ALBANY, NEW YORK

May 4, 1994

10:00 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Senators take your places. Let's all rise and join with me in saying the Pledge of Allegiance.

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

ACTING PRESIDENT KUHL: We have the very distinguished honor of being joined by Chaplain Richard Camp, who is the chaplain at the military establishment at West Point, and for the invocation. Chaplain Camp.

CHAPLAIN CAMP: Let us pray together.

We stand tall in these moments to applaud you, O God. You are the creator and sustainer of the universe. In a world uncertain about many things, we pause in this hushed moment of prayer sure of You and Your goodness.

We turn to You in our anxiety about the future, about the welfare of our state and our nation and our legacy to our children.

Give us wisdom that with Your

counsel, we will chart the course in accordance with Your word. And we ask Your guidance upon the men and women who serve here in the affairs of New York State. We remember too before You all those who lead and guide the colleges and the universities of and in New York, and today we pray for the United States Military Academy.

May our purpose remain clear, our mission noble and our product standing tall for what's right and good. In Your faithful name we pray. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 3rd. The Senate pursuant to adjournment, Senator Spano in the Chair upon designation of the Temporary President. Prayer by Bishop Muriel Grant of Brooklyn. The Journal of Monday, May 2nd, was read and approved. On motion, Senate adjourned.

THE SECRETARY: Hearing no objection, the Journal stands approved as read.

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 Johnson.

SENATOR JOHNSON: Mr. President, I've got a motion to make. I don't have the page number right before me, unfortunately, but it is Calendar Number 285, please remove the sponsor's star.

ACTING PRESIDENT KUHL: Sponsor's star is removed on Calendar Number 285.

Senator Velella.

SENATOR VELELLA: Calendar 472, Senate Print 6859-A, would you place a sponsor's star on that bill, please?

ACTING PRESIDENT KUHL: Sponsor's star is placed on Calendar Number 482.

The Secretary will read some substitutions.

THE SECRETARY: On page 5 of today's calendar, Senator Smith moves to discharge the Committee on Cities from Assembly Bill Number 8067-A and substitute it for the Identical Calendar Number 755.

THE SECRETARY: Substitution is ordered.

THE SECRETARY: On page 6, Senator Levy moves to discharge the Committee on transportation from Assembly Bill Number 9611 and substitute it for the Identical Calendar Number 762.

ACTING PRESIDENT KUHL: Substitution is ordered.

THE SECRETARY: On page 10, Senator Sears moves to discharge the Committee on Consumer Protection from Assembly Bill Number 8832-B and substitute it for identical Calendar Number 795.

THE SECRETARY: Substitution is ordered.

THE SECRETARY: On page 12, Senator Farley moves to discharge the Committee

on Local Government from Assembly Bill Number 6710 and substitute it for the identical Calendar Number 811.

ACTING PRESIDENT KUHL: Substitution is ordered.

THE SECRETARY: On page 12, Senator Skelos moves to discharge the Committee on Local Government from Assembly Bill Number 8460-A and substitute it for the identical Calendar Number 817.

THE SECRETARY: Substitution is ordered.

THE SECRETARY: On page 15, Senator Maltese moves to discharge the Committee on Crime Victims, Crime and Correction from Assembly Bill Number 7960 substitute it for the identical Calendar Number 834.

ACTING PRESIDENT KUHL: Substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, would you recognize Senator Larkin, please?

ACTING PRESIDENT KUHL: Senator

Larkin.

SENATOR LARKIN: Mr. President, I believe we have a privileged resolution at the desk. I wish it to be read in its entirety.

ACTING PRESIDENT KUHL: The clerk will read.

THE SECRETARY: Legislative Resolution, by Senators Larkin, Marino and all members of the Senate, celebrating the establishment of the United States Military Academy at West Point and calling upon Governor Mario M. Cuomo to declare May 4th, 1994 as "West Point Day" in New York State;

WHEREAS this legislative body is justly proud to celebrate the establishment of the United States Military Academy at West Point and to call upon Governor Mario M. Cuomo to declare May 4th, 1994 as "West Point Day" in New York State;

By an act of Congress on March 16th, 1802, the United States Military Academy was established within the borders of New York State on the banks of the Hudson River.

The Academy and its graduates are an integral part of the proud history of this state and nation.

The leadership and sacrifices of the members of "the Long Grey Line" have helped this country withstand countless threats to our cherished democratic way of life.

The alumni has -- have excelled not only on the battle field but in many fields of endeavor.

The Academy continues to provide our country with able and dedicated future leaders.

Its scenic campus is a mecca each year for thousands of visitors from across our state, continent and other countries.

The United States Military Academy is in the forefront of our state's outstanding institutions of higher learning.

Forty-five years ago, the late James T. McNamara, then a member of the New York State Assembly and a member of the Academy's class of 1939, was the author of the state

Legislature's first West Point Day resolution.

For decades, our nation has enjoyed the legacy of freedom, and the United States Military Academy at West Point has played a vitally significant role in the maintenance of peace and freedom.

These members of the august chambers are equally as proud to commemorate this event marking "West Point Day" in New York State; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to celebrate the establishment of the United States Military Academy at West Point and to call upon Governor Mario M. Cuomo to declare May 4th, 1994 as "West Point Day" in New York State; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Governor Mario M. Cuomo.

ACTING PRESIDENT KUHL: Senator Larkin on the resolution.

SENATOR LARKIN: Mr. President, on the resolution. It is an honor and privilege

to offer this resolution on behalf of the United States Military Academy at West Point.

This is a tradition, its 45th year, that we paid the respect and homage that is due to the Academy, its faculty, its staff and most important, its cadets. I want to welcome General Graves, the Superintendent of the United States Military Academy. I'm very proud that you have been able to join with us today, General Graves.

General Graves, ladies and gentlemen, is a graduate of the United States Military Academy. He's had a distinguished military career, serving in such famed combat units as the 82nd All American Airborne Division and also the 1st Infantry Division commonly referred to as the "Big Red 1".

General Graves has also served in many distinguished posts in the United States as well as abroad, and before assuming his position as Superintendent of the Military Academy, he was the number two man in the Joint Chiefs of Staff working closely with General Powell. In

1991, he became the superintendent of the academy. General Graves, it's an honor to welcome you here today.

You know, as we look at these young cadets, all of us should take a step back and reflect on their lives, not only of today but what their lives will be in the future. Will it be in Bosnia, will it be in Korea, will it be in Haiti, will it be back to Somalia or where it might be. These are the young people who have taken and will put four years in as a cadet and have a commitment for five years to their country. They will be the individuals, men and women on the front line, whether it is maintaining peace, humanitarian duties and some will eventually leave and lead private corporations and lead segments of government.

If you think about the Academy, you think about some of the great leaders that we've had. Just look, Pershing, Eisenhower, Patton, MacArthur, and when you look at the Desert, you think of General Norman Schwartzkopf.

These cadets, quite honestly, don't know what the future is, nor do we, but they have accepted the challenge and are willing to do it. We're truly proud of you, not just for being here. What we really want to say to you, is that we're proud that there are men and women and especially those of you, except for the first captain, who happens to come from Texas like the sup', of those of you from New York who thought enough about your life in the future and the fact that you wanted to be a part of something. You are a part of something that stands out. You're a visible sight. You are a sight for America. Two and a half million visitors come to the Point each year and they see you, and when they see you, they see America's finest.

Mr. President, I would like to acknowledge those who are here with us today. First, the Superintendent of the United States Military Academy, that is distinguished Superintendent Lieutenant General Howard Graves; the director of public affairs, Lieutenant

Colonel Don McGrath from the great county of Nassau; our cadet chaplain who you just heard from, Chaplain Camp; the aide to general Graves, Major Thomas Kassner, and a tactical officer - and for those of you who don't know what a tactical officer is, he's like your father, he runs you day and night -- Captain Woods; and from the public affairs office, Ms. Gascon right here.

The cadets that are with us today: Cadet Kristina Sinacori from Pomona, New York, Rockland County. Please stand up as I call your name. Cadet Wang John Hwang from Flushing, New York; Cadet Katharyn Kilbride from Garden City; Cadet Kyle Jette from Amsterdam; Cadet Deidre Spence from Liverpool; Cadet Tiffany Havasy from Scotia; Cadet Bradley Harrison from Briarcliff Manor; Cadet Gregory Yatarola from Dolgeville; Cadet Kristen Carlson from Staten Island; Cadet Adrian Rodriguez from the Bronx, and the leader of the corps of cadets, the first captain, Howard Hoege of Kingwood, Texas.

Ladies and gentlemen, the Military Academy at West Point.

(Applause.)

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery, Senator Larkin still has the floor.

SENATOR MONTGOMERY: Oh, I'm sorry. I thought you sat down, Senator.

ACTING PRESIDENT KUHL: Senator Marchi indicated a desire to speak. Did you want to speak also on the resolution, Senator Montgomery?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: I'll yield to you first.

SENATOR MONTGOMERY: Thank you, Senator Marchi.

I'll be very brief. I just wanted to especially compliment this group of cadets because I see there are a number of

women, and I think that more than ever, we're going to need those women in the military because the kinds of conflicts that we are experiencing across the world, I think are going to -- it's going to make a difference that we have women there. We saw how important and how significant it was that women were in the most recent -- in our most recent involvement as a military conflict situation, and so I just want to welcome you as a woman who sometimes I feel that I'm also in the military here in the Senate in many ways. We have our own battles to wage as women here, and so I want to reach out to you and say, welcome, congratulations, not to diminish the men but certainly to lift up the fact that we have women there, and I would also like to especially welcome the cadet from Texas. In my other life, I was a Texan, so I'm a New Yorker now, but I love -- I still love Texas. Welcome. Welcome. Welcome.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: Mr. President,

Senator Montgomery called our attention to the fact that we now have a term that we can't use anymore, I guess the distaff side in rich measure and, of course, one of them is from the county of Richmond.

I was reminded -- I was reminded in observing the Senator's remarks that we have a comparable experience here on this floor with our own bases of operation and our own tactical maneuvers and battles hopefully coming out with products that in some way reflect basic needs and goals and objectives.

I remember Senator Brydges who was the Majority Leader of this house many years ago, said that -- quoted Oscar Wilde in describing our own life and is somewhat descriptive of your own, that "He who lives more lives than one more lives then one must die", because you are engaged in a total experience that becomes so much a part of you, that when you leave it or you separate yourself from it, it -- it's a kind of death. On the other hand, it's redeemed completely and given total

vindication in the prayer that the chaplain gave us, and that is the moral, the moral and spiritual element that is central to your purpose, central to your motivation, and your role in defending freedom and defending world peace.

This is a tremendous responsi bility that you are carrying, and if you keep alive that flame of faith, that spiritual faith that has sustained great leaders and great people that have ever come out of the Academy, whatever their roles, whether they exercised the highest levels of responsibility or intermediate levels, all of them had a profound effect, not only on results which we hope furthered the cause of freedom and peace, but also in regenerating the spirit of mankind, the humanity itself that we are dedicated to this principle and you are active agents in protecting it, shielding it, and ensuring that it remains central to our purpose as a nation and as a people.

I'd just like to have my remarks

joined with the others that have been made because they certainly -- I address you as a grandfather, not even a father would -- each and every one of you, and in you I see so much hope of what is good and best for this country in the future.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm very proud to rise and greet Deidre Spence from my district, and I want to speak in a little different vein than what's been said before.

You know, unfortunately, what we see and hear most in the media and even on the Senate floor or anywhere you go is all the problems of this world and all the dim future that we had because people don't have responsibility anymore. They don't act responsibly. They don't act with character. They don't act with dignity or just plain sensitivity, and I just met Deidre at 10:00 o'clock this morning, and unfortunately, I didn't get a chance to speak with the other

cadets, but I'm sure the same can be said for them.

You get this great feeling being around them that there is a future for this country, there is a future, that we do have people like this that are disciplined, that are responsible human beings, that are going to help make this country even greater than it is now, so I welcome all of you and congratulate all of you and thank you for coming, in a personal sense that it makes me feel good that maybe we do have the future that I hope we have for my children who happen to be your ages as you sit there today.

And thank you and congratu lations.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Mr. President, I rise to join my colleagues in recognizing West Point and the fine young men and women who have joined us today as cadets.

I represent the city of

Watertown, Jefferson County area in my district that serves as home to Fort Drum and the 10th Mountain Division, and I hope and know that many of these young men and women will at some time during their military career spend time at that assignment and spend time in my community, and I'm sure they will, as their predecessors have, distinguished the uniform and the nation that they serve and blend in with that community and make it a strong integral part of New York State, and I would remind my colleagues that while we're recognizing West Point today, that it too is not only a military installation in this state that provides certainly our officer corps and the leadership, but it also is an important part of the economy of this state as are the other military installations.

It's an important aspect that when we're recognizing these young men and women, we also recognize the Army itself, its involvement in New York State and reinforce New York State's commitment to support the United States Army, the other military services and the

important role that they play in this state.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: Thank you.

I rise also to say how happy I am to participate in the day with the young cadets from West Point and the former cadets who are now our military leaders at the Point. I'm part of their generation.

Quote, "A man who has never lost himself in a cause bigger than himself has missed one of life's mountaintop experiences." I had my staff send that quote to me last week because I thought I might have occasion to use it. I was late and I didn't get a chance to use their quote, but a week ago today we read our resolution in this chamber and adopted it, went to the steps of the Capitol and participated in a 21-gun salute honoring Richard Milhous Nixon. The quote I just read to you is from Former President Nixon.

That brings me to something that

happened this morning, a memorial for deceased members of the Legislature. All of this is new to me. You have to understand I'm a freshman and so as a freshman, everything I do is a new experience and I'm putting it all together with what I hope will be a mountaintop experience for me some day here in this chamber. The rabbi in that memorial service reminded us of the Thornton Wilder play, "Our Town" and the character Emily. If you haven't read it lately or if you haven't read it at all, I would recommend that you read it because the message from Emily is to remember to live life while you are living it, and you're at the beginning of some very interesting lives, and that play will be -- will speak to you at age 21 or 22. It will speak to you at age 50 because the message is clear. Remember to live life while you are living it.

My staff person who sent these quotes to me didn't know what I was going to want and offered me two quotes to use last week had I needed or been able to use those quotes,

and I would like to close with the following which was a second quote that was sent to me, and I think that message is also very clear.

Quote, "There is something better, if possible, that a man can give than his life; that is his living spirit to a service that is not easy." President Woodrow Wilson. I believe sometimes your service will not be easy, but the spirit in which you live that service will be an honor to all of us and to you all who are doing it so gracefully and with so much good heart and with such high hopes.

Thank you for being what you are.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I'm not ashamed to say that I'm old enough to remember some of those great old movies, the "West Point Story" and all of those which were at a time when you see a movie and you didn't have to worry about crazy endings but they were just wonderful

stories and you felt great to be an American when you saw these -- these movies.

And this is always a good day for us in Albany. I look at these fine young people and understand that with what we are giving them, they unquestionably have an obligation to us. On the other hand, what is really more important is that we in government have a great obligation to you. If you do well, what you are being taught, the skills you are learning turn out to be one of our greatest weapons, if not our greatest weapon.

Senator Larkin referred to your accepting the challenge, and obviously by accepting that challenge, it challenges us to keep the world free so that the ultimate sacrifice is not called for by any of you wonderful people, for any American citizen or, indeed, anybody. But your skill and your dedication and your acceptance of that challenge used properly by the citizens in government, keep all of us safe, my family, my children, God willing, some day my grandchildren.

So it is with the deepest respect and honor that we have you here today and that you grace our chamber, and I wish the Academy well, and particularly the people who have joined us today. May we all wish you Godspeed.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Sears.

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

I rise to also greet the contingent of cadets and the General up here today on "West Point Day" and, especially, I would like to recognize Gregory P. Yatarola from Dolgeville which is in my Senatorial District in the 47th Senate District.

Many, many great men have come before you, and I'm sure many more will come after your term in the military. I was very fortunate in having served under one of the great generals of the United States of all time in my opinion. I went in with Governor - General MacArthur at Inchon, and I know of his capabilities because I was there to serve with

him, and maybe I didn't agree with the final decision on his coming back to the States because I believed as he did that you were in the war to win, and that was the only reason you were there.

But I certainly want to commend all of you, General, and all of your cadets and all of the people that you work with because if there's one thing that this country needs today perhaps more than any other time, it's certainly not down-sizing our military. We must maintain a strong military if we're going to be the leader of the world, and for all the work that you do along those lines, I commend you and I welcome you. Godspeed.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President.

As chairman of the Veterans Committee, I would like to welcome you here today and say how very proud we are of you. I would also like to make a point to you that I'm

sure that it's much easier to get into this body, into the Senate, than it is to get into the Point. So, you've all probably excelled and far surpassed anything that anyone here probably could have attained, so you should be proud of that.

I'd also take this opportunity to remind everybody in this chamber, we talk about how proud we are of you now, but I would remind everybody that we should also remember you as you're here today when we deal with affairs of veterans. You've got many years to serve and many years before you to get to that point, but I would remind everybody that we're proud of you now, but we should also be proud of you when you are retired and when you are veterans, and we should always keep that in our minds, and I assure you that many of us here feel that way, that in your active life and when you retire and you're veterans, that we will be here to support you and congratulations.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Larkin to close on the

resolution.

SENATOR LARKIN: Sir -- Mr. President, before I close, I would like to apologize. Cadet Eric McAllister from Cobleskill, please. Senator Cook will give me heck. Thank you very much.

Mr. President, my colleagues, again on behalf of all of us, we're honored that you would be here today. We wish you Godspeed. We wish you good luck. We wish you a career as you pursue the finishing of your studies at the Academy and your ensuing five years of commit ment, and we wish that you, as you enter that phase, will look at peace, the symbol that you're working for, because you as strong leaders will help us preserve peace, not only for us here in America but for the world. You are America's finest and we salute you.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor, signify by saying aye.

(Response of "Aye".)

Opposed?

(There was no response.)

The resolution is adopted unanimously.

General Graves, on behalf of Ralph Marino, the President Pro Tem of the Senate, Senator Larkin and all of the members of the house, we congratulate you on what you do. You do it so well.

And thank you for bringing the cadets and your faculty members to share just a bit of yours lives with us. You can see from the outpouring of the members that it's - you're very, very inspirational to us. Thank you for sharing the intellect of the Corps, and certainly their enthusiasm that reassures us for the brightness of America.

Thank you for being here.

(Applause.)

ACTING PRESIDENT KUHL:

Senator Present.

SENATOR PRESENT: Mr. President, would you recognize Senator Libous?

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I have a privileged resolution at the desk, and I waive its reading and ask that just its title be read and be adopted, please.

ACTING PRESIDENT KUHL: The clerk will read the title of the special resolution.

THE SECRETARY: Legislative Resolution, by Senators Libous and Cook, commending Colchester Holdings, Incorporated upon the occasion of its designation as "New York State's Small Business of the Year".

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Wright.

SENATOR WRIGHT: Mr. President,

on behalf of Senator Lack, I wish to call up Bill Print Number 6694, recalled from the Assembly which is now at the desk.

THE SECRETARY: By Senator Lack, Senate Bill Number 6694, an act to amend the Penal Law, in relation to conditional sentencing.

SENATOR WRIGHT: I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is before the house, Senator Wright.

SENATOR WRIGHT: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Present.

SENATOR PRESENT: Would you

recognize Senator Kruger, please?

ACTING PRESIDENT KUHL: Senator Kruger.

SENATOR KRUGER: Mr. President, I ask for a privileged resolution to be adopted unanimously, Number 3488. I waive its reading.

ACTING PRESIDENT KUHL: The resolution is at the desk. The clerk will read the title.

THE SECRETARY: Legislative Resolution, paying tribute to Sister Jane Talbot, R.S.M., Adele Millstein, Anthony Giordano, the late John F. Carroll and the Bensonhurst Council of Jewish Organizations.

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor, signify by saying aye.

(Response of "Aye".)

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President,

let's take up the non-controversial calendar, please.

ACTING PRESIDENT KUHL: The clerk will read the non-controversial calendar.

THE SECRETARY: On page 27 of today's calendar, Calendar Number 501, by member of the Assembly Lentol, Assembly Bill Number 6875-A, Civil Practice Law and Rules and the General Construction Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 640, by Senator Volker, Senate Bill Number 3825-C, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 659, by Senator Seward, Senate Bill Number 7410, authorizing the State University of New York to lease certain lands.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 663, by member of the Assembly Pheffer, Assembly Bill Number 825.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 670, by Senator DiCarlo, Senate Bill Number 6378 -

SENATOR DiCARLO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 674, by Senator Stafford, Senate Bill Number 7538, proposing an amendment to the Constitution, in relation to exchange of certain forest preserve lands.

ACTING PRESIDENT KUHL: Last section. Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator

Gold.

SENATOR GOLD: Yeah, I asked Senator Stafford to lay this bill aside yesterday because we have been told that there was a group who wanted to file a memo on it. We have nothing, and I just wanted to thank Senator Stafford again for his courtesy. I vote aye.

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The resolution is adopted.

THE SECRETARY: Calendar Number 685, by Senator Volker, Senate Bill Number 3907-C, an act to amend the Criminal Procedure Law, the Penal Law and the Civil Practice Law and Rules.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR DeFRANCISCO: Explain my

vote.

ACTING PRESIDENT KUHL: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: On calendar 685.

ACTING PRESIDENT KUHL: We're on Calendar 685, that's correct, Senator.

SENATOR DeFRANCISCO: This is a very extensive bill and it has many, many more good qualities than bad, but I would just like to state for the record, there is a bad quality that I hope gets corrected in the final process in the negotiations and before it becomes law, and that concerns the statute of limitations for civil actions.

Basically, the language of the statute of limitations for civil actions is that you can commence a civil action under this statute up to three years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the childhood sexual abuse, whichever expires later, so it's conceivable that someone

who realizes after seeking some treatment or realizes from whatever method or means when they're in their advanced age that something may have happened and they just discovered the causal relationship and then the three years begins to run. I think this is a very bad section, that it's a section that is not needed, and it extends the statute of limitations really to the point of making -- there are no statutes of limitation in these cases, so I would hope that that would be corrected and the statute of limitations with respect to civil actions would be modified in the negotiation process.

ACTING PRESIDENT KUHL: How do you vote, Senator DeFrancisco?

SENATOR DeFRANCISCO: I vote aye.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: With my apologies to everyone, I understand that Senator Galiber may have had a question on this bill. I'm trying to check it out now, and I understand the

circumstances -- what? On the other hand, what's the vote? We just took care of the -

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 689, by Senator Sears, Senate Bill Number 5740, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 690, by Senator Velella, Senate Bill Number 6541-A, an act to amend the Penal Law and the

Criminal Procedure Law, in relation to forgery.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 692, by Senator Maltese, Senate Bill Number 7 -

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 695, by Senator Volker, Senate Bill Number 7483, an act to amend the Civil Practice Law and Rules, in relation to notice to defaulting party.

ACTING PRESIDENT KUHL: Last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 697, by Senator Padavan, Senate Bill Number 7496, an act to amend the Penal Law and the Administrative Code of the city of New York.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 699, by Senator Volker, Senate Bill Number 7574, Crim...

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

706, by Senator Holland, Senate Bill Number 6500 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 708, by Senator Daly, Senate Bill Number 7477 -

SENATOR GOLD: Lay it aside, please.

SENATOR PRESENT: For the day.

PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 711 by Senator Padavan, Senate Bill Number 6784, authorize the commissioner of General Services to sell or lease certain land in Queens County.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 715, by Senator Daly, Senate Bill Number -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 717, by Senator Daly, Senate Bill Number 5200 -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 721, by Senator Johnson, Senate Bill Number 73...

SENATOR JOHNSON: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

SENATOR JOHNSON: Also Calendar Number 722.

ACTING PRESIDENT KUHL: Calendar

Number 722 is laid aside for the day.

THE SECRETARY: Calendar Number 726, by Senator Seward, Senate Bill Number 5135, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 727 by -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 729, by Senator Farley, Senate Bill Number 1594, an act to amend the Banking Law.

ACTING PRESIDENT KUHL: Last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: I would like to ask to be excused from voting on this bill.

ACTING PRESIDENT KUHL: Without objection, so ordered.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present, that completes the non-controversial calendar.

SENATOR PRESENT: Mr. President,

can we take up the controversial calendar?

ACTING PRESIDENT KUHL: The clerk will read the controversial calendar.

THE SECRETARY: On page 33, Calendar Number 670, by Senator DiCarlo, Senate Bill Number 6378, an act to amend the General Obligations Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator DiCarlo, an explanation has been asked for by Senator Dollinger.

SENATOR DiCARLO: Yes, Mr. President.

Last year there was a highly publicized case which saw a convicted mugger receive a $4.3 million judgment in a civil action against the Transit Authority in New York City and a police officer. It isn't often that such an outcry is heard about such happenings.

In the Penal Law there is something called a justification, and when a police officer, while doing his duty, causes injury, justification can be made and criminal

liability is put aside.

This bill basically says that there is an assumption of risk in a tort action against the police officer or peace officer while doing their job. If they live up to the three elements that are also found in the Penal Law, the elements being that the injury occurred during the course of an arrest or preventing escape from an arrest, the defendant reasonably believed the plaintiff committed an offense and the justification defense would have applied in a criminal prosecution against the defendant for the same conduct.

Now, I might like this bill to have reversed what happened last year in the award. The Court of Appeals has spoken to that, and this bill honestly probably would not have changed that verdict, but what this bill says is if a police officer can show that he was justified and followed all three elements, then that that would be an assumption of risk by the plaintiff in a tort action, and that the defendant in a tort liability could use that as

he would use it in a criminal case.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Can I just ask Senator DiCarlo one or two short questions?

ACTING PRESIDENT KUHL: Senator DiCarlo, do you yield?

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator DiCarlo yields.

SENATOR GOLD: Senator, I'm not sure if I misunderstood you. Did you say that if your bill were the law, it would have or may not have changed the result in the Court of Appeals case?

SENATOR DiCARLO: Yes, it would still be left up to the jury to decide whether the defendant in this case, the police or peace officer was justified under the same guidelines where we have in the Penal Law, so under the McCummings case if you read the fact pattern in the McCummings case, clearly or not so clearly

the police officer shot the mugger, did not see the actual crime take place. The mugger was shot down at the bottom of some steps, and this would be up to the jury to decide whether the assumption existed or not, so would it have applied to the McCummings case? It might have, it might not have, but that would still be up to the jury to decide. This basically just gives the defense, the police officer, something to look at and his attorneys to show a jury and say, "Under criminal law, this is the case. You can use this now under a civil tort action."

SENATOR GOLD: If the Senator would yield to one more question.

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: The Senator does.

SENATOR GOLD: When I started to look at your bill and, of course, I know the case you are talking about, but many of us are very upset with a -- with an investigation going on in Staten Island right now, and the mayor of the city of New York was very clear that no one

should pre-judge that situation, and I think people don't want to, but with the advent of the Camcorder, we find now that there are more and more amateur people taking pictures, and we're finding out some things which maybe we don't even want to know but, at any rate, your bill says that the items are (1) the injury sustained by the plaintiff arose in the course of attempting to effectuate the arrest, okay, or in attempting to prevent the escape, that now we get to the second part. The defendant reasonably believed the plaintiff to have committed an offense.

Now, that doesn't say, as I read it, that he had to see that the defendant committed any offense, that he just had reasonable cause to believe, which I think is a basis under the law today for a police officer making an arrest, isn't that true, sir?

SENATOR DiCARLO: Yes, that is correct.

SENATOR GOLD: Yeah, so that is -- that is just -- I want to be clear what

we're doing. That merely restates the law. We're saying, if you got a police officer and he's trying to make an arrest which that's what we have them there for, and he's making it because he has reasonable belief that the defendant committed an offense, and again, that is the law. Then we get "and", and this is where we are. "The actions of the defendant --" meaning the police officer "-- were such that in any criminal prosecution against that police officer, the defense of justification would have applied", am I right?

SENATOR DiCARLO: Correct.

SENATOR GOLD: Senator, what I don't understand, I think -- I thought and I may be wrong, that that is basically the law today.

SENATOR DiCARLO: That is the law but that, as the law stands now, only applies in criminal cases in the Penal Law. That does not presently apply in a civil tort action. We're basically saying that if this law can be applied in a criminal case, that it should also be a defense in a civil case.

SENATOR GOLD: That's what I'm getting at.

SENATOR DiCARLO: So we're taking the law in the criminal case and we're making it good in a civil action.

SENATOR GOLD: Senator, I must say, so far I'm not offended by your language at all. What I'm trying to find out is -- and perhaps this would make it easier for us. The court -- did the Court of Appeals say, Senator DiCarlo, that if it was a police officer with reasonable belief and if he used the proper force and it was all reasonable, et cetera, that that is not a civil defense today?

SENATOR DiCARLO: My under standing in the Court of Appeals ruling that this does not apply in a civil action, and that is from the Court of Appeals decision. Thus, we find it necessary to put it on the book so it can be used as a legitimate defense.

SENATOR GOLD: Thank you, Senator DiCarlo.

ACTING PRESIDENT KUHL: Senator

Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, on the bill.

I think Senator DiCarlo's observation about whether the defense of justification would apply in this instance is correct. Based on the facts as I know them in this case -- and I'm going to read just a summary of those facts so everybody understands. I think that the reaction in New York State has been this has been an outrageous verdict, but I think when you look at the facts in a little greater detail, you understand why the defense of justification, that at least in my understanding in the trial court was presented to the jury was nonetheless rejected by the jury and the court found in favor of the plaintiff.

The plaintiff in the civil action against the Transit Authority, McCummings, admitted that he was engaged in robbing and beating a victim but claimed that after being alerted by his lookout in this robbery, he broke

off the assault and fled down the other staircase in the opposite direction. He stated that he was some 17 to 20 feet away from Officer Rodriguez when he was shot in the back. The plaintiff denied that he ever lunged at the officer. McCummings denied that the claim made by Rodriguez, the officer, was that McCummings had lunged at him while he was trying to effectuate an escape. The plaintiff denied that.

The plaintiff's medical expert testified that McCummings' spinal cord was immediately transected by the bullet, and that he instantly lost all weight-bearing capability, and since he was found at the bottom of the stairs, that's where he was shot. Now, it's undisputed that he was shot in the back. The defendant, the Transit Authority, offered no credible medical evidence to the contrary.

Officer Rodriguez asserted that despite the plaintiff's wounds, the plaintiff was able to run down the staircase before collapsing. The officer's version is that "He

lunged at me, I shot him. He ran away and fell, collapsed to the bottom of the stairs."

On the direct examination of Officer Rodriguez, the jury heard him testify about three prior incidents involving the use of his firearm. The shootings were found to be justified by the Transit Authority. Officer Rodriguez twice before had shot at fleeing suspects and missed, the first time firing twice, the last time he emptied his entire revolver. On another occasion, Officer Rodriguez had shot and killed this stray dog which apparently was rummaging through a garbage can on the Transit Authority property.

The defense of justification was presented to the jury. The jury rejected it and bought the version of the plaintiff who had been incarcerated for three years as a result of having been convicted of the robbery and found that excessive force had been used against him, and consequently the Transit Authority was responsible for $2.5 million in damages.

From my point of view, the facts

of this case are such that even had the law that we're about to pass been in effect, if the jury had believed that the victim was 17 to 20 feet away from the officer and running away when the officer shot him in the back, this law would not change that conclusion. It wouldn't change McCummings.

So, as I see Senator DiCarlo's proposal, it would enshrine the justification of defense into law, but it wouldn't go quite far enough to accomplish the goal of providing victim -- the victim with some possibility of relief because I think the key thing here is that while McCummings is awarded $2.5 million in damages from the Transit Authority for the injuries he sustained because the officer used executive force, the person who was involved in the original mugging, Sandusky who's on the floor having been beaten up and robbed, he doesn't have the ability to get access to those funds to what some people interrupt as a windfall, other people would interpret as compensation for damages.

That's why, Mr. President, I have at the table an amendment to this bill, an amendment which would do two things if -

SENATOR GOLD: Mr. President.

SENATOR DOLLINGER: Okay, I'll pause for a second.

ACTING PRESIDENT KUHL: Senator Dollinger wishes to offer up an amendment?

SENATOR DOLLINGER: Yes, I believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: Do you have two, I understand? Could you tell the desk which one you wish to take up first?

SENATOR DOLLINGER: Well, in the interest of time -- if I can pause one moment, Mr. President?

ACTING PRESIDENT KUHL: Certainly.

SENATOR DOLLINGER: Number 2.

ACTING PRESIDENT KUHL: We're going to proceed with amendment number 2?

SENATOR DOLLINGER: Yes.

ACTING PRESIDENT KUHL: All

right. There's an amendment at the desk. The clerk will read -- you're going to waive the reading?

SENATOR DOLLINGER: Waive the reading of the amendment, Mr. President. I'll explain the amendment briefly.

ACTING PRESIDENT KUHL: Fine.

SENATOR DOLLINGER: This is an idea -- this amendment incorporates two items.

ACTING PRESIDENT KUHL: Senator Present. Excuse me, Senator Dollinger.

Senator Present -

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: -- why do you rise?

SENATOR PRESENT: We have reviewed Senator Dollinger's proposed amendment. I would like to make a point of order. Senator Dollinger's amendment to Senator DiCarlo's bill is out of order since it violates Rule VI, Section 4(b) in that it is not germane to the original object or purpose of Senator DiCarlo's bill. Senator Dollinger's amendment

consists of proposed changes to provisions of the Executive Law which are not consistent or germane with Senator DiCarlo's bill.

Therefore, I'd ask that you rule Senator Dollinger's proposed amendment being out of order.

ACTING PRESIDENT KUHL: Senator Dollinger, I have -- knowing that your amend ments were being prepared and were going to be offered up -- reviewed it. I'm aware of Senator Present's objection. Having reviewed the rules of this chamber would suggest that Senator Present's objection is well taken and would rule your amendment not germane and out of order.

SENATOR DOLLINGER: Mr. Presi dent, can I appeal the ruling of the Chair and be heard on the issue?

ACTING PRESIDENT KUHL: That you can.

Senator Dollinger, on the appeal of the ruling of the Chair.

SENATOR DOLLINGER: The amendment that's before the house currently does, in my

judgment, the one thing that Senator DiCarlo's bill -- and I am prepared to vote in favor of that bill -- in enshrining into the statutory law of this state, a principle that says municipalities can be insulated from liability, civil liability, in instances in which the justification of defense is proven to the satisfaction of the jury. That would immunize the municipalities, the agencies and authorities that are acting in the function of the police power, would immunize them from tort liability.

But it seems to me that the other step that Senator DiCarlo's bill doesn't take is a step that's been advocated by Senator Jones in Monroe County, by many of us for crime victims, and that's to do two things. One is to open up the door and expand the definition of the profits of a crime in the Son of Sam Law, which is Senator Jones' bill, to include compensation, compensatory damages or punitive damages that are obtained by a perpetrator of a crime during the course of a crime or an attempted escape. That would expand the definition of profits of a

crime to include another category which would be available for the crime victim to recover against.

The other thing that this amendment does which is again, I think, germane to the issue of crime victims and what tort liability flows from crime victims either immunizing municipalities or extending tort liability so that there would be available funds for the victim of the crime, Mr. Sandusky, the man who's left on the floor, who's been robbed and beaten in this case, would be to extend the statute of limitations, and it relates directly to the McCummings issue because under McCummings, it appears as though Mr. Sandusky, who now may have the ability to have a claim against Mr. Cummings because he's now received a substantial amount of money for his compensatory damages, the statute of limitations may have expired and cut off his ability to recover.

So, what the amendment does in respect to the statute of limitations is it extends it three years, not only from the period

of time that the funds are supposedly available, which is the current ruling under the Son of Sam Law, but extends it three years from the time that either a judgment is entered in favor of the perpetrator of the crime or three years after a final appealable order -- non-appealable order is issued by a court on appeal.

We would extend the statute of limitations so we don't put Mr. Sandusky in a position where he's got to make that judgment immediately upon when the funds are, quote, "available". It would extend the period of time. It would open up the possibility for victims of crimes to be able to recover when their perpetrators have recovered tort damages.

I look at this as an outgrowth of the exact same issues present in the McCummings case. It's something that I know Senator Jones and others have worked on. It's an issue that I think is ripe for a complete resolution, not a partial resolution by simply immunizing the municipalities, but by making available to crime victims in what I believe is a germane approach

to the whole issue, the series of issues raised in the McCummings case is to make greater opportunities available for crime victims, the people who are injured by the perpetrator to be able to recover damages.

So, I'm disappointed that the majority doesn't see the linkage in what I believe is the -- not only the relevancy but the direct germaneness of providing crime victims with recovery while we're immunizing munici palities from tort liability, so I dispute the determination that it's germane.

I would ask my colleagues to vote in favor of overturning the ruling of the Chair on the issue with respect to germaneness.

ACTING PRESIDENT KUHL: Senator Leichter, you have a question on the -

SENATOR LEICHTER: Yes, yeah, Mr. President. On the issue of your ruling, and what I really want to do is to try to clarify it in my own mind, get an understanding. I would like to ask Senator DiCarlo if he would be so good as to yield, and I want to preface it by

saying that I have very fond memories, Senator, of debating your father and, as you know, people who served here with him. He was one of the most able debaters that this Legislature has seen, at least in modern times. It was a great pleasure to serve with him. The other thing I remember was his openmindedness and his fairness.

SENATOR DiCARLO: You didn't know him.

SENATOR LEICHTER: And I know the -- I know the fruit never falls far from the tree, so we'll expect that same sort of approach from you but, Senator, if you would be so kind as to yield to a question.

ACTING PRESIDENT KUHL: Senator DiCarlo, do you yield to Senator Leichter? The Senator yields.

SENATOR LEICHTER: Yeah, I supported your bill in committee, but it does seem to me that the good Senator from Monroe County, Senator Dollinger, really raised a very good point and one that I think would make your

bill an even better bill, which is that in those instances where the jury should reject the defense of justification, and we find that someone who had broken the law nevertheless now finds himself the beneficiary, if you will, of a jury's largesse, why shouldn't the crime victim at least have an opportunity to share in that? The example in this case is that Mr. Sandusky, the victim who was left bleeding on the subway platform, shouldn't he now recover from Mr. Cummings?

I guess we can't make this retroactive, but if such a situation arises in the future, my question to you is, why not accept the amendment and amend your bill, bring it back in three, four days, have it pass unanimously. It will be a better bill, and that's really my question to you. We can forget all of the parliamentary debates, and so on.

SENATOR DiCARLO: Senator -- Mr. President. First let me thank you for the kind words about my father.

SENATOR LEICHTER: And you.

SENATOR DiCARLO: Thank you. And let me just assure you that I am no match for my father in debating skills as will probably be seen during the course of the session.

I happen to -- I'm pleased that you support my legislation, and I like the bill as it is presently. I think it's such an important issue that we pass this in both houses right now and it becomes law, that I think that the form that my bill is in is the way I want to see it go through.

I listened to Senator Dollinger and I can understand his position, and his position seems to make sense but not as pertains to my legislation. I would be very happy to look at Senator Dollinger's bill or Senator Jones' bill as pertains to this, and I could see myself being supportive of such legislation, but for today, and for my legislation and for what I want my legislation to do, I think that the Senator's amendment doesn't fit what I'm looking to do at this point, but again, it has merit, as far as I'm concerned, as a bill and I would look

at it.

SENATOR LEICHTER: Well -- Mr. -

ACTING PRESIDENT KUHL: Senator Leichter, are you asking Senator DiCarlo to continue to yield?

SENATOR LEICHTER: No, I -

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I just wanted -- I think on the ruling.

ACTING PRESIDENT KUHL: On the ruling, right. It's hard to tell from your question, Senator, but continue, please.

SENATOR LEICHTER: Thank you, Mr. President.

I'm disappointed that, you know, once again we find, even by a new member and one with such an illustrious name, this same ap proach that anything that the Majority brings to the floor is so perfect, it cannot be improved upon, and as we saw yesterday, even when it appears not to be perfect, it never needs to be justified. I think that's unfortunate, but I

have difficulty in understanding your ruling, Mr. President, and I know how fair and openminded you are, sir, and -- but why can we not -- taking a bill that addresses itself to the issue of municipal liability where an officer of that municipality takes an action which that officer may consider justified, or the issue is presented to the jury, why can we not also deal with the -- one of the consequences of where the jury finds the justi fication doesn't exist? We got a crime victim, a crime victim that should be compensated. Why rely on the super technicality, which I don't think is correctly applied in this instance? I have difficulty in understanding why the Majority would try to keep this bill or this amendment from coming up.

Mr. President, I suggest to you that if you take a look at the purpose of the amendment, it certainly fits into the purpose of the bill to the overall structure of the bill and should be -- should be properly before us. As I -- as I further said, it should be accepted

by the Majority but certainly to keep us from even considering it on, I think, a misplaced techni- cality, I think is unfortunate.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Yes, I would like to speak on the ruling. I guess -- I certainly understand that perhaps mace and assault rifles are stretching it a bit, but I guess I'm really confused as to why these do not relate.

I'm very, you know, supportive of Senator DiCarlo's bill. I myself am not a lawyer so I really did not approach the same situation, although I was greatly outraged as you were. I definitely looked just at the victim and the victim's rights, and the victim basically ending up with no rights in this outrageous settlement that left the victim as Senator Dollinger described him.

I did submit a bill that would help the victim gain something, add a clause to the Son of Sam Law that would have helped the victim recover perhaps some of these damages.

I did hear Senator DiCarlo, I believe, say that he's not sure that his bill would enable the jury to decide against the person, actually the criminal in this case, so I guess I think what Senator Dollinger is proposing to amend this -- I certainly feel it's germane. We're all talking about the same issue here and I think if we combine these two, and I'm pleased to hear Senator DiCarlo say that he is willing to look at them, but I think we have them here now and I think it makes sense that it is germane, and we should be dealing with it as a package that will perhaps help both the victim and solve all of the problems that we're trying to address here.

ACTING PRESIDENT KUHL: Senator Gold, on the appeal of the ruling of the Chair.

SENATOR GOLD: Mr. President, the subject very dear and near my heart since I offered the original Son of Sam Law and carried the amendment that we passed to redo the law just a couple of years ago, and I would like to remind the members, particularly on the other

side of the aisle, that when we put in our new Son of Sam Law, which was done the same way I did the first one, with bipartisan sponsorship in this house, we had a larger statute of limitations than the final bill. It was the Assembly that whittled it down. As a matter of fact, the individual responsible for that was nominated for a judgeship and I was one of the few people that voted no, I was so incensed, but the point is we wanted to go a longer way, "we" meaning the Senate, to make sure that a victim was taken care of before a criminal.

Now, with the Governor's help, we wound up with a law, the new Son of Sam Law, which I think is still a great model for the nation, but there are many of us, including Senator Jones and Senator Dollinger and people on your side of the aisle, who want to, on a continuing basis, make sure as we find out about loopholes that we cut into those loopholes.

Now, I can tell you, I know something about the McCummings case, and I do know that Mr. Sandusky has filed a suit. I'm

not sure exactly where that is, but under one of the provisions of Son of Sam, he may be able to get in because the statute hasn't run, but the Jones proposal and the Dollinger proposals are just good proposals, that in the normal course of business in the New York State Senate, should be grabbed up.

Now, we really ought to cut it out. I will pay for the phone call, if each member of the Republican Party in this house wants to call your colleagues in Washington and find out whether or not Republican Congressmen are allowed to offer amendments, and whether or not they don't, in fact, do amendments and whatever. This business just really has to stop.

Senator DiCarlo, I read your bill and I don't have any problems. I think you're doing a good thing. I think that the way you've structured it, officers who violate the law, such as happened in California and may have happened in Staten Island, I don't know, will certainly be held accountable and your law won't

touch that and I'm glad of that and I can support it but, Senator DiCarlo, you have a chance today to take a giant step. If this amendment prevails, the way I understand it, this bill will come back as 6378-A, introduced by Senator DiCarlo. Nobody's taking away your name off that bill as the major sponsor. Senator Skelos and Bruno will still be -- have their names on this bill, except that now you can say we not only took care of the situation with the police officer but we made sure that the Son of Sam provisions are expanded or clarified to help crime victims.

I know you don't take advice from me, but if I were Senator DiCarlo, it's a win win situation. When the Governor signs it into law, the pen certificate will say "Senator DiCarlo". It will hang in your office, not mine, but we can do it better, and we really are making such an error. I mean, there are a lot of votes that happen around here that people suggest are political and yesterday's absurd bill to try to make it look like some people

aren't ready to clamp down on welfare cheats. That's so silly.

But, Senator DiCarlo, I mean, are we now supposed to run around and say, "My God, Republicans don't even care about crime victims." Here's an opportunity to make sure that this money stayed away from crime victims and they wouldn't let it come at -- I mean, we ought to -- we really ought to stop this business.

I think, Senator DiCarlo, that Senator Dollinger and Senator Jones have really given you an opportunity and you ought to grab it. When the bill comes out and we pass it and it becomes a law, your newsletter will tell your constituents that that pen certificate is not only going to protect police officers where they should be protected but helps crime victims. What can be better than that? I think you gentlemen and lady are making a big mistake. I hope you would see the logic to this and vote against the ruling of the Chair.

ACTING PRESIDENT KUHL: Senator

DiCarlo.

SENATOR DiCARLO: Mr. President, just in brief to answer somebody who I respect very much, Senator Gold. I find it -- I agree with the ruling of the Chair, that this is not germane, but what I find most disturbing is an accusation which I find very disingenuous about not speaking to colleagues. I heard a debate here yesterday where the opposition on the other side was arguing against one of my colleagues and saying how they were appalled by the fact that they had -- didn't get answers to a bill that was being voted on here, and there was waving of arms and there was loud voices being heard in this chamber.

I find it disingenuous now that people come to me and say, "Well, we have a great amendment and we would like you to tack it on to your bill", when I never saw the amendment. Not only have I never seen the amendment, but I never got a call from the Senators on the other side of the aisle saying they have a great idea. Never asked me about it

and now they come before this body and they say that we're doing something that we should not be doing, I find it to be, again disingenuous, and, you know, I am always there for a phone call from a colleague, but the Senators who spoke on their amendment never bothered to call me, never bothered to show me an amendment, and if they're going to complain about not getting information and they're being asked to vote on a bill yesterday, I find it interesting they can come here today asking me to support an amendment that I've never even seen or received a phone call on.

SENATOR GOLD: Would the Senator yield to just one question?

ACTING PRESIDENT KUHL: Senator Gold is asking Senator DiCarlo to yield. Senator DiCarlo, would you yield?

SENATOR GOLD: Senator DiCarlo, I'm told that the amendment was actually -- in order to make an amendment, you know, it must be served. I'm told that it was served upon your office yesterday. Certainly the language is

only about six lines. Is that true or not? Just so that I know. I didn't do the serving.

SENATOR DiCARLO: I never saw it and, as a matter of fact, this bill came before the Senate yesterday, and at that point I was told while the bill was being ready to be debated, that an amendment was put up to the desk, so I never saw it before the time of the debate and I have yet to see it. No, nothing has been served on my office and I never received anything.

SENATOR GOLD: Well, if the Senator would yield.

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: Senator DiCarlo? The Senator continues to yield, Senator Gold.

SENATOR GOLD: Senator, while I might have some sympathy with what you said, I mean, if the amendment was filed yesterday, you knew there was an amendment. It's a short one. This isn't a 40-page, 80-page, 200-page budget bill. I mean, it certainly is something that

you were aware of in that sense but, Senator, perhaps -- let me put it to you this way. This bill will not become a law in the next four minutes. Maybe what we should do -- and I'm not making the motion, Senator. Maybe there is some legitimacy to what you said, I don't know. Maybe we should put the bill aside, and I'll buy coffee for you and Senator Dollinger and Senator Jones, and we'll take a look and see whether or not, in fact, you can be the lead sponsor of this bill in a better condition. If you haven't had the chance to see it and if that is so, then I think that's something that can be accommodated. We are not going out of session tonight for the year, and we have time to do it right.

SENATOR DiCARLO: Mr. President.

ACTING PRESIDENT KUHL: Senator DiCarlo.

SENATOR DiCARLO: I've stated before and I'll say it again, I happen to believe that my bill is in the form that it should be, and this is the bill that I want to

see passed. I agree with the Chair on his ruling on it being germane.

My point that I raised earlier was that, again, I found it interesting after what went on here yesterday with Senator Nozzolio's bill, with the outrage that was heard in this chamber where some people on that side said they didn't get some answers to questions, and how could they vote on a bill, but with my legislation and my bill, for it to have happened the way it happened and say that I'm not willing to look at something that might be better for my bill, I think is just an outright lie.

Now, I never saw the amendment. I've read it since. I still believe that it's not germane to my bill, and I would prefer to pass my bill, but when people on the other side of the aisle start talking about how we're not being fair, I find it a little bit outrageous, because I did not get prior warning or a chance to see this -- this amendment before my bill came forward, and that's the only thing I'm saying. I don't want -- and I've said it

before, my bill is the way I want it to be. I agree with the ruling of the Chair, but I just find it strange how one thing is outrageous, and then when it's done on the other side of the aisle, that's fine.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I want to reiterate that I do think this is germane, and I appreciate Senator DiCarlo's comments but, quite frankly, one of my great frustrations about working in this chamber is that we have rules and regulations that are made by the Chair. They're promulgated by the 35, 36 members -- 35 members sitting on the other side of the table. There's nothing in the rules that require that I serve those on you, nothing. I'm playing by the rules. I don't control the calendar. I don't decide when this bill comes up. You do that. I play by the rules that you've set. I haven't violated any rules, and I apologize if I offended you from a courtesy point of view. I apologize for that.

I have submitted amendments on bills when I was the ranking member of Senator Wright's committee, when I was the ranking member of Senator Libous' committee. I've submitted amendments to committee. I haven't seen those amendments come up. I haven't seen those bills come up. But there's nothing in the rules that you set that require that I do that. If you want to change the rules that require that I have to give you notice and serve them on you, I will do that, Senator, but I think it's a little bit disturbing to me to say, "Gee, Senator Dollinger, you didn't play by the rules when you submitted this amendment", when to the best I can tell, I did, I certainly tried to.

I apologize, Senator. In the future when I propose an amendment -- and I'm going to propose lots of amendments because I think there are lots of things we can do better in this chamber, when I propose that amendment, I will take it upon myself, although not required as I understand it by the rules of this chamber, I will attempt to serve it on the

member and the sponsor of the bill.

One thing I do know -- and this I agree with Senator Gold on. I know I'll never have to serve anybody on this side of the chamber, because the unwritten rule in this chamber is that no matter what comes from this side of the chamber, no matter how we try to attend to the problem, not only in municipalities but the Sanduskys who are left on the floor, who are the victims of crime, obviously that part of the chamber says "We're going to deal with just the municipalities. We'll leave Sandusky to a later day", but Senator Gold points out one very good thing. He may not have a later day because his lawsuit may be dismissed by failure to comply with the statute of limitations, and if you think there was an outcry when the McCummings case came down because there was a huge judgment rendered against a municipality, think of the outcry when he, Sandusky is thrown out of the court because of a technicality called the statute of limitations and the Senate wouldn't pass the

bill because it was sponsored by Mary Ellen Jones. Explain that to your constituents in your newsletter.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

I didn't intend to speak on this at all, but Senator Dollinger has inspired me to take a little different tact, simply because there are people represented on this side of the aisle who are covered under the Voting Rights Act of the federal government and who, because we are not allowed to submit legislation to protect the interests of our people as just spoken to with McCummings, we are, in fact, disenfranchised and, therefore, I as an African American Senator, cannot come here and really facilitate the interest of African-Americans, Puerto Rican-Americans and other minority people in our districts because the actions of the other side have, in effect, disenfranchised us in making the case and the argument and being

advocates for our people.

I think this is dangerous ground. It is quicksand. I think that the disparity practiced by the other side of the aisle is in violation of the Voting Rights Act of this country. I think you ought to think about that. I think you really ought to give some attention to that, that you have, in effect, by posturing in the manner that you have, by not allowing legislation to protect the interests of the African-American, Caribbean-American, Puerto Rican community, other Latinos in this state, to bring forth legislation from this side of the aisle have, in effect, disenfranchised all of these people, and this house may every day operate in violation of the Voting Rights Act of this country.

Think about it, because others on this side of the aisle are thinking about it, and I think that maybe the public should know about it. I think that editors represented here in the newspapers should know about it. I think there should be some serious thought to what you

are really doing with the manner in which this house operates, and maybe we ought to focus on that and clean it up ourselves before somebody decides to clean it up outside of this house.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The question is on the appeal of the ruling of the Chair. An "aye" vote will be to sustain the ruling of the Chair; a "nay" vote will be to overturn the ruling of the Chair.

On the question, all those in favor, signify by saying aye.

SENATOR GOLD: Party vote in the negative.

ACTING PRESIDENT KUHL: The clerk will record the party line vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33, nays 20.

ACTING PRESIDENT KUHL: The ruling of the Chair is sustained. On the bill. Last section.

THE SECRETARY: Section 2. 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 KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 692, by Senator Maltese, Senate Bill Number 7444, an act to amend the Criminal Procedure Law, in relation to the family of a deceased crime victim.

SENATOR GOLD: Just one half second.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Jones.

SENATOR JONES: Thank you. Yes. I would like to speak to the bill that Senator Maltese has here today.

First of all, I would like to thank him for taking up the Monroe County issue. As I'm sure the Senator knows, I'm very

pleased that the bill is going to pass and to help the victim in Monroe County which the bill was written for and which I submitted on February 28th.

I just -- you know, I'm very happy the bill passes and I support Senator Maltese, and I probably would have not made the next statement I'm going to make had this last debate not taken place, but I would just like to make it very clear that in my situation, the phone calls did take place, discussion was attempted to be held and my efforts were not accepted or recognized, so I do need to add that, but I want to thank the Senator because it was a situation where a victim in Monroe County was denied the right. No one could speak to the victim because it did not fit under the short categories of the law that were there at the time, so I'm glad it's going to be corrected, but I do need to make the statement that I did make the phone calls, and my bill or whatever was not accepted, even though I'm reading the same thing here today.

ACTING PRESIDENT KUHL: The clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 697, by Senator Padavan, Senate Bill Number 7496, an act to amend the Penal Law and the Administrative Code of the city of New York.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for. Senator Padavan, explanation has been asked for by Senator Gold.

SENATOR PADAVAN: Mr. President, this bill would include retired correction officers within the existing provision exempting police officers from the payment of firearms

licensing fees.

This bill passed last year, unfortunately, was vetoed by the Governor. In the veto message, just to share that with everyone, because I'm sure if I don't, someone else will. The Governor indicated cost to New York City localities, and that if we did this bill, it might prompt others to request similar consideration for other groups of individuals. Certainly that's not my intention, but as far as cost is concerned, the number of officers that would be affected here is so minimal that I couldn't quite understand the Governor having mentioned that, but those were his two reasons for vetoing it last year.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yes, Mr. President, I just want to point out that the Republican mayor of the city of New York that has a memo in opposition to this bill indicates that there are approximately 550 correction officers who would be involved and his

opposition is on budgetary grounds.

ACTING PRESIDENT KUHL: The clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 51, nays 2, Senators Galiber and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 699, by Senator Volker, Senate Bill Number 7574, Criminal Procedure Law, in relation to corrective remedies.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

SENATOR GOLD: Excuse me, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, I'm aware of the circumstances of the sponsorship of the bill, and I know everybody wishes Senator Volker well, and we passed a number of his bills today, but if I could just have one day on this.

Senator Maltese, I know you're ready to stand up on it, but maybe we could just put it over, and if we can cure our problems, we won't have to debate it, okay?

SENATOR MALTESE: On behalf of Senator Volker, lay it aside for one day.

ACTING PRESIDENT KUHL: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 715, by Senator Daly, Senate Bill Number 1093, an act to amend the Environmental Conservation Law, in relation to reporting the costs -

inactive hazardous waste sites.

SENATOR GOLD: Explanation.

SENATOR PRESENT: Lay it aside for the day.

ACTING PRESIDENT KUHL: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 717, by Senator Daly, Senate Bill Number 5200-C, Environmental Conservation Law.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: The clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 727, by Senator Hannon, Senate Bill Number 66... 6627, Administrative Code of city of New York,

in relation to access to correct housing maintenance code violation.

SENATOR PRESENT: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Present, that completes the controversial calendar for the day.

SENATOR PRESENT: Mr. President, would you recognize Senator Wright, please.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Mr. President, I have a privileged resolution at the desk. I request the clerk read the title.

ACTING PRESIDENT KUHL: The clerk will read the title of the privileged reso lution.

THE SECRETARY: Legislative Resolution, by Senator Wright, expressing sincerest sorrow upon the occasion of the death of John L. MacFarland.

ACTING PRESIDENT KUHL: All those in favor of the resolution signify by saying

aye.

(Response of "Aye".)

Opposed nay.

(There was no response.)

The resolution is adopted unanimously.

Senator Galiber.

SENATOR GALIBER: Would you open up for -

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Yes.

ACTING PRESIDENT KUHL: Senator Present, should we put all members of the Legislature on that resolution -

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: -- except -- those people who do not wish to be, if they would indicate to the desk accordingly, that will be done.

We have a motion, Senator Present. If that's okay, we'll do it at this time.

SENATOR PRESENT: Sure.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: On behalf of Senator Lack, Mr. President, on page 22, I offer the following amendments to Calendar Number 346, Senate Print Number 660, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The bill is amended and will retain its place on the Third Reading Calendar.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we adjourn until Monday, May 9th at 1:00 p.m., intervening days to be legislative days. The members should also be advised that they are subject to the call of the Majority Leader for a session upon giving 24 hours notice.

ACTING PRESIDENT KUHL: The Sen ate stands adjourned until Monday at 1:00 p.m.

(Whereupon, at 1:31 p.m., the Senate adjourned.)