of courtesy and you have a right to proceed. The only thing I can do in rebuttal, I think, Senator Daly, is to read the rather short letter, and encourage you to interrupt me whenever you want, if there is a response to something that is said in the letter that you think is incorrect.

SENATOR DALY: Mr. President.

ACTING PRESIDENT SPANO: Senator Daly.

SENATOR DALY: The letter is from whom?

SENATOR GOLD: Yeah, I -- and it's short. It's not a filibuster, Senator. The letter is from the state Consumer Protection Board and, as I say, I would like to -

SENATOR DALY: May I, Mr. President -- may I just make one comment? I'd be delighted to hear the letter. Isn't it interesting, in response to the bill I've carried now for a year, I've received no memo or letters in opposition from the Consumer Protection Board. I've received no letters of

opposition this year from the Secretary of State. The only letter, the only memo in opposition I have is from NYPIRG.

SENATOR GOLD: Well, Senator Daly, as I say to you, you're a gentleman, you've extended courtesy to me, and I try to give it. That's why I said to you, the memo that we have from the Secretary of State is from last year, but we -- and I made that clear. We did call them and they say that, as far as they're concerned, use the memo, they continue their opposition to the theory.

Now, this says -- and by the way, this letter, while last year's letter does refer to the "B" print, that's why I think it's relevant.

The Consumer Protection Board strongly opposes the bill which would estab lish... real estate board within the Department of State with oversight authority over the activities of licensed real estate brokers. We also oppose the proposed "B" version of this bill now being circulated, under which the board

would be provided the authority to promulgate regulations to effectuate the purposes of Article 12-a, the state statute regulating real estate brokers, to prescribe the subjects to be tested in licensing examinations and to make recommendations to the Secretary of State as to the validity of all real estate brokerage enforcement proceedings under Section 442 (e) of the Real Property Law.

The creation of this board, which would consist of eight licensed real estate brokers, six public members and the Secretary of State, would unnecessarily impede the adminis tration of Article 12-a.

Now, is that -

SENATOR DALY: Excuse me, Mr. President.

SENATOR GOLD: Is that paragraph accurate?

SENATOR DALY: No. Would the Senator read that last sentence, please.

SENATOR GOLD: Yeah, be glad to, Senator. This says: The creation that it

envisions is eight licensed real estate brokers....

SENATOR DALY: That is not correct.

SENATOR GOLD: Excuse me. Excuse me... six public members and the Secretary of State.

SENATOR DALY: That is not correct.

SENATOR GOLD: Now, the balance under your bill is what?

SENATOR DALY: The balance, the maximum seven from the industry, minimum five.

SENATOR GOLD: Maximum is seven.

SENATOR DALY: Maximum of seven, total board is 15, including the Secretary of State, so those figures are incorrect.

SENATOR GOLD: Yeah.

SENATOR DALY: We do give a balance of power, as you say, we give the balance to the non-members of the industry in this bill.

SENATOR GOLD: All right. So it

would be seven, seven and one, is that it?

SENATOR DALY: Seven and eight.

SENATOR GOLD: Now, it goes so.

SENATOR DALY: Mr. President, may I correct -- it could well be five and ten.

SENATOR GOLD: I understand.

SENATOR DALY: And I submit, Mr. President, the fact that they didn't even have the right -- they didn't have the right figures in that letter clearly makes their letter questionable indeed.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Yeah. Senator Daly, it's my practice to -- to want to have open files to everybody, and that's why I offered you the letter.

SENATOR DALY: Much appreciated.

SENATOR GOLD: But the point is, if they're opposed to it, I want to make it available to you and give you this opportunity. Under the recommendation *** the state of New York would become a recognized leader in the

regulation of the real estate industry. For example, through the Department's efforts *** reform legislation was enacted in 1991 which addressed industry abuses concerning proper disclosure of agency relationships by brokers and agents.

SENATOR DALY: May I comment on that?

SENATOR GOLD: Of course, I don't mind you -

SENATOR DALY: Mr. President, the Senator said I could interrupt him or I certainly wouldn't do it otherwise.

SENATOR GOLD: That's all right.

SENATOR DALY: That disclosure bill talked about 1991 was a product of the Senate, was a result of two years negotiation with the Senate. I was chairman and I handled that bill also; in fact, I sponsored that bill, Mr. President, and we did negotiate that bill and that's why the bill is being commended by so many people as one of the best disclosure laws in the country, and the original proposal that

we had to work with was -- has been or was at that time roundly condemned.

So I do believe that that use of that law as an example of the work of the Secretary of State leaves something out and that is the work of this house and, frankly, my committee, Senator Waldon, as, frankly, a minority member. I'm very proud of that bill, that law, Mr. President, by the way, and again I think that adds to the ammunition I have here in defense of this bill.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Well, let's be honest. The biggest ammunition you got is Runes. You got a guy with a brain over there.

SENATOR DALY: I'm moving him to the back.

SENATOR GOLD: No, no, I admire Mr. Runes. Mr. President, the -- I don't think there's any indication here that credit is not due to the Legislature. Whenever there's a law obviously we participate. I just think that

they're making the point that they have done some things that are responsive and, in all fairness, if they recommend it to the Governor and work with you and this became a law, I don't think we should ignore that.

At any rate, the Department has also continuously fought to protect the rights of consumers in such transactions by vigorously enforcing state law against brokers engaged in illegal and unethical business practices.

SENATOR DALY: That signed by Gail Shaffer, Mr. President?

SENATOR GOLD: Pardon me?

SENATOR DALY: That signed by Gail Shaffer?

SENATOR GOLD: No, no, this is from the Consumer Protection Board. Yeah.

The Board also believes that circumventing the Department's regulatory authority by the establishment of a board acting under the substantial control and influence - now, here again, you say that the voting is 7-7 -- would seriously erode the present protection

afforded consumers. The memorandum in support provided no justification for why the board is needed in addition to the present board's construction.

SENATOR DALY: Mr. President, I do not say the present balance on this bill gives you a 7-7 vote. I say this bill gives you a maximum 7, maximum 7 from the industry and 8 outside the industry, so I want to correct that immediately. We are making sure that the balance of power on this commission lies not in the members of the industry but other members of the board.

SENATOR GOLD: Yeah. Now the last paragraph, if I may. Further, the bill is not workable and technically deficient in numerous ways. For example, section 442 (k) 4 would require the board to review complaints made to the Secretary of State in any enforcement proceedings under section 442 (e) of the Real Property Law and empower the board to make recommendations as to the validity of the complaint.

It says, since the board would be a totally voluntary entity without staff, the procedure would unnecessarily delay the Department's complaint procedures. Further proposed subdivision 442 (k) 6 of the Real Property Law will permit the real estate board to fix all fees required by this section, but no such fees are established by this section.

Even if we were not opposed to the basic premise of the bill, numerous technical deficiencies would need to be addressed before the bill could be given serious consideration by the Legislature.

SENATOR DALY: Mr. President, on the last -- the last paragraph, you know, the question is saying, I should say the writer is stating that there are technical deficiencies in the bill which he doesn't list but, first, Mr. President, the fact that they didn't even know the number of people who are appointed to the board, from where they come, clearly proves that they didn't do their home work, Mr. President.

SENATOR GOLD: No.

SENATOR DALY: Or they -

SENATOR GOLD: Senator Daly.

SENATOR DALY: They were talking about another bill.

SENATOR GOLD: Senator Daly, Mr. President, I want to be fair. I told you this was dated June of '93, and they talked about a proposed "B" version that they thought they saw. Now, I made that clear, Senator Daly. Now -

SENATOR DALY: Well, Mr. President.

SENATOR GOLD: Now, excuse me, and then I'll -

SENATOR DALY: Excuse me.

SENATOR GOLD: As to the number from the board, or not the board, you clarified that, and I respect that, but now this whole last paragraph has nothing to do with the numbers. The last paragraph I read dealt with the complaint process.

Now, if that is not accurately reflecting your bill, then I'd appreciate it if

you'd correct me on that, but if you want me to reread it, this has nothing to do now with the number of members on the board. It says that under the enforcement procedure the board is empowered to make recommendations as to the validity of the complaints. Is that accurate or not?

SENATOR DALY: Well, Mr. President, I don't -- what line of the bill are you talking about, Senator?

SENATOR GOLD: Well, Senator, again, it's only a few lines. Let me read it and, as I say, I have certainly no objection to your counsel working with you as we all have.

And further this bill is unworkable and technically deficient in numerous ways. For example, proposed subdivision 442 (k) 4 would require the board to review complaints made to the Secretary of State in any enforcement proceeding under section 442 (e) of the Real Property Law and empower the board to make recommendations as to the validity of the complaint.

SENATOR DALY: That's not section 4. Have you got the bill there, Senator?

SENATOR GOLD: Yes.

SENATOR DALY: Turn to page 2, line 53. What you're reading, I don't -- I'll read it to you, Senator: Administration/ enforcement. The Department of State shall have the power, and its duty shall be to administer and enforce the laws and regulations of the state relating to those activities regarding *** real estate industry required under this section and require its agents to bring prosecutions for unauthorized and unlawful practices.

That has nothing to do with what you read. This is the Department of State. It does not refer, that section or that paragraph, to the commission. It refers directly to the Department of State.

SENATOR GOLD: All right. Well, Senator, the -- you -- let me ask you this question -- let me ask you this question on the bill. Is there -- in this bill, if a complaint is made -- in this bill, if a complaint is made

to the Secretary of State -

SENATOR DALY: Mr. President.

SENATOR GOLD: -- does the board -- would the board have the power to -

SENATOR DALY: Would the Senator yield to me just for a minute? Let me emphasize the fact that what you read is not in the bill.

SENATOR GOLD: All right.

SENATOR DALY: It -- again, may I finish?

It again demonstrates, Mr. President, that whoever wrote that letter, whoever wrote the other memo in opposition didn't know what they were talking about. Now, if they had their facts as wrong as indicated by Senator Gold's reading of the memo, his reading of the letter before, that dealt with the numbers of people who are appointed and from where they will come, then, Mr. President, I submit to you that this is really an exercise in futility right now.

We're dealing with a piece of paper that means nothing. There's no truth in

it. They don't know what the bill is; so why should it be used in the debate on this floor?

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

ACTING PRESIDENT SPANO: Senator Daly yields, I think.

SENATOR DALY: Yes, I will.

SENATOR GOLD: All right.

SENATOR DALY: I think. Well, I question -- I'll tell the Senator privately later on what I'm thinking.

ACTING PRESIDENT SPANO: Read the last section.

SENATOR DALY: Thank you, Mr. President.

SENATOR GOLD: All right, Mr. -

ACTING PRESIDENT SPANO: I'm sorry, Senator Gold.

SENATOR GOLD: That's right.

SENATOR DALY: I guess this is what's called warm-up time, Mr. President. We have another heavy bill that we're going to work on.

SENATOR GOLD: Now, Senator Daly, I have papers given me by heads of departments and we are told that they continue with some objections. From the point of view of the members on this side, they have consistently voted on bills on a bill-by-bill basis based upon the fact that we can clarify some of the issues and maybe the comments you've been making, Senator Daly, have been gaining you votes.

I hope -- I hope for your sake maybe, you know, that might happen, but Senator, what I -- what I -- the proposed "B" print that they were talking about back in June, apparently is not the "B" print before us.

SENATOR DALY: Obviously, obviously.

SENATOR GOLD: I'm delighted. I'm delighted. But the one thing I'm not delighted about is, just forgetting about whether or not this memo was accurate or not accurate, the question occurs, does the board, under the bill we're talking about today -

forget the memo, does the bill we're talking about today give this board the power to make recommendations on the validity of complaints that are filed pursuant to the complaint process?

SENATOR DALY: Oh, I would hope so, Mr. President. I would hope that this board would make many recommendations to the Secretary of State, some of which she will follow and some of which she will not.

SENATOR GOLD: All right.

SENATOR DALY: May I also point out, if I may go oh, finish.

SENATOR GOLD: Yes, sure.

SENATOR DALY: Mr. President, while Senator is talking, getting advice from his counsel, may I also add that you talked about the importance of receiving these letters, these memos from department heads, and I would submit, Mr. President, if this is -- these department heads send such communications, such missiles to the Senate as irresponsibly written and investigated as these memos and letters are,

then I'd question their competence to remain as department heads and perhaps indeed the Governor should investigate both of these department heads and certainly look into some of the letters they've been sending us on other - other legislation. Maybe they're just letters from the past and they will continue in the future, and I'm glad it's been raised by Senator Gold for that purpose.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: On the bill, I've just been asked by a very distinguished member who I respect greatly and whose debate is always so incisive, so important on every single bill that -- whether this is all worth it, and I don't know whether it's worth it or not, Senator Daly.

The bottom line is, the way - whether this memo which was written in antici pation is accurate in the changes or not, the bottom line here is you're recommending a board

in the department where the department tells you they don't want it, the consumer protection agency tells you they don't want it. It hasn't worked in other states, and you're giving, Senator, as I see it a mandate.

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

ACTING PRESIDENT SPANO: Will you yield to a question?

SENATOR GOLD: No, no, no.

ACTING PRESIDENT SPANO: Senator Gold refuses to yield.

SENATOR GOLD: No, only because it's a matter of life and death. If I yielded and we continue, I'm going to get shot.

The point is, Senator Daly, that you appear to be giving powers to a -- to a voluntary group without staff and whatever that goes into the complaint process. I would have preferred to give you this letter, have you come back tomorrow and see me informally and say, "Senator, it's a different bill or whatever."

At any rate, there has now been

what my distinguished colleague from Rochester, both of whom I respect greatly, a free and open debate. Last section.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

Senator Padavan to explain his vote.

SENATOR PADAVAN: To explain my vote.

First, I'd like to thank the sponsor for having taken the original bill and done a lot of things to respond to some valid, in my view valid, concerns that I've expressed and others had expressed regard to this legislation. But despite those excellent efforts, I'm still going to oppose this bill.

The real estate industry is not homogeneous. Unfortunately, in certain parts of the state, particularly in the parts that I

represent, we have a component in this industry that can best be described as scurrilous, with no regard to community -- community stability, are constantly involved in block busting, disruptive practices, and cause me and my office to almost weekly write the Secretary of State about one complaint or the other.

Now, if we can isolate that group from the rest of the state, there would be nothing wrong with this bill but, unfortunately, we can't and, therefore, there are components of this bill which bring the fox into the chicken coop, and I don't want my complaints to come before this board. I mail too many of them which come from my constituents, who are victimized by the activities of certain unscrupulous real estate agents who, as I said, before don't give a hang about the community in which they make a good living. All they're interested in, in too many cases, is that commission and nothing else. They are a small number, but they do a great deal of damage which is why, in Queens County, the Secretary of State

and her predecessors, including the Governor, have found it necessary to enforce non solicitation orders and non-geographic non-solicitation bans, and the simple fact that this industry in that part of the state was causing so much harm; and while this bill is much improved over the original print, it still provides an opportunity for some of these individuals to be put in a position of undermining those efforts which I and others continue to expend in order to control the negative side of the real estate industry in the areas that I represent.

So, for that reason, Mr. President, I vote in the negative.

ACTING PRESIDENT SPANO: Senator Padavan in the negative.

Senator Daly to explain his vote.

SENATOR DALY: Mr. President, I do believe and certainly in respect to my colleague and certain of the allegations that he's made and certain opposition in the past,

but I submit to my colleague that this bill will help us in policing and preventing those practices because we'll have -- as he says, he uses the term "fox in the chicken house", we will have experts in the real estate industry serving on this commission who will be able to advise the Secretary of State and make her aware of possible misuse, I should say abuses in and among real estate operators.

I also remind the Senator that his primary concern deals with the non solicitation "cease and desist" law and in the amendment to the bill we have taken that out completely of the regulatory process under the new advisory commission, and we have given it right back to the Secretary of State, period, and I think that act in itself will -- will, I should say should help many of my colleagues to support the bill.

But, again, let me say in conclusion, Mr. President, that I see nothing wrong whatsoever in bringing experts of an industry into the regulatory process. Who knows

more about a given industry than those who live with it every day? Each and every one of us, when we want to become expert in an area, we know we can't be expert in every area, so we bring in to us, into our offices, we talk to those who spend day after day in that business and we use them as advisers and we've done this in the banking -- with the banking commission for years.

That worked well, and, Senator Gold, again the last -- he stated that it hasn't worked in other states. He read it in a memo. We know what that memo was worth, don't we, because in completing the statement it misstated the legislation that is before us.

This is good for the industry. This is good for the state and it's good for the people who have to deal with real estate operators because the Secretary of State will have at her command seven -- five to seven members of the real estate industry, the balance -- the balance because of the eight members, including herself, who are not in the real

estate industry.

Mr. President, this is good legislation and demands the support of this house.

ACTING PRESIDENT SPANO: Senator Daly in the affirmative.

SENATOR DOLLINGER: Explain my vote, please.

ACTING PRESIDENT SPANO: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Explain my vote. The Journal Clerk perhaps should make an entry that I concur with Senator Daly, and I think that the -- my experience in Monroe County where I have been experienced with this particular agency in real estate deals, the real estate board has done a very good job of self policing, has done a very good job of complaint taking, dealing with complaints, giving evidence at least in our part of the state, and particularly the 54th District. The problems of the real estate industry have been attended to by the real estate agency.

That gives me some confidence, although there may be a question of how much control the real estate industry has on this board, which I will leave to others in this state, but I'm convinced that well-meaning real estate agents can be a part of this decision making and recommendations in this state.

So I have that confidence, and so again, strange as it may seem, I am concurring and voting with my colleague from western New York.

ACTING PRESIDENT SPANO: Senator Dollinger in the affirmative.

SENATOR DOLLINGER: Perhaps a notation by the Journal Clerk would be sufficient.

ACTING PRESIDENT SPANO: Results.

THE SECRETARY: Those recorded in the negative -- those recorded in the negative on Calendar Number 261 are Senators Galiber, Gold, Kruger, Leichter, Markowitz, Mendez, Montgomery, Onorato, Padavan, Santiago, and

Stavisky. Ayes 48, nays 11.

ACTING PRESIDENT SPANO: The bill is passed.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT SPANO: Senator Leichter.

SENATOR LEICHTER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 330, please.

ACTING PRESIDENT SPANO: Without objection.

THE SECRETARY: Calendar Number 263, by Senator Padavan, Senate Bill Number 5080-A, an act to amend the Family Court Act, in relation to certain records of juvenile delinquents.

SENATOR GOLD: Explanation.

ACTING PRESIDENT SPANO: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

This bill would mandate the fingerprinting of juvenile offenders for all

felonies. Currently we have an unfortunate problem in this state that any youngster may commit and be arrested for a Class D or E felony and is precluded from being fingerprinted. There are, of course, a variety of offenses that would fall into those categories, everything from a loaded firearm or use of one; assaults, sexual contact with a child under the age of 11, and so on, which would put such a youngster in the society which we are obviously trying to protect in a position of not having any record of that individual, that young person, having committed that crime; and so repeat offenders would go undetected, which also has a negative component when you think in terms of the need to refer such a youngster as a youngster-at-risk for appropriate treatment, if necessary, but certainly appropriate action by a court of competent jurisdiction. And so the need for fingerprinting to develop a criminal history unfortunately now has become a matter of necessity.

This bill is sponsored in the

Assembly by Assemblyman Feldman. It has been written about in a number of articles and supported by such writings and is the reason we have it before us today.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT SPANO: Senator Waldon.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT SPANO: Senator Padavan yields.

SENATOR WALDON: Senator, I'm troubled a bit by this approach because historically those less than age 16 have not been treated with fingerprinting and mug shots, et cetera, because this society has felt that they -- they had a chance of rehabilitation or going in a different direction or that they were at such a tender age that they should not be so treated.

In preparation of this bill, have you looked at that from its historic perspective

in America?

SENATOR PADAVAN: Senator, obviously we've looked at it from historical perspective and obviously this is not something that we enter into with great joy. It has become a matter of necessity. There is a provision in this bill which states that, when a youth has been fingerprinted, if this became law, after one year of adjudication as a juvenile delinquent, the fingerprints are destroyed.

The reason there is that we would not want to stigmatize that youngster for the rest of his or her life, and we take that into consideration. The fact remains, Senator, there's one article I read here written by a man by the name of Herbert, talks about a youngster who, I think it was 12 years of age, walked up to someone with a loaded revolver, held it to his head, pulled the hammer; fortunately the round didn't go off. A policeman was on the scene, arrested him. Certain efforts were made, the child was remanded to his parents, and so

on. Two weeks later he did the same thing, only this time the weapon did go off. The person was killed. There was no record, and that youngster, by the way, if memory is correct, had a series of other incidents of a criminal nature as well.

So, unfortunately, we do the youngster no service and certainly we don't have society protecting itself from such actions when we shield that individual, that young person, from the identity of having had this background. We're not talking about minor offenses here. We're talking about serious acts of violence, and I think it's clear that with 72,000 arrests in this state last year of young people in this age category, for such acts of violence, that we've reached the point where, unfortunately, and I mean that unfortunately, we must keep a record of these offenses so that we will be able to deal with these juveniles who are at risk and simultaneously protect society.

SENATOR WALDON: May I continue,

Mr. President?

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: If the Senator would continue. But, Senator, don't we have a very exacting record-keeping process now because the juvenile is arrested, the officer fills out the appropriate arrest records, there's a record at the precinct, and the crime that's of a certain nature, certainly is recorded in every conceivable way, and that is retrievable.

The only difference that you would now require is that there be fingerprints for this particular situation.

SENATOR PADAVAN: Unless there is a conviction of a serious crime, there is no record, Senator, that can be retrieved. If a youngster such as the one I described before where there was no conviction, where for some reason or other the child was remanded back to the parents or some entity and that youngster is arrested at some subsequent point in time committing another act of violence, there is no

record to refer to to say that we have a youngster here who has a history of violence, and that's the reason for the bill.

There is no other answer to that question. Sometimes these kids are arrested. As you know, they'll give a false name, and that is not uncommon either. The sheer number, 72,000 last year, tells us that we have a problem. This bill's not going to solve that problem. I'm not trying to mislead anybody, but certainly I think we need this tool at our disposal.

Youngsters today, we read day after day are coming into schools with weapons of all kinds; we're having to put metal detectors at the entrances of our schools, something unheard of when you and I were growing up. Teachers in -- are frightened in the schools because of this kind of violence. It's the realities of the world we're living in.

This measure, hopefully, will help.

SENATOR WALDON: Last question.

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: If I may, Senator, if by "no record" you mean nothing retrievable under MUSOOS or any other finger print retrieving device -

SENATOR PADAVAN: That's correct.

SENATOR WALDON: I accept and understand that, but when someone is arrested there's a recordation in the regular logs of the precinct. The detectives have the entries in their memo books and, from my experience working the streets of the city of New York, when someone has done something like this, one, you don't release him until you identify the parent or some adult for recognizance purposes even if they're juvenile delinquent and there is an ongoing record somewhere, maybe not computerized and retrievable as fingerprints would be, but there's a record somewhere.

So I think there's a bit of a redundancy. I understand, truly I understand

the nature of the violence in this city, meaning New York City, and in the state, across the state.

SENATOR PADAVAN: May I respond to your point, Senator.

Just from the memo, and I think it's important for you to understand this and others that may be listening. It says: Under current law, a juvenile arrested for committing a Class D or E felony offense may not -- may not be fingerprinted. These felonies include such serious offenses as possessing a loaded firearm, assaulting a person and causing serious physical injury, and/or having sexual contact with a child under the age of 11. As a result, each time the juvenile is arrested, he or she appears to be a first offender eligible for lenient treatment. The shielding effect of these provisions follows a youth to adulthood. There, despite numerous felony adjudications, the juvenile can receive youthful offender treatment or have a juvenile offender case removed to Family Court because he or she appears to have

no prior record, unless, of course, as you said, you find that log in that precinct that someone remembers.

You've got a big city, big state. That can happen, but it doesn't normally.

SENATOR WALDON: On the bill, Mr. President.

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: I believe I understand what Senator Padavan is attempting to achieve here. I recognize the seriousness of 72,000 violent acts by children. We are living in troubled times, but I just think there's an adequate methodology to follow the young people and that this -- this fingerprinting process just may be too much, too overwhelming, too overburdened, overburdening -- overburdening young people.

I just find it very difficult on many levels to accept, so I will have to vote against this.

Thank you, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT SPANO: Senator Gold.

SENATOR GOLD: Mr. President, I respect very greatly the comments of Senator Waldon and his concerns, but I must say that I've always thought that we go too far in the way we create fingerprinting as itself being this horrifying thing when you realize that lawyers are fingerprinted and people who go into different kinds of government service are fingerprinted and, as I've said before, there are parents who fingerprint their children at a young age just to help in identification if, God forbid, the child gets lost, and they don't think that they are stigmatizing their child.

I believe that privacy is very important and there is a place for privacy and that if someone has been in difficulty as a youngster, been given youthful offender treatment or whatever, that that privacy should be very, very important to their whole life.

Indeed, if somebody is a juvenile offender and gets in trouble and straightens out their life and gets the break that the law provides for them, I think that that should be respected by everybody in privacy.

Having said that, I am proud that a number of years ago, I sponsored what is now a law that takes all of the records from places like New York City and centralizes them in New York City, so you don't have a situation where a youngster gets into trouble in the Bronx and then goes to Queens and Brooklyn and constantly is treated as a first offender.

I also think that we all get horrified when we read in the papers some of the situations where, for example, it doesn't deal with the children, but someone has had 30 suspensions of their license and then commits vehicular homicide, say how come they're still driving around with 30 suspensions?

We have this where you have people still in the system, and you see 18 priors and whatever. I don't see anything wrong

with this bill from the point of view that someone gets identified in the system and if somebody has been in trouble and is still getting into trouble, we ought to know about it. At that point, we can talk about help, we can talk about treatment. Maybe we ought to just talk about jail and punishment, but I think that we have to know.

Today many of us were visited by schools, parents, teachers, the Board of Ed. people were up here, and one of the terrible things about the New York City school system today is the violence which apparently even the students say is their number one concern, and you can't have wonderful children of all racial, ethnic backgrounds, trying to go to school. Parents are concerned, parents work, they want their kids to have a better life, and there's the two percent, five percent, whatever it is, ten percent who go there with guns and whatever who were destroying the opportunity of the other children, and I see nothing wrong with this bill.

One thing about the bill, to tell you the truth, which I don't understand but obviously it's not going to change, is why it even has to be destroyed if the youngster is not in trouble for a year. If you start at 13 and you go a year 14, then you get in trouble at 14, go a year to 15, I don't even know why we have to destroy prints at that point. But it's in the bill and, Senator Padavan, fine.

But I think we have to get over the hurdle that in the criminal justice system we are somehow tainting people forever merely by doing a fingerprinting, and the identification process. I see nothing wrong with it. As a matter of fact, maybe if we have fingerprinting and a kid has been in trouble and gets in trouble again, maybe there's a few kids we could save who are not being saved because we don't know at some point under the present system how much involved they really are.

So I don't change my views on helping these kids. I don't change my views on youthful offender treatment, and I don't change

my views on giving them some opportunity even if they are incarcerated, but I do not see where the identification process hurts them if their privacy is properly maintained, and I'm going to support the bill.

ACTING PRESIDENT SPANO: Senator Galiber.

SENATOR GALIBER: Thank you, Mr. President.

Senator Gold and I usually are headed in the same direction. So this issue, however, we part company momentarily.

This piece of legislation starts opening up with the fingerprinting of youngsters in the spirit in which we give youngsters another shot, so to speak, is what the Family Court is really all about.

Now, we all recognize that we're living in some horrendous times, that we've lost perhaps a generation, if you will, of youngsters, but the spirit of what the Family Court is all about and as the sponsor indicated, the stigma that is attached to fingerprints -

and we're going to get some more bills this year on fingerprinting -- and it depends on how you want to use those fingerprints, what is the spirit in which you fingerprint folks for and this piece of legislation would say that we are fingerprinting those persons in felony categories that if, in a year's period of time, that person or if something happens we would then destroy those fingerprints.

That's not so. This is part of a movement that some of us, those of us who have been here a long time, had warned us about, Orwellian in his 1984 society suggested what had happened. 1984 came here in Albany and we said absolutely nothing at all about it.

They've got youngsters with serial numbers, and serial numbers, we just call them Social Security numbers, almost before they're born. They've got high tech' which can tell you what color socks you had on last year. We are focusing in on a group of youngsters, small in number, but powerful and horrendous. I wish we would just spend part of our time

talking about those goods kids. We're talking about the few in number.

Now, Senator, nobody has any stronger feeling about what's happening out in the streets of New York than I and contra to some of the thoughts of those of my colleagues on both sides of the aisle who suggest that because we have a different view we have a different vision or we recognize what the end results may be, that we're soft on crime, we excuse what happens in our community, and that's not so because the recipients, if you will, of all these, the violence that occurs in comparison to the sponsor's neighborhood, my neighborhood and some others, are inundated with this kind of negative activity.

But the spirit of what the Family Court Act, as recently as 1962, as we measure history, was with a view toward giving the youngster another opportunity. The Youthful Offender Law that has been mentioned with a view toward giving someone another opportunity.

Someone once said that we have a

learning experience in our society and we learn by reading and writing, listening and making mistakes and those of us who are parents only hope that the mistakes that we -- our children find themselves in or participating in are such that are not serious enough to harm them for the rest of their life.

Senator Padavan, this bill has a potential for harming a youngster for the rest of his or her life. We said in the piece of legislation that, if the fingerprints are destroyed, so be it. That saves the possibility of an admitted stigma. But, Senator, once you are fingerprinted, those prints stay on file. Even a youthful offender fingerprinting process if you're subsequently arrested show up on the NYSIIS sheet. There is absolutely no way that we can force the F.B.I. who will also have a copy of those fingerprints to give those fingerprints back even if we do, in fact, destroy them.

Senator, this is a -- not a mean spirited piece of legislation. We all recognize

where you are coming from, but I suggest that fingerprinting youngsters at the age of 12 and 13 and 14 is not the right way to go, that we're headed in the wrong direction to solve a very serious problem, that yet when we ascertain where that problem is, we pinpoint that problem, we come back and tell you where that problem is, and all we need is a little help in terms of putting the resources, whatever they may be, into those neighborhoods and communities where these problems are, so we can stop some of this madness that's taking place in our communities. Can't get the support, can't get the support.

So, Senator, I understand where you're coming from. I understand why you have put this piece of legislation in, but I think there's a potential for damaging, and it's not a bleeding heart approach, not a liberal approach, it's not soft on crime approach. It's saying that the spirit of what the Family Court Act is, the spirit of what those of us who live in this great country give the next person an opportunity, this piece of legislation doesn't

do that.

I don't know how to solve that problem except to put those resources that I mentioned before in those areas that we've pinpointed where the violence occurs or to deal with some of the core reasons why we have this kind of violence. This is not the right way to go. Once this person at the age of 12 or 13 will be fingerprinted, those prints will stay on file for the rest of his or her life and, if we don't change the direction that we're going in, I dare say that the time is going to come much sooner and it won't be a question of you will be precluded from employment and schools because you are convicted of a felony or convicted of certain misdemeanors, you're going to be excluded merely because you were fingerprinted.

Senator, those fingerprints will, in fact, stay on file.

Thank you, Mr. President. I vote no.

ACTING PRESIDENT SPANO: Senator Goodman.

SENATOR GOODMAN: Mr. President, since the matter of fingerprinting is going to come before us in regard to several different pieces of legislation, it's perhaps a timely moment to express a point of view about this which I don't think has been heard on this floor or the floor of the other house.

My first set of fingerprints of myself were taken when I entered the United States Navy at the officer candidate school in Newport, Rhode Island. I got through that school and became a commissioned officer and served in the Navy for 38 months, and for every day of that 38 months I had a plasticized identification card with my fingerprints on it. The purpose of that was to make certain that upon entering or leaving various military facilities that I could be positively identified.

The next occasion on which I had my fingerprints taken were when President George Bush appointed me to the National Endowment for the Arts and, as part of my Federal Bureau of

Investigation check, I had to go to my local police station, give a complete set of fingerprints which went on file with the F.B.I., went on file with the United States Senate, which did an independent check. In short, a widely disseminated set of fingerprints are now on file in every imaginable government agency.

From my standpoint, the occasions on which I was fingerprinted were occasions of honor and of not anything that was in any way negative, but rather had a positive aspect to it.

Let's consider another problem that arises with respect to identification. Every now and then, we hear that a youngster has been inadvertently switched in a hospital, given to the wrong parents because of inadequate identification of that youngster, and so there's been suggested the notion that we should take, if not fingerprints a footprint of every new born child to be sure that there's no such confusion.

I think the problem which

confronts us on fingerprinting is that the whole context of the matter has been a criminal one rather than a recognition that there are a wide variety of needs for identification, and I'll just cite one more to you. Some years ago I sponsored a piece of legislation in this house which became law which brought about the necessity of a check of people who are on a government payroll and at the same time receiving various types of government subsidies with respect to presumed unemployment. By comparing those who have jobs for pay with those who did not have jobs for pay which was done with the Social Security number, we were able to save an estimated $167 million a year of taxpayers' money.

Now, I submit to you that this type of identification is in the public interest. The problem, of course, is that in the great majority of other cases, there's a criminal identification context attaching to fingerprinting and it seems to me that the sooner we realize that this is not something

which carries a negative onus, but something which needs to be done to fulfill a whole assortment of salutary purposes which benefit society, does seem to me that we'll change our view of this.

We now have new technology called finger-imaging. Several of you may have been at the demonstration that was given us here two years ago when the new machinery which accom plishes this was demonstrated and a number of us put our hands in the machine and we were able to be advised that our fingerprint identification on this imaging was even more positive than the old technique.

To sum up, Mr. President, I think that this is a useful and, indeed in some cases, a salutary development, one which should be viewed not in the negative sense but in a positive way which will help all of us if it's enacted.

This is just the first of a series of bills. I think we should give it our affirmative support.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SPANO: Senator Galiber to explain his vote.

SENATOR GALIBER: Yes. Thank you, Mr. President.

On the same spirit of what my colleague had mentioned, Senator, it's a question of what you intend. We all know that in certain countries they have tied yellow ribbons on arms in certain countries, for horrible, horrible reasons. That yellow band is not the same one that we wrap around trees to bring our soldiers home.

So it has to do, Mr. President, what is the spirit; what is behind this notion of fingerprinting more than the fact of the distinction, and there's a volcanic difference

from what my colleague has indicated.

I vote no.

ACTING PRESIDENT SPANO: Senator Galiber in the negative. Results.

THE SECRETARY: Ayes 56, nays 3, Senators Galiber, Santiago and Waldon recorded in the negative.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, in behalf of Senator Marino, I offer up the following committee assignment changes and ask that they be filed at the Journal.

ACTING PRESIDENT SPANO: They'll be filed in the Journal, so ordered.

SENATOR PRESENT: Any housekeeping?

ACTING PRESIDENT SPANO: Any motions, resolutions, housekeeping?

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we

adjourn until tomorrow at 11:00 a.m.

ACTING PRESIDENT SPANO: Senate stands adjourned until tomorrow at 11:00 a.m.

(Whereupon at 4:52 p.m., the Senate adjourned.)