ALBANY, NEW YORK

March 23, 1994

11:56 a.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, Tuesday, March 22. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. The Journal of Monday, March 21, was read and approved. On motion, Senate adjourned.

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

read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR COOK: Mr. President.

ACTING PRESIDENT FARLEY: Senator Cook.

SENATOR COOK: On page 10 of today's calendar, Calendar Number 416, Senate Bill 2970, would you please place a sponsor star on that bill?

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

Senator DiCarlo.

SENATOR DiCARLO: Mr. President. On page 20, I offer the following amendments to Calendar Number 463, Senate Print Number 7068,

and ask that the bill retain its place on the third reading of the calendar.

ACTING PRESIDENT FARLEY: Without objection the bill will retain its place on the Third Reading Calendar.

Are there any other motions on the floor?

(There was no response.)

We have a couple substitutions. The Secretary will read those.

THE SECRETARY: On page 4 of today's calendar, Senator Goodman moves to discharge the Committee on Investigations, Taxation and Government Operations from Assembly Bill Number 4537A and substitute it for the identical Calendar Number 426.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: On page 18, Senator Daly moves to discharge the Committee on Environmental Conservation from Assembly Bill Number 9628A and substitute it for the identical Calendar Number 400.

ACTING PRESIDENT FARLEY:

Substitution is ordered.

Senator Present.

SENATOR PRESENT: Will you recognize Senator DeFrancisco?

ACTING PRESIDENT FARLEY: Senator DeFrancisco.

SENATOR DeFRANCISCO: I have a privileged resolution at the desk and request that it be read. That's Resolution 2956.

ACTING PRESIDENT FARLEY: Title or its entirety?

SENATOR DeFRANCISCO: In its entirety.

ACTING PRESIDENT FARLEY: Read Senator DeFrancisco's resolution in its entirety.

THE SECRETARY: Legislative Resolution 2956, by Senator DeFrancisco: Legislative resolution commending the Valley Babe Ruth All-Stars.

Whereas, the 1993 Valley Babe Ruth All-Star baseball team accomplished what no

other local baseball team ever has by earning the opportunity to compete in the Babe Ruth World Series held in Springdale, Arkansas;

The Valley Babe Ruth All-Stars made four games in the Series for thirteen and under baseball players, finishing an impressive four out of the more than 1900 teams that qualified for the national competition;

This extraordinary feat was accomplished only after the Valley All-Stars first captured the district title in Auburn with three ten-run wins;

The Valley All-Stars then advanced to the regional competition in New Jersey where they emerged with 13 consecutive victories against other all-star teams from across the Northeast, qualifying them for the World Series;

Along the road to the World Series, the Valley All-Stars had to first raise money for the trip to Arkansas;

The Valley All-Stars also garnered many honors on the way to the World

Series, including a send-off by the Syracuse Chiefs and their fans at MacArthur Stadium;

The dream of competing in the Babe Ruth World Series was only realized through the teamwork and talent of fifteen 13-year-olds, Richard Adamczyk, Eric Cohen, Ian Cuthbert, Jon Downs, Mike Erwin, Lauren Fitzpatrick, Steve Haryan, Jeff Machan, Matt Marsallo, Andy Myatt, John Pennisi, Brian Thompson, Ed VanSlyke, Jordan Weismore and Mike Wohenski;

These young players were expertly managed by Bob Weismore and skillfully coached by John Pennisi and Jay Downs;

The team members were faithfully supported by their parents and the local community who delighted in their wins and the individual accomplishments of each player; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to celebrate the outstanding achievements of the Valley Babe Ruth All-Stars; and be it further

RESOLVED, that we take this

opportunity to applaud the spirit of solidarity and sportsmanship that distinguishes these young men and women from their peers, and congratulate them for attaining a level of excellence that most young people can only dream about; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to the Valley Babe Ruth All-Stars in care of Robert Weismore, Manager.

ACTING PRESIDENT FARLEY: Senator DeFrancisco on the resolution.

SENATOR DeFRANCISCO: Mr. President. I rise to congratulate the Valley Babe Ruth All-Star team. It's truly an honor for me to recognize these outstanding individuals in this body.

Having played baseball a few times in my life, I recognize how impossible the dream that they recognized was to accomplished. To be fourth out of 1900 teams in the nation is truly amazing. Winning 13 consecutive games in playoffs in order to get to the World Series,

makes the final four basketball tournament pale in comparison. The odds were truly against them.

But what's more important about this group -- and, unfortunately, in this day and age, we hear about the bad kids, the people who are violent out on the streets, the people who are doing things that shouldn't be done. Here's a group of individuals who are doing the right thing, learning sportsmanship, teamwork and responsibility, which we don't see across the board.

And it points up the need, as Chairman of the Tourism, Recreation, and Sports Development Committee in the Senate, to promote programs that allow children to participate in these types of activities, to promote not only teamwork but good character, and I want to point out, you might have missed it in the resolution when it was being read, that there is young lady on this baseball team. So, we have a truly unique team, not only in the victories but the fact that it's a team that did not exclude

anyone in their activities.

The coach and -- the manager and the coaches have to be commended at an outstanding, truly outstanding accomplishment, and we applaud you and I applaud you as the Senator that represents your district.

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

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Congratulations to an outstanding team. We're delighted to have you visit the Senate and, on behalf of the Senate, again, congratulations.

(Applause.)

Senator DeFrancisco.

SENATOR DeFRANCISCO: With another privileged resolution to be read, the 49th Senate District is truly the district of champions, and that's privileged Resolution

2957.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: Legislative resolution by Senator DeFrancisco, congratulations to the Westhill Lady Warriors Varsity Soccer Team as Class C state champions.

Whereas, the 1993-94 Westhill Lady Warriors Varsity Soccer Team accomplished what no other team has done in the history of the Westhill High School girls' soccer program by capturing the Class C State Championship;

The Lady Warriors finished their season with an impressive record of 23 wins, one tie and just one loss;

In order to attain the State title, the Lady Warriors initially captured first place in their own high school league;

The Warriors then advanced to the quarterfinal round where they trounced Altmar Parish-Williamstown 9-0, and progressed to the semi-finals where they easily defeated Clinton 6-1;

Westhill took the Class C Section III Championship by outplaying Cooperstown in the Carrier Dome and went on to secure the regional title by routing Elmira-Notre Dame and Bloomville and tying Cold Spring Harbor;

The dream of capturing the State title was only realized through the teamwork of 23 young ladies, Captains Robin Arnold, Toby Johnson and Adriane Smith, and Meghan Edwards, Kristin Halsey, Amy Kelly, Holly Klamm, Kristen Banach, Janine DeStefano, Meghan Erwin, Tina Gaspe, Katy Palmer, Lindsay Ryan, Kendra Smith, Katie Kirsch, Saral Ungerer, Kristen Parody, Carolyn Butler, Katie Williams, Sarah Thornton, Julie Donahue, Julie Guinn, and Jennifer Kirsch;

These talented players were expertly coached by Ann Riva, who was also named Class C Coach of the Year;

Many of the teams members received individual recognition for their athletic acts including Sarah Ungerer, who was selected to the State Girls Soccer Coaches All-Star Team and the First Team of the State

Section III All-Star Team, and Toby Johnson, Adriane Smith and Kristen Banach who were named to the first, second and third teams, respectively, of the State Section III All-Star Team;

The Lady Warriors were also winners off the field, garnering the Scholar Athletic Team Award by the New York State Public High School Athletic Association, because the combined scholastic average of the top 12 players was 91.2 percent;

The team members were faithfully supported by their parents and the entire West hill community which delighted in their wins and the individual accomplishments of each player; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to celebrate the outstanding achievements of the Westhill Lady Warriors Varsity Soccer Team; and be it further

RESOLVED, that we take this opportunity to applaud the spirit of solidarity and sportsmanship that distinguishes these young

women from their peers and congratulate them for attaining a level of excellence that most young people can only dream about; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to the Westhill Lady Warriors Varsity Soccer Team.

ACTING PRESIDENT FARLEY: Senator DeFrancisco, on the resolution.

SENATOR DeFRANCISCO: I thank you again for allowing me the privilege to take the time to recognize the Lady Warriors. I'm a little concerned that there's no men on your team, but we will overlook that because of the other fine points in this resolution.

I think the one that just jumps out at me -- it's the same thing that I pointed out with respect to the Babe Ruth team; and that is, people on your team are an example to everyone. It is not only sports but a 91.2 average among the top 12 players. You are recognized as scholar athletes as well. To win a national championship and also attend to your

studies, that shows what you mentioned before, responsibility, and you are all going to show, I'm sure, great promise in the future for your communities.

I also want to make a special point that, a couple of people, I played sports with their fathers, and which is kind of interesting. It's Kristen Banach. Len Banach I played baseball with as did I play baseball with Joseph Smith. His two daughters are on the team.

And I want to congratulate them and everybody on the team for the outstanding year but, most of all, for being role models for the people in the community, to show that young people can do what's right and can have fun while doing it.

We honor you today.

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

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

Again, in the gallery, we're fortunate to have with us so many outstanding athletes. I don't ever recall so many athletes up in the gallery. Congratulations. We're honored to have you here with us today and come back and see us next year as winners, too.

(Applause.)

Senator Present.

SENATOR PRESENT: Mr. President. I believe Senator Cook has an announcement.

ACTING PRESIDENT FARLEY: Senator Cook for an announcement.

SENATOR COOK: Mr. President. I would like to announce an immediate meeting of the Education Committee in the Majority Conference Room.

ACTING PRESIDENT FARLEY: The Education Committee will be meeting immediately in Room 332, the Senate Majority conference room.

Senator Present.

SENATOR PRESENT: Mr. President.

Can we take up the noncontroversial calendar, please?

ACTING PRESIDENT FARLEY: Secretary will read the noncontroversial calendar, starting on page 11.

THE SECRETARY: Calendar Number 13, by Senator Levy, Senate Bill Number 1313, an act to amend the Penal Law.

THE SECRETARY: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 88, by Senator Levy, Senate Bill Number 191, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks on school bus attendants.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 116, by Senator Skelos, Senate Bill Number 6523A, an act to amend the Education Law, Executive 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 47.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 276, by Senator Skelos, Senate Bill Number 6540A, an act to amend the Education 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 47.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

293, by Senator Levy.

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

ACTING PRESIDENT FARLEY: Lay it aside for the day, did you say?

SENATOR PRESENT: Yes.

THE SECRETARY: Calendar Number 298, by Senator Volker, Senate Bill Number 3385, an act to amend the Penal Law and the Criminal Procedure Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 328, by Senator Skelos, Senate Bill Number 6567B.

ACTING PRESIDENT FARLEY: Lay that aside.

THE SECRETARY: Calendar Number 342, by Senator Kuhl, Senate Bill Number 3182, Agriculture and Markets Law.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 358, by Senator Hannon, Senate Bill Number 280, Real Property Tax Law, in relation to the sale of vacant real property.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 371, by Senator Present, Senate Bill Number 6372A, Real Property Law.

ACTING PRESIDENT FARLEY: There is a home rule message here at the desk.

You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: The bill is passed.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 401, by Senator Skelos.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for today.

THE SECRETARY: Calendar Number 413, by Senator Marino, Senate Bill Number 3828A, amends Chapter 576 of the Laws of 1975.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 415, by Senator Holland, Senate Bill Number 6308, an act to amend the Education Law.

ACTING PRESIDENT FARLEY: Senator Holland -- lay the bill aside.

I can't hear you, Senator.

SENATOR GOLD: I'm sorry, sir. I was confused as to two bills.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

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

ACTING PRESIDENT FARLEY: The controversial. The Secretary will read, page 11.

THE SECRETARY: Calendar Number 13, by Senator Levy, Senate Bill Number 1313, an act to amend the Penal Law, in relation to including the theft of dogs and cats within the crime of grand larceny.

ACTING PRESIDENT FARLEY:

Explanation has been asked for.

Senator Levy.

SENATOR LEVY: Senator Gold, we have, as I'm sure you recall, discussed this bill in previous years. What the bill seeks to do and will do if enacted into law would be to remove the unintended distinction today that occurs under the larceny statute when someone steals a non-pedigreed dog or cat. If there is a theft -- if there is a theft of a pedigreed dog or cat, because of the value of the dog or the cat, that would be a felony. And for pet lovers like myself whose dogs and cats are part of my family, we put the same value on a non pedigree as we would put on a pedigree. So what this statute would do would be to make it a felony, regardless of value, to steal a dog or a cat.

ACTING PRESIDENT FARLEY: Read the last section.

Whoops! Senator Dollinger.

SENATOR DOLLINGER: No, go ahead, Senator Leichter. I'll yield to Senator

Leichter.

SENATOR LEICHTER: Well, I -- Mr. President. Let me ask Senator Levy one question, if you would yield, Senator?

SENATOR LEVY: Yes, certainly.

SENATOR LEICHTER: Senator, I believe we had that bill last year and I believe I -- at least I think I voted against it. I see I did. I have problems with making a Class E felony the stealing of a pet irrespective of its value, and I agree that maybe we shouldn't make any distinction between a pedigreed dog or mongrel because they are both loved as much by their owners. I just think making it a Class E felony, to my mind, is too severe.

But looking at the bill now, there was something, in addition, that troubled me about it. As I understand, this bill would apply only if the cat- or the dognapping occurred from the premises of the owner or within a certain distance -

SENATOR LEVY: Yes.

SENATOR LEICHTER: -- of the

owner's premises?

SENATOR LEVY: Yes. Let me tell you why.

First of all, let me respond to your first thought, Senator, and that is, present law today makes it a felony to take a dog or a cat if the value is over $1,000. So that's the law. We're not -- by this bill, we're not making that a felony in the State of New York. It's a felony right now. We're just equating -- equating the theft of a non pedigreed dog or a cat.

The language of this bill was negotiated with the Assembly and a commitment was made that the Assembly was going to pass it. That is why we put the restrictions that are in the bill as it relates to the proximity, and then, as happens from time to time, the Assembly did not pass the bill.

This was a negotiated piece of legislation, and that's why that language is as it is.

SENATOR LEICHTER: Good.

Senator, if you would just continue to yield for a moment, because I want to really express through a question what I see is some inconsistency in that bill, but I just want to say I appreciate that there is presently a felony, because if you -- I guess the taking of any property and animals are considered property; over a certain value makes it a felony. My problem is that we are now extending it. I'm not sure it should be a felony under any circumstances, but I guess if you say taking the property over the value of $1,000 means that it's a Class E felony and you take some valuable or pedigreed dog -- although you and I know that you could love a mongrel as much as a pedigreed dog -- and that's the reason for the law. Maybe, you know, we ought to take a look to see if there is a more rational way to punish the taking of animals.

But if you're going to say that taking an animal, irrespective of its value, is a Class E felony, I don't know why it's less damaging or injurious if you take that animal

and it's a thousand yards from the owner's property -- he is walking the dog in the park and somebody lures the dog away -- than if he takes it out of somebody's back yard. I don't understand the logic of that.

SENATOR LEVY: Senator, there is no logic to it other than the fact that we hope to get this bill enacted into law, and the Assembly told us, if you make it 501 feet, we are not going to pass the bill, and as you understand, Senator, we -- we move legislation successfully by compromises, and that is the compromise that was worked out with the Assembly.

And let me also add -- and I know Senator Dollinger has concern not related to this bill, but part of the genesis of this bill was work done by a sergeant in the city of Rochester Police Department, and it related to petnapping rings and petnapping rings that dealt with the theft of dogs, and dogs were then exported to the Far East where dog meat is a delicacy. So that was another genesis for this

legislation.

ACTING PRESIDENT FARLEY: Senator Marchi.

SENATOR MARCHI: No, I just - it's very edifying, I think, that Senator Levy has taken this initiative. To be very blase and to perpetuate the myth of a cast among our domestic animals that are the object of the affection and the protection of so many people and that bite and that value is in the eyes of the beholder, for him to stand up and pronounce this ringing affirmation, a care affirmation, I think really adds luster to his name.

He doesn't need my support, but I think this is a very, very positive step and he should be congratulated, and I would be very disturbed if anybody voted against it.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Will "Senator Luster" yield to a question?

ACTING PRESIDENT FARLEY: Senator

Levy.

SENATOR LEVY: I just wish you were a pet lover.

SENATOR GOLD: Senator, I understand the comments you made about the significance of a loss regardless of whether the dog is a pedigree or not, but I want to ask you two questions in that regard.

Firstly, I know that you must have a relative who has a ring or piece of jewelry that was handed down from a grand parent, or whatever, that has phenomenal, phenomenal value, sentimental value, but is under a certain amount of money. Do you suggest, by legislation, that we should change our larceny laws to include as an E felony any piece of jewelry that may be undervalued in the marketplace but because of emotional and family ties has greater value to the person?

SENATOR LEVY: Senator, only if it's a jewel that has a beating heart.

SENATOR GOLD: Okay.

Senator, the second question I

have is, I understand how, for example, if you had a back yard and you had a dog and your dog means a lot to you and somebody passes by in the street and grabs that dog, we talk about it being a felony; you've got a relationship with that dog -- Muggzy's been with you since childhood and you love that Muggzy -- but now, Senator, you have a dog in the back yard and it gives birth to some puppies; and before you even know the litter is there, somebody passes by and seizes a dog and that is from a litter of puppies and, wrongfully and in criminal intent, they reach over, they grab one of these little pups, and take it away. Senator, are you suggesting that this phenomenal attachment that you have for Muggzy since childhood also is going to cause that same damage when that puppy you don't even know about gets stolen, that that -- that person who stole the dog -- we're creating that person into a felon, also?

SENATOR LEVY: Senator, the intent of this bill is clear; and that is, when you steal -- when someone steals either a dog or

cat within the prescriptions of the piece of legislation, that is the crime.

Now, I would like to go beyond this, Senator, but I have explained not only this year but last year the limitations that the Assembly put on going forward with this bill, and we hope -- we hope we're going to be able to have this bill enacted this year, and I don't want to go beyond what that agreement was.

SENATOR GOLD: All right. Mr. President. On the bill very briefly.

ACTING PRESIDENT FARLEY: On the bill, Senator Gold.

SENATOR GOLD: Last year, Senator Galiber and myself and Leichter and Mendez and Montgomery, together with Senator DeFrancisco and Senator Saland, voted in the negative.

You know, Senator Levy, in all fairness, I know you have very good intentions, but it is a little simplistic to say that if someone had a larcenous intent, then that's it and they are a felon, because that's not what our law is.

If somebody commits a larceny and its below a certain value, it can be as venal and as disgusting as any other larceny, but in our laws we have said that if its below a certain value, it's a different degree of crime. Should that be? I don't know.

Maybe we should get rid of some chapter and have one degree of crime. You steal a diamond that's worth 25,000 or you steal a pencil, it's a felony. You go to jail. But if that's not what it is, Senator, then there's got to be some logic to it.

And I appreciate, Senator, when you say to me that it's a negotiated process. We all understand that. As a matter of fact, my distinguished colleagues, Senator Dollinger and Senator Leichter, want to have a conference committee set up so that we can have real negotiations between the houses and open -- out in the open people will see what the issues are and how we get to it.

But I would suggest to you, Senator, that the result of your compromise is a

bill that just doesn't make any sense. It doesn't make any sense. There's no logic to whether the pet has been with you for year, whether it's new, it's old, whether the pet ran out in the street. If the pet is lured from the yard into the street, now, you have a legal argument as to whether the luring was part of the taking. It goes just too far in a direction.

And I would certainly urge those people who were in the negative to stay there, and maybe get some converts.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Oh, wait a second.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I commend Senator Levy. I think this does raise an issue, but I have to agree with Senator Gold. I think that the unfortunate

consequence of this bill is that how is a criminal to know that this is the valued pet that you kept in the household or just a mongrel, some mutt that walked in two weeks ago and has taken up residence in your house?

I'm reminded of that dog from the movie "Down and Out in Beverly Hills." The family dog was a part of the family and then the guy comes in from the outside and he's there for a couple days and he takes over. It seems to me we're drawing sort of artificial distinctions.

And then the next question I can see -- and it's going to be like the debate we had over the Ryan bill. Someone will raise the defenses that he didn't know it was a valued dog or a valued member of the family. He didn't understand that this was the family pet of longstanding.

One of the things that I have done with this bill previously is, I've had amendments on the table to put the assault weapon ban on this bill, because my belief has always been that instead of focusing on pets, we

ought to focus on human beings, and while I understand this is your pet project, I have a pet project, too, and that deals with assault weapons.

And I have been dogged in my persistence on it because I think it would take a big bite out of violence in this state. And I think we ought to turn our attention to the big issue of violence and crime and attack that issue first.

I'm going to vote in favor of this bill. My hope, however, is that the priorities on the other side will change and that we'll look at assault weapons and what that means to crime and violence in this state and recognize that while we have some obligation to protect owners of pets, we also have an obligation to protect a huge number of people that are exposed to huge issues of violence.

I will vote in favor of this bill. But, please, understand that the priorities from my point of view should be that at day 66, 66 days after the Martin Luther King

holiday, we should get on with the issue of restricting access to assault weapons which will do something that will benefit everyone and not just protect pet lovers. That will protect all two-legged beings. Here we're protecting four-legged creatures. Let's protect two-legged beings first.

ACTING PRESIDENT FARLEY: Senator Waldon.

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

I recall, in 1961, I believe, leaving the post office with my brother Robert and seeing a junkman coming down the street at Peck Slip -- the post office in lower Manhattan -- and my brother remarking to the junkman, would he consider letting the dog go that he had sitting on the seat next to him, because the dog was in such a state that Robert felt the dog might do better on his own.

And I am wondering, if someone would have stolen that dog, would he qualify under this bill for this criminal penalty? And,

furthermore, I'm wondering if that -- in the South where I grew up, a sooner -- I don't know if anyone understands that a sooner is a dog, but I will tell you privately off the floor. If someone were to steal a sooner, would that person qualify in terms of this particular bill?

And I'm also being very facetious, Senator Levy. Permit me to do that. We've been here too long. Sometimes in the budget process suffering, trying to get out - if I wish to steal the dog and leave the fleas, what would the penalty be?

For all of those reasons, I will have to vote in the negative on this, and I'll have to withstand the heat of those who are pet lovers, although I am a pet lover, but I think this is stretching the dog lover a bit too far in terms of what we should be doing here in this chamber.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the first day of November next, succeeding the date on which it shall have become a law.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yes, Mr. President. I'm prompted to get up because of something Senator Marchi said, and I want to agree with him to an extent. He talked about the "luster" of Senator Levy, and I absolutely agree with him; and, Senator, I think you have that luster in spite of this bill, and I appreciate your concern for pets and we all love pets and I want to make that clear on the record.

I had a dog, just a wonderful friend, that is no longer with us. If there is a dog heaven, that dog is certainly there, and I appreciate your concern, and so on, but maybe

you, Senator Levy, because of the philosophy your party holds, Ohrenstein, anybody else, ought to realize more than anybody else there's some things that you can not always address through legislation, particularly through the Penal Law, and I think that some of the members of this side of the aisle pointed out, I think, some of the problems and inconsistencies with this bill.

It also occurred to me, this really discriminates among pets, because somebody may love a python or a parakeet, and so on, as much as a cat and a dog, and your bill doesn't cover it.

I think we have made a fine statement for pets, and maybe we ought to go on to some better things.

I vote in the negative.

ACTING PRESIDENT FARLEY: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I just wanted to explain my vote. I voted -- I'm voting in the negative.

I listened very carefully to Senator Dollinger's argument in voting in favor of this bill. It had something to do with Martin Luther King and something to do with assault weapons.

Based upon that logic, if he is voting in favor of it in that logic, I must vote against it. I can't understand it.

ACTING PRESIDENT FARLEY: Senator DeFrancisco, in the negative.

Senator Levy to explain his vote.

SENATOR LEVY: Senator Leichter, let me refresh your recollection. The fervent sponsor of this bill in the Assembly who worked so hard to have it enacted into law is New York State's Attorney General today.

I vote aye.

ACTING PRESIDENT FARLEY: Anybody else? Will the negatives please raise their hands.

Do you have them all, Mr. Secretary?

THE SECRETARY: Those recorded in

the negative on Calendar Number 13 are Senators DeFrancisco, Galiber, Gold, Leichter, Mendez, Montgomery, Saland and Waldon. Ayes 46. Nays 8.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Stafford.

SENATOR STAFFORD: May I please announce an immediate meeting of the Senate Finance Committee in Room 332.

ACTING PRESIDENT FARLEY: The Senate Finance Committee will meet immediately in Room 332, the Senate Majority Conference Room.

Calendar 88, Senator Present?

SENATOR PRESENT: May we return to reports of standing committees, please?

ACTING PRESIDENT FARLEY: Report of a standing committee.

Secretary will read it.

THE SECRETARY: Senator Cook from the Committee on Education reports the following bill directly for third reading:

Senate Bill Number 7187, by Senator Cook, an act to amend the Education Law, in relation to payments of state aid to schools.

ACTING PRESIDENT FARLEY: Without objection, the bill is reported directly to third reading.

SENATOR PRESENT: Mr. President. May have we have a vote on that bill now, take it up.

ACTING PRESIDENT FARLEY: Senator Present, we have a message.

SENATOR PRESENT: We accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message, please say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

You can read the last section that bill.

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.

Senator Present, what is your pleasure.

SENATOR PRESENT: Regular order, please.

ACTING PRESIDENT FARLEY: Regular order. Calendar Number 88, page 11.

THE SECRETARY: Calendar Number 88, by Senator Levy, Senate Bill Number 191, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks on school bus attendants.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: I have some questions on this, but I notice the Finance

Committee is leaving and that includes Senator Galiber, who might want to be recorded in the negative on this. Could we just either allow that and read the last section and maybe go back.

ACTING PRESIDENT FARLEY: I will read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: Nay.

SENATOR GOLD: Senator Galiber in the negative.

SENATOR LEICHTER: May I be in the negative.

SENATOR GOLD: And Senator Leichter.

ACTING PRESIDENT FARLEY: Leichter is in the negative.

Senator Nanula is in the negative.

SENATOR GOLD: Yes, Senator Nanula in the negative. And then if we can suspend the roll call. All right?

ACTING PRESIDENT FARLEY: Senator Present, what's your pleasure on that?

SENATOR PRESENT: No objection. Suspend the roll call.

ACTING PRESIDENT FARLEY: Suspend the roll call.

SENATOR GOLD: Thank you. And at this point if Senator Levy would give us a brief explanation.

SENATOR LEVY: Sure. Senator Gold, as you know, a number of years ago, we passed legislation which became law that required the fingerprinting of school bus drivers. We did that bill, though it was in the legislation that we passed in the Senate as a compromise to have that bill enacted into law, we removed from the bill fingerprinting of school bus attendants, not only on Long Island but other parts of the state, and the reason that I have introduced that bill, this bill

since then, is that we had an incident on Long Island where a developmentally disabled child was raped and sodomized by a school bus attendant working on a bus who was on parole. I believe that if anyone is going to be working on a school bus transporting our most valuable asset, our most precious commodity, our children, we ought to insure that they meet the same standards someone has to meet if they are going to drive a bus as relates to not having been convicted of a crime, of a felony.

So this bill would treat school bus attendants the same way that we treat school bus drivers and require them to be fingerprinted so that those who employ them know what their records are and that they would be disqualified if they were convicted of certain felonies.

SENATOR JONES: Would Senator Levy yield for a question?

ACTING PRESIDENT FARLEY: Senator Levy would you yield?

SENATOR LEVY: Sure.

SENATOR JONES: I'm not familiar,

Senator, with school bus attendants other than on special handicapped buses. Are there a lot of them throughout the state? Is this an issue downstate?

SENATOR LEVY: It's an issue across the state. State Education estimates there are 2500 statewide.

SENATOR JONES: Are these people ever left alone with children? I'm not of the opinion that they are.

SENATOR LEVY: Certainly we can all envision circumstances where they would be alone with children when the bus driver is not on the bus, and it is not only children that are developmentally disabled.

SENATOR JONES: All right. Would the sponsor yield to another question?

ACTING PRESIDENT FARLEY: Senator Levy.

SENATOR JONES: Does current law allow school districts to require these checks if they so choose?

SENATOR LEVY: Yes. But when we

did the original law -- and incidentally, since we have done that law, 584 school bus drivers have been disqualified because of felony convictions. When we did the original law, school districts at that point could have required fingerprinting of school bus drivers, but based upon what the law has shown us, 584 disqualifications of drivers that shouldn't be behind a wheel. Certainly given the facts of the situation I told you about and there is more than one on Long Island with attendants, certainly gives us the same justification for learning whether those people who work as attendants have a disqualifying felony conviction.

SENATOR JONES: Will the sponsor just yield to one more question?

SENATOR LEVY: Yes, certainly.

ACTING PRESIDENT FARLEY: Senator Levy.

SENATOR JONES: Would this be a cost to the school districts? And if so, then is this an unfunded mandate?

SENATOR LEVY: Senator, when we did the original legislation, it was the same type of requirement. Yes, there is a cost involved, but I can tell you that notwithstanding those costs, the school boards association, the big five and so on, are all actively supporting this piece of legislation. The only ones that are opposed to this piece of legislation are the employee representatives. Their unions are opposed to this legislation, not the school districts.

SENATOR JONES: On the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Jones.

SENATOR JONES: As I said, Upstate, school bus attendants are not the norm. They are more unusual, and I really do not know of any incidents where they would be alone with children, but I'm certainly supportive of anything that is going to provide for the safety of our children, so I will accept what you're saying about this. I would just hope that we have also covered every other, I

guess, issue within the school -- everyone else who might be in the same position, would be alone with children, because I think it is critical that we protect the children in our state. So I will vote for it, although I am concerned about imposing something on the district.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to one question, Mr. President?

ACTING PRESIDENT FARLEY: Senator Levy.

SENATOR DOLLINGER: Senator, as I understand your response to Senator Jones, there's current legislative authority for a school district to do this if they wanted to.

SENATOR LEVY: Yes.

SENATOR DOLLINGER: My question is, if they can do it by themselves without any further authority for themselves, if they are close to the situation, they are operating the buses, they know who they are putting on,

they've got people responsible, why wouldn't we let them do it by themselves? Why do we have to tell them to do it? They've got the law. They can choose to do it themselves.

SENATOR LEVY: Senator, I have listened since you have served in the Senate - I've watched and listened to you speak about such great justifiable pride about your own children and the reason that we've got to do this legislation is for kids like yours, Senator, when they are on the bus with a school bus attendant, that if your school district did not fingerprint that attendant and that attendant had a disqualifying felony that your children should be protected when they ride on that bus. That's why we have to do this legislation.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President. I agree with Senator Levy that someone should be protecting my children on the school buses, but I hope you have also heard me

talk, perhaps not as eloquently, about the separation of power, about the distribution of power, about the distribution of power to the courts, about the distribution of power to the legislature, because in my training as a lawyer I'm very sensitive to those issues from a constitutional or legislative scheme. I'm also sensitive for the need to determine who makes decisions.

In my view, there is a lot of justification for doing exactly what you suggest, but that argument is best made to the people in the trenches, to the school boards. They can clearly decide to do this all by themselves. And the argument that parents, myself or other parents, would make should be made to the school boards. If they are going to have to pay the cost, they should make the decision. Why should we mandate it from the top?

I voted for this legislation last year. Frankly, in looking at it in terms of a mandate -- and we're requiring every school

district to do it where they may not see it as a problem. In my own home town of Brighton, they may not see this as a problem. I hold them accountable at the ballot box for how they deal with my children when they are on a bus. I will hold them accountable if they fail to take this measure if in their opinion it is not wanted, not justified, and they don't want to pay the cost. I think that's a reasonable judgment on their part, could be a reasonable judgment on their part. But they're clearly -- under our system, they should be the ones who make the decision.

SENATOR LEVY: Senator, if you were a parent of that child that was raped and sodomized because that attendant shouldn't have been on that bus, you would want to do more with that school district than to hold them accountable at the ballot box. Now, we have already made the decision in this house and in the Assembly and the Governor signed the bill into law to have the same type of fingerprinting for a school bus driver, and that was a mandate

on a school district, and as I've indicated, the School Boards Association is in support of this legislation and requiring school districts to take this action.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT FARLEY: On the bill. Senator Dollinger.

SENATOR DOLLINGER: I've taken a look at this. I voted in favor of this last year. I am now convinced that this is a mandate in its true and unabashed form.

It does serve a good purpose, Senator. I acknowledge that it does, but the question is who ought to make the decision, and it seems to me we've got school boards who are elected by people, who have liability policies, who have liability exposure in the event that they don't properly account for my children. They are elected to make these decisions. This is exactly the decision, the kind of decision they should make.

But the question becomes why

should we tell them they have to do it if they decide they don't want to? Seems to me that is the fundamental proposition of a mandate. I don't -- have not heard, frankly, a clamor from the districts that I represent for this legislation, and it seems to me that in the distribution of power in this state, of what authority we give to local school boards, one of the clear authority we give them is to take care of my children and let them make that decision.

The importance of who is making the decision in this case is the reason I'm going to change my vote from last year voting in favor to vote against it. The argument that you make, Senator, you can come to the Brighton school district where I live and make that argument and they may be convinced that it's the right thing to do, but to tell them that we've decided here to do it, when I haven't heard from them, I haven't heard any information that this is a significant problem in my district and that they would want to do it, I feel that we're telling them to do something that they

necessarily haven't asked us to do and that they have the clear power to do themselves.

For that reason, because it's a distribution of power issue for me, I'm going to change my vote and vote against it this year.

SENATOR LEVY: Senator Dollinger, will you yield to a question? Have you heard from your school district that they are opposed to this legislation?

SENATOR DOLLINGER: No, I haven't heard either side of this.

SENATOR LEVY: Have you heard from the School Boards Association that they are opposed to this legislation?

SENATOR DOLLINGER: I have not heard from them one way or another on this issue. I'm not aware of any memos. I just point out that I don't have any memos from the school board in favor of this bill.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes, will the

sponsor yield to a question?

SENATOR LEVY: Certainly, Senator Gold.

ACTING PRESIDENT FARLEY: Senator Levy.

SENATOR GOLD: Senator, you indicated you said the big five are for this; is that correct?

SENATOR LEVY: Yes.

SENATOR GOLD: Today, do the big five use their discretion and get fingerprints in these cases?

SENATOR LEVY: Senator, I can not tell you whether they are in fact finger printing or not. I can tell you that they are supporting the legislation.

SENATOR GOLD: All right. And secondly -- will the Senator yield to a question?

SENATOR LEVY: Yes, Senator.

ACTING PRESIDENT FARLEY: Senator Levy will yield, I'm confident.

SENATOR GOLD: Senator, do we

fingerprint employees of the school systems who do janitorial services?

SENATOR LEVY: We do not, Senator.

SENATOR GOLD: Do we fingerprint people who do maintenance work.

SENATOR LEVY: No, Senator Gold.

SENATOR GOLD: On the bill, Mr. President.

ACTING PRESIDENT FARLEY: On the bill, Senator Gold.

SENATOR GOLD: Mr. President. We have on our calendar throughout the year a number of pieces of legislation where we are asked to give authority to either schools or to district attorneys or to local governments who don't have the authority to do a certain thing that they think is important in the operation of their functions.

The big five, Senator Levy says, is in favor of this legislation, but we don't even know if they do it today, and they have the power to do it. Now, are they saying to the

Legislature, "It's a great idea. I'd like to do it. Make me do it. But if you don't make me do it, I won't do it even though I can do it"?

I mean that just doesn't make any sense. Either it's something that should be done and these people are doing it wherever they can possibly do it and maybe there's a place or two in the state that aren't doing it, so they should be doing it, so Senator Levy wants this legislation to make sure that in those few places in the state that are not doing it, they must do it. But without that, Senator Levy, there is no logic to this bill.

They have the power to do it. The Legislature is not strapping the hands of the school districts at all. And the thing that I find more interesting, Senator Levy, we are doing this for school bus drivers and now we're talking about attendants who, I assume, work on some bus with a school bus driver who has been approved. And yet we allow people to do janitorial services in the schools, walk around the schools, go into bathrooms perhaps where one

youngster is there alone, unprotected; we allow maintenance people around the schools working outside where some stray youngster may be, and you don't fingerprint them. Seems to me that they are a greater danger, if you want to create that danger, than a school bus attendant who happens to be there under the jurisdiction, if you want to use that word, of a school bus driver.

So I don't understand it. I also want to point out, as I think you may have done, that the American Federation of State, County and Municipal Employees strongly opposes passage, as does CSEA, and they point out they do not know why these people are being singled out for fingerprinting.

And while that is a legitimate argument, I think the Dollinger argument is still the best. If people have the power - they have the power -- to come to the Legislature and then say we must order them to use this power in a situation where you are dealing with generally responsible people

running a school district makes one wonder.

Last year, Senator Connor and Galiber and Gold and Hoffmann, Jones, Leichter, Markowitz, Montgomery, Ohrenstein, Smith and Stavisky voted in the negative.

Last section.

ACTING PRESIDENT FARLEY: Senator Mendez.

SENATOR MENDEZ: Mr. President. Statistics show that one out of four children are abused sexually in schools. That is a tremendous task in protecting our children that we have to look at. I think that I am supporting this bill, Mr. President, because at least it starts to do something, whether or not the present school system does have the power to fingerprint the bus attendants. That in my mind is irrelevant. Do you know why? Because this legislation will remind everybody that we don't want our children -- we want our children to be safer.

Also, the maintenance individuals and the janitors and what have you, they should

also be fingerprinted, because they are every single day enclosed near our children.

So I think this is a good bill, Mr. President. I support it.

ACTING PRESIDENT FARLEY: On the bill.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90 day after it shall have become a law.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator Jones to explain her vote.

SENATOR JONES: Yes. My vote, too, represents a change but for a different reason. I am going to accept -- certainly up my way it is not an issue. I have complete faith in the school boards that I deal with that they are taking precautions and, as I said, bus attendants -- most people are lucky to have a bus and a driver, far less an attendant.

But apparently this is an issue. I have listened to what Senator Mendez said, and apparently it is an issue in downstate areas. So I will support it on the basis of the statistics you have given me today, because I think we do have to protect our children first.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 88 are Senators Daly, Dollinger, Galiber, Gold, Leichter, Markowitz, Montgomery, Nanula, Ohrenstein and Smith. Ayes 46. Nays 10.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 298, by Senator Volker, Senate Bill Number 3385, an act to amend the Penal Law and the Criminal Procedure Law.

SENATOR GOLD: May we lay this aside for Senator Galiber?

ACTING PRESIDENT FARLEY: Is that your pleasure, Senator Present?

SENATOR PRESENT: (Indicating "Yes.")

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 328, by Senator Skelos, Senate Bill Number 6567B, Education Law.

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

SENATOR GOLD: What is the bill?

ACTING PRESIDENT FARLEY: That's 328.

SENATOR GOLD: Last section.

ACTING PRESIDENT FARLEY: Read the last section.

Did you want to speak, Senator Dollinger?

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT FARLEY: Explanation. Senator Skelos.

SENATOR SKELOS: Senator

Dollinger, this legislation, under existing law, school districts if the parents of a child or a guardian so desire must notify the family that their child has not been in school that day. Under this legislation, if the parents so desire, it would require that parents notify them within three hours of that child not being in school -- the school notifies the parents.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: I got a chance to read this. First of all, in the back in Section 2, which deals with the requirements that if they are absent for more than five consecutive days, there will be notification of -

SENATOR SKELOS: That's an additional part of this legislation. It would state that if the child has been missing for five days and the school district has not been able to verify where that child is or contact

the parents, then the school district would notify the local authorities that this child was missing.

SENATOR DOLLINGER: Okay. In the prior two sections of the law, there's exculpatory language in the event that the school district doesn't comply with the directive. It says that no criminal or civil liability will an attach.

In this section, that language is absent. Is it your intention to put -- to make a school district liable or increase its exposure if for some reason they don't report to the law enforcement agency -

SENATOR SKELOS: No.

SENATOR DOLLINGER: -- within five days?

SENATOR SKELOS: No.

SENATOR DOLLINGER: Shouldn't that language be included to provide exculpation for the district in the event they don't comply with the law?

SENATOR SKELOS: I believe the

other section would cover that.

SENATOR DOLLINGER: The prior section? Which section the -

SENATOR SKELOS: There is that language in another section of the law.

SENATOR DOLLINGER: Okay. I just point out that in both of the prior sections when it says "notification upon absence" and "notification when deemed absent," there is exculpatory language that says the school district isn't criminally or civilly liable, but yet in that provision there isn't, and I just wonder. Your intention is to create no greater exposure for the school district under this section either. Isn't that correct?

SENATOR SKELOS: What this legislation does, it extends the existing law and just adds this section concerning notifying the police authority. So I think the language that you're talking about would cover it and the school district would not be criminally or civilly liable.

SENATOR DOLLINGER: Okay. I

guess I -- and I don't mean to create a problem but it seems to me that it's explicitly referred to in the prior paragraphs; in C and D, it contains exculpatory language and applies to those specific paragraphs. And if the intention is not to create any further liability to the school district, the language should be in that paragraph, as well. I don't know whether it's worthy of amendment, perhaps, at a later time.

I'm going to vote in favor of the bill. I have one other question, though.

As I understand it, this language only applies to elementary schools?

SENATOR SKELOS: Yes.

SENATOR DOLLINGER: And, again, through you, Mr. President. I apologize.

SENATOR SKELOS: Yes, elementary schools.

SENATOR DOLLINGER: In the definition of elementary school, does that include middle schools as well?

SENATOR SKELOS: It would be K through 5 or K through 6, I believe, depending

on the school district.

SENATOR DOLLINGER: Okay. Again, Mr. President. On the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I think this is a good idea. I would urge the sponsor, however, to consider including the middle schools as well. My recollection is that many of the pupils who are actually abducted or have been killed are pupils who were beyond elementary school and what happens is you suddenly turn 11 or 12 and you think that you can be very independent and that you can go out and walk down streets or walk through your town. Third and fourth graders aren't quite that ambitious because they aren't quite that old, and it's that little sense of independence that can often times expose a child to a very, very dangerous situation.

And I guess I would encourage the sponsor to look to perhaps an amendment at a later time to include this provision, which has

good language, to include middle school students as well so we extend that protection up to 8th grade.

SENATOR SKELOS: Very good suggestion, Senator. Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT FARLEY: Oh, I'm sorry. Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you. Mr. President. I would just like to comment on this legislation.

I think Senator Skelos has an extremely important issue that is being raised here; and that is, when children are absent, we want to make sure that their parents know that and that someone is aware. However, Senator Skelos, I'm not sure how this is going to work particularly for New York City, and I'm just reading the memo which says, "It requires the school to notify parents within three hours of

the commencement of the school day and if the whereabouts of the child remains unknown, such notification, a search must be made by an attendance official."

Now, in New York City where we have already a tremendous budget deficit and a substantial percentage of that deficit has fallen upon our school -- public school department, the board of education, we don't have attendance people to go out looking for children. We don't have people to make those phone calls to track down 200,000 children who are absent on an average daily basis.

So is this a mandate that is now going to require the board of education or is going to support parents agitating for this kind of service where we don't have -- we have classes with 29 and 30 children in the class and not enough teaching staff?

SENATOR SKELOS: Let me explain -

ACTING PRESIDENT FARLEY: Senator Skelos.

SENATOR SKELOS: -- Senator Montgomery. First of all, school districts are required under existing law if the parents so desire -- number 1, they are required to notify the parents that if you want us to, we will notify you when your child is missing from class. So you need the parents under existing law to say to the school district, yes, notify me. If they say this, then the school district is required to notify the parents, but there really are no standards on how you do this. It can be by a letter. It can be by a phone call. We go back to the case of Eaton Pates of several years ago. Many police authorities felt that if the parents had been notified within a few hours that perhaps they could have caught his abductor and saved him. We still do not know what happened to him.

But the requirement is there already in existing law that this be accomplished. So all we're saying is if the school districts notify the parents and the parents so desire to be notified, then there

must be a call back to them within three hours of this child being missing.

SENATOR MONTGOMERY: And I think, Mr. President -

SENATOR SKELOS: Just one other point, Senator Montgomery, if I can.

SENATOR MONTGOMERY: Yes.

SENATOR SKELOS: Is I have a piece of legislation which, hopefully, we'll be voting on in the near future that would allow the senior citizens who are part of the RSVP program, one of their priorities would be on a voluntary basis to work in the schools as part of this program, to assist the school districts in doing these type of call back programs. But this is not a new requirement on school districts. It is there right now that there be some sort of notification to the parents and again if they request it.

SENATOR MONTGOMERY: Yes, and thank you for that explanation, but I still maintain, Mr. President, that what Senator Skelos has done is in fact given a three-hour

limit and required that phone calls be made based on the parent's request and so there has to be someone there physically making those phone calls, and if there are 50 or 100 children absent on any given day and the parents have required and requested that they be called, we have to have a person there, somebody has to make those phone calls.

And if the parent says I don't know why Johnny is not in schools, then we are also requiring that there be someone to go out looking for them. Now, I would love to have that happen. I think that is important. It is extremely important. But by the same token, we don't have guidance counselors in schools right now. We don't have -- our classes are too, too large. We don't have money to make the classes smaller. We don't have librarians in the schools. We don't have -- never mind attendance teachers or any of that.

So we are requiring one more thing to happen in the school during the school day by personnel who are in fact not going to be

in the classroom. So, Mr. President, I just think that this makes a lot of sense, but I certainly would not want this imposed on the board of education where we are already right now -- the Chancellor as we speak is having to reach out into each district and require of each district superintendent that they cut their staff. So I just think this is the wrong time to do this kind of a mandate of an increase in a service that is non-classroom related, when we are talking about improving the education for children.

So I'm going to vote no on it, not because it's a bad bill, but I just think there are so many other pressing, pressing other needs and issues of our board of education, that we need not do this at this time.

Thank you until.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of September next succeeding the date on which it

shall have become a law.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56. Nays 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

ACTING PRESIDENT FARLEY: Senator Stavisky.

SENATOR STAVISKY: Mr. President. Without objection -

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR STAVISKY: I should like to be recorded in the negative on Calendar Number 88.

ACTING PRESIDENT FARLEY: Without objection, Senator Stavisky is in the negative on Calendar 88.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. If there is no objection, I would also like to be recorded in the negative on Calendar Number 88.

ACTING PRESIDENT FARLEY: Without objection.

Regular order.

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

SENATOR GOLD: Explanation.

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

SENATOR KUHL: Yes, Mr. President. This is a bill that is probably best explained by reading the first four lines of the bill language, and it says, "No solid waste management facility shall be located on land used in agricultural production, located within an agricultural district, or upon land receiving an agricultural assessment pursuant to this article and taken through the exercise of the eminent domain."

Simply put, this would ban the power of local governments to take lands by eminent domain which is included in an agricultural district or receiving agricultural assessments for the purpose of solid waste landfill or solid waste management facilities.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator.

Simply put, this would ban the power of local governments to take lands by eminent domain which is included in an Agricultural District or receiving agricultural assessments, for the purpose of solid waste landfill or solid waste management facilities.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President, we debated this bill in the past. I'm going to try to be very brief, just state the reasons I think this bill is a mistake.

I think to fix by legislation

land where you can not site any solid waste facility, I think is going to create a lot of problems. There's suburban land that is very valuable; there is urban land that is very valuable. I think we all appreciate the value of agricultural land, but let me just say Senator Kuhl, I have, as some of you know a place that I love and cherish very much in Essex County, represented by my good friend here, Senator Stafford. I know that maybe two or three years ago they developed a solid waste management site for the whole county, Senator Stafford, in the Town of Lewis. While I'm not positive, I suspect that that is classified as agricultural land. You do have counties in this state where most of the land is agricultural, either classified as such or assessed as such, where the localities may decide that that is still the land that they want to use because they are under pressure to come up with a solid waste management facility, and I think to preclude them by this legislation from doing it under any circumstances, I respectfully submit

is a mistake.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Wait a second. Senator Oppenheimer, I think, is first.

SENATOR OPPENHEIMER: Right. As all of us know, it is very difficult to site a solid waste management facility. It is difficult in all sections of our state. Upstate much of the land is agricultural land. If you say you can't site a facility on agricultural land, you are in effect taking out almost all the land which could potentially be sited. It is difficult enough. There are prohibitions enough on the siting and protections enough under our environmental law that I think to create further hardships in the siting would make it exceedingly difficult for a municipality.

And, therefore, I'm going to be voting no.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Mr. President. There is a memorandum in opposition by the New York State Department of Environmental Conservation. It says "strongly opposed." And their arguments are -- there are two arguments they set forth which really I think bear some significant consideration.

Firstly, they point out that the governmental taking of agricultural land for solid waste management facilities represents only an extremely small portion of loss of these valuable lands for agriculture. A worse case analysis shows that in any year less than 100 acres of actual active agricultural land will be used for landfill. The number is compared to the annual loss of 40,000 to 60,000 acres of urban and suburban development.

Furthermore, they point out, the bill does not place any restrictions on the use of agricultural land for private landfill facilities.

The other point they make is a point that when I came here as a younger person

in the early 1700s, I thought that the constitution meant something. I want to congratulate all of you because as pigheaded as I am, you have convinced me that the constitution never interferes between friends. But the fact is that Article 9, Section 1, of the New York State Constitution provides that "Local governments shall have the power to take land for public purposes and such excess lands as are necessary to provide for public use, subject to legislative regulation over the exercise of the power of eminent domain and excess combination by local government outside of its boundaries." Therefore, assuming we even pass it, it would be probably declared unconstitutional because that very locality that was referred to so eloquently by Senator Leichter, which might have no other choice but to use a small piece of agricultural land in order to abide perhaps by a federal court order, would take that land, ignore this legislation, point to the constitution, and then maybe some pigheaded person outside the Legislature that

you haven't convinced that the constitution doesn't mean so much may shock all of us and uphold the constitution.

So I do not think it is a great idea. Do I respect Senator Kuhl and his commitment to the agriculture community? I certainly do. But this bill may be well intentioned but it is unconstitutional and it would create more problems than it would solve.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Just not to belabor this, Mr. President, but I think there's something that Senator Leichter and also Senator Oppenheimer have missed, and that is that the - when we talk about prohibiting the taking in an Agricultural District, we're talking about a very small segment of land across the state. And it is not true, Senator Leichter, that every county or some counties are totally encapsulated within an Agricultural District. That is just not the case.

There is a whole formulation

process that was created by a law adopted by this Legislature, and I know Senator Gold was here because of his extended service, but you may have been here, too, and it occurred back in 1971 when the Agricultural District Law was adopted.

But there is a process where a group of individuals -- and there is a minimum acreage involved -- has to make an application. Application has to be approved by a local county board and then an Ag District can be created. Those are reviewable every eight years, so there is an annual kind of review process that each county goes through.

Now, what does that do for a local farmer? It puts a local farmer in a position where he can have an assessment based on his actual production situation. It's not based necessarily on fair market value. So in some cases that can be a significant tax advantage to him. This bill as posed doesn't deal with the situation where a farmer says if he is in an Agricultural District that he wants

to voluntarily enter into arrangements with a local municipality and sell his farm or a portion of his farm for a planned management facility. Doesn't deal with that. What this deals with is the taking involuntarily of this parcel of land against the wishes of a farmer.

And what you are failing to miss and what we're seeing out in areas of my portion of the state -- and I know down in the Mid Hudson area -- we are seeing what we call the critical mass of agriculture, that cumulative acreage that will allow for a continued production of the agricultural arena to continue, being essentially decimated because it's being picked off. As Senator Gold said, 40,000 to 60,000 acres are being lost to urban sprawl, to suburban development, and that's being captured up in this whole agricultural arena.

What we're talking about -- and I agree with Senator Gold -- is that maybe we're only looking at 100 acres here on an annual basis of taking, but that hundred acres can be

critical to the development and to the continuation of this critical mass of agriculture.

So by a one taking for a land management facility, you can essentially undermine the whole agricultural arena in one particular area. That's what's so important. And if it is only 100 acres, then certainly there ought to be a hundred acres somewhere else within this nearby region that ought to be able to be voluntarily obtained so that we don't undermine agriculture.

Also as a portion of that 1971 Agriculture Districts Law, there was a commitment by this Legislature, by the State of New York, saying that it was a major fundamental underlying principle that we would substantiate and support agriculture because we thought it was so important to the fabric of our society out our way, to the needs of our constituents in this state, that we set forth on this process of creating Agriculture Districts that essentially would support agriculture. What this bill does

is to recognize that we can undermine that process. We can undermine that process if we allow individual communities to select, on their own basis and not on a statewide general basis, the site selection for these land management facilities.

One of the things that Senator Gold mentioned in his argument was the question of constitutionality. And certainly anybody who wants to try to defeat a bill like this will talk about the constitutionality of this provision. You know, local governments certainly get their power to take land by eminent domain from Section 1, Article 9 of the constitution, and it does specifically state, the Legislature may authorize and -- and I underline -- and regulate the power of eminent domain.

Section 3 of that same article goes onto say, okay, that other than the property -- affairs of property and of the local government that the Legislature reserves the power to limit that.

Now, what I point out to you is that there have not been a great deal of cases that deal with this particular issue, but there was one in the early years of our current governor. Back in 1984, there was the Town of Islip versus Cuomo, and the Court of Appeals upheld the constitutionality of a section of Environmental Conservation Law which restricted the disposal of solid waste in landfills in Nassau and Suffolk County. That's the only case, really, that's on record dealing with this issue. And, again, they upheld the constitutionality of that limitation.

You know, again Senator Gold's argument about the constitutionality, one of the things that's in that memo that he noted that comes from DEC is that by regulation - regulation -- not by the act of this Legislature with the consignment of the Governor, they have precluded the taking of land by eminent domain when there are soils in what they call Classification 1 and 2. Now, I would say to you that that is an argument in support that it is a

constitutional provision that we are seeking here today.

So I'm fully in support of this bill as you probably noticed in regard to my argument. I think it's vital if we're going to look to the long-term preservation of agriculture. Agriculture certainly is under tremendous strain in this state, certainly in this country today, and I think if you want to see the communities in Upstate New York just fade away, you want to see that fabric destroyed, then you continue to allow the things that are happening in communities across this state and you would vote against this bill. But if you feel that agriculture is a necessity, is absolutely essential for this state to have a piece of that to provide free products -- I should say products of -- some of them are free. I think that's what the farmers tell us from the prices they are getting paid for them. But if you think this state ought to support an industry that in fact is necessary for the nutritious evolvement of our citizenry, then in

fact you will support this bill.

Now, I know you will make the right decision, Senator Leichter, and I know Senator Oppenheimer probably has revisited her thought on this. Senator Gold, I know has been here so long that he has probably voted against an act like this so he is not so likely to do that. But I certainly would encourage all of you to rethink your opposition if you have that, and I ask you to support the bill.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Will Senator Kuhl yield to one question?

SENATOR KUHL: Certainly.

SENATOR GOLD: First of all, Senator, I don't know about -- whether I appreciate that last remark, but as someone who has heard you declare your handicap and then see you putt, I -

At any rate, Senator, you made a comment, and I'm curious whether you're able to

address this. You said that without this legislation, communities could themselves take action which could have an affect on agriculture and without any state oversight on what the general plan was. I think you said something along those lines. Does your bill -- couldn't we draft a bill or does your bill take into account, maybe there should be some oversight so that in a particular area we could save some agricultural land by doing something else. But I gather from your bill it doesn't do anything like that at all. You merely mandate you can't use the agricultural land even if there was some general state plan that protected agriculture in general, but still suggested that this one particular site might be valuable.

SENATOR KUHL: No, I didn't say exactly what you said, Senator. Again, I don't want you to use the word just agricultural land, because that's an improper reference to the bill.

The bill only deals with land that's situated in an Agricultural District

under production, and that really limits the number of acres that are out there -- or that is receiving an agricultural assessment, which doesn't expand it much more, because they don't get the assessment unless it's under production and in an agricultural district.

So, it's very, very limited, but this is our answer to that indiscriminate type of activity by communities who really aren't looking for the general good. And as I said, this State Legislature, years ago, decided that it was the general good to protect agriculture. So this is just a reaffirmation of that process, that dedication by this Legislature and a further indication of where we want agriculture to be in the next century.

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 Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: To explain my vote, please. Local officials do have the best interest of their immediate communities in mind. And if they are under a mandate to site such a facility as this, they are doing the best job they can, and I think this makes it unduly onerous for the municipal officials who are trying I think to do the best they can. They have the home rule with them in our state. Certainly, it's a very strong influence in my county, and we believe that land use is the ultimate home rule of the municipal decision making. So I vote against this.

ACTING PRESIDENT FARLEY: Senator Oppenheimer in the negative.

THE SECRETARY: Those recorded in the negative on Calendar 342 are Senators Gold, Leichter and Oppenheimer. Ayes 55. Nays 3.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

358, by Senator Hannon, Senate Bill Number 280, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90 day.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: May I have my name called?

ACTING PRESIDENT FARLEY: Senator Gold to explain his vote.

SENATOR GOLD: Yes, I just wanted to point out we have had this discussion before. The Citizens Housing and Planning Council is opposed to it, the New York City Mayor's Office -- this year? Last year. That's why they clarified it. Last year's Mayor was opposed to it in the City of New York. And Senator Connor and Gonzalez, Halperin, -- that's

not going to help much -- Markowitz, Mendez, Montgomery, Ohrenstein, Onorato, Solomon, Weinstein and Senator Goodman voted in the negative.

ACTING PRESIDENT FARLEY: Last section.

Negatives raise your hands.

THE SECRETARY: Those recorded in the negative on Calendar Number 358 are Senators Connor, Galiber, Goodman, Kruger, Leichter, Markowitz, Mendez, Montgomery, Nanula, Ohrenstein, Onorato, Santiago and Solomon. Ayes 45. Nays 13.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. Is there a report of the standing committee at the desk?

ACTING PRESIDENT FARLEY: There is.

SENATOR PRESENT: Can we have it read?

ACTING PRESIDENT FARLEY:

Secretary will read the report of the standing committee.

THE SECRETARY: Senator Stafford from the Committee on Finance reports the following bill directly for third reading:

Senate Budget Bill, Bill Number 6688A, an act to amend Chapters 50, 51, 52, 53, 54 and 74 of the Laws of 1993, making appropriations for the support of government.

ACTING PRESIDENT FARLEY: The bill is reported directly to third reading.

Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity at the desk for that bill?

ACTING PRESIDENT FARLEY: There is a message of necessity here at the desk.

SENATOR PRESENT: May it have its third reading at this time?

ACTING PRESIDENT FARLEY: All in favor of accepting the message of necessity, please say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

Read the last section of this bill.

SENATOR GOLD: Mr. President. Would Senator Stafford yield to a question on the bill?

ACTING PRESIDENT FARLEY: Senator Stafford, would you yield?

SENATOR GOLD: Senator Stafford, this is the so-called deficiency budget; is that correct?

SENATOR STAFFORD Right.

SENATOR GOLD: Senator, is there a reference in this bill at all to the legislative portion of last year's budget? Was there any deficiency necessity in this bill?

SENATOR STAFFORD: I don't believe there is, Senator.

SENATOR GOLD: Will the Senator yield to one more question?

ACTING PRESIDENT FARLEY: Senator

Stafford.

SENATOR STAFFORD: Yes.

SENATOR GOLD: Senator, I know you wouldn't know this off the top of your head and I certainly wouldn't either, but perhaps in your notes or counsel. Do you know what the legislative budget was as enacted for the year 1993, 1994?

SENATOR STAFFORD: I would have to look that up.

SENATOR GOLD: Do we have that available?

SENATOR STAFFORD: Get it.

SENATOR LEICHTER: 167 million.

SENATOR GOLD: I think it was $167 million. Does that sound right?

SENATOR STAFFORD: I'm sure my Senator over the summer wouldn't be wrong.

SENATOR GOLD: Will Senator yield to another question?

ACTING PRESIDENT FARLEY: Senator Stafford.

SENATOR GOLD: Senator, it is my

understanding that the legislative budget as enacted by us last year about this time was 167-plus million and that we actually spent 175.2 million or 7 million-some-odd dollars more than was appropriated. Now, Senator, wouldn't that have to be covered today by an item in the supplemental budget -- deficiency budget, rather?

SENATOR STAFFORD: You are referring to the legislative budget?

SENATOR GOLD: Yes, sir.

SENATOR STAFFORD: As soon as I get the information, I certainly will discuss it with you. There could be, and we will find the answer for you. But there, for instance, could be reappropriations, and we really wouldn't need this.

SENATOR GOLD: Senator, if you will yield for another question? I think that you got the -

ACTING PRESIDENT FARLEY: Senator Stafford?

SENATOR GOLD: I think that is

the answer, Senator. My understanding -- and I just want to make sure I'm correct -- is that last year, in addition to the 167 million that we appropriated for a legislative budget, that we, in fact, did reappropriate perhaps some $60 million or someplace in that area -- I certainly take a correction from your staff -- of money that has been carried in the legislative budget and not spent from the prior year. Is that the source?

SENATOR STAFFORD: Yes.

SENATOR GOLD: Senator, if you will yield to one other question.

I understand, Senator, that as we examine the budget of the State of New York, there are many places where we find reappropriations. There are buildings that we are going to fund that aren't built. There are other situations where money was set up for a program that didn't start that year; and, therefore, it has to be reappropriated. Do you know if any state agency or any place else in the budget, Senator, where we reappropriate

fifty or sixty million dollars of money that's meant to be on a cash basis expenditure of these agencies as we do with the Legislature?

SENATOR STAFFORD: Well, I would start with the education capital project. I would have to get documentation for further examples.

SENATOR GOLD: I understand that is capital. I understand that in captal projects, where the project is not built on time or not finished on time, we carry that money forward. But the legislative budget, if I may, Senator, is not building anything. It's employees' salaries; it's paper, paper clips, mailings, telephone, and things which happen as a regular day-to-day expenditure of money.

Any place else where we carry a fund for a department of that kind of money?

SENATOR STAFFORD: I believe there are reappropriations. I think, in my years here, I've seen them, and I will get some examples.

SENATOR GOLD: On the bill, Mr.

President.

ACTING PRESIDENT FARLEY: Senator Gold on the bill.

SENATOR GOLD: Senator Stafford. Let me suggest the following to you, Senator, that what we do in terms of the legislative budget is an outrage -- outrage. Now, when you have a state department under the Governor and that department comes in with a budget and we negotiate the budget back and forth and then comes March of the following year, such as we are here now, and they have acquired additional money, they must come to us and we determine whether it's right or wrong, and we vote on a deficiency budget.

It is only within the Legislature that we give ourselves a $60 million slush fund. So, you don't find the Legislature in a deficiency budget because we don't have to. We not only pass for ourselves a non-itemized budget, but we give ourselves a cushion.

Now, if you realize that the budget is about 167-, 170- million dollars and

then you have a slush fund of 60 million, I mean that's basically a capacity of -- I do the math real quick -- maybe 25 percent or a third more in the budget, undocumented as we go along. I mean what an outrage!

But I tell you what's a worse outrage. There were people in to see me yesterday, university professors from SUNY. They indicated that in order to keep SUNY the viable, wonderful system it is, they would like $10 million to specifically replace 250 professors. They didn't say, "Give me $10 million and maybe I will mow the lawn or maybe I will put in a better here or there." They said, line by line, "250 professors, $10 million."

Now, in the budget negotiation right now, we are trying to balance a budget. Now, that budget is money that's going to be new money, money to go here and there, and reappropriations. By the Legislature hogging - hogging -- $60 million off to the side, we have to find $60 million someplace else or ignore the need.

Now, if you want to forget the 60 million, we could give it back to the taxpayers, as I have heard the Republican Party say over and over ad nauseam, but you never do it; or we could use that money, instead of holding it aside dormant, to give it to State University. That's $10 million. We could give it to your local school districts and cut the property taxes. I don't see any of you doing that. We could give it to drug programs; we could give it to pre-K programs; we could give it to women going back into the work force. That would help our tax base.

We could do a lot of things, but the chutzpah of holding $60 million in a secret drawer so that we don't have to come forward in the deficiencies -- and I love this, too, you know. I can just see the Finance Committee saying to Commissioner X or Y, "How come we gave you a budget and you didn't stick within the budget, and you gotta come back for a deficiency?" You never see the Legislature coming for a deficiency, and the reason is you

got 60 million in your back pocket. Now, that really ought to stop. It ought to stop.

If we budget ourselves for 167 million or 171 million this year without even telling the people where we're spending it, that ought to be enough. It ought to be enough. There is no possible logical or moral justification for hiding that kind of money from the public.

Senator Stafford, I can tell you this. I respect your position and I -- but I can tell you that this issue does not stop today with the deficiency budget, and we can have all the budget negotiations you want.

As far as I'm concerned, this is going to be an issue right through the budget process. I think that this Legislature is composed of a huge group of hypocrits if we tell other departments how to tow the line and to be careful of every penny and we talk about the economic health of this state and we treasure the economic health of our residents and we're concerned about their property tax level and we

sit on $60 million of their money without explanation and without need.

Now, I understand reappropriations, and please don't insult the press and don't insult the public by saying, "Well, sure. Look, Senator, we have a ten million reappropriation for this hospital, and we have a five million reappropriation for this school. Forget about that nonsense. We understand that. Those are programs that are going to be built. The money has to be held aside.

You want to take a look at the judiciary budget. I admit, all right, you got me. They had a reappropriation of money there. You got me. 180,000 -

SENATOR LEICHTER: 50.

SENATOR GOLD: 50? -- 150,000. But those reappropriations are understandable.

Now, we have reappropriations where, as a result of the actions of one of our members, there is going to be a senior center opening and it's not ready, so we reappropriate;

or we've given money to some local organization and the money didn't get approved on time, so it gets reappropriated. We understand that.

We, in the Legislature, do something we allow no one else to do. We reappropriate a sum of money that is earmarked for nothing other than the whim of the leaders of the Legislature. We don't allow any other branch of government to do it, and thank God we don't. It's a disgrace. But it's a double disgrace that we do it within our own body, and it ought to stop.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: Mr. President. I normally don't get into these political discussions, but the issue of budgeting has become of much greater facination to me after the last few years when I read some of the nonsense that's been reported in the paper, for

instance, about member items and things like that, because I began to realize that some of the numbers that have been thrown around by some of these organizations outside the Legislature have occurred because they don't realize the reappropriation system.

Let me give you some agencies who reapprop millions and millions of dollars every year: Mental Hygiene, Mental Retardation. Member items, some of which are reapproped from years ago, and you know the reason why if you look at the system. The truth is the system doesn't work the way outsiders think; and that is, a lot of projects are thrown out. Projects take several years.

SENATOR LEICHTER: Mr. President.

SENATOR VOLKER: I would like to continue, if I might.

ACTING PRESIDENT FARLEY: He doesn't want to yield.

SENATOR VOLKER: I will yield later.

By the way, I don't know where

the $60 million came from. I understand, it's a nice figure, and it may or may not be correct. And remember, we -- the deficiency budget is used to redirect money that is already there. We don't necessarily -- we use that primarily for things that are going to be done or have been done already, in many cases, within the foreseeable past. To suggest that that money is going to be lost is absolutely not true, because the money, in fact, could be used to offset next year's budget.

I'm sure you know that. If the money has not been spent, it could be used to offset next year's budget. There is a whole series of ways it could be done.

I know it sounds good. And it's -- I think it's part of the problem. For instance, last year, there was talk about $60 million worth of member items, and I'm told that the cash behind it was a very much smaller amount, and the reappropriations in the budget are what people total up over the years.

Budgeting is a very complicated

process, and you can make arguments about whether we should make different changes, and so forth; but the argument that somehow there is this huge pool of money that the legislature gathers up and just could be used for something else, I don't think either the Governor or the Legislature would really allow that to happen.

So, I realize it makes for good press, and I understand. The Minority, obviously, its job is to -- is to look at the Majority and try to come up with things that are irritating, but I would also suggest that, to a certain extent, it is part of the budget confusion.

Senator, I would say to you that you probably will have a better argument when the main budget comes out, not with the deficiency budget, because you can't use the deficiency budget to argue that. There is no new money in the deficiency budget at all, but that doesn't necessarily mean that every dollar of changed money is going to be in the deficiency budget. That's not the way the

operation works.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: I yield to Senator Gold.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Will Senator Volker yield to a question.

SENATOR VOLKER: Sure.

SENATOR GOLD: Senator, you mentioned member items, and I did, too. Isn't it a fact, Senator Volker, that a member item is an item that you know what the item is? It can be for a school district, it can be for a drug program, but it is a specific item earmarked for a specific thing.

SENATOR VOLKER: But, Senator -

SENATOR GOLD: Isn't that true or not?

SENATOR VOLKER: No.

SENATOR GOLD: No?

SENATOR VOLKER: Senator, the

money in the budget is lump sum, as you well know. And the reappropriations are listed in there in their lump sums. They are not listed as specific items. They are listed in joint reapprops. The items themselves are individual. That's true. And things are submitted to the Comptroller and everyone and so forth, but not directly in the budget.

SENATOR GOLD: Will the senator yield to a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR GOLD: Senator Gold.

ACTING PRESIDENT FARLEY: No, I asked if Senator Volker would yield.

SENATOR GOLD: Will you yield?

SENATOR VOLKER: Yes.

SENATOR GOLD: Senator Volker, we all know that there used to be this famous "green book" which took the supplemental member items and listed them out, and in recent years we've gotten lazy, but the fact is, Senator,

that we have a member item group and members submit specific lists, and the reappropriations part of that, Senator, are items that did not get funded or paid out during that first year. Isn't that true?

SENATOR VOLKER: In the first or second and third year, in some cases.

SENATOR GOLD: Yeah, but that's true.

SENATOR VOLKER: That's true.

SENATOR GOLD: It's earmarked money.

SENATOR VOLKER: Yes.

SENATOR GOLD: All right. Senator -- Senator Volker, you said -- if you would you will yield to another question -- that this reapprop, of course, it's there but it can be used to offset next year's budget. Why can't it be used to offset this year's budget, Senator, if, in fact, I'm right? All right, Senator? If, in fact, I'm right and there is 60 million -- maybe it's 55 million. But if there is that kind of money sitting around that hasn't

been spent by the Legislature and is not earmarked for "Well, we have a computer system coming in and we haven't seen it yet," or vice versa, or something like that, would you agree with me, Senator Volker, that we should use that money this year rather than talk about Keno in the stores or talk about other things? Couldn't we use that 60 million this year?

SENATOR VOLKER: Assuming that were true, which I don't necessarily know it's true, who's saying that we're not?

SENATOR GOLD: Senator, that's a great question. I'm asking you today would you be willing to commit to me that that money be used to balance this year's budget?

SENATOR VOLKER: Senator, let me tell you something. First of all, I don't know that your calculations as to how much money is left over is correct. Be interesting if it was. I suppose it would show that we are doing a much better job of conserving money than a lot of people would give us credit for.

And I don't think you realize

that, Senator, what you are really saying is that we are not spending anywhere near as much money as we have been purported to spend. So, I think that's fine. I think you're probably right. If we have a lot of money left over and we don't need to finish up anything, then I suppose we should use it to cut down the new budget. That would be fine.

SENATOR GOLD: Thank you.

On the bill, Mr. President.

Senator Gold on the bill.

SENATOR GOLD: Senator Volker, I thank you. I always like to deal with an honest man because you get an honest answer. And, Senator Volker, you're going to have a chance to answer those questions again on a day, I hope, not too long in the future.

First of all, Senator, the 60 million does not come because we are so terrific, because the bottom line is, Senator, that while a few years ago we ran maybe some small edges and a little bit under what the Legislature was appropriating, the fact is that

last year we ran over by some $8 million, so let's not break our arms patting us on the back.

The other thing, Senator, is when you say that we accumulated this money because we're such great managers, let me tell you something. That is nonsense, and I'll show you how it's nonsense.

You have a business like the Legislature that ought to run on a 130 million a year. So you come out with a budget, an honest budget at 130 million and you spend 130 million and you came out even. But then you get a group like us who want to show everybody how smart we are, so we appropriate 135 million, we spend 130 and tell people we saved 5 million. Well, we never told people how we were going to spend the money in the first place because we don't itemize our budgets.

So, for example, in 1985-86, we appropriated 130 million. We spent 122-. What we're not telling the public is we probably should have spent 110-, but we didn't itemize

the 122-, so we don't know whether we were so terrific when we saved $8 million. And we don't return it, as Senator Leichter said. All we did was put it in this pot that we keep collecting.

Now, if you want to take two people, give them each $20, tell them to go shopping and see who does the best with their $20. You can do that. But you can't appropriate a sum of money to yourself without having a hearing, such as the hearings that are conducted by this body with regard to every other state agency, you see, and we say to them, "What do you mean out of your billion dollars you were going to buy 17 pencils? Can't you get away with 16 pencils?"

I mean we do that to everybody, but we don't do it to ourselves. We come in with an unitemized budget and we tell people that in a few years we spent under that, so we're terrific managers. You are not terrific managers unless you're willing to say how it was spent, and then somebody else can say, "Well, yeah, you only spent $122 million, but if you

really weren't wasting it on this mailing and that and making this one look good and that one look good, you could have spent 110-." That would be an honest count.

So, Senator Volker, that answers that.

But on the other side of it, Senator, I am telling you that I will be the happiest person if you prove me wrong. When we have that legislative budget to actually vote on this year, if there is no reappropriation, Senator Volker, and we have an honest legislative budget and you tell Senator Stafford and Senator Marino to go to meetings with the Governor and with the Speaker and tell them, "Don't you worry about raising another 60 million by annoyance taxes and by going after business and by going after local property, et cetera, but we, the Senate, the Senate led by the Republicans, want to take that $60 million slush fund and help balance the budget, and now we'll be honest brokers like everybody else," Senator, I will salute you. And you can even

say that -- put it in the Rochester papers, the Senate Republicans, led by Senator Dale Volker, said, "Give back the money." Dollinger was right. Mary Ellen Jones was right. And I'm accepting that. Give them back the money. Senator Hoffmann was right. I want to see Senator DeFrancisco stand up in Syracuse and say, "By God, that Senator Hoffmann is terrific. She's right. We're giving back the $60 million." Why don't you do it?

But, Senator, those questions are going to be asked. It may be 3:00 in the morning when you hide that legislative budget and finally sneak it out on the table, but those questions are going to be asked.

And the reason that I brought it up on the deficiency, Senator, is because if we did not have the slush fund, if it wasn't in existence last year, we would have this deficiency budget in front of us, which included a request for $7.8 million for the Legislature, because that's what we did. We spent $7.8 million more than we told the people a year ago

we would spend.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Dollinger.

Don't read the last section.

SENATOR DOLLINGER: Did Senator Leichter -

ACTING PRESIDENT FARLEY: He has yielded.

SENATOR DOLLINGER: Mr. President. One question for the sponsor. I'm not quite sure I fully understand the budgeting process. But could you just tell me are we spending more money or less money in the deficiency budget? If I were to tally all the increases in income and the extra expenses in here, what's the bottom line of that document.

SENATOR STAFFORD: We're not spending more. This is really appropriation only -- authority. Appropriation authority to be spent.

SENATOR DOLLINGER: I just didn't hear it, Mr. President.

ACTING PRESIDENT FARLEY: He said we're not spending any more. This is appropriating authority.

SENATOR DOLLINGER: So the actual dollar amount in the state budget doesn't go up by this document.

SENATOR STAFFORD: Correct.

SENATOR DOLLINGER: And we're just shifting money. These are transfers around in accounts; is that a fair statement?

SENATOR STAFFORD: Exactly.

SENATOR DOLLINGER: Senator Gold, actually spoke perfectly for me, Mr. President. I have nothing to add.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57. Nays 2. Senators Dollinger and Jones recorded in the

negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. Can we continue with the report of the Finance Committee?

ACTING PRESIDENT FARLEY: Yes, we can.

Secretary will read the report of the Finance Committee.

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

Member of the Taconic State Park Recreation and Historic Preservation Commission, Donald B. Derr of Somers; and Sally Siegrist Sypher of Putnam Valley.

Member of the Niagara Frontier State Park, Recreation and Historic Preservation Commission, Jack A. Gellman of Niagara Falls; and Paul A. Schoellkopf of Buffalo.

Members of the Palisades

Interstate Park Commission, J. Martin Cornell of West Nyack.

Member of the Central New York State Park, Recreation and Historic Preservation Commission, Ruth S. Kerr of Homer.

Member of the Board of Trustees of Cornell University, Sol M. Linowitz of New York City.

Member of the Board of Trustees of the New York State Higher Education Services Corporation, Howard T. Ford of Buffalo.

Banking member of the State Banking Board, Daniel J. Hogarty, Jr., of Troy.

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

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The nominees are confirmed.

Senator Present.

SENATOR PRESENT: Can we go back to recognize order, please.

ACTING PRESIDENT FARLEY: Regular

order.

THE SECRETARY: Calendar Number 375, on page 17, by Senator Volker, Senate Bill Number 6734, Estates, Powers and Trusts Law.

SENATOR GALIBER: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Volker.

SENATOR VOLKER: Mr. President. This is a bill that was originally sponsored by Assemblyman Bill Hoyt and myself, who, of course, is deceased, and now by Assemblyman Sam Hoyt and I -- from the Assembly. It resulted from a case some years ago in Surrogate's Court in Erie County, where a fellow was tried for an axe murder of his mother and father. He acknowledged that he killed both his mother and father, a rather gruesome and brutal killing, and then went into Surrogate's Court to attempt to collect the estate from both his mother and father.

The surrogate objected. At first, refused to allow him the estate. Oh, by the way, he was declared innocent by reason of

insanity. He then was able after -- the case, I believe, may have gone to the Court of Appeals. I'm not sure, but it was finally decided that the surrogate was required to allow the person who killed these people but was declared innocent by reason of insanity to collect the money.

He then moved to Pennsylvania with his uncle and aunt. In Pennsylvania, several years later, he repeated the crime killing his uncle and aunt in a very similar fashion; and, after doing that, he was tried again and again found innocent by reason of insanity.

But the Pennsylvania courts, my understanding is, work under the common law rules, would not allow him to be able to inherit the estates of both his uncle and aunt.

What this bill very simply says is -- and this is only, by the way, for murder. This is not -- somebody asked me a question. And we have gone over, by the way, a series of questions on this. This is only if a parent

kills a child or a child kills a parent, that if that parent or child is found innocent by reason of insanity, that they cannot collect from the estate. The law right now, by the way, is if you kill either one you can't collect because under the law you can't collect by reason of your wrong. Under common law, as I understand it, it was very strict. Whether there was insanity involved or anything else, you could not collect.

One issue that has come up and we have been trying to figure some sort of way in which -- for instance, a wrongful death action. And Senator Galiber, I think, has brought it up, and several other Senators, about the possibility that somehow someone might sue through the estate and the person who was found innocent by reason of insanity and might have to sue through that person for wrongful death. We, very honestly, have had difficulty figuring out that kind of scenario because, normally, the people who would sue for the wrongful death would the distributees, which in this case would

be the children or the parents, or whoever, and those would be the very people who presumably would benefit from the fact that the person who committed the killing and was found innocent by reason of insanity would now not be able to inherit.

I suppose there would be some way in which some sort of collateral heir could potentially become involved, but I guess our thought is -- and we're still researching it, by the way -- our thought is that it would be so remote, we just can't -- it's very difficult to even find a case in which that would be so.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 3.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr. President, just briefly on the bill. Senator Volker, I have a certain amount of sympathy for what you are trying to achieve, but I'm also troubled

about the fact that what we say under this bill is that in all instances where there was a homicide of an infant by a parent or a parent by an infant that the one who is found to be guilty of the act but innocent by reason of insanity can not inherit.

We're dealing, obviously, with the most terrible and the most tragic of circumstances. What's worse than a parent killing an infant or an infant killing a parent, and certainly this fills us with enormous revulsion. But, mind you, these are people that are found innocent by reason of insanity, and I just wonder whether in some instances we're not really going to perpetuate or enhance that terrible tragedy by saying this person who committed the crazy act not knowing what he or she were doing now they can not even inherit.

Now, you and I know that there are some instances where juries find insanity. There was a case in California -- I didn't follow it that closely -- of these Menendez brothers where frankly just reading in the paper

if they are found not guilty by reason of insanity -- I think they had a hung jury -- if they were found not guilty by reason of insanity, you might have some question about having these people inherit their parents' money.

And, therefore, Senator Volker, what I wanted to ask you or suggest to you that possibly we ought to provide in the law that this is a matter that the surrogate -- give some discretion. Because you and I can postulate a case where we would say, "Yes, this was a terrible thing. A father killed a child, just horrible" or the other way around. But you are just making it that much worse by saying that the -- let's say if it's a son who killed his father that the son can not inherit and the father probably under those circumstances, you know, would say, "Yes, I don't want my son hurt even more."

So, I think that rather than trying to impose a rigid rule, I think that maybe we ought to give a power to the surrogate

to determine based on evidence that in that particular case the one who did the act and who was found innocent but innocent only by reason of insanity can not inherit or can inherit based on the equities in the situation. I think that might be a better way to approach it.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Would Senator Volker yield to just one question on that.

SENATOR VOLKER: Sure.

ACTING PRESIDENT FARLEY: Senator Volker, I presume you will yield.

SENATOR GOLD: Senator, I think as Senator Leichter pointed out, we're trying to help in the legislative process not be confrontational. But, Senator, under your bill I think even the grandchildren couldn't inherit. Isn't that true?

SENATOR VOLKER: No, that's not true.

SENATOR GOLD: All right.

SENATOR VOLKER: No, because

they're distributees. The issue would be whether they were distributees under the -- do you understand what I'm saying?

SENATOR GOLD: Yes, yes. What I meant -- Sorry, I will take it back. In other words, if their father, let's say, was the one who was insane they couldn't even get that portion from the father.

SENATOR VOLKER: Oh, sure, they could.

SENATOR GOLD: It would pass through.

SENATOR VOLKER: No. Yes, they could because they would then become the only distributees, because they would also be the distributees of the mother.

SENATOR GOLD: Hold it. If the Senator would yield. I'm not being very artful about asking the question.

The point I'm getting at -- yes, you're right, if they were the only ones. But if there were numerous children and numerous grandchildren, whatever was going to go to their

father, let's say, would be eliminated and they would basically be cut out of that, even though the grandfather, so to speak, who was killed might very well have had very strong feelings for those grandchildren.

SENATOR GOLD: I think you must be referring to two sets of children because there's no other way, otherwise -

SENATOR GOLD: Yes.

SENATOR VOLKER: I suppose it's possible, but -- by the way, they wouldn't inherit directly because, remember, the person who is declared innocent by reason of insanity, unless he was also killed, he wouldn't be allowing anybody to inherit directly until he dies.

SENATOR GOLD: Yes, true.

SENATOR VOLKER: So you are talking about a remote consequence later on. And, by the way, in the meantime, he could have a will, for instance, and will it to somebody else anyways.

SENATOR GOLD: All right. Will

the Senator yield to just one more question?

ACTING PRESIDENT FARLEY: I'm sure he will.

SENATOR VOLKER: Yes.

SENATOR GOLD: I'm just really lobbying for the Leichter approach to give a little discretion.

But, Senator, let's say there really was a substantial estate and maybe $2 million would go to this insane person, isn't it possible that if the person was allowed to inherit and was really insane and was being kept that the person might be using that money to repay the state for what the cost of the confinement were? Whereas, under your bill, the person would have no money; the sisters and brothers get all the money, and then the state has to pay for what might be years of incarceration of a mentally ill person who might otherwise be able to pay their own way.

SENATOR VOLKER: That's a possibility, Senator, but the more likely scenario is the children would inherit the

entire estate and actually would then receive more money. And the argument is that those children would receive at least some money to take care of them if they were -- as you know, if they are juveniles, it would come in trust because the guardian would have to be appointed in their behalf and so forth.

I think I understand what you're saying. The problem here, I think, is a question whether you go back to the common law. Because I think you would agree, Senator Leichter, Senator Gold, that the old common law was that even if you were declared mentally ill, or whatever, you still couldn't inherit under the old common law, under the strict common law.

I suppose this is going back to the old strict common law, and that's something I think we'll look at, but I just think -- at least initially, it seems to me, that this is the better way.

We are going to look at that. In fact, we are going to look at more of what you

are saying, anyways, to see if there is some way in which there might be a possibility that somebody might come through on a wrongful death. We are going to look at that.

ACTING PRESIDENT FARLEY: Read the last section.

Senator Galiber.

SENATOR GALIBER: Just one question.

ACTING PRESIDENT FARLEY: Senator Volker, would you yield again?

SENATOR VOLKER: Yes.

ACTING PRESIDENT FARLEY: Senator Galiber, I'm going to ask you to speak into the microphone because the stenographer is having trouble hearing you.

SENATOR GALIBER: I can't here you.

(Laughter.)

ACTING PRESIDENT FARLEY: You were talking while I was.

SENATOR GALIBER: Mr. President. Senator Volker, when we discussed this

yesterday, I had some of the same concerns, and you were kind enough to look into them, and you have some of the same concerns today. And added to those concerns were an approach by Senator Leichter and Senator Gold.

And since we have three persons now that you agree have some question about it, would it be asking too much to have the bill laid aside? We have a bit longer to go in the session. Maybe you can check on those things.

SENATOR VOLKER: Aren't we going to finish tomorrow, Senator?

Senator, are you asking me to lay this aside and check it further? Is that what you're saying?

SENATOR GALIBER: Yes.

SENATOR VOLKER: Okay. Lay it aside.

SENATOR GALIBER: Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR GOLD: No, we're laying it aside.

ACTING PRESIDENT FARLEY: Lay the bill aside.

Senator Levy.

SENATOR LEVY: Yes, I would like to star Calendar 293, Mr. President.

ACTING PRESIDENT FARLEY: 293 is starred at the request of the sponsor.

THE SECRETARY: On page 19, Calendar Number 413, by Senator Marino, Senate Bill Number 3828A, an act to amend Chapter 576 of the Laws of 1975.

SENATOR GOLD: Can we ask the sponsor for one day? Senator Stachowski -

SENATOR LAVALLE: Yes.

SENATOR GOLD: With the consent of the sponsor, one day on this.

ACTING PRESIDENT FARLEY: Senator LaValle, give them a day?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT FARLEY: Lay it aside.

We have a substitution, Senator Present.

SENATOR PRESENT: Do the substitution.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: On page 12 of today's calendar, Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 8651A and substitute it for the identical Third Reading 222.

ACTING PRESIDENT FARLEY: The bill is substituted.

Senator Present.

SENATOR PRESENT: Is there any housekeeping?

ACTING PRESIDENT FARLEY: Any motions or housekeeping from the floor?

Seeing none, Senator Present.

SENATOR PRESENT: Well, we'll just hold it a moment.

ACTING PRESIDENT FARLEY: Senator Santiago.

SENATOR SANTIAGO: I ask unanimous consent to be recorded in the negative

on Calendar 88.

ACTING PRESIDENT FARLEY: Senator Santiago will be in the negative on Calendar 88, without objection.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Could you please recognize Senator Leichter on a motion, please.

ACTING PRESIDENT FARLEY: I can do that.

Senator Leichter.

SENATOR LEICHTER: Mr. President. I have a motion to discharge up on the desk. I believe appropriate notification was given, and there will be three other motions and, Mr. President, so at this time, let me call up my bill, 1342A, for purpose of a motion to discharge.

ACTING PRESIDENT FARLEY: Secretary will read the title of it.

THE SECRETARY: By Senator Leichter, Senate Bill Number 1342A, an act to

amend the State Finance Law, in relation to requiring that budget bills making appropriations or reappropriations to the Legislature contain specific categories and amounts of expenditures.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President. This bill is not a new one or a stranger to us, and certainly the issue isn't. In fact, earlier today, Senator Gold very eloquently addressed some of the issues that my bill addresses which, simply stated, provides for a detailed budget by the Legislature and provides for hearings on the legislative budget as we have hearings on the budget of all other state agencies as well as the judiciary.

Mr. President. I'm really somewhat saddened that I have to rise and make this motion, because, frankly, the case for a -

Mr. President. Can we have some order, please.

ACTING PRESIDENT FARLEY: Your

point is well-taken. Please would you listen carefully to Senator Leichter.

SENATOR LEICHTER: Because, Mr. President, I'm saddened because the case for a detailed legislative budget is obviously so clear and so indisputable, and we have sought to make it so forcefully, and I think we have certainly raised the issue in a clear, rational way over the last few years, that I thought that we would finally get a detailed budget.

But I must say to find that, once again, we're going to be asked to vote on a legislative budget which is a model of obfuscation, of secrecy, of deception, of misleading, I think it shows on the part of those who are pushing that budget, who are presenting it to us in this fashion a hubris, a shamelessness that I'm really amazed at.

Now, earlier today, Senator Gold pointed out how the obscurity of the legislative budget and the shenanigans that the legislative leaders engage in with the budget leads to a situation where the Legislature never has to go

for deficiency budget because we've set up a slush fund, but the situation in some respects is even worse than he stated it.

It's hard to believe it could be worse than that the Legislature, which includes such self-proclaimed paragons of fiscal conservatism who want to cut spending have actually built up this $60 million slush fund which they reappropriate year after year, dip in whenever they want to because, "We don't need a deficiency budget; we've got our own slush fund."

But what makes it worse is and why this is really a classic for slush fund is that there is no detail. You don't even know what the reappropriation does because it falls into the same vague, ambiguous, obscure categories as are contained in the legislative budget. Let me tell you. This is the phoniest of the phoniest of the phoniest budgets that you could possibly have. It is an absolute fraud on the people of the State of New York, and it makes such hypocrisy of the Legislature, I don't

know how anybody who has any role in putting this budget together and who votes for it can get up with a straight face and talk about responsibility, fiscal conservatism and cutting waste.

We don't know what's in this budget, and the fact of the matter is that my friends on the other side of the aisle have no idea. They know as little as I do. There is only one person who knows what is in that budget and how that budget is going to be used and that's the Majority Leader in this house and the Speaker in the Assembly.

Let me make it very clear. This is not an issue between Democrats and Republicans because we are as critical of our colleagues and friends in the Majority in the Assembly as we are of you who are in the Majority here. In fact, the other day I went to the Assembly chamber, and I heard a very eloquent speech about the abuse of mailing privileges, and it was the distinguished county leader from Erie County, the Republican County

Leader Assembly Member Tom Reynolds. He was brilliant. I wanted to bring him in here. I saw him here earlier. I was hoping I would have his same eloquent support. So it's not a political issue, but it's an institutional issue.

And let me say that while I'm highly critical of what we do with the legislative budget, I do so out of sorrow because I have real regard for the Legislature and I have great regard, fondness and respect for my colleagues. So if I'm sounding sort of harsh and bitter and maybe pejorative, it is certainly not meant at any individual because we're also dealing with an institutional practice that obviously precedes Senator Marino and Speaker Silver or Weprin and so on.

But it is time that we take a look at what we do; and, you know, what makes it to my mind so amazing that we continue with this obscurity and with this obvious and blatant fraud is that if you wanted to maintain this level of spending, you wanted to do other

things, you could probably do it and still come up with a budget that at least meets the guidelines of what is correct budgeting. You've got the votes. You've got the power. But I guess what you are afraid of is that somebody is going to look at the legislative budget and is going to say, "Wait a second. How come you guys are spending so much?" Why is it that Senator Goodman has a staff allowance of over a million dollars and -- and -- and other instances, and people may well raise those questions.

So to avoid that and to keep the sort of latitude that you're able to have when you have such a vague budget, you continue to present something which is not a budget at all. It shouldn't be called a legislative budget.

So, what we're trying to do with this bill is to make the Legislature detail and explain how it spends the public money. It's not your money. It's not my money. It's the public's money, and I think they've got a right to see how that money is being spent.

Now, we had quite some

contretemps of the mailing, abuse really of the mailing privilege, and I think we showed very clearly -- the Senate Democrats did -- that there was an abuse; that we had some members of the Majority who were able to send out mail that far exceeded the rules. We got up what we identified as a Million Mailer Club. One of our colleagues, good friend, somebody I respect, was very much offended, because mistakes were made so that in a relatively minor respect the amount mail that he sent out was overstated. He talked about this as a malicious attack, and he wanted investigation and so on. I just want to say to my friend -- he is not here -- I'd love to have an investigation of all of the mailing that is put out by this house. And why not? How can you justify it?

And I say to my friend here, you want an investigation, the first thing you ought to do is show how much mailings you sent out. Why shouldn't the public know the mailings that you sent out? But you can't find out under this particular budget.

And what makes the budget -- even obscure as it is and uninformative as it is, what makes it totally ridiculous is that both the Speaker and the Majority Leader have the right and the power to change allocation. You've only got about four or five categories, but they can change those. So even if we appropriate $3.5 million for mailings as was done in past years, you can spend much more. And in some years, the Senate Republicans have indeed spent much more than $3.5 million for mailings.

This year the mailing in the legislative budget is scheduled to be 4.5 million, but it's really a meaningless figure because you can spend however much or however little that you want to. You're under no constraint whatsoever. If you don't use the full amount, you roll it over next year. If you decide you've got an incumbent whose got some problems, you'll send out more mail for him, and you just take the money either from the reappropriation or shift it from another

category.

In other words, it's not a budget, not a budget at all and it cannot be defended. And if you just take a look at what other legislative bodies do. For instance, I have here -- this is the budget for the Legislature in Maryland. House of Delegates, Annapolis, Maryland. This shows what their budget is. Open up to a page. "Office of Majority Leader." Tells you exactly how much that office is going to spend. He has got an administrative aide. He's got a secretary. He has other personnel. The other than personal expenses also set forth. Why shouldn't that be the case here?

Congress -- Congress -- which is not anybody's model of a perfect legislative body, but they have a detailed budget, and the public wants that, has a right to expect it. Why not here?

Not only is the budget not detailed, but there is no backup material. Take a look at the judiciary. I've here on my desk

-- I'd pick it up but my back isn't strong enough to pick up what must be 10 or 12 pounds of documents. This is just to support what the judiciary asked for, and the Legislature has hearings on it. Senator Stafford sits there, and he asks very searching questions, and he's working hard to protect our money to see that the judiciary doesn't come in with requests that are unreasonable.

And we say, "We want backup material." Don't come to us and say you're going to spend so and so much money. Prove that it's necessary. Show how it's going to be spent. Show the benefit to the people of the State of New York. And they come up with this 12 pounds of documents, and our staff pours through it. We look at it. We say, but wait a second. You don't need this secretary, and you got too many stenographers, and so on.

And that's our job. We ought to be doing that. We do it for every executive agency because, by God, our job is to protect the taxpayers money. But when it comes to the

legislature, no hearing, no backup material, no searching inquiry. It's just voted on. Whatever you want, you get. How do we justify it?

Aren't you ashamed of this sort of hypocrisy? And, indeed, there are members who joined our body last year, Senator Pataki, Senator Nozzolio, and others, who said I'm for a detailed budget. But I frankly haven't seen you do very much to carry out that promise you made, although you are going to have the opportunity in a few minutes to vote on the motion to discharge, and maybe you'll say, "Oh, I never vote for motions to discharge. I'm doing that through the committee system." Well, you know that's bunk.

This is the only chance to do it, and I hope that you're gonna cast your vote where your mouth was. But it shouldn't only be those members who maybe in the heat of battle decided to do the right thing. All of us ought to decide to do the right thing here as regards the legislative body.

The fact is, really, that we run here -- I say "we". I'm not responsible for any of this, certainly not for running this legislature. But we have, in New York State, the most secretive legislative body I think in the whole nation, and it's utter disgrace. It's abuse ridden because we have a basic inherent flaw, and that is the legislative budget.

That budget is not a budget in any sense of the word. It's a phony baloney of the worst order. We ought to end it, because it detracts from what I think we're really about and from what I think everybody here wants to do, which is, to meet our responsibilities.

So I plead, I beg you, I ask of you, I implore you, I will cojole you, and I will continue to get up on this floor and speak on it; and that is, join us in supporting a bill that will give us a legislative body with a detailed legislative budget.

If you don't want to do it through a motion to discharge, then do it. Let's see it. But you haven't done it yet.

This at this moment is the only vehicle that we can do it, and I ask the members of this body. Do the right thing. Support a detailed legislative budget.

ACTING PRESIDENT FARLEY: All in favor of Senator Leichter's motion to discharge.

SENATOR GOLD: Party vote in the affirmative.

SENATOR PRESENT: Party vote in the negative.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 24. Nays 35.

ACTING PRESIDENT FARLEY: The motion fails.

Senator Jones.

SENATOR JONES: Mr. President. I believe I have a motion to discharge up there, and I'd like to call up bill 6531.

ACTING PRESIDENT FARLEY: Secretary will read the title of Senator Jones'

motion to discharge.

THE SECRETARY: By Senator Jones, Senate Bill Number 6531, an act to amend the Legislative Law, State Finance Law, and the Public Officers Law, in relation to requiring disclosure of the manner in which public funds have been expended for personnel or property by the legislative and executive branches of state government.

ACTING PRESIDENT FARLEY: Senator Jones.

SENATOR JONES: Well, I would probably be safe in making the assumption if we're not willing to do an itemized budget we're probably not willing to do the quarterly accounting, either.

The budget is the plan. I am asking for an accounting of how we did spend the money. It at least would allow you to see how well we followed the plan.

It's clearly not new and unique. We've been asking for this long before I came here, and I know it's not something we won't

continue to ask for. It's not as though everybody else isn't doing it. I have in front of me the Congressional quarterly report, you know, which I spoke about last year; and, you know, people laughed, but you open up and you find out that your Congresswoman spends 32 cents on August 21st. Well, I'm sure the public doesn't need to know those kind of small numbers; but, certainly, there's something in between. What California does, the state of Wisconsin also has, quarterly -- or reporting, at least, on expenditures; and I guess I fail to see why the State of New York isn't willing to do the same.

This bill doesn't only require us, it asks for a work location report, and it obligates agencies to do the same. I don't see any reason why the public isn't entitled to know the work location, how many people work there, what their salaries are, equipment, and why they aren't able to see that on a list of expenditures.

So, again, I just see this as

another way of doing the right thing. We should be doing this. The public are entitled to have this information at their hands. We personally have to disclose, as I said earlier. You just filed or will be filing your income tax. You are going to have to show how you spent your money if you're claiming it on your tax. Why are we exempt as a body when we are spending other people's money not our own?

ACTING PRESIDENT FARLEY: On Senator Jones' motion to discharge, do you wish a party vote?

SENATOR GOLD: Party vote.

ACTING PRESIDENT FARLEY: Senator Present?

SENATOR PRESENT: Party vote.

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

THE SECRETARY: Ayes 24. Nays 35. Party vote.

ACTING PRESIDENT FARLEY: The motion fails.

SENATOR JONES: I believe I have

another motion up there.

ACTING PRESIDENT FARLEY: Would you read the title to Senator Jones' -

SENATOR JONES: 3704.

ACTING PRESIDENT FARLEY: 3704.

THE SECRETARY: 3704, by Senator Jones, an act to amend the Public Officers Law, the General Municipal Law, and the Education Law, in relation to restricting mass mailings by certain elected state and local officials.

SENATOR JONES: I can't quite believe I'm standing up here again mentioning the word "mail." Prior to coming here, I used to go to my mailbox and look for a letter from a friend or bills from my creditors or, even better, advertisement for a sale that I could rush out and spend money on.

Mail, thanks to all of you, has taken on a really new dimension for me. I will never look at it the same. The word "mail" will always mean to me -- and I assure you I will scrutinize all of it in the future to see if it does have a political connotation. You know, it

seems silly that we need to be talking about this; and yet it's such a simple issue when you look at it straightforward.

We put out some guidelines last year, and those guidelines -- remember I said the word "guidelines," because that's what they were. They weren't a law. And I remember one of my colleagues describing the debt reform we did last year as being comparable to Swiss cheese and full of holes. Well, so were our guidelines because, if you read the fine print, there's lots of reasons to exclude or change, all within the power of Senator Marino.

We don't trust the school districts. We sat here today, and we said we don't trust our local school districts to do the right thing, so let's make a law and make them do the right thing.

We say all the time we don't trust local governments do the right thing. Let's give them a mandate to make them do what we think is the right thing.

Well, I'm asking you today let's

not trust ourselves either. Let's put it into law and force ourselves to do the right thing.

It's very simple, three newsletters, 100,000 pieces of bulk mail, the same rule for everybody. Forty-five day cutoff prior to election.

It's simple. It's not complicated and there's no loopholes. So I'm saying, you know, if we want to impose standards on everybody else, then I don't see how you can do that without being willing to stand up and impose standards on yourself.

So I would ask you to look at this bill. Senator Leichter already told you this, as you well know, is our only avenue to even discuss these things. So I guess I'm asking let's put this to rest. I'm as tired of mail as you are. Let's put it to rest and do the right thing.

ACTING PRESIDENT FARLEY: Call the roll on a party vote for Senator Jones' motion to discharge.

(The Secretary called the roll.)

THE SECRETARY: Ayes 24. Nays 35. Party vote.

ACTING PRESIDENT FARLEY: Motion fails.

Senator Dollinger.

SENATOR DOLLINGER: There is a motion to discharge at the desk with appropriate notice given, and I'd ask that my bill, Senate Print 3705, be called up.

ACTING PRESIDENT FARLEY: Secretary will read Senator Dollinger's title.

THE SECRETARY: By Senator Dollinger, Senate Bill Number 3705, an act to amend the Public Officers Law, in relation to disclosure of records of the state legislature.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator -

SENATOR DOLLINGER: I would ask that my colleagues join me in an affirmative vote to get this bill onto the floor of the Senate so we can talk about the one thing I

think we all agree on, and I've sat in this chamber now for fifteen months. I've never heard anybody from this side of the aisle and I -- although I haven't heard a lot of debate from the other side of the aisle, I don't think I've heard anybody on the other side of the aisle say I believe in the concept of secret government.

I mean I'm willing to even conduct a little poll. I'm doing this without the concurrence of our Deputy Minority Leader, but maybe we can conduct a little poll. Does anybody on the other side of the aisle believe in secret government? I mean raise your hand.

I'm borrowing from Senator Jones' first grade class. She's told me that she used to do that when she wanted to find out how her pupils were thinking. Maybe I can ask. Is there anybody in the chamber who feels that secret government ought to be the way we do business in this state?

Okay. So we don't see any hands raised. I guess we all agree that the best way

to do it is through an open process of government and through providing as much information as we can to our constituents about how we spend their money.

Well, this bill provides you with the perfect tool to do that. I'd point out that I'm only following the footsteps of an already lauded leader, the President of the New York State Senate, who in 1974 authored a bill called the Freedom of Information Act, which was a bill that required everybody in the state, every other level of government, to open their books to allow the taxpayers to have access to their books.

In school districts, school districts couldn't spend money on themselves without disclosing it to the people. They couldn't take travel vouchers and fly around the world without having their vouchers subject to freedom of information. They couldn't spend money and hire staff without that being subject to freedom of information. They couldn't send out newsletters to their constituents advocating

yes votes on budgets without telling their constituents how much they spent for postage and printing.

All of that was required by this law for local governments, every other level of government be it counties or cities or school districts or fire districts or water districts. Everybody in the state had to buy into the concept of open government because this Legislature, this Senate, lead by the current President of this body, said that that was the right thing to do.

Except -- except -- we left a little tiny part uncovered, that little tiny part of state government called the State Legislature. Sort of a clever little thing to do. We mandate that everybody else open their books. We tell them they've got to do it, but we also send them one other message. You do it but we don't have to do it.

We don't have to do it. That's the way the law was written. Then all of a sudden, there is a court challenge last year.

Someone sues, asks for information, as Senator Jones described, about the mailings. They want to know is this mailing being used for political purpose?

The New York State Senate says no, we're not going to tell you what that mailing is. We're not going to tell you how we spend your money. We don't have to.

The lower court in this case held that they did. But this body, with the aid of taxpayer dollars, went off to the Appellate Division and defended the concept of secret government. Can't believe that we did it. We brought up a motion to deny the access -- the funds to do that.

But, no, we spent our money going to the State's Appellate Division and saying, "Uh-Uh Uh-uh, the rule of open government does not apply to us. We can keep our deliberations, we can keep our spending, all in secret.

Sure enough, it went to the Appellate Division, and the Appellate Division read the law drafted by Senator Marino, and they

concluded, "Oh, the Legislature has exempted itself." We don't have to disclose.

The amazing thing about it is, we sat here yesterday when the Ryan case came down, and the Court of Appeals in interpreting the New York State Constitution gave the benefit to a defendant of an inartful drafting of that statute and said, "Because their constitutional rights and their liberty interests are at stake, we're going to put a heavier burden on prosecutors." This Legislature jumped to the opportunity to redefine that legislation, draft it again, make it clearer, so that we could achieve the beneficial public purpose of not allowing a lot of people who were charged with drug offenses from walking out of jails or walking out of prosecutions.

What I am amazed at is that when the Appellate Division, Third Department, said to everybody in this state the State Senate can keep its deliberations in secret and spend your money in secret, no one from the other side of the aisle jumped up and said, "That's wrong. We

can't let that happen. We ought to change that law and open up the process of deliberation, open up the disclosure of records, because that's a public wrong."

It's wrong for the public to be excluded. It's wrong for us to tell the public, "You want our records? You can't have them. We're going to spend your money, and you can't find out how we do it."

It's wrong to do that. Nobody on the other side of the aisle is justifying that approach. I don't hear anyone debating that we should keep things in secret. I don't hear anyone debating that we should close our books and never let anyone see. But, yet, that's the effect of the law that's been in place since 1974. It's time to change it.

This bill will accomplish that change. What we have now in the State Legislature is a form of hide-and-seek government. We hide records. We don't disclose the records, and we send everybody else off to seek them in any other form that they can, be it

through the Comptroller's Office, or as the Legislative Task Force on Reform has tried to do through the United States Post Office, to try to pry off the lid of secrecy that is tightly wrapped on the top of this body.

It seems to me this bill raises a very simple fundamental question. What does freedom of information mean? It means that the information that you pay for, that a taxpayer pays for, ought to be available in a free way to the people who pay the bill. The message from a no vote on this bill is that the Majority in this house doesn't believe in freedom of information. You don't believe in it, you don't want it, you don't want to be held accountable to the same standard that every other elected official in this state is held to, and it seems to me it becomes the cruelest mandate of all to tell everybody else that they got to buy into the concept of freedom of information but we don't.

By voting against this motion, it seems to me that this body is declaring itself

in favor of the tyranny of secrecy rather than the access of freedom of information. It will continue. It is not right. It's not fair. I defy everyone in this room to go back to your constituents and tell them that you believe in the tyranny of secrecy in the State Senate and not in the freedom of information.

We bought into the concept in 1974, twenty years ago. The virtual anniversary, the twentieth anniversary of the Freedom of Information Act. Let's celebrate that anniversary. Let's celebrate the work of the Majority of this body twenty years ago, the work of the draftsman Senator Marino, by passing a Freedom of Information Act that declares that, at this level of government, we are supportive of an open process of access to information.

We will freely give our information away so that the taxpayers and the citizens of this state will know how their money is being spent and have greater confidence in our ability in spending that money.

It seems to me that this bill

inevitably flows from everything that has gone before. We would celebrate the twentieth anniversary of the Freedom of Information Act and do the entire state a great service by passing this legislation.

I will ask for your vote in the affirmative so that it can be put on the floor, and then I will ask for your vote in the affirmative so that we can send a message to everybody in this state that we're not hypocrits, and we don't believe in one rule for everybody else and another rule for ourselves, but, instead, we are consistent and committed to the concept of freely making information available to the taxpayers and citizens of this state.

Mr. President. I urge a vote in the affirmative on the motion to discharge.

ACTING PRESIDENT FARLEY: Secretary will call the roll on the motion to discharge. Party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes 24. Nays

35. Party vote.

ACTING PRESIDENT FARLEY: The motion to discharge fails.

SENATOR PRESENT: Any house keeping?

ACTING PRESIDENT FARLEY: Any housekeeping? Any motions on the floor?

(There was no response.)

Seeing none -

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

The Senate will stand adjourned until tomorrow, Thursday, at 11:00 a.m.

(Whereupon, at 2:43 p.m., Senate adjourned.)