ALBANY, NEW YORK

March 22, 1994

4:27 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: Senate will come to order. Senators will please find their seats.

Please rise for the Pledge of Allegiance to the Flag.

(Whereupon, the Senate joined in the Pledge of Allegiance to the Flag.)

Today, in the absence of visiting clergy, we will bow our heads for a moment of silent prayer.

(Whereupon, there was a moment of silence.)

Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, March 21. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Sunday, March 20, was read and approved. On motion, Senate adjourned.

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

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. Are there any motions on the floor?

Senator Spano.

SENATOR SPANO: Mr. President. On behalf of Senator Johnson, would you please star Calendar 363 and Calendar 381.

ACTING PRESIDENT FARLEY: The bills are starred at the request of the sponsor.

SENATOR SPANO: Mr. President. Move that the following bills be discharged from their respective committees, be recommitted, and strike the enacting clause: Senate Print 2280. That is on behalf of Senator Cook.

ACTING PRESIDENT FARLEY: The

enacting clause is stricken, and the bills are recommitted to their respective committees.

SENATOR SPANO: On behalf of the sponsor, can you remove the star on Calendar 116, Senate Bill 6523A.

ACTING PRESIDENT FARLEY: Star is removed at the request of the sponsor.

SENATOR SPANO: On behalf of Senator Daly, on page 18, I offer the following amendments to Calendar 400, Senate Print 6794, and ask that the bill retain its place on the Third Reading Calendar.

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

SENATOR SPANO: On behalf of Senator Lack, on page 9, I offer the following amendments to Calendar 277, Senate Print 1065, ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Is that Senator Saland or Senator Lack?

SENATOR SPANO: Senator Lack. Senator Lack's bill, page 9, Calendar 277.

ACTING PRESIDENT FARLEY: Would you change that to Senator Saland?

SENATOR SPANO: Okay. That last one was on behalf of Senator Saland.

ACTING PRESIDENT FARLEY: Correct. Without objection.

Senator Johnson. Are you just standing?

Senator Holland.

SENATOR HOLLAND: Please star my bill Calendar 406, Senate 4479A, please.

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

Senator DiCarlo.

SENATOR DiCARLO: Mr. President. On behalf of the sponsor, Senate Bill Number 75, Senator Levy requests starring the bill.

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

Senator Present.

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

ACTING PRESIDENT FARLEY: All in

favor of adopting the Resolution Calendar, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

270, the bill is starred.

Are there any other motions on the floor?

(There was no response.)

Senator Present, what's your pleasure?

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes, on behalf of Senator Paterson, I believe he has a privileged resolution at the desk.

ACTING PRESIDENT FARLEY: He has. Would you like the title read?

SENATOR GOLD: Yes, just read the title and then move.

ACTING PRESIDENT FARLEY:

Secretary will read the title of Senator Paterson's resolution.

THE SECRETARY: Legislative Resolution, by Senator Paterson, commending Johnny Medina upon the occasion of his designation as the first place winner in the United States Savings Bond Division Third Annual National Student Poster Contest.

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

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Let's take up the noncontroversial calendar, please.

ACTING PRESIDENT FARLEY: The Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 7, Calendar Number 62, by Senator Velella, Senate

Bill Number 6398A, an act to amend the Insurance Law, in relation to dental risk management programs.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 331, by Senator Kuhl.

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

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 337, by Senator Larkin, Senate Bill Number 2233A, an act to amend the Election Law, in relation to the hours for voting.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 342, by Senator Kuhl, Senate Bill Number 3182, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR KUHL: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

SENATOR KUHL: Yes. Mr. President.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Yes, I mistakenly laid aside Calendar Number 331 for the day.

That one should have been called up instead of 342. 342 I would like laid aside for the day, but the other one I would like called up. The second time around is fine.

ACTING PRESIDENT FARLEY: Without objection, would the Secretary call up 331, which we laid aside.

THE SECRETARY: Calendar Number 331, by Senator Kuhl, Senate Bill Number 3718A, an act to amend the Public Officers Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: 331.

SENATOR GOLD: Party vote in the affirmative.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: On page 13, Calendar Number 355, by Senator Tully, Senate Bill Number 4528B, an act to amend the Public Health Law, in relation to insuring the patient in making donations.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 356, by Senator Tully, Senate Bill Number 4997, an act to amend the Public Health Law, the Penal Law and the Domestic Relations Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 357, by Senator Tully, Senate Bill Number 5605, an act to amend the Public Health Law, in relation to establishing a state council on hospice care.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 358, by Senator Hannon, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 359, by Senator Wright, Senate Bill Number 6861, authorize the city of Ogdensburg School District to finance the accumulated deficit.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 360, by Senator Wright, Senate Bill Number 6862,

in relation to authorizing the conveyance of certain real property of the city of Ogdensburg.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 361, by Senator Kuhl, Senate Bill Number 2038, an act to amend the Vehicle and Traffic Law, in relation to requiring the Commissioner of Motor Vehicles on annually issue a compilation of laws.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 362, by the Assembly Committee on Rules, Assembly Bill Number 8918, Executive Law, in relation to the publication of certain notices.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 366, by Senator Saland, Senate Bill Number 2363B, Social Services Law and the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 367, by Senator Saland, Senate Bill Number 3428A, Family Court Act, in relation to fair treatment of child witnesses.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 368, by Senator Saland, Senate Bill Number 4573A, Family Court Act, in relation to orders directing provision of services.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 369, by Senator Saland, Senate Bill Number 4866, an act to amend the Family Court Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 370, by Senator Cook, Senate Bill Number 2989A, Uniform Justice Court Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 373, by Senator Present, Senate Bill Number 6574, Judiciary Law, in relation to appointment of grand jury stenographers.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator Johnson, Senate Bill Number 6665, Real Property Actions and Proceedings Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

375, by Senator Volker, Senate Bill Number 67 -

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 376, by Senator Farley, Senate Bill Number 1181, Education Law, in relation to the funding of certain libraries.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 377, by Senator Libous, Senate Bill Number 2293B, an act to amend the Education Law and the State Finance Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 378, by Senator LaValle, Senate Bill Number 3755.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 380, by Senator LaValle, Senate Bill Number 6130, authorizing an apportionment of state aid for certain capital expenditures.

ACTING PRESIDENT FARLEY: There is a local fiscal impact note here at the desk.

You can read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 382, by Senator Cook, Senate Bill Number 2288.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 384, by Senator Maltese, Senate Bill Number 6388, an act to amend the Executive Law and the Criminal Procedure Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator Present, Senate Bill Number 2063, Criminal Procedure Law, in relation to eligibility for youthful offender status.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 390, by Senator Sears, Senate Bill Number 3106, an act to amend the Penal Law, in relation to including the use of a firearm.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 393, by Senator DiCarlo, Senate Bill Number 6379, an act to amend the Penal Law, in relation to the sale of controlled substances on school grounds.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator Volker, Senate Bill Number 6912.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 397, by Senator Cook, Senate Bill Number 3271A, Environmental Conservation Law, extending the shooting preserve season.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 398, by Senator Marchi, Senate Bill Number 6521, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 399, by Senator Sears, Senate Bill Number 6756, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 401, by Senator Skelos, Senate Bill Number 66 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 407, by Senator Tully.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 408, by Senator Tully, Senate Bill Number 6565, an act to amend the Social Services Law and Chapter 710 of the Laws of 1988.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 409, by Senator Holland, Senate Bill Number 6974, an act to amend Chapter 602 of the Laws of 1982 amending the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 410, by Senator Holland, Senate Bill Number 6975, an act to amend Chapter 715 of the Laws of 1982.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 411, by Senator Holland, Senate Bill Number 6976, an act to amend Chapter 535 of the Laws of 1983 amending the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 421, by Senator LaValle, Senate Bill Number 7131, Education Law, in relation to the

membership of the Board of Cooperative Educational Services in certain instances.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, that's the first time through.

SENATOR PRESENT: Would you recognize Senator Sears, please.

ACTING PRESIDENT FARLEY: Yes, I will.

Senator Sears.

(There was no response.)

He doesn't want to be recognized.

SENATOR PRESENT: Let's go to the controversial calendar.

ACTING PRESIDENT FARLEY: Are there any other motions before we - Controversial.

SENATOR PRESENT: Would you call up 407 first.

ACTING PRESIDENT FARLEY: 407. Secretary will read it, please.

THE SECRETARY: On page 19, Calendar Number 407, by Senator Tully, Senate Bill Number 6325A, an act to amend Chapter 906 of the Laws of 1984 amending the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present, controversial?

SENATOR PRESENT: Controversial.

ACTING PRESIDENT FARLEY: Secretary will read the controversial calendar.

THE SECRETARY: On page 11, Calendar Number 337, by Senator Larkin, Senate Bill Number 2233A, Election Law, in relation to the hours for voting at primary elections within the county of Orange or Ulster.

ACTING PRESIDENT FARLEY: Explanation has been called for Senator Larkin.

SENATOR LARKIN: Mr. President. This bill has been called for by the town clerks in the towns of Orange and Ulster County. Over an extended period of time, they have found out that this law that was enacted in the mid '80s to add these two counties has not done anything to increase voter participation and the only thing it has created is a cost factor to local governments.

It has the support of local government.

SENATOR GOLD: Where?

SENATOR LARKIN: In Orange and

Ulster counties, the town clerks.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Will the Senator yield for a question.

ACTING PRESIDENT FARLEY: Would you yield, Senator Larkin?

SENATOR LARKIN: Yes.

SENATOR CONNOR: Thank you Senator. Senator, the memo and the people who have proposed this say it will save money, and I have a simple question. How much?

SENATOR LARKIN: I don't know, Senator, but the numbers that we have been watching in the balloting at primaries at our two respective counties is so limited, it's almost a -- it's a waste of time of not only the taxpayers but of those who are sitting around all day doing nothing. Primary for a Conservative party year before last, in one election district of over 500, five people

voted.

SENATOR CONNOR: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT FARLEY: On the bill. Senator Connor.

SENATOR CONNOR: Thank you. Senator Larkin points out one problem that we're always going to have; and that is, when the very small parties, the Liberal or Right to Life or Conservatives, have a primary, of course not very many people vote between 6:00 a.m. and noon or whenever. Not very many people vote for the whole day in those parties.

But we can't make the law with hours geared to the party. The fact is when one of the major parties has a hotly contested primary, a lot of people do want to vote. Particularly Orange County, much more than Ulster, has become a bedroom county. People commute to elsewhere in the metropolitan region or to New York City, and they want to vote in the primary. But if we have the short kind of primary day that this bill would result in, they

will lose their opportunity to vote.

I have some numbers here just for instance. In the 1974 primary -- it was a Democratic primary, statewide -- 5200 people in Orange voted and 3800 in Ulster. Subsequent to that, the law was changed in 1983 in the feeling that more people would vote in the primary. And we get results like in the '82 gubernatorial primary, 24,000 people voted in Orange; 10,465 voted in Ulster.

As recently as the 1992 presidential primary 10,468 people voted in Orange and 8200 voted in Ulster.

So, generally, when there were hotly contested primaries, years like '74 and '82 and '84 and '92, the turnout did go way up from what it had been before this law was enacted. Indeed, the law was prompted by the very large turnout in '84 which really inconvenienced people because there was a lot of crowding.

The fact of the matter is, minor parties aside, these are counties, particularly

Orange County, that does have a commuter component among its voters, and we really ought to accommodate their desire to vote in a primary election.

The sponsor can't put a number on it. It will save money. Well, at what price democracy? The fact of the matter is if it only saves an itty-bitty amount of money, then we ought to opt in favor of affording the voters the widest possible opportunity to vote.

And I say to my colleagues on the other side of the aisle who may see a hot primary this year, more and more in our state when there are real contests in major parties, you get very large turnouts in a primary.

And bills like this, really - because what we do, we, the State of New York, run the party's primary for them -- ought to accommodate the interest of the major parties and the widest possible participation by their members in a primary election.

This particular bill does not have bipartisan support from the two major

parties in the two counties, and that's my principal political objection to it.

Apparently, the two Republican chairs said it's okay and one of the Democratic chairs, but the Democratic chair in Orange County feels very, very strongly that within the Democratic Party in Orange County there are a large amount of commuters who are active in party affairs and like to vote in the primaries, and they require the extended voting hours which the Legislature afforded that county back in 1983.

Under those circumstances, I don't think we ought to move a bill, whether town councils or whatever want it, that isn't supported -- and that's been the history with successful election changes -- that aren't supported on a bipartisan basis by the organizations concerned.

And I'm not going to say any more because I think because there is not that support, this is going to be, once again, a one-house bill.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes, I appreciate Senator Connor's remarks. As usual, he is right on target. We've had this before, and number of us have voted in the negative on it.

I just like to say for myself that I certainly would have felt a lot better, Senator Larkin, if you came to us with a bill asking for money to advertise or to encourage or do something to get the people out to vote, because that's what it's about. Cutting the voting hours isn't what elections are about. Limiting the ballot access is not what elections are about.

So I appreciate the comments by Senator Connor, and I would certainly urge everybody, certainly on this side of the aisle, to vote in the negative.

Last section.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Dollinger, do you wish to speak? Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Actually just on the bill, Mr. President.

ACTING PRESIDENT FARLEY: On the bill. I'm sorry.

SENATOR GOLD: Party vote in the negative.

SENATOR DOLLINGER: To explain my vote?

Mr. President. I voted against this bill last time, and I intend to vote against it again.

It seems to me that the comments from Senator Connor and Senator Gold are extremely well taken. I personally think that we ought to be doing everything possible to encourage participation in major parties, smaller parties, whatever you want to call it. The greater the participation of the public in the party system, I think the greater vitality it has, the more effective primaries will be.

I, frankly, think we ought to be

looking at the possibility of extending voting beyond a single day if we want to have greater participation, at least in primaries. This bill, it seems to me -- anything that rolls back the amount of time people can vote in a primary to figure out who the major party candidate should be is a mistake.

We should be expanding the time for voting, perhaps even including it to a couple of days, to make sure that every Republican gets to be heard, every Democrat gets to be heard, and every member of a minor party gets to be heard, as well.

This is taking a step in the wrong direction when we need further election reform. We should be expanding the time and doing other things to get more people involved in elections rather than fewer.

I'll vote no, Mr. President.

ACTING PRESIDENT FARLEY: Senator Present, do you agree to a party vote?

SENATOR PRESENT: Yes, party vote.

ACTING PRESIDENT FARLEY: Read the last section.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 34. Nays 23. Party vote.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: May I have unanimous consent to be recorded in the negative on Calendar Number 62, Senate Bill 6398.

ACTING PRESIDENT FARLEY: 62? Without objection.

SENATOR GOODMAN: Thank you.

THE SECRETARY: On page 13, Calendar Number 358, by Senator Hannon, Senate Bill Number 280, an act to amend the Real

Property Tax Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Lay it aside.

THE SECRETARY: Calendar Number 375, by Senator Volker, Senate Bill Number 6734.

SENATOR GOLD: Can we have one day on this for Senator Galiber.

ACTING PRESIDENT FARLEY: Can you have one day on this, Senator Volker?

SENATOR VOLKER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside for the day.

THE SECRETARY: Calendar Number 378, by Senator LaValle, Senate Bill Number 3755, an act to amend the Education Law, in relation to the transportation of students.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator Jones to explain her vote.

SENATOR JONES: Yes. I'm, you know, like everybody else certainly interested in having children transported safely to school, but I see this as another option that we're taking away from school districts and another mandate we're placing on them.

Unless we're prepared to give them more money, this transportation seems to be the only option that they have, and I'm very concerned that we would take this away from them. So as a result, I'm voting no.

ACTING PRESIDENT FARLEY: Senator Jones in the negative. Results.

THE SECRETARY: Ayes 56. Nays 2. Senators Daly and Jones recorded in the negative.

ACTING PRESIDENT FARLEY: Bill is passed.

THE SECRETARY: Calendar Number 382, by Senator Cook, Senate Bill Number 2288,

an act to amend the Correction Law, in relation to payments in lieu of taxes.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Cook.

SENATOR COOK: Mr. President. The State of New York has seen fit, for a very good reason, to place most of its correctional facilities in relatively small communities. That's all well and good, except that there are certain services that those correctional facilities require -- essentially fire service and emergency ambulance service coverage - which put a very heavy burden on those communities.

The most recent contact that I had on this subject was Otisville, which happens, as a matter of fact, to have a federal prison as well as a state prison with a few hundred people providing all of the tax money that is necessary to buy sophisticated fire fighting equipment that would be adequate to respond to an emergency of the type that could

occur in that facility were there a fire; and, of course, prisoners that are statewide prisoners are being placed there, something that all of us should share in the cost of.

And this bill in a very modest way puts one dollar a year from each correctional facility into the treasury of the fire department and of the emergency medical service to help cover some of those costs. And as I said, a very modest bill because a thousand dollars or so doesn't really go very far but at least it's a recognition on the part of the State of New York that we do have some responsibility for sharing in those costs.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President. I'm sorry to say this, Senator Cook, but I think it's a myoptic bill and, frankly, it's a bill where it shows a certain amount of greediness, if I may say so.

First of all, a lot of these

communities are very anxious to have a prison in their localities because it brings terrific revenue in terms of job and other economic activities.

In fact, I remember some years ago, it was in my mind a terrible budget that was passed and one that was very difficult for Republicans to support, but you had to pass the budget and you did. And, afterwards, I saw Senator McHugh, and we were in the -- in our little hideaway there, and I said to him, "I guess you are going to stay here over the weekend." He said, "Why should I?" I said, "Well, you don't want to go back and show yourself in your community, having voted for this budget with taxes and everything else."

He said, "I'm coming back a hero." I said, "You're coming back a hero?"

He said, "Yes, I brought a prison to my community. People are going to be delighted."

So, Senator Cook, let's recognize that there are many areas of the state that are

very happy to have prisons located there because of the economic benefit and value that they bring to their communities.

Now, I think it's unfortunate that there are many places in New York State that are so dependent on prisons for economic activity. I wish we could do more for those communities, and we should be doing more for them, and I'm sure those communities would like to see other forms of economic activity other than prisons.

But the fact is, at this moment, it is a recognition of the economic value of prisons. So at the same time that you are fighting to get prisons in your communities, that you see the value to the communities having the prisons, then you come and you say, "Now you've put all this money in our community, now you got to pay us for providing volunteer fire department service."

I really don't understand that. But over and above that, what concerns me is the way we fragmentize our tax laws and have

different rules for this facility. There are other state facilities. I don't know why you just pick prisons. If this was a sensible approach, then it ought to apply to all state facilities; and if you applied it to all state facilities, then how about for other services that the state provides or rather that the localities provide to these prisons?

You could make the argument there is additional police presence that's required. You got visitors who come there, so you need local police officers to handle traffic and other things of that sort.

Now, you remember that some years ago we had a bill that I think first passed when you and I were in the Assembly -- we probably supported it -- which provided that the state was going to pay to the localities for every one of its facilities, a payment in lieu of taxes or would be equal to taxes, would be a recognition of the services the locality provides to the state in servicing its facilities. And we found out it was going to cost $400-500 million or

even more, and every year there was a painful vote as we extended the effective date. And finally, in the middle of the one night when we were all groggy, we finally killed that. Because I think we recognized not only the cost but also that there was an consistency in both wanting state facilities, benefiting from state facilities, and then saying to the State of New York now you got to pay for it.

So I think the bill is not fair. I think it's not reasonable, and I don't think it's consistent with our tax laws. And for that reason, I would urge my colleagues to vote against it.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55. Nays 3. Senators Galiber, Leichter and Solomon

recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator Volker, Senate Bill Number 6912, an act to amend the Penal Law, in relation to the criminal possession and criminal sale of a controlled substance or marijuana.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

SENATOR VOLKER: Mr. President. You know, I've heard it said before, you know, sometimes we get up on the floor of the Senate and we say this is one of the most important bills to pass the Senate this year.

Admittedly, I say it with the death penalty, and I mean it very sincerely. I have to be honest with you, of all the criminal justice bills that I have introduced this year and hope to pass to come into law, this one is probably the most important one we will do this year.

One of the reasons why we have

rushed this bill as soon as it's been ready to go -- and I will tell you why it hasn't been ready to go until now, why this is the first day that we are able to pass it on this floor. If this piece of legislation does not pass both houses, be signed by the Governor, thousands of people -- thousands of violent inmates -- and let's stop the crap that's been going on over in the Assembly about all of the people involved in drugs in our prisons are nonviolent people. That's the biggest crock of nonsense I've ever heard in my life.

An awful lot of violent people are going to walk out of our prison system. It is a very dangerous situation created by a Court of Appeals in this state that should take a real look at itself and decide where it is in a number of ways.

Some people have said that this is the worst criminal justice decision made by a Court of Appeals in this state in decades. This is the People versus Ryan decision, that basically says that a person who is charged in a

drug case not only must be charged to have knowingly committed the crime and has to know that he or she is in possession of drugs but also has to know the weight of the drugs, a standard by the way that any law enforcement officer and prosecutors and so forth realize is almost a ridiculous standard, and it's a defense attorney's dream, by the way.

Now, let me tell you where this bill came from.

Can I finish just a second.

ACTING PRESIDENT FARLEY: I think Senator Volker wants to finish his.

SENATOR VOLKER: This bill was submitted to us by the District Attorneys Association of New York or submitted to the Governor's office, I'm sorry. It is a bill that was submitted to us at the request of the Governor and the Attorney General. It was drafted by the District Attorneys Association. It is supported by the Law Enforcement Council and virtually, as far as I know, every reputable law enforcement group in the State of New York.

No one is exactly sure, very honestly, and we discussed this -- Senator Dollinger and myself and a number of us discussed this in our committee meeting. No one is exactly sure, even assuming we pass this bill, what kind of havoc has already been wreaked by the Court decision, because there will be some tough decisions that some judges - are going to have to be made as to what the effect, already, of cases that have happened prior to this; in other words, especially cases that occurred between the time that this case was decided and whenever the Governor signs this bill into law.

So I think that this is something extremely serious. It has been estimated that if we do nothing with this People versus Ryan decision that at least 4,000 cases will be put at risk, and no one is sure how many cases are in the pipeline that could be dealt with by this.

It just seems to me that this is something that we can't delay dealing with. And

I know there are some people here who have not been able to enact second felony offender changes. And as somebody said, this is a nice way of doing it. This is a nice way of emptying out some of our prisons.

It may be nice, but it's extremely dangerous. This will put at risk some of the most dangerous prisoners in our system because the possibility is there, the very strong possibility, that many of those cases will be overturned and, in fact, until we get this righted, that future drug cases will be brought almost to a halt. The New York City Police Department is saying that all of their cases, their drug cases could be put in jeopardy.

So this is something that's an extremely serious matter.

ACTING PRESIDENT FARLEY: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would the Senator suffer one question, please?

ACTING PRESIDENT FARLEY: Would you yield?

SENATOR VOLKER: Certainly.

SENATOR WALDON: I may be incorrect, Senator Volker, but I thought I heard you say that thousands will walk out of jail.

SENATOR VOLKER: Could, yes.

SENATOR WALDON: There is no retroactive clause in this bill, is there, in regard to people who have already been sentenced?

SENATOR VOLKER: There is no retroactive clause. The question I think is - and we don't know the exact answer to this question. The question that has to be asked is, is on writs of habeas corpus and things of that nature, what would be the result?

There is one school of thought that says it's a procedural matter and therefore if it's reversed by a clarification of the statute, so to speak, that judges can still rule that the cases could stand, and there's another school of thought that says that's not

necessarily.

So what will probably happen is, assuming that this bill becomes law, there will be a lot of cases making decisions about what are some very serious criminals -- either stay in jail, go to jail and so forth -- even despite this bill; but at least we will have protected whatever we can and stopped the wreaking of the havoc that this decision has made.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Waldon.

SENATOR WALDON: I'm going to have to ask the seconds question.

ACTING PRESIDENT FARLEY: Sure.

SENATOR WALDON: If you would permit.

SENATOR VOLKER: Sure.

SENATOR WALDON: You don't mean that those in jails will, in fact, walk out. This is more a prospective bill, is that not correct, meaning that those who are sentenced in futuro, under Ryan, may not be, in fact,

sentenced to what you believe they are guilty of; but if this legislation you are proposing is passed, they would receive the appropriate sentence as you view the law?

SENATOR VOLKER: Senator, I hope you're right, but I'm not sure you're right. I think there is the possibility that some people who are already in jail could presumably walk out. That is a possibility. I'm not saying that would happen, but there are some in the law enforcement community, in the District Attorneys Association, who believe that the real probability is that a number of the cases that have already gone through the pipeline recently could well be overturned if this statute isn't put into place and if we don't straighten this out.

SENATOR WALDON: Thank you very much, Senator.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: Usually in the course of the debate, especially with my good

friend, Dale Volker, I ask him to yield to some questions but not in this case.

This piece of legislation needs some time, and this is what is called political hype. The decision in the Ryan case came down, I believe, in December of 1993. Here we are a few months later reacting, if you will, to a decision which has not yet found its way really into the court system.

Senator Volker and I were here, and I don't recall how he voted on the Rockefeller law back in 1970, whenever it was - '73 -- and there are those of us who suggested to the then governor of this great state of ours, desirous of running for president of the United States, desirous of taking off his mantle of liberalism, desirous of putting on his cap of conservatism, forced us -- forced some -- into the harsh Rockefeller law, A-1, A-2, A-3.

Took us some time. And I'm not sure, I think Senator Dale ultimately or from the very outset saw something wrong there, but it took us back to 1970-whatever-the-date-was to

pass legislation. It happened to be Chapter 4 or 10. It was one that I remember and I usually don't remember statutes, but it really changed A-2 and A-3 categories because we felt that the law was too harsh. And it gave us an opportunity to review, if you will, the A-1 categories which called for life in prison.

What has happened here in this particular case with the Ryan case, Judge Kaye and five other judges -- and it depends on whether they are favorable or not. It's like being a lawyer. If you get your client off, you're a great lawyer. If he or she goes to jail, you're a lousy lawyer.

We have confirmed some very fine judges in the Court of Appeals, without opposition in most cases. And what Judge Kaye is saying is simply that there are layers of cases where the punishment is too severe.

We've talked about unloading our jail systems; that half or a good portion represent persons who have committed small nonviolent drug arrests. They can make it sound

bad by saying these are violent criminals in there, and yet we have in the Bedford house of detention some 98 women, 80 percent of their population talked into being mules, if you will. And that's what this bill is all about and establishing the fact that they are mules; but because of the weight, we find them serving fifteen years to life.

And I don't want to make it sound -- dramatize it by saying Bedford Hills, because it's a women's institution. All our prison institutions throughout the state, the same thing applies.

What this bill is is a reaction to a political year, not really knowing where this is going.

I practice law on rare occasions. I have two cases. Just got rid of one the other day, and it happened to be in this category. District attorney agreed that the defendant, my client, was a mule. He had those Nike sneakers coming back from one of the islands, and it looked a little high without the jumping, and

they asked him to stop. And as he ran, two pounds of cocaine came out of the back of his shoe. He said they gave me X number of dollars to bring this back. 21 years of age, no prior record. Without Ryan, we're sending him to jail or her to jail for fifteen years.

And if we take it in a different perspective and we talk about alternatives to incarceration, if we read very carefully the message that the Governor sent to us, shock treatment which we all agree, or most of us do, we will offer it to you again if the criteria you meet is there plus if it's narcotics.

Predicate felon possibility? If it is drugs, we will offer an opportunity by giving to the judge a discretion to deal with it. If you are arrested for a felony under the message that was sent to us -- it may pass, and I think it will because the package over in the Assembly is based on changing the criminal justice system -- give you an alternative to go into a treatment program.

All these things that are

mentioned are designed, because we have recognized that we are putting people in jail for drugs, violent if you want to call them that -- that's nonsense in my judgment, and no disrespect, and you know that -- where all these folks who are in jail for this horrible length of time merely because they have possessed a certainly quantity of drugs.

Are they the big ones, the big timers that we talk about? Are they the ones shooting up the neighborhoods, if you will? No. Because we never, Senator Volker, caught up with those big ones in the first place. Even the A-1 categories, we never got ahold of them. They were so smart. They were able to give 15-year-olds the heavy part of the drugs. We never caught up with them.

Judge Kaye by her decision five other judges have suggested that this is the first time, that we want to put some teeth in the hands of those so that we will not be packing our prisons with those persons who but for the Rockefeller law might very well be on

probation or serving lesser amounts of sentences.

What the bill that Senator Volker suggests offers strict liability. I'm not sure, but I think it has something in terms of possible affirmative defense in it or perhaps that was one of the memos or amendments that was going to be proposed, I'm not sure. But you have to put the defendant on the stand in order to do so.

We have a number of memos here, some in opposition -- a lot in opposition. But, Senator Volker, let me just share with you what time does. Time has a way of solving so many things.

In this short span of time from December '93 to March '94, just a couple of months, three months or so, the reaction to this law as far as the district attorneys are concerned, I made some inquiries and they told me that there are now, Senator Volker, three reported cases. One is People versus Okehoffurum. In that case, the evidence of the

price and the defendant's handling of the weight is sufficient to establish knowledge of weight. People versus Corang, held defendant's handling of five ounces of cocaine was sufficient for a class A felony indictment. And People versus Lujan -- all these are recent cases since the Ryan matter, so they're dealing with it, as I said before -- held the size of the drug package sufficient to circumstantially prove knowledge of the weight.

I tried to use Ryan in that sneaker case of mine. Judge says, "Counsel, two pounds, two pounds is not the kind of case that the Ryan decision meant," and I suspect that the sponsor of the bill knows that as well as I do. Maybe not as well as most of you know.

The districts attorneys in Manhattan -- four or five judges refused to dismiss these cases. Another judge says, "Well, if it's pure weight." And when we say "pure weight," we're not talking about the two pounds again. We're talking about the section of the law that it's brought under where it's a small

few ounces, where they have reduced it to a misdemeanor. But in the other cases, they refused to indict -- or they do indict. They refused to dismiss the cases, and there's a number of judges who have followed that.

And I simply say that this matter that we discuss today needs some time. And as I said to you, before, we fought and I think somewhere, Dale Volker, like most of the time, Senator, we wind up on a part of the issue. Maybe, sometimes, it's just a third of it, and that's quite a bit as far as the two of us are concerned. We did away with the Rockefeller law because they're putting too many people in jail who shouldn't be there.

Can you imagine someone who for economic reasons -- and I'm not justifying any of it -- for economic reasons takes a certain quantity of drugs from here to there. There's no culpability as far as the sale of that drug. For economic purposes, he collects a fee for doing it. Should that person serve fifteen years? The proponent of this bill say yes, that

the prosecution has put on additional burden with the prosecution to show that he had knowledge or she had knowledge.

And if you read a careful reading, careful reading of the decision, Judge Kaye and her colleagues went through certain mitigating circumstances where this would not apply; but to create this kind of political hype at a time when this decision has not had an opportunity to function, see how it works out, and the sign posts are indicating that the judges and the district attorneys are not having a problem that you mentioned about. They knee-jerked it on December 24, maybe Christmas Eve, if that was the date that it came down, but not March of 1994.

Again, back in the real world, I know, Senator, that the votes are here, and it's going to happen, but why should we go back to the Rockefeller days. You opposed part of that then, and you are going to close the door with this piece of legislation. This piece of legislation basically concerns itself with those

persons who are not violent, with those persons who are involved because they are mules, but certainly not in that category that we read about in the paper where persons are going through the neighborhoods, shooting up the neighborhoods, killing off little babies. This is not the situation.

I say the bill needs more time, and I was going to offer an amendment on it, but the amendment takes away from where my position would be, because then I'm asking for a presumption. And your bill would befall on the defendant and my amendment, and yours also, I think, where we have to put the defendant on the stand in order for him to say, "No, I didn't have knowledge" or "No, I didn't have intent" and then for the jury to make the decision.

So, colleagues, I had to put this on the record. I like to function most of the time in the real world. I don't like fighting windmills too often. I do it too often as it is. But this is one of those cases.

This bill solves a problem that

has haunted us for years and years and years, and that's the harsh Rockefeller law. This is the first time that we had an opportunity to deal with those persons who possibly, if we were to poll this body, would say clearly that they do not deserve to be in jail for the fifteen years or so that the statute calls for. We need some time. I'm not sure we're ever going to get it.

I only hope, but I have very little hope, that at least in the Assembly by the time it gets on their calendar -- and I hope they don't rush it, because it's such a short time span. I dare say knowing your position, Senator Volker, on this issue that if this were to come up not at the wee hours of closing session but if this bill were to come up sometime near the end of this session, perhaps you wouldn't even bring it up. Because by that time, you would have seen that this bill doesn't do the damage that you suspect it does.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator

Volker. Then I will go right to Senator DeFrancisco.

SENATOR VOLKER: I will try to be brief. Senator Galiber, normally I -- and I must say to you that I understand what you are saying very well, and I think you are well aware that both of us in one way we're on the same side, and maybe in degrees, on the Rockefeller drug law. As a result my activities in the Assembly on the Rockefeller drug law, I got the longlasting and lifelong enmity of a governor who -- I've never said publicly on the floor here -- once drove his limousine across the sidewalk in front of me, threatened me, pushed me against a wall, and I pushed him back against another wall, a few other things that happened as a result of it. He was a real confrontationalist. He also said that the changes in that Rockefeller drug law -- he privately told some of his friends -- were the greatest defeat that he had in public life, not well-known, and the result of it was that a number of other things occurred after that which

I can't get into here, but did occur.

Senator, I must disagree with you. And I understand what you are saying to me. You are right about one thing that the impact of doing nothing in this, of not passing this legislation and not signing into law, would, I think, in the long-term have the effect of negating a good deal of the tough drug laws that we have passed over the last two decades. Nonviolent as well violent people would be impacted. That's almost a surety.

Ryan, by the way, was not a small time possessor. If you look at who the People versus Ryan case involved, it was not some small time possessor. Quite obviously, when you think about it, because it went all the way to the Court of Appeals. And I suppose, normally, small time people, very honestly, don't get to the Court of Appeals.

In fact, what's really not well-known is, here, we had a failure here a few years ago of a first-felony defender diversion program. The reason it failed is that every

D.A. in New York City had been doing first-felony offender diversion for years. You really got to work at getting busted and going to jail in New York City. Four, five times.

When you are talking about this sort of thing, I mean, sure, there is I suppose the occasional person who is supposedly the small-time person. My definition of the normal drug person who's nonviolent is the guy who shoots over somebody's head, misses, and gets convicted of possession of a lot of marijuana that he carries out of a store, because if you look at the history of people who are in jail just on drug charges, virtually all of them - virtually all of them -- have a long string of felonies before that, at least a few of which are violent felonies. Many times they were pled down. That's the way it is.

The problem is -- and I don't know, maybe you're right, Joe. All I know is the New York City Police Department says they have 3100 cases that if we don't do anything about the People versus Ryan case they may have

to throw it out the window, and those are only possession cases. They have no idea on the sale side exactly how many they may have to sack.

The rest of the state at this point says 900. They're not sure, but it's a lot. This is not just about small-time people, not at all. It could be somebody with thousands of pounds for that matter.

Yes, it is Joe. And not only that, there is another factor here. If this case remains unchallenged, what about the larceny statute? You could apply this to other areas of the law.

And you and I know, Senator, and both of us, I assume, have been involved, and I know of many people have been involved in cases involving people who have drugs. Most of the people that are involved in drugs, they have no idea of the exact amount of the drugs that they have. They don't know whether it's six pounds or four pounds or three pounds.

This is, by the way, a standard that every law enforcement person that I've

talked to says is impossible to meet, virtually. It's ridiculous, and it flies in the face of the statute. What the Court of Appeals did was to take a statute and take the meaning of it as it was intended and said, "We're going to interpret it in a different way." That's what they said.

The trouble is and, once again, the Legislature certainly never meant that we were going to say that the criminal had to know exactly how much drugs he had or she had. What the Court of Appeals is saying is we don't particularly care what the Legislature intended we're going to put our imprimatur on it and make an decision. Maybe that's the worst thing of all, and Senator Marchi has pointed that out over the years. It's a very disturbing kind of thing that's occuring in the courts not only in this state but in this country, where courts are taking statutes that we and other legislatures have passed and saying, "Well, we don't like the way that they did that, not that they intended anything else. We know what they intended, but

we think it ought to have been different and, therefore, we are going to say that this is what they really intended to do."

I guess -- let me finish up by saying, Senator, normally I would agree with you that we could take some time to look at this. This is like saying that there's a leak in the Titanic, and we should take a little time and hope that the thing doesn't sink.

The only issue here in this bill of waiting is the issue of how many cases we're going to jeopardize, and that's why I think, Senator, I can't agree with you and why I ithink we have to move ahead.

SENATOR GALIBER: Senator yield to a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT FARLEY: I do have a list, incidentally, but I presume that you would yield. I do have a list of people that wanted to speak on this.

So Senator Galiber.

SENATOR GALIBER: Senator, are

you aware that the three cases that I cited -- I might not have pronounced that first name probably, but all those cases were held because they were able to show by circumstantial evidence. That's why they didn't dismiss these cases, either by the handling of them or in the law enforcement category where they say, "Do you want to buy a nickel bag or a dime bag?" So that's the kind of knowledge. There were convictions here. These cases were not dismissed. You would have us believe that if your bill passes -- or if the Ryan decision stands, that the flood gates of our institutions were opened up and 30-some-odd thousand, whatever those cases that the police officers who have no responsibility for prosecution in the first place have written to you and said 31,000 of our cases -

SENATOR VOLKER: Hundred.

SENATOR GALIBER: -- are going to go down the drain. I'll yield.

SENATOR VOLKER: Hundred, Joe. I didn't say 31,000. 3100.

SENATOR GALIBER: 3100? All right, 3100.

SENATOR VOLKER: In New York City.

SENATOR GALIBER: Okay. New York City. Sounded -- New York City, sounded reasonable for that amount, very frankly.

The fact of the matter is that the Ryan case, they are closing the doors so rapidly here that the only area of concern - the areas of concern that you have won't happen. The prosecutors are suffering no serious misgivings about this decision itself, very frankly. You haven't heard from them recently, I'm sure.

And there is that distinction between the statutes, and I'm not quite sure, the maximum sentence and a number of other categories which I really can't see here on the notes.

The fact of the matter is that this piece of legislation, as I pointed out to you, they are not opening up the flood gates.

District attorneys are not prosecuting these cases -- they are prosecuting these cases, and they are not dismissing them because the knowledge that they need by circumstantial evidence, the handling of the case, the amount that you talk about, the two pounds that I talked about. Judge Eng, right in Queens County, said, "Come on, Counsel, that doesn't fly," because defense attorneys try it. That's not even close. What we're talking about in the Ryan case are those small cases where they wind up reducing them in the first instance. It's just where we have a mule situation. They charge them with an A-2 felony. They can't go any further than the A-2 felony. When we changed the Rockefeller law, it has to be the best you can do is three years to life, best you can do for someone whom we have established is merely a mule, no culpability as far as the sale or use of the drug is concerned.

Senator, I'm not trying to convince you. I just wanted to draw a couple of things to your attention, and there's a list of

cases that we got this afternoon, and I won't trouble you with them, where they've said the same thing. Judge Roberts, not Burt Roberts, his brother in Manhattan refuses -- denies them all. They bring them in on a small amount with a pure weight with crack. They threaten them, say if you don't take the year and a half now, we'll send it back up to the grand jury, who will come out with a B felony conviction, possibility. So the prosecutors are handling this. They are handling this.

And when we compare their ability to handle it -- I have a lot of confidence in them, but I'm sure you have also -- as opposed to the damage it does, closes the door in areas where we're both concerned about those persons who are spending an inordinate amount of time in prison because of this tough law.

SENATOR VOLKER: Senator, I guess I will have to reply to that.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: This is not

about small timers. This is not about big timers. This is about -- and this is not about sentencing. This is about a basic issue of a statute and a reinterpretation of a statute by the Court of Appeals. Senator, those cases have not reached the Court of Appeals.

Yes, there are judges. There's no question there are judges who are saying we don't want to follow that ridiculous decision, and we're going to find a way to avoid it. The problem is, though, that you and I know the defense bar is running around -- this is one of the biggest boons to the defense bar that they've seen. We've had them in our office. They are running all over the place. They think this is the greatest thing since sliced bread.

This, by the way -- and I will be the first to admit it. I'm an attorney. I think this case is a great case for defense attorneys. I'm an attorney. I mean they can make a bundle if we don't change this case because they are going to be able to appeal umpteen cases to the higher courts, and probably

some of these cases that you mentioned are going to end up in the Court of Appeals. And what's the Court of Appeals going to do? They already made a decision that basically said you have to prove the weight, and they are faced with that decision.

By the way, I heard from some friends of mine who know the judges in the Court of Appeals. They are saying they have never received so much flack from the public as they have received because of this case; and, frankly, I think they should have.

I'll be very honest with you, normally I -- you and I are more in agreement, very often, than in disagreement, but on this one, Senator, I have to disagree with you. I think it's important that we do this as quickly as possible.

I think it's a double principle. First, I think that the Court of Appeals made this decision, I think, against what was clearly the wishes of the Legislature when this was passed. The issue of drug deals and the issue

of second-felony offender reform, all that sort of thing is a whole different issue.

This issue is the issue of whether we can allow a decision to stand that makes a ridiculous standard -- puts a ridiculous standard not only on the prosecution but on law enforcement officers.

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

SENATOR DeFRANCISCO: I think I forgot what I was going to say. No.

I think Senator Volker mentioned in his last remarks exactly what I was going to point out earlier. It was mentioned by Senator Galiber that this was the Court of Appeals way to take care of the situation where the mule gets too much of a sentence, and it gives the opportunity to reduce the sentences in that respect.

This is not a sentencing case. It's a case that says that if you want to prove that someone is guilty of one of the aggravated possession of drug offenses, you not only have

to show that they knowingly possess the drug but they knowingly possess the quantity of drug that aggravates it into a higher degree.

So although there may be some lower court cases that say that we can prove it by circumstantial evidence, quite honestly I have no idea how you can prove by circumstantial evidence whether or not what is being possessed is .75 grams or 1.1 gram, and the one gram is the area where you aggravate it to a higher degree of possession. You may be able to prove by circumstantial evidence that it is the highest degree of felony, but in the intermediary levels you can't do that. It's virtually impossible.

And if someone knowingly possesses a drug, I think it's good public policy to punish them in accordance with how much drugs they actually carry; and if there is a risk by the mules of knowing whether or not they are going to get an A felony or a D felony, they might want to check to see how much they are carrying.

So I would suggest, basically, that this is an important law, and it is very important because all prosecutions from this point forward are impaired by this impossible burden to prove the aggravated offense -- not the sentence we're talking about, to prove the aggravated offense based upon the quantity of drugs actually in the possession of the individual.

ACTING PRESIDENT FARLEY: Senator Dollinger. And Senator Padavan is next.

SENATOR DOLLINGER: Mr. President. I rise to speak in favor of this bill, although I have to -- I guess, as the Supreme Court has often times done, I concur in the result but disagree with the logic that drives us there.

First of all, let me make it clear. I don't think the Court of Appeals did anything wrong in the Ryan decision. As I understand that opinion, what they did is they looked at a statute that had been drafted by this Legislature, a law that had been approved

by this Legislature, which contained the term "knowing," "possesses for sale," and then described an amount. And what they did is they looked at a system of legislative judgments, and we said, "The more you possess the greater the penalty."

What actually happened then is the Court said we're going to take that "knowing" and we're going to apply it not only to the "knowing possess" but knowing possess a certain amount.

They took the inartful drafting, what I believe was the inartful drafting of that statute by this Legislature, and said, "We're going to interpret it to benefit the defendant," which, from my point of view, is exactly what the Court of Appeals, which is the bastion of protecting the rights of criminal defendants should have done, and they should have applied a very strict standard in analyzing the statutory language and applying the term knowing to require that there be a knowing possession of a specific amount of the drug.

So from my point of view the Court of Appeals did what it was required to do and as a court designed to protect individual liberty, and that is to require this Legislature to be more artful in the drafting of a statute which had increasing penalties attached to the differences in the amount drugs that were possessed.

We are not in the position where we can correct that, where in the system of checks and balances in this state we have the clear power, the clear opportunity to do that. The system is working.

This bill, I believe, reflects an instance in which the system will continue to work. We draft a statute perhaps not as artfully as we should. The Court of Appeals looking to give the defendant the benefit of the doubt applies a very strict reading of the language of that statute, construes it in favor of the defendant, and says there was a failure to prove that they knew exactly how much of the drug they possessed. Under those circumstances,

they strike down the conviction as the constitution compels them to do. We now are faced with the situation where we can remediate that inartful drafting of the statute to come to a conclusion as to what the knowing provision of that law ought to apply to.

So from my point of view, the Court of Appeals didn't do anything wrong. The Court of Appeals did exactly what the constitution requires it to do, to interpret a somewhat inartfully drafted statute in favor of a defendant, and it comes back to our lap now to choose to remediate it.

I'd also point out and I guess I agree with one other factor I guess Senator Volker said, and, again, I'm agreeing with the conclusion here, but this bill will apply not only to violent drug users. As I read it, the bill reaches down to criminal possession of marijuana in the fifth degree, which in my judgment is a very relatively small offense in our drug system. I don't believe it's a felony, although I haven't had a chance to check the

rule. So it applies to the offenses of criminal possession of marijuana fifth through the first degrees as well as the criminal sale of marijuana in the third through the first degrees.

I think the point that Senator Galiber talked about, about the person who is possessing the drug either for their own use or may not know all the extent of the use, what we have done in this state, what we've decided to do, is increase the penalties as we decrease the amount of drugs that we need to possess. The consequence of that is that the kind of statutory dispute that evolved in the Ryan case is going to be more and more prevalent as we try to push the penalties for smaller and smaller amounts -- increase the penalties for smaller and smaller amounts. But I think we are affecting not only violent drug users, we are affecting everyone when we include it down to possessions, the simple possession of marijuana in the fifth degree.

I also agree -- and this is where

I agree with Senator Galiber. I think that in those smaller drug uses, in possession for personal consumption and use, we need a more enlighten policy in this state. We don't need far more severe penalties. What we need is an approach that says, "We're going to look at drug treatment first and try to deal with the problem of addiction rather than the problem of criminal offense."

But as we currently stand, unless we're going to make that wholehearted change, if we're going to continue down a road that says, "We're going to use a system of attaching greater penalties to lesser amounts," and we need the clarification, I believe this bill goes in the step of clarifying legislative intent consistent with our constitutional obligations. I think it does that. I think it will in the greater penalties, in the more egregious drug offenders create greater prosecutions, greater chance for prosecution; and, therefore, I'm going to support the bill.

But the system didn't break

down. The system is functioning now as it properly should. And I hope that we would turn our attention to dealing with the problem of possession and small sales and try to come up with a more therapeutic way of dealing with people whose only crime is that that they are addicted to drugs.

ACTING PRESIDENT FARLEY: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President. The comments that we just heard from Senator Dollinger remind me of a similar problem that we experienced in 1976. There aren't too many people here today who were here then, but I know Senator Galiber was, when we adopted something known as the Marijuana Reform Act.

That bill and that law had many things in it that I didn't approve of. One of them, of course, was lessening the penalties for possession, but it also at the same time dealt with penalties for sale of various quantities of marijuana, and the bill passed both houses, was signed into law.

Shortly, thereafter, a major arrest of a large quantity, bales, actually, which probably could be weighed in tons, took place. When that case was brought before the Court, a very clever defense attorney said, "Your Honor, I have the law. It says weight of marijuana. Now, in these bales of marijuana are seeds, twigs, stems and all other things and the prosecutor has not cited the actual weight of the marijuana, the component."

And the prosecutor explained to the Court that there was no way in the world that they could take these bales of marijuana to some laboratory without spending weeks and actually eliminate all those components. So the case was thrown out, and we were presented with a major problem. The district attorneys came to us as they are now, and the Governor came to us as he is now, and said you have to correct this issue, this problem, which may or may not have been an error on your part but, nevertheless, is a problem, and so we changed the law to aggregate weight, and we dealt with the

problem.

So now, here again, we have a similar situation -- a little bit different but quite similar -- and so we must change the law to stay one step ahead of what, as Senator Volker has properly stated, would be a bonanza to defense attorneys reaching out to every one of these convicted drug pushers based on what is perceived by the Court today to be a flaw in our statute.

And I see no other choice but to act upon it expeditiously, both houses, get it to the Governor's desk, and do what we are supposed to do.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR GALIBER: Very briefly,

Mr. President. May I have my name called?

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: Contrary to what has been said, it is my firm belief that the Ryan decision merely uses knowledge, if you will, to determine whether one spends a year mandated in jail or the rest of their life. So I say the Ryan decision was carefully drafted. It is needed in the climate that we have, and I vote in opposition to the bill.

ACTING PRESIDENT FARLEY: Senator Galiber -- Read the last section, I guess. That's where -

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: He voted in the negative, Senator Galiber did. Senator Paterson. Senator Waldon.

THE SECRETARY: Ayes 57. Nays

3. Senators Galiber, Paterson and Waldon recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed. Senator Spano.

THE SECRETARY: Also Senator Smith in the negative. Also Senator Santiago.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar number 401, by Senator Skelos, Senate Bill Number -

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

We have a report of a standing committee, Senator Present.

SENATOR PRESENT: Let's receive it.

ACTING PRESIDENT FARLEY: Secretary will read the report of a standing committee.

THE SECRETARY: Senator Sears from the Committee on Consumer Protection reports the following bill directly for third

reading:

Senate Bill Number 7068, an act to amend Chapter 509 of the Laws of 1992, amending the General Business Law, reported directly for third reading.

ACTING PRESIDENT FARLEY: Directly to third reading without objection.

Senator Present.

SENATOR PRESENT: Would you recognize Senator Paterson. I believe he has a privileged resolution.

ACTING PRESIDENT FARLEY: Senator Paterson.

I think we did it. Did you wish to speak to it, Senator Paterson?

SENATOR PATERSON: Thank you, Mr. President, no. I just wanted to acknowledge the person that the resolution was written for, but the person has left. So I'd just like to thank you, Mr. President, for being here today.

ACTING PRESIDENT FARLEY: Thank you. The resolution passed unanimously.

Are there any housekeeping

measures on the floor?

(There was no response.)

Senator present.

SENATOR PRESENT: Mr. President. There being no further business, I move we adjourn until tomorrow at 11:00 a.m.

ACTING PRESIDENT FARLEY: The Senate will stand adjourned until tomorrow at 11:00 a.m.

(Whereupon, at 5:55 p.m., Senate adjourned.)