ALBANY, NEW YORK

May 16, 1994

2:52 p.m.

REGULAR SESSION

SENATOR CHARLES D. COOK, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT COOK: The Senate will come to order. You all please rise and join me in the Pledge of Allegiance.

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

In the absence of a clergy, shall we pause for a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 15th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, May 14th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT COOK: 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 SKELOS: Mr. President.

ACTING PRESIDENT COOK: Senator Skelos.

SENATOR SKELOS: Calendar Number 992 on the Second Reading Calendar, would you star that bill.

ACTING PRESIDENT COOK: Bill is starred.

SENATOR SKELOS: And on the Third Reading Calendar, Number 818, would you lay it aside for the day for amendments.

ACTING PRESIDENT COOK: Laid aside for the day.

Senator DiCarlo.

SENATOR DiCARLO: I move the following bills be discharged from their respective committees and be recommitted with

instructions to strike the enacting clause: Senator Johnson, 5987-A.

ACTING PRESIDENT COOK: Bill is recommitted.

SENATOR DiCARLO: Mr. President, I wish to call up Senator Volker's bill, Print Number 7518, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT COOK: Secretary will read.

THE SECRETARY: By Senator Volker, Senate Bill Number 7518, an act to amend the Town Law, in relation to deadline for annual audit to be completed.

SENATOR DiCARLO: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT COOK: Secretary will call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 31.

ACTING PRESIDENT COOK: Bill is

before the house.

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

ACTING PRESIDENT COOK: Amendments received and adopted.

SENATOR DiCARLO: Mr. President, on page 51, I offer the following amendments to Calendar 855, and Assembly Print 7516, for Senator Libous, and ask that said bill retain its place on third reading.

ACTING PRESIDENT COOK: Amendments received.

SENATOR DiCARLO: Mr. President, on page 60, I offer the following amendments to Calendar Number 485, for Senator Levy, Senate Print Number 193-A, and ask that said bill retain its place on third reading. Mr. President, please remove the star.

ACTING PRESIDENT COOK: Amendments received, and the star is removed.

Senator Saland.

SENATOR SALAND: Mr. President, on page 61, I'd offer the following amendments

to Calendar Number 599, that's Assembly Print 9919-A.

ACTING PRESIDENT COOK: Amendments received.

SENATOR SALAND: I ask that the bill retain its place on Third Reading Calendar.

ACTING PRESIDENT COOK: So ordered.

Secretary will read some substitutions.

THE SECRETARY: On page 5 of today's calendar, Senator Sears moves to discharge the Committee on Health from Assembly Bill Number 9619 and substitute it for the identical Calendar 1037.

On page 30, Senator Velella moves to discharge the Committee on Rules from Assembly Bill Number 8794-B and substitute it for the identical Calendar Number 349.

ACTING PRESIDENT COOK: Substitutions ordered.

Senator Present.

SENATOR PRESENT: Recognize

Senator Holland, please.

ACTING PRESIDENT COOK: Senator Holland.

SENATOR HOLLAND: Mr. President, I have a resolution at the desk. I ask that it be read.

ACTING PRESIDENT COOK: Secretary will read.

THE SECRETARY: Legislative Resolution, by Senator Holland, memorializing Governor Mario M. Cuomo to proclaim May 23rd through 27th, 1994 as Bone Marrow Donor Awareness Week in New York State and honoring Olympic speed skater Kristen Talbot of Schuylerville, New York, for her dedication and consummate commitment to excellence.

WHEREAS, this legislative body is justly proud to memorialize Governor Mario M. Cuomo to proclaim May 23rd through 27th, 1994 as Bone Marrow Donor Awareness Week in New York State, and to honor Olympic speed skater and bone marrow donor Kristen Talbot of Schuylerville, New York for her dedication and

consummate commitment to excellence;

Bone marrow transplants now give people dying of blood-related diseases such as leukemia and aplastic anemia a chance to be cured if a donor can be found whose bone marrow matches their own;

An individual has only a 30 percent chance of finding a donor among his own family members. Once family members have been tested and no match is found, an individual is faced with only about one in 20,000 unrelated people who will match closely enough to allow the opportunity for a bone marrow donation;

Kristen Talbot has been skating since before she entered kindergarten. She's been competing in national championships since age 12 and qualified for her third Olympics, earning the fourth and final spot in the 500 meters;

Just before competing in the 1994 Olympics, Kristen Talbot had bone marrow extracted from both hips at Johns Hopkins in order to save her brother, her brother Jason,

who needed a transplant to fight aplastic anemia, a condition that attacks the marrow and slows or halts the production of red and white blood cells;

Kristen Talbot's commitment to excellence mirrors those prerogatives of personal initiative and accountability so paradigmatic of our American manner;

Through her long and sustained commitment to excellence in the arduous sport of speed skating and her altruism in giving her bone marrow, Kristen Talbot has so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience;

Kristen Talbot will dedicate her time and energy to bowl in the Legislative Bowl-a-Thon to raise money for testing in the Legislative Office Building during Bone Marrow Donor Awareness Week;

Although national donor registry was begun in 1987 to assist in finding suitable donors from a pool of "typed" readily available

volunteers, it is estimated that at least one million potential donors worldwide must be listed on the registry if the majority of the 9,000 afflicted individuals presently waiting for matches in the United States are to be saved;

Many people in the United States have died because their desperate searches have not produced a matching donor in time; it is vital, therefore, that every effort be made to assure that the donor pool is as large and diverse as possible;

Marrow transplants require matching tissue types, which are characterized by complex genetic traits often unique to a particular race, and currently 92 percent of our volunteer donors are Caucasian;

It is of critical importance that African-American, Hispanics, Asians and Native Americans, who are presently under-represented on the registry, become volunteers so that the hope can be offered to all Americans in need;

In memory of the late Senator

Eugene Levy, it is the intent of this legislative body to designate May 23rd through the 27th of 1994 as Bone Marrow Donor Awareness Week in New York State, recognizing and honoring all those who have selflessly donated marrow or been tested as a potential donor, and to enhance public awareness of the desperate need for bone marrow donors, particularly minority donors;

During the Bone Marrow Donor Awareness Week, the Bone Marrow Resource Foundation will distribute educational material and conduct a donor drive to test individuals as potential donors in the Legislative Office Building. Donors will be registered in the National Marrow Donor Program through the local donor center at the American Red Cross in Albany;

Everyone has the availability to give the "gift of life" by donating bone marrow to someone who faces imminent death from a blood-related disease;

Through its commitment to the preservation and enhancement of human life, Bone

Marrow Awareness Week so clearly advances that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to memorialize Governor Mario M. Cuomo to proclaim May 23rd through May 27, 1994 as Bone Marrow Awareness Week in New York State and to honor Olympic speed skater Kristen Talbot of Schuylerville, New York, for her dedication and consummate commitment to excellence; and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to the Bone Marrow Resource Foundation, the National Marrow Donor Program, the New York State American Red Cross of Albany and Kristen Talbot, in recognition of their efforts in educating the public and assisting those in need of a bone marrow donation.

ACTING PRESIDENT COOK: Senator Holland.

SENATOR HOLLAND: Mr. President,

as the clerk has mentioned, this was started by Senator Gene Levy five years ago. Gene succumbed to leukemia shortly after that.

This is a disease that we can save a lot of lives with. In the five years we've been doing this here on the third floor of the LOB, we typed a lot of people. We need to type, as the clerk has said, about a million people in order to take care of the 9,000 people that are on the list right now.

It costs about $50 each to type each individual. We have to raise money for that. We've been -- we did last year -- we had a Bowl-a-Thon the year before that. We raised $13,000 last year. We're going to do the same thing tomorrow night. The lobbyists are gracious enough to donate money for this.

The typing will be next week, the 23rd and 24th on the third floor of the LOB. I ask anyone who is willing to have their blood typed to come there on that day, 9:00 to 5:00, they only take about a teaspoon of blood, it's a very easy thing to do and you could save a

life.

In the five years that we've been doing it, we've met a number of people who have donated and then been called and today we are - have the pleasure to welcome Kristen Talbot. I think many of you heard the story of Kristen Talbot. She's a speed skater. She's been in the Olympics three times. This year prior to the Olympics, her brother came down with aplastic anemia.

As you heard, in your family, it's a 30 percent chance to have a match. Kristen matched her brother, so before she went to the Olympics this year for the third time she donated bone marrow to her brother and we talked earlier of this, and she did go to the Olympics after that. She said she wasn't tired but she did miss about ten weeks, I think, of skating which cost her in that.

She's been competing in the national championships since the age of 12 and qualified, as I said, for her third Olympics. She's a fighter and is committed to her sport of

speed skating. However, she put her personal initiative behind her and gave bone marrow when her brother needed it.

Kristen is also donating her time to bowl tomorrow night -- and she said she's a great bowler -- in this year's legislative Bowl-a-Thon to raise funds. Because of her unselfishness, I am proud to introduce this resolution which recognizes Kristen's selfless giving and devotion to her sport, as well as designating May the 23rd through the 27th as Bone Marrow Awareness Week.

I do want to also thank all the people who donate. The bowling center is donated; the food is donated. Lots of people volunteer. Assemblyman Jeff Aubry is the sponsor in the Assembly. We can save lives, and I urge anybody who has five minutes on the 23rd and 24th to go down and have your blood typed.

Thank you very much.

ACTING PRESIDENT COOK: Kristen, we are very honored and humbled to have you here with us today. These acts of unselfishness that

people do in behalf of other people really put the rest of us to shame, and we are just so honored that you've seen fit to come here and join us today, and that you have been willing to join as well in the greater effort to raise funds so that other people may benefit, as your brother has benefited.

Senator Present, is it acceptable to open the resolution for all members if there's no one who objects?

SENATOR PRESENT: Right.

ACTING PRESIDENT COOK: There being no objection, then, all members are on the resolution.

The question occurs on the resolution. All in favor, say aye.

(Response of "Aye.")

All those opposed nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Mr. President, we take up the non-controversial calendar,

please.

ACTING PRESIDENT COOK: Secretary will read.

THE SECRETARY: On page 27 of the Calendar, Calendar Number 6, by Senator Volker, Senate Bill Number 246-B, an act to amend the Penal Law, in relation to the crime of false personation.

ACTING PRESIDENT COOK: Call the roll. Last section.

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

ACTING PRESIDENT COOK: Then call the roll. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT COOK: The bill is passed.

THE SECRETARY: Calendar Number 127, by Senator Farley, Senate Bill Number 342 A, an act to amend the Real Property Tax Law, in relation to sale by a tax district of lands in the forest preserve.

ACTING PRESIDENT COOK: Last section.

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

ACTING PRESIDENT COOK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT COOK: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Lack, Senate Bill Number 6694-A, an act to amend the Criminal Procedure Law, in relation to pre-sentence conditions.

ACTING PRESIDENT COOK: Last section.

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

ACTING PRESIDENT COOK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT COOK: The bill

is passed.

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

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 465, by Senator Farley, Senate Bill Number 2424 A, an act to amend the Banking Law, Estates, Powers and Trusts 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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 632, by Senator Holland, Senate Bill Number 207-A.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 654, by Senator Hannon.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 669, by Senator Cook, Senate Bill Number 7710-A, authorize the New Paltz Central School District to finance deficits.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Lack, Senate Bill Number 6963 B, Estates, Powers and Trusts Law, in relation to the division of trusts.

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 40.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 693, by Senator Maltese, Senate Bill Number 7446-A, an act to amend the Criminal Procedure 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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 694, by member of the Assembly Lentol, Assembly Bill Number 6869, an act to amend 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.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 696, by member of the Assembly Cahill, Assembly Bill Number 10828, Criminal Procedure Law, in relation to the service of an order.

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 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 699, by Senator Volker, Senate Bill Number 7574, an act to amend the Criminal -

SENATOR GOLD: Lay the bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 727, by Senator Hannon, Senate Bill Number 6627, an act to amend the Administrative Code of the city of New York.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 746, by Senator Hannon, Senate Bill Number 6337, an act to amend the Public Authorities Law.

SENATOR HANNON: Lay aside for the day.

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

THE SECRETARY: Calendar Number 752, by Senator Tully, Senate Bill Number 7717, amends Chapter 295 of the Laws of 1990, amending the New York State Medical Care Facilities Finance Agency.

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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 753, by Senator Tully, Senate Bill Number 7751 A, an act to amend the Public Health Law.

ACTING PRESIDENT KUHL: 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 767, by Senator Skelos, Senate Bill Number 2272 A, an act to amend the Real Property Tax Law, real property tax exemption for persons 65 years of age or over.

ACTING PRESIDENT KUHL: 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 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 773, by Senator Saland, Senate Bill Number 4331.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number

836, by Senator Maltese, Senate Bill Number 3294, an act to amend the Correction Law.

ACTING PRESIDENT KUHL: Read the last section.

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR GOLD: Hold it.

ACTING PRESIDENT KUHL: Call the roll.

SENATOR GOLD: Hold on a second.

ACTING PRESIDENT KUHL: Call the roll on Calendar Number 836.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 848, by Senator Libous, Senate Bill Number 6928 A, an act to amend the Mental Hygiene 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 849, by Senator Libous, Senate Bill Number 6930 A, an act to amend the Mental Hygiene Law.

SENATOR PRESENT: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 869, by Senator Trunzo, Senate Bill Number 4823, an act to amend the Civil Service Law.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 870, by Senator Trunzo, Senate Bill Number 6889 A, an act to amend the General Municipal Law and the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 872, by Senator Velella, Senate Bill Number 7198, an act to amend the Administrative Code of

the city of New York.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 876, by Senator Trunzo, Senate Bill Number 7792, an act to amend the Administrative Code of the city of New York.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 877, by Senator Skelos, Senate Bill Number 7862, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 879, by Senator Present, Senate Bill Number 2108, an act to amend the Insurance Law, in relation to coverage for mammography screening.

SENATOR SOLOMON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 894, by Senator Rath, Senate Bill Number 7054-A, an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 895, by Senator Skelos, Senate Bill Number 7129-A, an act to amend the Economic Development Law.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 896, by Senator Rath, Senate -

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

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

SENATOR PRESENT: And the next two bills, lay aside for the day.

ACTING PRESIDENT KUHL: Lay Calendar Number 898 and 900 aside for the day.

Senator Present, that completes the non-controversial calendar. What's your pleasure, sir?

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: May I have - yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 127, please.

ACTING PRESIDENT KUHL: Without objection, Senator Leichter recorded in the negative on Calendar Number 127.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT KUHL: Senator

Present.

SENATOR PRESENT: Mr. President, it comes that time when I ask that the Senate stand at ease for a few moments.

ACTING PRESIDENT KUHL: The Senate will stand at ease for a few moments.

(The Senate stood at ease from 3:17 p.m. to 4:01 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the staff to take their places, members to take their seats.

Senator Present, we have a little housekeeping. Shall we take that up first?

SENATOR PRESENT: First, take that up, and then we'll take up the controversial calendar, please.

ACTING PRESIDENT KUHL: Senator Velella.

SENATOR VELELLA: Mr. President, I move to reconsider the vote by which my bill 7198, Calendar Number 872, passed.

ACTING PRESIDENT KUHL: On the motion to reconsider the vote, the clerk will

call the roll.

(The Secretary called the roll on reconsideration.

ACTING PRESIDENT KUHL: Bill is laid aside.

Clerk will call the controversial calendar.

THE SECRETARY: On page 37, Calendar Number 632, by Senator Holland, Senate Bill Number 207-A, an act to amend the Penal Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, explanation has been asked for.

SENATOR HOLLAND: This bill would allow persons who have a valid license to carry a pistol or revolver in New York State, anywhere in New York State, to also carry that pistol or revolver in the city of New York.

The bill really is to correct an inequity in the law as far as I'm concerned, and another example of the two-state situation we have with upstate New York and the -- the city

of New York. It simply says that, if you're issued a valid pistol license in any of the 57 counties, you can carry that in the city of New York.

That is illegal today, although anybody who is issued a pistol license in the city of New York can carry it any place in the state of New York. That's unfair, not the right thing.

Now, I know you're going to say well, people will steal the weapons. That's - I don't think that's true. I don't think it's true at all. If somebody wants weapons, you know as well as I do, and you've brought it up on the floor, they can go to Virginia and get the weapons and bring them up here. They're not going to steal them from the people bringing them down here.

I might also tell you again, as I've told you every year, that when I was county clerk I consolidated the pistol issuing process in the county of Rockland from all the different police departments to the sheriff and the county

clerk's office and cut down the delivery of the system from 13 months to three months and, if anybody is issued a pistol license in the state of New York, first of all, you must have your fingerprints taken. You must have a background check. Fingerprints are run by the FBI, the BCI; a written statement and your resume is run by the Health Department and the Mental Health Department in the county of Rockland. We also require a statement from your spouse or the person you live with that they don't object to your having a pistol license, and they are given education on handling weapons as well. So there is no reason in my mind why it shouldn't be a one-state situation, and that's what this bill does.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: Thank you.

Will the gentleman yield to a question, please?

ACTING PRESIDENT KUHL: Senator

Holland, will you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator does, Senator Gold.

SENATOR GOLD: Senator, do you have any cities in your Senate district?

SENATOR HOLLAND: No.

SENATOR GOLD: It's a shame. Towns?

SENATOR HOLLAND: Towns, yes.

SENATOR GOLD: Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Holland, you continue to yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR GOLD: Senator, do any of those towns that you represent have any local ordinances at all in terms of conduct within them, speed of vehicles or any other ordinances that deal with conduct within their borders?

SENATOR HOLLAND: I'm sure you're

right.

SENATOR GOLD: Well, Senator, I have a memo from the mayor of the city of New York, the Republican mayor of the city of New York, which mirrors exactly the prior memo of the Democratic mayors of the city of New York, and he says in the last line of this memo, "The New York City Police Department strongly opposes this bill -- these bills." Actually, it talks about your bill and also the Assembly version.

Senator, don't you think that the city of New York has a right to control conduct within its borders, particularly conduct as serious as dealing with carrying and possession of weapons?

SENATOR HOLLAND: Certainly I see your point, Senator, but I really don't think so. I think, in this situation, it should be a one-state situation and, if people who are issued pistol licenses in the city of New York are allowed to carry them throughout the rest of the state, it should be reciprocal as far as I'm concerned.

SENATOR GOLD: Thank you.

Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: This is a bill which we've had before, we will have again, because it will never see the light of day, I'm sure, in the Assembly, and it's a difficult situation. I remember one of the great men in legislative history, Senator Levy, who used to talk about his wife being afraid to come to the city of New York unless she had a gun, and all I can do is to repeat very briefly what I've said in the past.

New York City is the Big Apple. New York City is a great city, but if you have people from upstate New York who feel that they cannot visit us without your gun, without bringing their guns, well, then don't visit. I mean we don't want to lose the tourism; we don't want to lose the economic value but, if the only way you can come to New York is if you bring your weapons, then I tell you, don't come. The

mayor says don't come. Our police commissioner says don't come, and that's really it.

I mean to argue over the difficulties in New York City and people not feeling safe, to argue about a statewide necessity for these kind of controls, we are very unsympathetic, meaning the people from New York City, with these kinds of arguments, and we respect the fact that, in your local areas, you're very careful about who you give gun permits to, and I respect that, and I respect that they're fingerprinted and I respect all the things you do, but I also tell you that when you are the elected mayor of millions of people responsible for the city of New York, responsible for its safety, and you're trying as hard as I'm sure this present mayor is doing and I know the prior mayor was very successful and crime fell during the Dinkins administration - please, let's not forget that -- and they say, We will take the responsibility, we don't want these guns in the city of New York, and the issue of whether or not there are illegal guns

in the city of New York is not the issue. The issue is they don't want the guns in the city, so once again, we will call for a slow roll call. I won't read out the names of the negatives, because we've had this so many times and it's not an issue that people will likely forget.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Thank you, Mr. President.

My colleagues, you know, when I saw this bill, I said, Well, we've had it be fore; I mean what's new? But there are some things that are new and maybe make it appropri ate to get up and comment on this bill.

I used to debate it at great length with Senator Levy, and I -- everyone who served with him, I loved him, but I thought he was wrong in this particular issue, and I think you're wrong, Senator Holland, to carry on that bill.

But let me tell you what's new.

Just today in the New York Times was an article that violence with hand guns in the United States in the last two years has increased, I think the figure was 20 -- close to 25 percent. More and more crimes are being committed with hand guns; more violence occurs with hand guns; more people are being shot with hand guns inadvertently, children finding guns in a drawer, playing with it, shooting themselves or shooting a member of the family.

Now, I appreciate that there's local licensing, but conditions in the city of New York are different. Unfortunately, in some respects there probably is more violence in the city of New York. We're trying to deal with it. The mayor is trying to deal with it, but as a consequence you must have in mind local licensing requirements, and I thought that Senator Gold's analogy to localities imposing their own speed limits was really very apt.

There are individual community differentiations, circumstances, and you can't just homogenize the whole state, particularly

when it comes to something as sensitive as gun control. We have a terrible time in the city of New York with illegal guns, and one of the ways that illegal guns find their way in the streets is they start out as legal, and every year we have hundreds of guns that are legal but that are stolen in the city of New York and, when I heard Senator Levy talk about his wife with a gun, I was scared. I was scared for her that she should find herself in a situation where she might use that gun considering some of the people in the city of New York and their prevalence towards violence, and I was scared for the people of the city of New York if that gun, as can happen and happens, should be taken from her or stolen and find its way onto the illegal market.

Just yesterday, I had a conference on crime in the city of New York and I wish that people, you my colleagues, had been there because it was really one of the most intelligent discussions. We had excellent people. We had our commissioner of the Division

of Criminal Justice Services, Girgenti, Jerry Lynch, the president of John Jay College, the Bronx Borough Commander, Catherine Abbate, and just a wonderful and inspirational person, Stephen McDonald, the former police officer who was badly wounded and paralyzed as a result of an assault on him by a young person with a hand gun; and one of the things that they all agreed on is that we have to take stronger measures to get guns off the streets of New York City and, for that matter, in our communities throughout the state and in the nation.

So we really plead with you to be aware of the needs of the city of New York, the special circumstances. Listen to our local elected officials. Listen to our mayor who says, Please don't pass this bill, and keep in mind that the American people are changing on the issue of gun control. We saw it in the House of Representatives. I think they're tired, they're fed up with the mayhem, with the violence. They realize guns are dangerous. They realize that the NRA slogan, Guns Don't

Kill, People Kill, of course, is perfectly stupid, because people can generally kill only because they have guns.

And so we say don't pass measures that place the people of the city of New York at greater risk.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I -- this is one of the bills that I recall, as well as Senator Leichter has said that Senator Levy used to bring to the floor and it was one of the few times that I would actually debate against him, because we were friends and agreed on so many things.

I just wonder if Senator Holland would yield to a question. I know that Senator Levy said that he was afraid that his wife needed her pistol in her mink coat, she had to have it, she wanted to have it when she came to the City, and I just wonder if Senator Holland would yield to a question.

SENATOR HOLLAND: Sure.

ACTING PRESIDENT KUHL: Senator Holland, will you yield? Senator Holland yields, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Senator Holland.

Senator Holland, similar to Senator Levy who was afraid that his wife would be shot if she didn't have a pistol in her mink coat, is it, for you, a similar rationale for this bill? Do you need a pistol in your jacket or does your wife need her pistol in her mink coat when you come to visit Senator Padavan in his district, Senator Goodman in his district, Senator Marchi in Staten Island, Senator Maltese in Queens? Are you afraid to come without your pistol, and you need this bill to resolve that problem for you? Is that the rationale? I'm just curious, Senator.

SENATOR HOLLAND: My wife neither has a mink coat nor pistol. Nor do I.

SENATOR MONTGOMERY: So is there -- is there a -- a growing and -

ACTING PRESIDENT KUHL: Senator Montgomery, are you asking Senator Holland to continue to yield?

SENATOR MONTGOMERY: Yes, if you would continue to yield.

ACTING PRESIDENT KUHL: Senator Holland yields, Senator Montgomery.

SENATOR MONTGOMERY: Is there a growing need among your constituents that they come into the city and they're afraid and they need this legislation?

SENATOR HOLLAND: Senator, I think there is. I think the city of New York is a dangerous place to be; it's more dangerous than upstate. Somebody mentioned tourists and tourists shouldn't carry weapons. That's what's happening in New York and Florida; they're shooting tourists, and people are afraid to go into the city of New York.

It's hurting your economy; it's hurting your tax base, there's no question about it, and the people that have licensed hand guns are the people not creating problems, and we're

only talking about the licensed hand guns. We're not talking about the illegal hand guns. They should be controlled, there's no question about it, but we're only talking about the licensed hand guns.

SENATOR MONTGOMERY: Thank you. Thank you, Senator.

Mr. President, briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I am obviously very, very much opposed to this legislation for several reasons.

One is we certainly do not want to encourage people to bring additional weapons into the city without having the appropriate licensing as per our local government, and I think that, although people use that rationale frequently, that they need their weapon to protect themselves from whatever they envision as the enemy and the threat, we know that in fact there are very, very, very few instances

where people successfully defend themselves by the use of a gun, by killing the enemy essentially.

So this, in my -- in my estimation, is in the least a false reason for having -- for carrying a weapon, and I don't know if there are people like in this room, many of us or if any of us has chosen to carry a weapon, because we want to defend ourselves, we want to get our enemies, we want to do whatever people say that they use weapons for, and certainly those of us in this room who hunt as a sport don't bring our weapons with us as we just move around in society, in the streets and at work, and I don't know how many of us in this room take a weapon when we go out socially. I don't suppose anyone, but I -- I would not --I would not assume that no one does, but my assumption is that most of us certainly don't, and so I don't know what -- what people would want to carry weapons, especially people like us in this room.

Why would we need to have a

license to bring a weapon into a city that already has too many weapons? And obviously, the move now, even from within New York City, is to rid our street of weapons, not to encourage people, and at this very moment, Mayor Giuliani and Governor Cuomo are working together to expand our tourism industry, bringing people into the City from other states, other parts of the state, to encourage an economic upturn in terms of our tourism industry, to bring people into the hotels, who have been using the other facilities, the cultural institutions, to really encourage a revitalization of that aspect of the economy in the City, and here we are in the state, and Senator -- led by Senator Holland, and I say, Senator Holland, certainly I agree with many of the things that he has proposed but this movement led by him, I think is a terrible mistake, that you're saying we want you to come and we want you to bring your guns and in order to make it possible for you to bring more guns to the City as tourists, as visitors, as whatever, we want you -- we want the City to

relax its licensing requirements.

So, Senator Holland, clearly this is a mistake and, as I said, I argue against it when Senator Levy used to propose it, and I -- I have the same reason for opposing it now, and I wish that you would --I wish that you would change your mind because this goes against everything that we are trying to encourage and do in the state of New York.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I voted against this bill in the past, and I appreciate Senator Gold's comments about let's just get it over with and have this vote. I think it's probably somewhat predict able what would happen but I have to respond to a couple of the issues that have been raised.

One was, at least as I understood it, Senator Holland, you said that this would basically make New York city safe for visitors.

More people would want to go into the city because the visitors who want to bring their guns with them are somehow going to feel safe.

What I hear in the memorandum of opposition from the city of New York is, while you may make it feel a little bit safer for visitors, you will make it more dangerous for the people that live there. They don't want you to bring your gun into New York City, and it seems to me that one of our jobs in this body is to recognize, when someone says we don't want you to bring something into our house that's dangerous, we ought to recognize that and give them the ability to decide what comes in their house or not.

Now, I'm trying to draw an analogy in my own house. I have a smoke-free house. I have two children very sensitive to ambient smoke, so I have a little sign on my house that says, Please don't smoke if you come in my house, because I think it's dangerous and if someone walked to the door of my house and knocked on the door and said, "I'm going to

bring my cigarettes in because I don't think they're dangerous," I would tell them, "I don't care what you think; it's my house and what I think is important," and if I think it's dangerous, you can leave your cigarettes out in the street or you can come around to my back yard where all my friends who smoke go out on my back porch, my screened in back porch and smoke. I'm willing to tolerate that. I set the rules of the house.

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me. Senator Velella?

SENATOR VELELLA: Will you yield?

SENATOR DOLLINGER: Will I yield? Yes, Mr. President, I will.

SENATOR VELELLA: I happen to live in New York City, and can you tell me what basis you are using to say that the people of New York City don't want tourists to come into the City to have guns if they are, in fact, licensed and approved elsewhere in the state?

As one resident, I don't have a problem with somebody who's licensed from your

district who is a reputable person who has been approved by your government coming into my city carrying a weapon. I don't know. Have you taken a poll, or how do you presume to speak for the people of New York City?

SENATOR DOLLINGER: Well, I'm not speaking for the people of New York City. They've spoken pretty definitively themselves. There's a man that sits on, I don't know, Gracie Mansion, I guess they call it, he's sat there, one of them sat there for four years and then he wrote this memo, and then the guy who took his place was elected by the Republicans, wrote us a memo which I looked at and it's identical word for word, not one single word is changed.

SENATOR VELELLA: Senator, if you'd yield for another question.

SENATOR DOLLINGER: He's the elected representative.

ACTING PRESIDENT KUHL: Senator Dollinger, Senator Velella is asking you to yield.

SENATOR DOLLINGER: Mr. President,

I'm just tryin' to respond and I'll -- I'll yield again.

ACTING PRESIDENT KUHL: Please continue.

SENATOR DOLLINGER: It seems to me when we look to our municipalities, we're constantly looking to cities, we're looking to city councils or we're looking to the designated representative who got two million votes, two and a half million votes from the people of the city of New York, and they elevated him to become the mayor, and that's what he says, Please if you want to come to New York City, get a permit from us in New York City and your state permit isn't going to carry -- isn't going to allow you to carry a weapon in New York City.

I'm respecting his wishes, not imposing my own.

I'll now yield, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger will now yield to another question.

SENATOR VELELLA: Senator Dollinger, do you see no difference between the

mayor of the city of New York taking a position on a particular issue and making a statement on the floor of the state Senate that the people of the city of New York do or do not want some thing? There may not ever be any inconsistency in your mind there.

SENATOR DOLLINGER: Mr. President, in response I acknowledge that there can be an inconsistency between the electorate and it's elected officials. Unfortunately, it's not -

SENATOR VELELLA: Thank you, Senator. Your explanation is satisfactory.

SENATOR DOLLINGER: Unfortunately, in this democracy, I have no other way of looking to that electorate other than the people that they elect to represent them. I guess the same thing could be said to follow your logic, Senator, the same thing could be said of the 36 people who sit on that side of the floor with respect to the guns issue and I've been trying to amend the gun bills for the last three and a half months, to attach a ban on

assault weapons. What I'm told is that 36 members of the Senate representing the views of their constituents oppose that. So I guess the elected representatives, at least from my point of view, if your argument were carried to its natural conclusion, I would argue that that the 36 members over there don't represent the electorate either.

SENATOR VELELLA: Senator, one final question. Would you yield to it?

SENATOR DOLLINGER: I'd be glad to.

SENATOR VELELLA: You would have no -

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR VELELLA: You would have no problem then if I ordered a transcript of this and read back to you when we're talking about some other City issues that position that the mayor takes by reminding you that that's what the people of the city of New York want and that you have an obligation to fulfill that

wish?

SENATOR DOLLINGER: I - certainly, Mr. President, in response to the question, I think in that instance we're doing two things: One, we're responding to the person that talks and, two, we're making an independent judgment. But in this case we're imposing on the people of the city of New York -- in this case we're imposing on the people of the city of New York our views about what we think is acceptable in the city of New York, and I stand by -- I stand by what the mayor tells me.

If the Senator has got some other person in New York City that I should be listening to, I'd be glad to do it.

But to return the point I was making, Mr. President, I think if they run their house, if it's my house I should be able to decide whether people smoke in it or not.

Two, the reason why I stand is because the city of Rochester has just recently passed legislation that bans assault weapons and that does a number of things that this house has

been unwilling to do. I would like to do everything I could to encourage the city of Rochester to continue with that experimentation in trying to restrict access to weapons that the city believes are dangerous to the people who live there.

And, finally, I think we're wit nessing something in this chamber that's unheard of in the American political landscape, at least by my reckoning, and I've watched the issues somewhat carefully.

I think this may be the only elected body in the United States of America which is talking about increasing the amount of guns in our urban areas. I don't know of any other body that's doing that. Certainly the House and the Senate in Washington are decreasing the amounts that are available, other states that have banned assault weapons, other states that have restricted weapons are decreasing the amount of weapons available in our urban areas.

And here we seem to be moving in

the opposite direction where what we're doing, we're increasing the availability of weapons. This bill invites more guns to come into New York City. It seems to me it's a fundamental mistake; it's grossly inconsistent with what's going on in this country, and I think the unfortunate message is that GOP is now trans lated into GUN. That's the message that you can draw.

I think it's mistaken; I think it's misguided; I think it does a disservice it's a mistake to our cities that are trying to decrease violence. Let's have this vote; this thing ought to be defeated.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Just very briefly I'd like to get past the sparring and into reality. Once we pass by the petty political sparring and get to reality, the record ought to indicate that in the comments that were made by Senator Dollinger, those speak for the people of

the city of New York because, Senator Dollinger, there isn't a doubt that, if we polled the people of the city of New York they would, in overwhelming numbers, ask for the defeat of this bill.

Now, there are members elected here from the city of New York who, because of party lines or whatever, will vote for this bill and we happen to live in a society where in most Senate Districts people don't vote on the basis of one issue, and they may get away with it. But getting away with a bad vote doesn't mean you're speaking for the people in your district or the people in the city of New York and, Senator Dollinger, you can take it to the bank, the people of the city of New York thank you for supporting our mayor and for, more importantly, supporting them on this issue.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this bill? If not, the clerk will read the last section.

THE SECRETARY: Section 2. This

act -

SENATOR GOLD: Slow roll call.

THE SECRETARY: Section 2. This bill shall take effect on the first day of November next succeeding the date on which it shall have become a law.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT KUHL: Call the roll. Are there five Senators willing to stand to request a slow roll call? There are. The clerk will call the roll slowly. Please ring the bells.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(There was no response.)

THE SECRETARY: Senator Connor.

(There was no response.)

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator

DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley excused.

Senator Galiber. Senator Galiber.

SENATOR GALIBER: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

THE SECRETARY: Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Holland to explain his vote.

SENATOR HOLLAND: Mr. President, this is, in my estimation, just a question of fairness. If you can be issued a license in the city of New York, a legal license just for a hand gun, not for an assault weapon, Senator Dollinger, not for an assault weapon -- we're not talking about that; we're talking about the Second Amendment and the rights of the citizens of this country to carry weapons. We're not talking about assault weapons, we're talking about revolvers, hand guns, legal hand guns, that has been checked out by judges, by the FBI, by the BCI, by the Mental Health Association, people have been given courses in how to handle a weapon and not to take it out, as Senator

Montgomery said, to scare somebody away, only as a last resort. That's all we're talking about.

If you want to do it the other way, Senator Gold, why don't you make it illegal for the other way so that people in the city of New York can't carry their weapons in upstate New York. I think that would be just as fair, and I would be against that too.

So it's a Second Amendment question. It's a question of fairness, and I see -- and only makes sense to me.

ACTING PRESIDENT KUHL: Senator Holland, how do you vote.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator Holland in the affirmative. The clerk will continue calling the roll.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Johnson to explain his vote.

SENATOR JOHNSON: The state of

New York has very rigid requirements concerning licensing for hand gun ownership and for hand gun carrying. New York City perhaps may be stricter in some respects than the rest of the state.

We guarantee that in New York City you're probably less likely to meet a legitimate licensed hand gun owner than you are in any other part of the state based upon population. Needless to say, with so many unarmed people running the streets of the city of New York, crime is running rampant, that's no secret to anybody in this chamber.

The fact that others who are licensed in other parts of the state are just as credible certainly as anybody with a New York City license, they meet the same laws, the same requirements for remaining free of criminal background or mental defect. Those people perhaps may be a little more enlightened than some others and feel like they'd like to carry their gun when they visit the city of New York to protect their lives and their property -- a

very intelligent thing to do, in my opinion.

There's no reason why a legitimate permit shouldn't be valid anywhere in this state. So, Mr. President, I support this bill. I suggest other people support it as well.

Thank you. I vote aye.

ACTING PRESIDENT KUHL: Senator Johnson in the affirmative.

THE SECRETARY: Senator Jones.

SENATOR JONES: Yes.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

(There was no response.)

Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Marino, aye.
Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Aye.
THE SECRETARY: Senator Nolan.
(There was no response.)
Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein.

Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

(There was no response.)

Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

(There was no response.)

Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Mr. President.

ACTING PRESIDENT KUHL: Senator Saland to explain his vote.

SENATOR SALAND: Thank you, Mr.

President.

Mr. President, this bill, it would seem to me, merely reflects a reality of probably some 57 counties in the state of New York having a mechanism that's clearly lawful, that clearly is intended to comply with the law, one which screens countless numbers of candidates, one which is very, very selective, one which, by the way, certainly greatly exceeds anything that was discussed at the national level during the recent debates surrounding the adoption of the Brady bill by -- by our federal Congress.

These bills, basically as discussed, we're talking about a five-day waiting period. I think most of us here could say very safely that in New York the kind of careful scrutiny that occurs in each of the 57 counties outside of the city of New York results in a process that probably takes somewhere in the area of about six months. It's a process which runs not only through local law enforcement, local sheriffs, but one which also

bears the imprimatur of a court, a court review before an applicant has been found fit for a permit. Those people then have the ability to carry virtually throughout, oh, I would guess 85 to 90 percent of the geography of the state of New York, failing only to be appropriate in those some five counties comprising the five boroughs of the city of New York.

I believe this is basically an equity issue. This is an issue which I think certainly recognizes the realities of the rights of law-abiding citizens to be permitted to carry or where they've been so approved in the county of their residence. I see no reason why this exception should be carved out. In fact, I commend Senator Holland for bringing this bill to us today, and I vote in the affirmative, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland in the affirmative. Clerk will continue the roll.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Solomon.

(There was no response.)

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford. Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: My name having been called, I'd like to briefly explain my

vote.

ACTING PRESIDENT KUHL: Senator Stavisky to explain his vote.

SENATOR STAVISKY: How many times does the National Rifle Association's computer have to run? How many times during a session does the NRA have to insist on an act of fealty in order that members here who are fully capable of being reelected with or without the NRA's endorsement have to pledge obedience to the NRA's regressive posture?

I've heard statements about obedience to the law, and why should law-abiding citizens in upstate New York not have the opportunity to carry their firearms in New York City because upstate New York obeys the law and we should cast no aspersions? And yet there are times when members here acknowledge that other parts of the state do not necessarily comply with the law in every instance.

How many times do I hear my colleague ask for all of our votes for a local bill to exempt from some provision, let us say

of the Education Law, a school district that may not have complied with the law? And yet the law is the law. But is the law only the law when you wish it to be so? And is it not the law when you don't like it?

We do not want to have the standard of Judge Billy Bob or whatever his name is, in your jurisdiction whom we do not know making decisions with regard to guns in New York City. We have confidence that our police commissioner and our mayor -- our mayor, ladies and gentlemen -- I'm making no distinction, have the ability to speak for the city in which some of us live, the same way as your elected officials have the power to speak for your interests just as you do.

Please do not ask us to surrender our rights with regard to the law as it applies to New York City and then go back and tell us you don't want us to obey the law when it comes to your district that has done something to follow up the procedure or to violate the law when they knew it well in advance.

I don't want a double standard. I want home rule to apply equally across the state and some of you who know better should not be voting for this type of legislation again and again and ask us in New York City to remain silent when you want us to revise what we expect for our constituents and our visitors.

I do not want to impose a standard in your jurisdiction. Please don't do it in the place where I live. I vote no.

ACTING PRESIDENT KUHL: Senator Stavisky, how do you vote? Senator Stavisky in the negative. The clerk will continue the roll.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker excused.

Senator Waldon.

(There was no response.)

Senator Wright.

(There was no response.)

ACTING PRESIDENT KUHL: The clerk will call the absentees.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno to explain his vote.

SENATOR BRUNO: Senator, you talk about a double standard. You talk about imposing will on your constituency. I'd like to ask the same indulgence of you and those people that vote against this.

I have a pistol permit, legal, like a lot of other citizens in New York State. I resent being treated like a second class citizen in my own state. You have a pistol permit in New York City, you have a perfect right in coming to Rensselaer County, Saratoga County, into my district and carry a weapon.

I don't have the same privilege when I go into New York City. That is a double standard. We pass laws in this chamber every day that affect the entire constituency of this state, and I, for one, Mr. President, resent being treated like a second class citizen.

I get fingerprinted. I do all of the things that the law says I have to do to get a permit for carrying a pistol. I go into New York City, and I am a criminal if I have that pistol with me.

Now, do you call that representa tive? You call that good government? I don't, and I also resent the fact that any time anyone wants to get on their feet, they talk about the NRA and that we're (unintelligible) we're lackey.

Well, let's talk about being a citizen who feels that he or she has a constitutional right to carry a weapon here in New York State or in the United States, and that is totally unrelated to the NRA. So that may be self-serving in your constituency, but it's of

no value here in this constituency.

So, Mr. President, in fairness to all the citizens of this state, equal opportunity for all the citizens, I vote yes.

ACTING PRESIDENT KUHL: Senator Bruno in the affirmative. Clerk will continue the roll call.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: To explain my vote.

ACTING PRESIDENT KUHL: Senator Hoffmann to explain her vote.

SENATOR HOFFMANN: In the ten years that I have endured the debate on this bill, I've heard many things said on this floor that made me cringe, and today was another one of those days.

I would like to add my voice to the other upstate representatives who are talking about the issue of parity and fairness and the constitutional guarantee that we have to recognize rights enforced by the state of New York that allow people to do things across the state and to recognize that one jurisdiction does not have the right to deny people the opportunity to use a right which has been granted in another jurisdiction of the state. It is a relatively simple concept.

But what we have seen today is another example of somehow that issue of fairness is instead cast aside and we have territorial warfare and territorial prejudices exposed, and in this case a rather interesting class issue. I have never heard any castigation before of this chamber following the will of the NRA, and I resent the implication that any of us are taking orders from an organization like the National Rifle Association or any other organization.

Those charges were once made

about people who ran for office in this country who belong to minority religious groups and people who make those charges today are regarded as uneducated boobs, and I am appalled that any member of this chamber would accuse us, those of us who vote our conscience on this issue of taking orders from an organization and the reference to "Judge Billy Bob or whatever their names are" in the upstate area is another af front to people of this state. That's a direct reference to cartoon characterizations of people who live in the back woods. It's a Beverly Hillbillies kind of slap on those of us in upstate New York.

The Republican judges in Onondaga County who issue pistol permits would be offended to hear their characterization of "Judge Billy Bob or whatever their names are" in these chambers today. They follow the law. They use waiting periods that are far in excess of what the national standard has been. They screen people sometimes to excess, and they are fair and they recognize the Constitution and we

should recognize the Constitution for people all over the state of New York.

I hope the next time this bill comes up that the tenor of debate will be of a higher level and it will not be one in which everybody from upstate New York is cast in one lot and lumped with ridicule.

I vote aye.

ACTING PRESIDENT KUHL: Senator Hoffmann in the affirmative. The clerk will continue the roll call.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Ohrenstein.

(There was no response.)

Senator Oppenheimer.

(There was no response.)

Senator Pataki.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Wright.

(There was no response.)

ACTING PRESIDENT KUHL: The clerk will announce the results.

THE SECRETARY: Ayes 34, nays 16.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Recognize Senator Stafford.

SENATOR STAFFORD: I would like to call an immediate meeting of the Committee on Finance in Room 332, please.

ACTING PRESIDENT KUHL: Senator Stafford calls an immediate meeting of the Committee on Finance in Room 332, immediate meeting of the Senate Finance Committee.

Senator Present, do you desire to continue.

SENATOR PRESENT: Regular order.

ACTING PRESIDENT KUHL: Clerk will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 654, by Senator Hannon, Senate Bill Number 277A, an act to amend the Administrative Code of the City of New York and the Emergency Tenant Protection Act.

SENATOR GALIBER: Explanation.

ACTING PRESIDENT KUHL: Senator Hannon, Senator Galiber has asked for an explanation.

Senator Hannon for an explanation.

SENATOR HANNON: This bill provides that the failure to file a city -- New York City income tax return by a tenant in a rent-regulated apartment would be prima facie evidence that the tenant doesn't have a primary residency in New York City, which is a requirement -

ACTING PRESIDENT KUHL: Senator

Hannon, excuse me just a minute.

Ladies and gentlemen, there is a great deal of noise in the chamber. Very difficult for the chair to understand what Senator Hannon is saying even with the use of the microphone. Could we please quiet it down.

Thank you, Senator Hannon.

SENATOR HANNON: In conclusion of the explanation, this legislation doesn't apply to individuals who request an extension or provide any other reasonable excuse for failure to file their taxes in a timely fashion.

ACTING PRESIDENT KUHL: Clerk will read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Take that back. Senator Gold.

SENATOR GOLD: As has been pointed out in the past on this bill which keeps coming back, it's opposed by the New York State Tenant and Neighborhood Coalition; and Senator Connor and Espada, myself, Montgomery, Ohrenstein and Waldon have voted against it in

the past, I guess on the simple theory that you are mixing apples and oranges; and what can I tell you?

Last section.

ACTING PRESIDENT KUHL: Clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Clerk will announce the results.

THE SECRETARY: Those recorded in the negative on -- those recorded in the negative on Calendar Number 654 are Senators Espada, Gold, Goodman, Leichter, Mendez, Montgomery, Onorato, Smith, Stavisky, also Senator Markowitz, also Senator Kruger. Ayes 41. Nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

699, by Senator Volker.

SENATOR GOLD: Hold that temporarily for Senator Galiber.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 727, by Senator Hannon, Senate Bill Number 6627, an act to amend the Administrative Code of the City of New York.

ACTING PRESIDENT KUHL: Senator Hannon, Senator Stavisky would like an explanation.

SENATOR PRESENT: Lay it aside temporarily.

SENATOR GOLD: Thank you.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 773, by Senator Saland, Senate Bill Number 4331 an act to amend the Family Court Act, in relation to authorizing fees for probation services in Family Court.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL:

Explanation has been asked for.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 879, by Senator Present, Senate Bill Number 2108, an act to amend the Insurance Law, in relation to coverage for mammography screening.

SENATOR SOLOMON: Mr. President.

ACTING PRESIDENT KUHL: Senator Solomon.

SENATOR SOLOMON: Will the sponsor yield, please.

ACTING PRESIDENT KUHL: Senator Present, do you yield for a question?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: Senator does. Senator Solomon.

SENATOR SOLOMON: Senator Present, I'm sure you are aware that ERISA, the Employee Retirement Income Security Act,

prohibits states from having mandates on insurance policies that cross state lines so there can be standardization of policies. How do you reconcile this bill with ERISA?

SENATOR PRESENT: I don't think this bill conflicts with the federal law.

SENATOR SOLOMON: Can you cite me any cases where you can prove that, any legal opinion? Because this directly contradicts federal law under ERISA.

SENATOR PRESENT: It only covers laws that are governed by New York State law.

SENATOR SOLOMON: Senator, I read this legislation -- Senator, correct me if I'm wrong. Does not this legislation mandate -

Mr. President, if the Senator will yield.

Doesn't this legislation require any policies issued -- any policy to cover mammography exams even if those policies are issued out of state.

SENATOR PRESENT: I think that this bill provides only the mandates that are

covered by other laws, covered mandates. I think you interpret it wrong. We differ. I think you raised this issue in the past, when this bill has passed in the Senate.

SENATOR SOLOMON: Well, I just read the bill, and the bill in and of itself basically says -

ACTING PRESIDENT KUHL: Senator Solomon, are you asking Senator Present -

SENATOR SOLOMON: On the bill, Mr. President.

ACTING PRESIDENT KUHL: On the bill. Senator Solomon on the bill.

SENATOR SOLOMON: "Any policy which provides" -- let's see. The part that you are taking out is, "except that this provision shall not apply to a policy which covers persons employed in more than one state or the benefit structure which is the subject of a collective bargaining affecting persons employed by one state." That's what ERISA was specifically designed to do and has been interpreted by the courts.

The Courts have said where you have insurance policies that go across state lines -- for instance, General Electric can issue the same policy or have the same insurance coverage for all its employees. The state can not mandate certain coverages.

And in addition to the impact of this bill, what will happen is we will just basically have insurers move out of the state or the insurance policies will not be bought from New York State insurers. This bill directly contradicts ERISA. There is no court case that I know of, after doing a lot of research on ERISA, that supports the basis of this legislation, and the only thing we're doing is passing a law which is going to cause the loss of employment in this state and the loss of revenue in this state because there are premium tax dollars that are generated when insurance policies are sold, and we're going to lose those premium tax dollars.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Clerk will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 52. Nays 2. Senators Kuhl and Solomon recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 654.

ACTING PRESIDENT KUHL: Without

objection, Senator Connor is recorded in the negative on Calendar Number 654.

Senator Present.

SENATOR PRESENT: Go back to Calendar 773, please.

ACTING PRESIDENT KUHL: The clerk will read Calendar Number 773.

THE SECRETARY: Calendar Number 773, by Senator Saland, Senate Bill Number 4331, an act to amend the Family Court Act, in relation to authorizing fees for probation services in Family Court.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Gold has asked for an explanation. Senator Saland for an explanation.

SENATOR SALAND: Thank you, Mr. President.

Mr. President. This bill would amend the Family Court Act to permit a court to order a home investigation by a probation department -- a county probation department, which it already has the authority to do, but

add to that authorization the ability for the court to charge a -- permit the probation department to charge a fee from $50 to $500 or waive that fee in its entirety where on a showing of means the court determines that it would not be appropriate. Currently, that authority exists for home studies in cases involving custody proceedings.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: I just wanted - for those members who have voted in the negative before, Senator Galiber, Montgomery and Onorato, Paterson, Santiago, Solomon, Stavisky, Waldon, Kuhl, Pataki, and Skelos.

ACTING PRESIDENT KUHL: Clerk will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of October next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Padavan, to explain your vote?

SENATOR PADAVAN: Voting in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 773 are Senators Connor, DiCarlo, Gold, Kruger, Kuhl, Leichter, Mendez, Montgomery, Nanula, Onorato, Padavan, Santiago, Skelos, Solomon and Stavisky.

Ayes 39. Nays 15.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Would you recognize Senator Goodman, please?

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: Mr. President. It's my privilege and pleasure to bring to the attention of the chamber the fact that we have here a very distinguished senior member of the

United States Senate in our presence. I'm honored to have you meet and greet Senator Phil Gramm of Texas, who, as you know, is one of the more scholarly members of the United States Senate having himself been a professor, an expert on many issues, who is in Albany today for the purpose of discussing matters relating to health.

Senator Gramm, we're very pleased indeed to see you, and we warmly welcome you.

(Applause.)

ACTING PRESIDENT KUHL: Senator Gramm, on behalf of the Senate Majority Leader, Senator Marino, we certainly welcome you here. We're pleased that you found time to leave the busy city of Washington to come up and join us in our proceedings. Welcome.

I notice that Senator Goodman didn't know which side of the aisle to take you, but certainly we appreciate your being here.

Senator Nanula.

SENATOR NANULA: Mr. President. I'd like to request unanimous consent to be

recorded in the negative on Calendar Number 654.

ACTING PRESIDENT KUHL: Without objection, Senator Nanula will be recorded in the negative on Calendar Number 654.

Senator Wright.

SENATOR WRIGHT: Mr. President. I was away on Senate business when the vote on Calendar 632, Senate Print Number S.207A, was taken. I would like the record to reflect that had I been in the chamber when the vote was taken, I would have voted in the affirmative on Calendar 632.

ACTING PRESIDENT KUHL: The record will reflect that had Senator Wright been here, he would have voted in the affirmative on Calendar Number 632.

Senator Santiago.

SENATOR SANTIAGO: I request unanimous consent to be recorded in the negative on Calendar 632 and 654.

ACTING PRESIDENT KUHL: Senator Santiago, without objection, you will be recorded in the negative on Calendar Number

654. If you would like, the record will reflect that had you been here when the vote was taken on Calendar Number 632, you would have voted in the negative.

SENATOR GOLD: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Further housekeeping?

(There was no response.)

Continue the roll.

THE SECRETARY: Calendar Number 894, by Senator Rath, Senate Bill Number 7054A, an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Yes.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Senator, could we impose to put this over for one day for Senator Oppenheimer, please?

SENATOR RATH: I couldn't hear you, Senator.

SENATOR GOLD: Pardon me?

SENATOR RATH: I can't hear you.

SENATOR GOLD: That's the idea. Senator, could we put this over for one day for Senator Oppenheimer, please?

SENATOR RATH: Sure.

SENATOR GOLD: Thank you very much.

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

Senator Present.

SENATOR PRESENT: Mr. President. Can we stand at ease for a few moments.

ACTING PRESIDENT KUHL: Senator, we have a motion on the floor. Can we recognize Senator Holland?

SENATOR PRESENT: Go ahead.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Mr. President. I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: 8355.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Maltese.

SENATOR MALTESE: Mr. President. I ask that Senate Bill, my bill 5059, Calendar Number 84, be starred.

ACTING PRESIDENT KUHL: Place a sponsor star -- Senator, the calendar number, again, was -

SENATOR MALTESE: 84.

ACTING PRESIDENT KUHL: Calendar Number 84 will have a sponsor star placed on it.

SENATOR PRESENT: At ease.

ACTING PRESIDENT KUHL: Senate will stand at ease for just a few moments.

(Whereupon, at 5:07 p.m., the Senate stood at ease.)

(Whereupon, at 5:20 p.m., Senate reconvened.).

ACTING PRESIDENT KUHL: Senate will come to order.

Senator Present.

SENATOR PRESENT: Can we return

to the reports of the standing committee?

ACTING PRESIDENT KUHL: That we can, Senator.

We will return to reports of standing committees. Clerk will read.

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

Senate Bill Number 8474, by the Committee on Rules, an act to provide for payments to municipalities.

Senate Bill Number 8475, by the Committee on Rules, an act to amend Chapter 84 of the laws of 1994.

Senate Bill 8476, by the Committee on Rules, an act to provide for payments to vendors.

Senate Bill Number 8477, by the Committee on Rules, an act making an appropriation for the support of government.

Senate Bill Number 8478, by the Committee on Rules, an act making an appropriation for the support of government.

All bills reported directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are reported directly for Third Reading.

Senator Present.

SENATOR PRESENT: Mr. President. Can I have those bills read at this time, starting with Calendar 1072.

ACTING PRESIDENT KUHL: Clerk will read, starting with Calendar Number 1072.

THE SECRETARY: Calendar Number 1072, by the Senate Committee on Rules, Senate Bill Number 8474, an act to provide for payments to municipalities and to providers of medical services.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message at the desk?

ACTING PRESIDENT KUHL: There is, Senator Present.

SENATOR PRESENT: I move that we

accept the messages, as I think there are two.

ACTING PRESIDENT KUHL: On the motion, all those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The motion is approved.

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 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Oh, excuse me. Ayes 52. Nays 2. Senators Holland and Maltese recorded in the negative on Calendar 1072. Also, Senator Sears in the negative on Calendar 1072.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Present.

SENATOR PRESENT: Calendar 1073, please.

ACTING PRESIDENT KUHL: Clerk will read Calendar Number 1073.

THE SECRETARY: Calendar Number 1073, by the Senate Committee on Rules, Senate Bill Number 8475, an act to amend Chapter 84 of the Laws of 1994, an appropriation for debt services obligations.

ACTING PRESIDENT KUHL: Clerk will read the last section.

SENATOR PRESENT: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Are there messages of necessity and message of appropriation at the desk?

ACTING PRESIDENT KUHL: There are, Senator Present.

SENATOR PRESENT: I move we

accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The motion is approved.

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 54.

ACTING PRESIDENT KUHL: The bill is passed.

Clerk will read Calendar Number 1074.

THE SECRETARY: Calendar Number 1074, by the Senate Committee on Rules, Senate Bill Number 8476, an act to provide for payments to vendors under the Women, Infants and Children's program.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity and a message of appropriations at the desk.

ACTING PRESIDENT KUHL: There is, Senator Present.

SENATOR PRESENT: I move that we accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The messages are accepted.

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 54.

ACTING PRESIDENT KUHL: The bill

is passed.

Clerk will call Calendar Number 1075.

THE SECRETARY: Calendar Number 1075, by the Senate Committee on Rules, Senate Bill Number 8477, an act making an appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity and a message of appropriation at the desk on this bill?

ACTING PRESIDENT KUHL: There is, Senator Present.

SENATOR PRESENT: Mr. President. I move we accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The messages are accepted.

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 54.

ACTING PRESIDENT KUHL: The bill is passed.

Clerk will read Calendar Number 1076.

THE SECRETARY: Calendar Number 1076, by the Senate Committee on Rules, Senate Bill Number 8478, an act making an appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is a message of necessity and a message of appropriation at the desk on this bill?

ACTING PRESIDENT KUHL: There is, Senator Present.

SENATOR PRESENT: Mr. President. I move that we accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Those opposed, nay.

(Response of "Nay.")

Senator Dollinger is recorded in the negative. The messages are accepted.

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: Those recorded in the negative on Calendar Number 1076 are Senators Dollinger, Jones and Nanula. Ayes 52. Nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. Can we go back to Calendar 699?

ACTING PRESIDENT KUHL: We will return to Calendar Number 699. Ask the clerk to read.

SENATOR GALIBER: Explanation.

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

SENATOR GALIBER: Explanation, please.

ACTING PRESIDENT KUHL: An explanation has been asked for by Senator Galiber.

Senator Maltese.

SENATOR MALTESE: Mr. President. This statute seeks to amend the Criminal Procedure Law with regard to the people's failure to serve on the defendant copies of witnesses' statements.

Basically, it adds a new Section 240.46 to the Criminal Procedure Law to provide

that a reversal or modification of a judgment for failure to turn over copies of a witness's statements may not occur unless the defendant demonstrates that his rights were affected.

This is a statutory answer to People versus Ranghelle, which was decided on by our Court of Appeals in 1986, and what People versus Ranghelle did to the discovery rule, the Rosario rule, is extended it very unreasonably and to an extent that is not followed in any other jurisdiction in the United States. And what they said is, that even if a witness's prior statements do not contradict his testimony, even if those statements were not produced in bad faith, even if the substantial rights of the defendant are not affected in any shape, manner or form, or even if those prior statements absolutely buttress and substantiate and follow the witness's subsequent statements, that the case must be reversed and a new trial ordered.

So this is a corrective piece of legislation that, as a matter of fact, was

requested by the District Attorneys' Association of the State of New York, has been supported by every district attorneys' -- every county district attorney that has communicated with us; and, as a matter of fact, in a subsequent case People versus Dana Jones, Justice Joseph Bellacosa indicated that the decision in People versus Ranghelle was "a prosecutor's nightmare and a perpetrator's delight." So this legislation would remedy that prosecutor's nightmare and give us legislation in New York that would not unduly tie the hands of prosecutors and make it mandatory on lower courts to demand -- to reverse prior judgments and demand new trials.

ACTING PRESIDENT KUHL: Senator Galiber.

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

Senator, I don't really have any questions because I can count and I know where this bill is going, but I will just make some observations.

You have worked as a district attorney on occasion. You certainly have gone through our procedure as far as a formal education is concerned. You are someone who believes in America. You are someone who believes in the American Flag, and I guess, more importantly, you believe in people, and I'm not saying that with tongue in cheek. We may differ on how we go about the business, but more than often we come to some of the same conclusions.

This piece of legislation, as a fair and as a reasonable person and someone who believes in the Constitution of the United States -- and, again, I know all these things and this debate, every now and then we put our tongue in our cheek.

And my tongue is not in my cheek on this piece of legislation. It is all about fairness, Senator, and you knew this when you were a prosecutor; and when we seek changes, we seek changes mainly because, somewhere, someone has abused something. This is a situation where there has been a domino effect.

Those of us who believe in law and order and some believe in law and order and justice at the same time -- and sometimes there is more than just a fragile distinction; there is a big difference between the two -- believe that the Constitution of the United States was for people, at least most of the people, but it was about fairness and rights. And if we watch very carefully and we follow the various amendments, we have seen this great country of ours progress.

We have a situation here where you are now prepared to suggest that we shift the burden from the people, where it's always been, to the defendant. The defendant stands accused, indicted, he is prepared or she's prepared for trial. And we have prosecutors who -- we put them in an arrogant position, especially the new fellows.

Not the old timers when you were there. And, again, I'm not massaging you. When they had a case, they went forward with it. If they didn't have a case, they moved to dismiss

the case, wouldn't even present it to the grand jury. None of this nonsense that the D.A.'s Association, a number of young folks, some of them in my county, who believe they are going to change the world. The world certainly needs alterations, but not changes.

You have here a Rosario bill which we passed some time ago and we have been slowly amending it when it comes to the point where we figure that we haven't got an even playing field; and that's all we're seeking for here or any place in theory -- sometimes in actuality -- to say, "Is it fair?", the presumption of innocence. Those are not just casual words. The defendant appears before the Court. He or she is presumed innocent until proven otherwise by a jury of peers or a judge if it's a nonjury trial.

What you would suggest here and perhaps, yea, even encourage, is a situation where if the defendant who has the burden that you're trying to shift over, with little resources in some instances, Legal Aid taking

nothing away from or adding onto, Legal Services certainly, even in the case of private attorneys, where they do not have the ways and means, if you will, to go out and properly investigate a case, to marshal, if you will, all the evidence, as the district attorney has tons and tons of investigators, and then that district attorney's office decides what they will use or not use.

I'm saying that if you make that decision that we can't change the Constitution; we can't amend the Constitution because of the abuses; and as a result of the abuses, there are procedures which says or suggests, if you don't give up this information on demand, per se, as such, it's gone. It's an automatic reversal.

Does that do harm to anyone? Is that unreasonable? Is it not American? Is it not part of the forefathers' Constitution that they put into existence? It's American as I use the expression from time to time.

Why now should we change it merely because we have the votes? Why should

we tinker with something which is so very important, because we have the votes? Why should we bulldoze and make that kind of even playing field disruptive and making it uneven again to shift this responsibility back to the defendant?

Senator, this bill is just not fair, and I know that things and conditions are so bad in our society and some of our areas, whether it's talking about bringing guns into our community, or whatever the case may be, the conditions are so bad that even those persons who are saying we have gone too far with mandatory sentences, we have gone too far with all the other "Get Tough on Crime," which I agree we don't agree about the procedure, but certainly things are horrible in our communities. When you come Upstate, they are still horrible, but they are just better. They smooth out a little bit, but they are horrible in our district, and you know that.

This is not the answer. This is one of those occasions when we take a position,

"Whether it's death penalty or no?", and those who are strong believers of the death penalty, and I respect those judgments -- you know that as well as I do, for years. "Well, you know, if one innocent person happens to be electrocuted, sobeit; that's the way it goes."

In this piece of legislation, we're saying until we find another system -- and the American system to me is a good system with a number of cracks in the armor but the best system that I know of, and I have some personal problems with this great nation of ours, but we've seen progress. So, those of us who are concerned, as those of you on this side of the aisle and on this side of the aisle are concerned how we will slowly but surely whittle away at certain basic rights that people have.

We took the 14th Amendment and some number of other Amendments and we keep just attempting to destroy them. It's like declaring war, and that's what this "Get Tough on Criminals" and get tough and hard on things that are happening in our community. It's a cause,

it's a phase, it's another kind of war; and as a result of it, we hide behind the notion of a war, like we declared war on poverty. I can't imagine doing that, but we did it, and we hid behind it and a lot of abuses took place, but it gave us the right to do some other things.

We have gone through a sensitive area and that I'm concerned with, and that's the war on drugs. Once we throw that out, it's like a Madison Avenue public relations firm "declaring war."

This piece of legislation is akin to that because, when we declare war, then we justify all those things which are guaranteed by our Constitution, we throw them aside. We start kicking in doors without search warrants. We beat up people with due cause. We do all these horrible things, and we say, "But this is a war." This is a war so, therefore, we have justified them.

This reminds me, Senator, this piece of legislation -- and I said to one of counsels here, I said, "I wish Dale Volker was

here," not for the substance of the matter, because certainly you argue the point as well as he would, but just we miss him so much, and I wish he was here. I'm sure he will be soon.

But, Senator, this is my observations. I don't have enough votes here. But I'm saying we've got to put a screeching halt eventually, or we're going to have another form of government. We can't go on with this craziness in trying to shift burdens because of the horrible conditions that exist in our communities throughout the entire state with varying degrees. And that's what you are suggesting here. You are suggesting that this burden be shifted. You want to tie the hands of prosecutors, as you put it. Nice great terms.

No, we don't want to tie the hands of prosecutors. We want to bring back some of those old-time prosecutors who said, "If you are wrong, we're going to indict you, and we're going to convict you."

And those old-time judges -- we didn't have to fetter judges like we're doing

today. We had a horrible crime, this fellow is in jail right now, mostly males who are serving some long, long, long terms back to those old judges, that we no longer have any confidence in; who were prosecuted by district attorneys who we no longer have confidence in their philosophy; and you came up during that period of time. Those were good solid days where America meant something, our system meant something, and it worked pretty good.

We want to get merit judges because the old judges that we elected are no good. I don't know, they served me pretty well and you also. We're trying to go change a system that doesn't need changing.

And, Senator, this piece of legislation gives a basic American right that a defendant appears before the Court, his peers, clothed with the indicia of innocence, a presumption of innocence, built into that notion, this does violence. This does violence to that presumption of innocence.

SENATOR SOLOMON: Mr. President.

ACTING PRESIDENT KUHL: Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President.

Will Senator Maltese yield, please?

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to Senator Solomon?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator does.

Senator Solomon, will you yield temporarily?

Senator Present.

SENATOR PRESENT: Mr. President. Can we lay this bill aside just for a moment, and take up 727 and read the last section.

ACTING PRESIDENT KUHL: Calendar 699 will be laid aside just for a moment.

Clerk will call up Calendar Number 727.

THE SECRETARY: Calendar Number 727, by Senator Hannon, Senate Bill Number 6627,

an act to amend the Administrative Code of the City of New York.

ACTING PRESIDENT KUHL: 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: Senator Oppenheimer, how do you vote on this bill?

SENATOR OPPENHEIMER: I would like to vote in the negative, please.

ACTING PRESIDENT KUHL: Senator Oppenheimer recorded in the negative.

The roll call will be withdrawn. Excuse me. While the roll call is still open - Senator Velella.

SENATOR VELELLA: Negative.

ACTING PRESIDENT KUHL: In the negative.

Senator Goodman.

SENATOR GOODMAN: Nay.

ACTING PRESIDENT KUHL: In the negative.

Senator Padavan.

SENATOR PADAVAN: (Indicating negative.)

ACTING PRESIDENT KUHL: In the negative.

Senator LaValle.

SENATOR LAVALLE: Aye.

ACTING PRESIDENT KUHL: In the affirmative.

Now, the roll call will be withdrawn. The bill is laid aside.

We will return to Calendar Number 699.

SENATOR SOLOMON: Okay. We got this straight?

THE SECRETARY: Calendar Number 699, by Senator Volker.

SENATOR SOLOMON: Mr. President. Will Senator Maltese yield?

ACTING PRESIDENT KUHL: Chair recognizes Senator Solomon.

SENATOR SOLOMON: Mr. President. Will Senator Maltese yield?

SENATOR MALTESE: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

Senator Maltese yields. Senator Solomon.

SENATOR SOLOMON: I forgot the question.

Senator Maltese, I see the Ranghelle decision came down in 1986. If this has been such a -- when was this developed or seen by the prosecutors as such a pressing issue, because it's 1994 now?

SENATOR MALTESE: Mr. President. In the very same decision, there were observations made by Judge Bellacosa as to difficulties with this decision.

In 1987, a subsequent case, People versus Jones, that's when Judge Bellacosa made statements, both that it was a prosecutor's nightmare but, in addition, indicating that as a

common law rule it could be amended by statute, and he indicated that the Legislature should take a look at the judge-made law. The prosecutors, so far as I know, have indicated difficulty with it from the time of the decision in '86 and subsequently in '87.

SENATOR SOLOMON: Mr. President. If Senator Maltese will yield?

ACTING PRESIDENT KUHL: Senator Maltese, do you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR SOLOMON: Senator, I understand this is not your bill, so if you have the answer, that's fine. If not, that's okay.

Do you know when this bill was first introduced or any other bill similar to this was first introduced?

SENATOR MALTESE: Mr. President. That's what I've just been advised. The bill was introduced in 1987 and subsequently in every year and apparently was passed by the Senate

every year following that.

SENATOR SOLOMON: Thank you, Mr. President.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter. On the bill?

SENATOR LEICHTER: Mr. President. If Senator Maltese would yield, please?

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to Senator Leichter?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator does.

SENATOR LEICHTER: Senator, I am concerned about a point that Senator Galiber made, which is, that you are shifting the burden of proof; that it's on the defendant to show that he or she had their substantial rights affected by the failure of the prosecutor to do what the prosecutor should do, which is turn over papers.

But what I'm specifically

concerned about is the language in this bill that says that -- and I'm reading. The key word is on line 11. Let me read the whole sentence: "The Court shall not set aside a conviction or reverse or modify a judgment on account of a failure to comply with the provisions of Section 240.45 of this article..." -- that is the requirement to turn over the papers and documents -- "...unless the defendant demonstrates" -- demonstrates -- "that his substantial rights were affected."

By what burden of proof, preponderance, clear and convincing, beyond a reasonable doubt?

SENATOR MALTESE: Mr. President. The rule that prevailed prior to the Rosario case and was changed by the Rosario case in all other discovery matters right up until the People versus Ranghelle indicated that the Harmless Error Rule, the rules that indicated that unless a defendant's substantial rights were affected adversely, were prejudiced, that that error would not require the setting aside

or modification of a judgment or be calling for a new trial.

In all other discovery motions, the defendant would have to show that his substantial rights were violated if he was bringing forth some evidence that would -- some evidence that would indicate that the prosecutor had erred willfully or that it was not a harmless error that could be modified by an action of the Court.

The reason that this specific legislation is being put in is because this is so different. As I indicated earlier, this is not the rule that prevails in any other jurisdiction in the United States. This is a rule that twists the Rosario rule, which since '61 has become noncontroversial. The element that my good colleague, Senator Galiber, has indicated, the elements of fairness, the element of a balancing of the equities so that -- and giving every advantage to the defendant, so that he would have a fair trial has been carried, prior to Ranghelle, to a logical conclusion.

But this conclusion, I submit, is illogical. It is a twisted perversion because it indicates that even if the prior statement was not inconsistent to any degree; as a matter of fact, even if the prior statement of the witness in question is, "I saw him do it; I saw him pull the trigger, and I saw him kill the deceased," and that is not inconsistent with the subsequent statement of the witness, if that statement through inadvertance and not through bad faith were not disclosed to the defendant prior to the witness testifying, that case would demand the reversal and a new trial.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President. Senator Maltese, you totally failed to address my question. You made another commercial for the bill. You did it well. But I'm not going to repeat the question. I will just try to deal with it myself.

The point that I was trying to

get at, Senator, was that while I might have no difficulty if a prosecutor failed to turn over a paper and that paper, as you indicated, in no way affected the substantive rights of the defendant. But then, to put the burden on the defendant to show that the paper that was improperly withheld or failed to be turned over -- and it doesn't matter whether it was purposefully or whether it was inadvertent and negligent, or so on.

We have these rules in how to do trials. I don't ever do criminal work. I wouldn't trust any defendant to my knowledge of the Criminal Law, but I do some civil work, and I know the importance of turning papers over, and the sanctions that we impose on attorneys and parties if you fail to turn over papers.

If it's important in civil cases, it's certainly more important in criminal cases because one of the things that makes our system so wonderful, as Joe Galiber says, is that we do give every opportunity to the defendant because we want to make sure. We want to make sure that

we don't convict anybody improperly.

I remember first coming to this country and hearing the statement -- as a young person, I was impressed by it -- that we'd rather have 99 guilty people go free than to convict one innocent person. I question whether that's any longer the belief of some people.

So, when you have a bill of this sort, I'm just troubled by the fact that you now put the burden on the defendant to show that that paper which was improperly withheld affected his substantive rights. That may be difficult to do. There may be instances where, on the face of it, the paper doesn't seem to directly contradict the defendant's guilt; but an attorney, somebody as skillful as you, having information and the paper, would use it with a witness, and so on. Seems to me that the burden ought to be on the prosecutor -- on the prosecutor to show that that paper did not affect the substantive rights.

So my question to you was, if you are putting the burden on the defendant, what is

the nature of the -- does he have to show it by the preponderance of the evidence or all the various gradations that we have? But I don't know.

I don't know. I think I would be troubled with this bill irrespective of the degree burden you put on the defendant. I would vote for this bill if the burden was on the prosecutor to show that the mistake that the prosecutor made did not affect the rights of the defendant. But, then, where the defendant was damaged or may have been damaged, certainly he didn't get all the papers and documents that he should have. And now you say you didn't get them? "Yeah, you didn't get 'em. Show us that it hurt you." I think that's wrong, Senator.

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT KUHL: Senator Maltese on the bill.

SENATOR MALTESE: The burden - the burden on the prosecutor to prove the defendant's guilt has not shifted; the burden remains the same.

As to the specific document in question, the burden, if you will, has not shifted as far as the guilt or innocence of the defendant. What the court -- or what the Legislature here is attempting to do is return sanity to a decision, a court-made decision, a common law decision, which is a rule of evidence, and they have taken the Rosario rule, which I think all of us at this time find to be a reasonable rule, and they have done what we do in criminal trials. They leave it to a jury first of all, but ultimately a judge. And if in a judge's deliberation, he finds that this document when it is discovered would have affected the rights, the substantial rights, of the defendant adversely to whatever degree in his analysis he feels is detrimental, then he still has the same rights he had originally to order a new trial and reverse or modify the prior judgment of the court.

What my good colleague, Senator Galiber, was talking about earlier as far as when we were younger, some of us, and we were in

various phases of our career, I was a prosecutor for some three and a half years under two district attorneys, two distinguished district attorneys one Nat Hentel and the other a member of this house, Tom Mackell. And I find that in the passage of years -- now it will be almost 30 years -- my recollection sometimes dims, and I fall prey to the disease of people who start going into their 60s and 70s that the good old days look better and better all the time, and that we were the repositories of all wisdom, and that our judgments were never wrong, and that the things that we did in the district attorney's office were right and just. And perhaps, nowadays, they don't do it the right way.

Now, that isn't to say that I don't agree with Senator Galiber that those days we had better judgment and we did what I would consider a better job and that we had more discretion, for instance; and that in my judgment, again, district attorneys did not - in the exercise of their discretion did not -

were not unfair, were not unjust and were able to carry through, carry the best efforts of justice through and protect at the same time defendants.

We are in an adversarial system of law, an adversarial system criminal law. This particular piece of legislation is not adversarial. This particular piece of legislation is attempting to utilize some common sense. Certainly, it goes against all common sense if you say that the prior statement in no way contradicts, is perhaps an identical statement of the witness who is to take the stand for the prosecution. Certainly if it has no effect, absolutely no effect of any kind, detrimental or otherwise on the testimony of the witness or on the ultimate finding of guilt or innocence of the defendant, it should not be a cause for reversal.

We talk about the ends of justice being served. Those ends are best served by speedy trials not by congesting the courts with repeated, unnecessary, unfruitful, unfair,

requests for appeal.

In this case, we are seeking to remedy a court-made rule that a justice of the very court that came up with that rule has termed a prosecutor's nightmare and, in effect, has given us a road map of how we in the Legislature can act so that the best interests of all people and the best interests of the defendant would be protected.

The interests of justice are not fairly and justly served by protracted appeals, by unnecessary appeals, and by burdening the courts, the prosecutors, and the taxpayers with the unnecessary expense of trying cases repeatedly and over and over again with no effect and without the best interests of justice being served.

SENATOR GALIBER: Senator, will you yield for a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator Galiber asks Senator Maltese to yield.

He does.

SENATOR GALIBER: Senator, what would be wrong -- you know, I was there in the good old days. I'm sure you weren't talking about me because I recognize the good old days weren't so good in some instances, so I'm a firm believer in that point.

But, Senator, let me ask you a question. Wouldn't it be simpler just to give to the defense counsel all the material? Wouldn't that be the simple way?

SENATOR MALTESE: Mr. President. Certainly, it would be the simple way. And the law still demands that if a prosecutor fails to comply as far as good faith, that that's a consideration. That's something to be taken into consideration by the Court.

I believe that even under this legislation that if a prosecutor withholds, deliberately withholds, prior statements of the witness that it would be cause for both prosecutorial misconduct and, as well, as very compelling reason to still have a new trial called and a judgment reversed.

SENATOR GALIBER: Senator, will you yield for another question?

ACTING PRESIDENT KUHL: Senator does.

SENATOR GALIBER: How do we prove this, Senator, if we go to the extreme -- I'm dramatizing a little bit. We have liberty toward doing these things from time to time, but now by the time -- assuming that we have the money for the appeals now. Everybody doesn't have -- we have 18B lawyers and Legal Aid and a whole litany of persons representing indigent clients, because they don't have the money. Would you suggest that after the fact if this person is now electrocuted, if we had a death penalty, and all of a sudden we found out that somewhere along the line one of those old-time prosecutors withheld, purposely, a little piece of information that might have been favorable to the defendant, we now say to this prosecutor "We're going to take you before the bar association, maybe take your license away," how do we balance it out? Back to the basic

question I had before.

Why not just give it to them? Why don't we do the right thing from the outset, and we wouldn't have this. Because you and I, when people start talking about criminal law and prosecution and they use words like "craziness" or they use words like "not applicable in certain instances," which is not the craziness you were talking about before, I look with some suspicion that there are sort of code words out there, "unfair," "no harm," "craziness," "a community sense".

Senator, what I'm suggesting is there a very simple remedy, and you know in your heart's heart that there is. Just give it all over to them, because by the time it gets up on appeal, some persons just can't go that far. You know? We've had some experience with folks in jail and make all kinds of -- you know, serious threats about what they are going to do to us when they get out and stuff like that, and we trembled and we say, "We hope they never get out," or they die before they -- you know.

There is a concern.

But there are people in these institutions, and you and I traveled to some of these institutions, who shouldn't be there. And that's not being soft on crime. This is a procedural, this is an evidentiary rule which has held us in good stead. We nibbled away at the Rosario, but it started out because somebody abused.

The simple answer here is just give it all up at the outset. Don't leave it in the hands, the discretion of a district attorney who says, "Well, you know, I got somebody testifying but however...", especially in the area of identification. You drew the analogy, that whole criminal justice system, the whole criminal law, the whole trial experience that we have, this whole area of identification. So if you get somebody up and say, such and such, "I saw him pull the gun out and I saw him and this is the person," you are suggesting that if the district attorney has some evidence that this is not so or could be or a doubt somewhere, he can

keep it in his back pocket; and the only remedy that the defendant has is if, by chance, somewhere down the line, years later, were you able to prove proof it.

And the burden, Senator, does shift to the defendant. Whether you say it or not, it does shift to the defendant. The decision says that, or the suggestion there, shifts over; that he through the process can now come up and find out that this might have been more than just a harmless rule; because what little practice I have -- it's very little - this harmless rule wasn't applied in this instance.

The Court said harmless rules is when somebody blinked at the wrong time, or they said they read a paper or they did something in the course of the trial and the Court of Appeals says, "Listen," or the Appellate Division says, "This is a harmless error, because there is overwhelming other evidence that he or she would have been convicted any way." This is not it.

What you are attempting to do

doesn't cover that harmless area. This covers basic rights that the defendant has, and we all know this, and it's just Monday and it's a little frustrating there's no budget so we - you know, we spend some time on a very important issue. But, you know, you got the votes and it will probably go through. You've done it before.

But, Senator, there comes a time -- and I'm not sure we're going to see it in our lifetime -- where we have to put a screeching halt -- now I'll use a code word - this "nonsense" of slowly taking away basic human rights that people have. We got to stop some place.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Clerk will read the 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.)

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: Yes, thank you very much.

Mr. President. My distinguished colleague from the County of the Bronx could not possibly be more correct than he has been in the last few minutes, and that's because we're talking about the real world.

Now, I have tried cases, a lot of them, and believe me, I love juries but there's plenty of times when I had the feeling that while the jury came in with what I thought was the right verdict, a judge might have done something different. And that judge doing something different might have thought that the failure to give simple discovery might have been unsubstantial in terms of the rights of the defendant because the judge would have done something else.

And you can't do that. You can't put the situation to have a Court making that determination when the Court is not trying the case.

There was one case I had where the judge's eyebrows went up when the jury came back with the verdict, and he called me up to the bench. In a very, very friendly way and kind of cute way, he says, "Manny, what was the nature of the defense again?" And he thought it was funny, because he never would have come in with the verdict of the jury. That judge, who was one of the really great ones in this state, happens to now be an Appellate Division judge.

And the bottom line here is that Senator Leichter made what I thought was a reasoned person's offer. If you want to give a district attorney the right to argue that the rights weren't prejudiced, then the district attorney carries that burden. And then let the defense lawyer stand up and say, "But you don't understand what I would have done during cross-examination," or, Senator Maltese, in your

very extreme case, maybe that would have affected the plea bargain system.

And when you say the issue of guilt or innocence, I point out to you that in the federal government, they doesn't allow a judge to be involved in the plea bargaining, but in the state courts they do, and maybe that would have given the defendant the opportunity to do better for himself in that stage of the proceeding.

So the bottom line is, as is often the case, Senator Galiber is correct. The person's rights are protected by a district attorney or an assistant district attorney simply complying with the law, particularly in allowing someone to prepare the defense, which is something that effects their entire life.

I have vote in the negative.

ACTING PRESIDENT KUHL: Senator Gold in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 699 are Senators

Espada, Galiber, Gold, Leichter, Mendez, Paterson and Solomon. Ayes 48. Nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Can we go back to 727.

ACTING PRESIDENT KUHL: Clerk will read Calendar Number 727.

THE SECRETARY: Calendar Number 727, by Senator Hannon, Senate Bill Number 6627, an act to amend the Administrative Code of the City of New York.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for.

SENATOR HANNON: Yes, this bill would amend the City Housing Maintenance Code so that a landlord could commence a proceeding in order to get limited access to an apartment. That would be for the purpose of correcting a housing code violation because a tenant has refused to grant access to the apartment.

The beneficiaries of this would be two-fold. The rest of the tenants would benefit so that whatever was causing the code violation would not be harmful to their apartment, and the landlord could make the correction.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: First of all, I want to have out on the record that I'm grateful to Senator Hannon for his courtesy not only today but in the last few days in putting the bill over.

Having said that, there is a memorandum in opposition by the New York State Tenant and Neighborhood Coalition, and the problems with this bill I think are very obvious, but that first sentence says an awful lot, "The bill would place in the hands of New York City landlords a new way to harass and unjustifiably penalize tenants." They very strongly urge the defeat of this bill.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: Mr. President. I want to point out that I think the memorandum is entirely illogical and misplaced. First of all, all of the proceedings would have to be through court. There is absolutely no self-help allowed here whatsoever.

Second of all, this is not unjustifyingly penalizing tenants. There are tenants who are equally desirous of getting this bill as anybody else. When you live in an apartment building, the quality of your life depends as much on the services provided by the landlord as the style of life maintained by your fellow tenants. If some tenant refuses to give access and there is water leaking through that apartment or they are keeping a filthy apartment and those things cannot be cleaned up by the landlord, it's the other tenants who suffer.

Frankly, the landlord has a great excuse if he can't get access. So by voting against this bill, you are voting against

tenants.

And let me close by stressing, it's all under supervision of the New York City Housing Court judges who, if there is anything to be said, have been pretty well on the lookout for the interest of tenants.

ACTING PRESIDENT KUHL: Senator Markowitz.

SENATOR MARKOWITZ: Mr. President. A couple of questions, Senator Hannon, if I may.

ACTING PRESIDENT KUHL: Senator Hannon, do you yield to Senator Markowitz?

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MARKOWITZ: I have a couple of questions. Whenever I hear from you, Senator, on those rare occasions, that a piece of legislation is supported by the tenants, you recognize of course that I have to -- or some tenants and that it's real a pro-tenant bill, I begin to shake whether I'm in my seat or

standing because I know that I have to look it over again, because I don't think there has really been a time that I now of when you have gotten up here as a tenant supporter. So let me just ask some questions, and I know that your knowledge of this particular piece of legislation. You'll certainly be able to respond quickly to this.

Is there any fiscal implication for this particular legislation?

SENATOR HANNON: There is no appropriation necessary because of this.

SENATOR MARKOWITZ: Secondly, you say that those of us that are concerned about tenants in New York ought to take some solace in the fact that the New York City Housing Court will review any of the actions or misbehavior, if any occurs, from the owners. Do you believe this might add an additional burden on the New York City Housing Court, as we currently know it.

SENATOR HANNON: Actually, no. Because the number of times that the landlord

Has to go back to report that the violations have not been fixed will be diminished because the landlord will be able to say, "Yes, I got access to the apartment. I have been able to correct it; and, therefore, we don't have to continue with this proceeding." So I would think, if anything, one could surmise that the burden on the court would be reduced.

SENATOR MARKOWITZ: Senator, it has been my experience over many, many years, way before I became a Senator, that landlords very often fail to really make appointments with their apartment tenants in terms of repairs. Are we requiring in this bill as proof to the Court that in fact the tenant has been served with a certified request for access into that apartment?

SENATOR HANNON: That very well could be provided for, since you have to apply to the court for the order and it can be issued at the discretion of the court.

SENATOR MARKOWITZ: Right. But I'm asking again -

SENATOR HANNON: It shall be served as the Court may direct. "If the Court finds that the tenant has denied such access," as I read from the proposed bill, "or is causing the violation, the Court shall direct the tenant to provide access at a specific time and date for the purpose of permitting the landlord, agents, or employees to correct such violation."

I believe that responds directly to your point about making a specific appointment.

SENATOR MARKOWITZ: See, my experience should be, Senator -- our experience, our mutual effort should be what will work to get these apartments repaired. Now, there is no question that not every tenant is necessarily an angel and not every landlord is necessarily the opposite of an angel, for sure.

But one thing we could agree on. There are many abuses in the system. What we ought to be doing is striving to come up with the legislation that meets the needs of both tenants and owners of property. Both. We have

to be sure, for instance, Senator, that the remedy that the owner wishes to do is actually the work that has to be done.

We ought to impose a penalty on owners who make repair times and then fail to show, which happens all the time.

What about if there is a disagreement on who caused the violation? That very often occurs in landlord/tenants affairs as you know.

SENATOR HANNON: None of the points that you raise are forestalled or fore closed by this legislation. All of those points are and will be raised in court proceedings by tenants now. All we're trying to say is -- who caused it? It doesn't matter. If it's causing -- if you have a flood in the bathroom and it's leaking downstairs and all the way down to the lower floors, you want it fixed.

I'm sure the courts are going to say if it's somehow the fault of the landlord, they are going to get hit. The landlords, by the way, are under greater penalties. For not

only will they get fined for service violations directly but also they could get reduction in rent orders for failing to have a good apartment.

So I mean the economic incentive is all -- and the social incentive is all in getting these things fixed.

And let me just respond one more thing, Senator Markowitz. This puts all of the procedure through the courts. If somebody has a better procedure, they haven't made any specific suggestions that I can see of, and the bill has been out on the calendar for a number of weeks. It came out of committee. I haven't heard of anything, and we had it in last year also.

SENATOR MARKOWITZ: Okay. On the bill now if I may.

ACTING PRESIDENT KUHL: Senator Markowitz the bill.

SENATOR MARKOWITZ: I hear what the chairman of our Housing Committee is saying, and I think the arguments that you presented is really a good reason why we don't necessarily

need this bill at this time, and I also think that until such time as we do something with the Housing Court, Senator Hannon, that we help streamline the Housing Court that is frankly not working and has not worked for many years, to add additional burdens onto that court, more so than they can handle even with their responsibilities today, puts the tenants even in greater peril.

But I think in the legislative memorandum issued by the New York State Tenant and Neighborhood Coalition, I think that the last paragraph, Senator Hannon, is one that should have your attention. "There is no requirement to verify that service is consummated appropriately. The bill does not provide for an inspection to verify the landlord's claim. There is no provision to keep a landlord from racking up unlimited number of days of penalties by, for example, scheduling repairs and not meeting the schedule time, or in other ways misleading the tenants that are involved. There is no provision for bringing

the Court's attention to any existing relating proceeding which might be relevant in judging the full context of the allegations. Such proceedings include the Housing Part actions where the tenant is suing the landlord for repairs, holdover proceedings where landlords can sue tenants for allegations relating to the denial of access and nonpayment proceedings where the most significant offense is a counterclaim for repairs."

What I'm basically saying is I recognize also that there are examples in my own building and in other buildings that I have lived in, in which there are certain repairs that are needed, and there have been tenants, I'm sure you know that, that absolutely refuse access to the owners. There are nuts like that, for sure, out there.

Whether or not legislation like this is what we need to overcome that when, in fact, the owners are allowed emergency access when there is a clear and present danger -- and that's true, Senator. "It is not true," you are

shaking your head. It is true. Landlords can gain access where there is a threat to the building or the tenants in that building, even if a tenant refuses to allow access, and that's the truth, where there are major leaks and electrical problems in the building , and it's our example up and down.

Whether or not this is needed at this time, however well intentioned you say it is, I have to urge my colleagues to say no until such time that we can craft another piece of legislation that meets your goals and that meets what our experiences have been.

ACTING PRESIDENT KUHL: Senator Solomon.

SENATOR SOLOMON: Yes, Mr. President. Will the sponsor yield, please?

ACTING PRESIDENT KUHL: Senator Hannon, do you yield to Senator Solomon.

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SOLOMON: Senator, I used to do a lot of work in Housing Court at one point in time, and this was raised; but in many instances, there were never records kept; and the attempt to gain access would be the Superintendent knocking on the door at 2:00 in the afternoon when someone was at work.

My question is this, as I read this bill, this looks as if the landlord's basically going to get an ex parte order on this. And that's what I'm curious about. It doesn't say any requirement -- I don't have the previous section in front of me. I don't have the section that's being amended in front of me, but this looks as if the landlord could just go in and get an ex parte order on this on an affidavit.

SENATOR HANNON: You could get it ex parte in the sense that the order could issue, but you have to have service. And, frankly, if there was any doubt in the judge's mind, they would do as they currently do, and they would require the very fact of the order to

be in question and have a hearing in court.

So somebody has to start it. The question is if the judges were to feel there was any question of fact, they would have the hearing.

SENATOR SOLOMON: Well, I don't know. The tenant is -

ACTING PRESIDENT KUHL: Senator Solomon, you are asking Senator Hannon to continue to yield?

SENATOR SOLOMON: Yes.

ACTING PRESIDENT KUHL: Senator Hannon, do you continue to yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR SOLOMON: What I'm just saying, Senator, is that the way this proceeding is initiated is by an application to the landlord to the Court, not a service of any order or any notice upon the tenant. In other words, there is no process in here where the landlord serves notice on the tenant saying,

"I've attempted to get in, et cetera, et cetera, and now I'm going to go to court requesting a court order."

SENATOR HANNON: Let me point out the first two lines, "If the owner is unable to to correct the violation because a tenant has denied the landlord access or the tenants is causing the violation itself," all of this necessarily presupposes that there has been prior interaction between the two in regard to the incident and that this is a subsequent step. So that the use of the ex parte is incorrect. When we use ex parte, it is usually in regard to an injunction or a TRO, where there has not been any interaction between the parties. This is not such a situation.

SENATOR SOLOMON: So -- okay. Okay. Thank you.

ACTING PRESIDENT KUHL: Clerk will read the last section on Calendar Number 727.

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: Those recorded in the negative on Calendar Number 727 are Senators Connor, Espada, Galiber, Gold, Goodman, Leichter, Markowitz, Mendez, Montgomery, Nanula, Onorato, Oppenheimer, Padavan, Paterson, Smith, Solomon, Spano and Velella. Ayes 37. Nays 18.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 699.

ACTING PRESIDENT KUHL: Without objection, Senator Connor is recorded in the negative on Calendar Number 699.

Senator Galiber.

SENATOR GALIBER: Yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar 654 and Calendar 773.

ACTING PRESIDENT KUHL: Without objection, Senator Galiber is recorded in the negative on those two bills.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar 699.

ACTING PRESIDENT KUHL: Without objection, Senator Montgomery is recorded in the negative on Calendar 699.

Senator Smith.

SENATOR SMITH: I would like unanimous consent to be recorded in the negative on 699.

ACTING PRESIDENT KUHL: Without objection, Senator Smith is recorded in the negative on Calendar Number 699.

Senator Trunzo.

SENATOR TRUNZO: Mr. President.

On page 52, I offer the following amendments to Calendar Number 875, Senate Print Number 7726, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Housekeeping?

ACTING PRESIDENT KUHL: I think that completes it, Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move that we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT KUHL: Senate stands adjourned until tomorrow, Tuesday, at 3:00 p.m.

(Whereupon, at 6:22 p.m., Senate adjourned.)