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ALBANY, NEW YORK

April 18, 1995

3:02 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT KUHL: Senate
3 will come to order. Ask the members to find
4 their places. Ask everybody in the chamber to
5 rise with me and join in the Pledge of
6 Allegiance to the Flag.

7 (Whereupon, the Senate and those
8 present joined in the Pledge of Allegiance to
9 the Flag.)

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

12 (Whereupon, there was a moment of
13 silence.)

14 Reading of the Journal.

15 THE SECRETARY: In Senate,
16 Monday, April 17. The Senate met pursuant to
17 adjournment. Senator Kuhl in the chair upon
18 designation of the Temporary President. Prayer
19 by the Reverend Father Peter G. Young, Blessed
20 Sacrament Church, Bolton Landing. The Journal
21 of Sunday, April 16, was read and approved. On
22 motion, Senate adjourned.

23 ACTING PRESIDENT KUHL: Hearing

1 no objection, the Journal stands approved as
2 read.

3 Presentation of petitions.

4 Messages from the Assembly.

5 Messages from the Governor.

6 Reports of standing committees.

7 Reports of select committees.

8 Communications and reports from
9 state officers.

10 Motions and resolutions.

11 Senator Present.

12 SENATOR PRESENT: Mr. President.

13 On behalf of Senator Levy, please place a
14 sponsor star on Calendar 414.

15 ACTING PRESIDENT KUHL: Calendar
16 414 will be starred at the sponsor's request.

17 SENATOR PRESENT: Mr. President.

18 ACTING PRESIDENT KUHL: Senator
19 Present.

20 SENATOR PRESENT: On page 21, on
21 behalf of Senator Leibell, I offer the following
22 amendments to Calendar 386, Senate Print 2743,
23 and ask that it retain its place on the Third

1 Reading Calendar.

2 ACTING PRESIDENT KUHL: The
3 amendments are received and adopted. The bill
4 will retain its place on the Third Reading
5 Calendar.

6 We have a substitution at the
7 desk, Senator Bruno. Would you like to take
8 that up at this time?

9 SENATOR BRUNO: Please do the
10 substitution.

11 ACTING PRESIDENT KUHL: Secretary
12 will read.

13 THE SECRETARY: On page 4,
14 Senator Holland moves to discharge from the
15 Committee on Labor, Assembly Bill Number 5506A
16 and substitute it for the identical Senate Bill
17 Number, Calendar 443.

18 ACTING PRESIDENT KUHL:
19 Substitutions ordered.

20 Senator Bruno.

21 SENATOR BRUNO: Mr. President.
22 At this time, could we adopt the Resolution
23 Calendar.

1 ACTING PRESIDENT KUHL: The
2 motion is to approve the resolution calendar.

3 All those in favor, signify by
4 saying aye.

5 (Response of "Aye.")

6 Opposed, nay.

7 (There was no response.)

8 The Resolution Calendar is
9 adopted.

10 Senator Bruno.

11 SENATOR BRUNO: Mr. President.

12 On behalf of Senator Levy, I would like to call
13 an immediate meeting of the Transportation
14 Committee in Room 332.

15 ACTING PRESIDENT KUHL: There
16 will be an immediate meeting of the
17 Transportation Committee in the Majority
18 Conference Room, Room 332.

19 Senator Bruno.

20 SENATOR BRUNO: Mr. President.

21 Can we at this time take up the noncontroversial
22 calendar.

23 ACTING PRESIDENT KUHL: Secretary

1 will read the noncontroversial calendar.

2 THE SECRETARY: On page 6,
3 Calendar Number 89, by Senator Holland, Senate
4 Print 139, an act to amend the Social Service
5 Law and the Education Law, in relation to
6 Medicaid fraud control.

7 ACTING PRESIDENT KUHL: Secretary
8 will read the last section.

9 THE SECRETARY: Section 3. This
10 act shall take effect on the 30th day.

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 31.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 270, by Senator LaValle, Senate Print 2882, an
19 act to amend the Education Law, in relation to
20 the registration of licensed professionals.

21 ACTING PRESIDENT KUHL: Secretary
22 will read the last section.

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 33.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 292, by Senator DiCarlo, Senate Print 499A, an
10 act to amend the General Obligations Law, in
11 relation -

12 SENATOR PATERSON: Lay it aside,
13 Mr. President.

14 THE SECRETARY: -- in relation -

15 ACTING PRESIDENT KUHL: Go ahead
16 and finish it up.

17 THE SECRETARY: -- in relation to
18 exoneration of certain police officers.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 294, by Senator Lack, Senate Print 2908, an act
23 to amend the Judiciary Law and the State Finance

1 Law, in relation to juror fees.

2 SENATOR PATERSON: Lay it aside.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 300, by Senator DiCarlo, Senate Print 2873, an
7 act to amend the Real Property Tax Law, in
8 relation to tax exemption for buildings
9 containing cooperative apartments.

10 ACTING PRESIDENT KUHL: Secretary
11 will read the last section.

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 33.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 306, by Senator Hannon, Senate Print 2086A, an
22 act to amend the Tax Law, in relation to tax
23 credits for the servicing of certain mortgages.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the last section.

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 34.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 309, by Member of the Assembly Dugan, Assembly
13 Print Number 5542, an act to amend the Alcoholic
14 Beverage Control Law, in relation to the
15 interests of manufacturers, wholesalers and
16 retail licensees.

17 ACTING PRESIDENT KUHL: Secretary
18 will read the last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 35.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 311, by Senator Goodman, Senate Print 3465, an
6 act to amend Chapter 172 of the Laws of 1992,
7 amending the Tax Law, relating to transferee
8 liability.

9 ACTING PRESIDENT KUHL: Secretary
10 will read the last section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 37.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 312, by Senator Skelos, Senate Print 602, an act
21 to amend the Public Health Law, in relation to
22 the Senator Tarky Lombardi Nursing Home Without
23 Walls Program.

1 SENATOR PATERSON: Lay it aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 325, by Senator Tully, Senate Print 3643, an act
6 to amend the Environmental Conservation Law, in
7 relation to the general powers of the New York
8 State Environmental Facilities Corporation.

9 ACTING PRESIDENT KUHL: Secretary
10 will read the last section.

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 38.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 328, by Senator Seward, Senate Print 2014, an
21 act to amend the Public Service Law.

22 SENATOR PATERSON: Lay it aside.

23 ACTING PRESIDENT KUHL: Lay the

1 bill aside.

2 Senator Bruno, that completes the
3 noncontroversial calendar.

4 SENATOR BRUNO: Mr. President.
5 Can we now take up the controversial calendar.

6 ACTING PRESIDENT KUHL: Secretary
7 will read the controversial calendar.

8 THE SECRETARY: Calendar Number
9 292, by Senator DiCarlo, Senate Print 499A, an
10 act to amend the General Obligations Law, in
11 relation to exoneration of certain police
12 officials.

13 SENATOR DOLLINGER: Explanation.

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

17 SENATOR DiCARLO: Senator
18 Dollinger, what this bill does is Article 5 of
19 the Penal Law contains the defense of
20 justification concerning criminal charges for
21 the use of physical force or deadly physical
22 force. It explains when and under what
23 circumstances the use of such force is

1 justified; and if justification is proven,
2 constitutes a complete defense to criminal
3 charges concerning the use of such force.

4 This bill simply provides that if
5 a police officer or peace officer would have
6 been justified in using physical force or deadly
7 physical force in a criminal prosecution against
8 him, the same defense would apply in a civil
9 suit for damages brought by the felon. The
10 felon under such circumstances would be deemed
11 to have assumed the risk of injury.

12 ACTING PRESIDENT KUHL: Chair
13 recognizes Senator Abate.

14 SENATOR ABATE: Would the Senator
15 yield to a number of questions?

16 ACTING PRESIDENT KUHL: Senator
17 DiCarlo, do you yield?

18 SENATOR DiCARLO: Yes.

19 ACTING PRESIDENT KUHL: Senator
20 yields.

21 SENATOR ABATE: My question is,
22 is justification a question of fact or law?
23 Would the issue of justification be decided by

1 the judge or decided by a jury in the civil
2 case?

3 SENATOR DiCARLO: Question of
4 fact would be decided by the jury.

5 SENATOR ABATE: Okay. And would
6 the defense of justification apply even though
7 the police officer violated or ignored a
8 departmental rule or regulation? And if that's
9 the case, would that, in fact, undermine the
10 ability of local police departments to regulate
11 police officers?

12 The example is -

13 SENATOR DiCARLO: Whatever the
14 rules and laws that would apply in a criminal
15 case would also apply in the civil case so
16 that's -- basically, to answer your question.
17 More specifically -

18 SENATOR ABATE: I guess so then
19 you could conceive of a situation where an
20 officer, in terms of the Penal Law, may be
21 justified in the actions that he took but might
22 violate a departmental rule or regulation? The
23 defense of justification is different in a

1 criminal case than what would be applied in a
2 civil case. There are different burdens of
3 proof.

4 SENATOR DiCARLO: Again, to
5 answer the question, if under the Penal Law it
6 is justification, then it's the same under the
7 Civil. What the bill does -- and I don't know
8 whether I am answering the question the way you
9 want me to, but what we're trying to do is to
10 take the criminal justice laws and the Penal Law
11 in terms of justification when to use force and
12 a police officer under criminal charges and
13 we're taking that exact same statute and we're
14 moving it into the civil area so that we would
15 have a defense of justification. So if in a
16 criminal act the officer was justified, then it
17 would also be a defense within the civil
18 charges.

19 SENATOR ABATE: In the case where
20 an officer shot an unarmed fleeing suspect in
21 the back -

22 SENATOR DiCARLO: M-m h-m-m.

23 SENATOR ABATE: -- that officer

1 would probably not be justified and then would
2 not receive -

3 SENATOR DICARLO: Correct.

4 SENATOR ABATE: -- immunity under
5 this statute.

6 SENATOR DICARLO: Absolutely.

7 SENATOR ABATE: Okay.

8 SENATOR DICARLO: Absolutely.

9 SENATOR ABATE: And then one
10 further clarification.

11 ACTING PRESIDENT KUHL: Senator
12 DiCarlo do you continue to yield?

13 SENATOR DICARLO: Yes.

14 ACTING PRESIDENT KUHL: Senator
15 continues to yield.

16 SENATOR ABATE: Thank you. Would
17 this apply to all peace officers, whether or not
18 they are authorized to carry a weapon?

19 SENATOR DICARLO: It would apply
20 to the same individuals who are covered by the
21 criminal statutes in the Penal Law, yes.

22 SENATOR ABATE: I have no further
23 questions.

1 ACTING PRESIDENT KUHL: Senator
2 Dollinger.

3 SENATOR DOLLINGER: Mr.
4 President. Would Senator DiCarlo yield just for
5 one question?

6 ACTING PRESIDENT KUHL: Senator
7 yields.

8 SENATOR DOLLINGER: My
9 understanding, Senator, is that the effect of
10 this bill would not necessarily overturn the
11 decision in McCummings because the jury on
12 highly controverted facts would have still been
13 entitled to find that the suspect who fled down
14 the stairs was actually shot in the back at the
15 time of fleeing. Is that correct?

16 SENATOR DICARLO: Yes, Senator.
17 The case which caused me to put this legislation
18 in was the McCummings case. This bill probably
19 would have no effect on the outcome of the
20 McCummings case. The reason -- one of the
21 reasons we put this bill forward is because the
22 Court of Appeals of the State of New York said
23 that the justification defense in a criminal

1 action would not be applicable in a civil case,
2 and that's the reason we did it, but it would
3 probably not have had an impact in the
4 McCummings case or made the McCummings case turn
5 out any differently.

6 SENATOR DOLLINGER: Again, Mr.
7 President, I think I've supported this bill in
8 the past. I think the justification defense is
9 a good one. An officer threatened with deadly
10 physical force should be able to use deadly
11 physical force to defend himself. That is the
12 defense of justification; and if there is
13 someone injured as a result of that, I agree
14 with the Senator that that should be an
15 assumption of risk on the part of a
16 perpetrator.

17 I know last year I introduced an
18 amendment to this bill that would make the funds
19 available -- from these kinds of judgments,
20 available for distribution to the crime
21 victims. I would hope that we consider that
22 again at some point again in the future, perhaps
23 with the sponsor of this legislation or with

1 others.

2 ACTING PRESIDENT KUHL: Secretary
3 will read the last section.

4 THE SECRETARY: Section 2. This
5 act shall take effect on the first day of
6 November.

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 45.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 SENATOR COOK: Mr. President.

14 ACTING PRESIDENT KUHL: Senator
15 Cook.

16 SENATOR COOK: Mr. President. I
17 would like to announce that the regular
18 Education Committee meeting is being held in
19 Room 124 right at this moment.

20 ACTING PRESIDENT KUHL: There
21 will be an immediate meeting of the Education
22 Committee in Room 124.

23 Secretary will continue to call

1 the controversial calendar.

2 THE SECRETARY: Calendar Number
3 294, by Senator Lack, Senate Print 2908, an act
4 to amend the Judiciary Law and the State Finance
5 Law, in relation to juror fees.

6 ACTING PRESIDENT KUHL: Senator
7 Lack, an explanation has been asked for by
8 Senator Paterson.

9 SENATOR LACK: Thank you, Mr.
10 President. Mr. President. This bill was
11 introduced at the request of the Chief
12 Administrative Judge, and it's a very simple
13 matter. It would allow jurors to waive the
14 payment of their fee. Payments so waived would
15 go into a fund that could be used in that
16 locality in that fiscal year for purposes of
17 equipping jury assembly rooms, jury deliberation
18 rooms, offices for commissioners of jurors and
19 such other court facilities as is required to
20 effectuate the policies of the state as set
21 forth in law.

22 Monies not so expended by the end
23 of the year would go into a new fund called the

1 Supplemental Jury Facilities Fund and would have
2 to be appropriated for use of such cities and
3 counties by the State Legislature as would any
4 other item in the next fiscal year.

5 ACTING PRESIDENT KUHL: Senator
6 Paterson.

7 SENATOR PATERSON: Thank you, Mr.
8 President. Would Senator Lack yield for a
9 question?

10 SENATOR LACK: Surely, Mr.
11 President.

12 SENATOR PATERSON: Thank you, Mr.
13 President. Senator Lack, how many -- I get the
14 impression from the bill that this was actually
15 the idea that some jurors themselves had thought
16 of when they looked at some of the facilities
17 and thought that they were in need of repair.
18 Do you have an idea how many jurors felt this
19 way? I mean is this the result of a
20 conversation that some jurors had about it, or
21 is this something that was an organized effort
22 to prevail upon the chief administrator to ask
23 that this law be enacted?

1 SENATOR LACK: Mr. President.
2 Quite frankly, I don't know. This bill has been
3 introduced at the request of the Chief
4 Administrative Judge, and I would assume that
5 both he and the Chief Judge -- particularly
6 since the Chief Judge has just received her jury
7 project report. In terms of the jury project
8 and the extensive polling of jurors that they
9 did, Mr. President, saw a need that there are
10 some jurors who said, "Gee, I really don't want
11 this money, and I'd like to turn it back to the
12 state."

13 I doubt very much whether the
14 jurors might have evidenced the desire that it
15 go to jury rooms. I do believe upon information
16 and belief, Mr. President, that it is the Chief
17 Administrative Judge in the Office of Court
18 Administration that thinks that such sums which
19 would come from jurors not accepting their fees
20 would most appropriately be spent on jury
21 facilities.

22 ACTING PRESIDENT KUHL: Senator
23 Paterson.

1 SENATOR PATERSON: Thank you, Mr.
2 President, and thank you, Senator Lack. The
3 answers to the question were quite sufficient.

4 Now speaking to the bill, Mr.
5 President. There are several reasons why I
6 don't particularly recommend that this bill be
7 enacted.

8 First of all, they probably have
9 to set up a separate account to collect all of
10 these monies that would go toward the
11 improvement of the conditions around the
12 courthouse.

13 Secondly, I think there is an
14 unusual onus that's being placed on a number of
15 jurors even if they are willing to contribute to
16 it to effect this actual purpose. I don't know
17 how many jurors there could be or how much money
18 it would take until you actually did something
19 that was tangible. It's just an idea. I'm
20 certainly not opposed to improving the
21 conditions; and if we need to improve the
22 conditions, then perhaps as a state government
23 we should actually do that.

1 Finally, my objection to this
2 bill is I think it opens a door or opens a can
3 of worms or a Pandora's box. It opens something
4 that I would prefer stay closed, and that is
5 just this idea of a kind of private funding for
6 something that actually should be a public
7 responsibility. The judicial system is very
8 important, and Senator Lack's attempt to find a
9 way to correct it is very laudable, but this
10 particular fashion of having individuals deduct
11 or in some way return the monies they received
12 for serving on a jury in order to improve
13 conditions is something that might be extended,
14 and I would really not like to see the time come
15 when individuals are encouraged to give back
16 monies that they have actually earned in order
17 to effect some process. In other words, what
18 may have started out as voluntaryism could inure
19 to the detriment of coercion.

20 And so I will recommend that this
21 bill not be acted upon.

22 ACTING PRESIDENT KUHL: Secretary
23 will read the last section.

1 THE SECRETARY: Section 4. This
2 act shall take effect immediately.

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT KUHL: Announce
7 the results when tabulated.

8 THE SECRETARY: Ayes 48. Nays
9 1. Senator Paterson recorded in the negative.

10 ACTING PRESIDENT KUHL: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 312, by Senator Skelos, Senate Print 602, an act
14 to amend the Public Health Law, in relation to
15 the Senator Tarky Lombardi Nursing Home Without
16 Walls Program.

17 ACTING PRESIDENT KUHL: Senator
18 Skelos, an explanation has been asked for of
19 Calendar Number 312 by Senator Dollinger.

20 SENATOR SKELOS: Senator
21 Dollinger, that is a very complicated bill in
22 that it would name the Nursing Homes Without
23 Walls Program after former Senator Tarky

1 Lombardi.

2 SENATOR DOLLINGER: Mr.
3 President. I appreciate the explanation. I
4 rise just to commend -- I know Senator Skelos in
5 his position as the Aging Committee Chair has
6 watched this very carefully, and I applaud
7 naming this after Senator Lombardi.

8 I just rise to point out that
9 unfortunately it was going to be "the nursing
10 home without funding" for a period of time. I
11 know that my Senate colleagues have put
12 additional resources back in to help this
13 program. Unfortunately, the Governor had a view
14 that seemed to say, "Wipe it out"; and then in
15 his 30-day amendments said, "We'll only leave it
16 for private pay patients." As I think you know,
17 they are only about one percent of the total
18 participants in this program.

19 So my purpose in rising is that I
20 hope we will continue to honor Senator Lombardi
21 by putting full funding back in this program and
22 make it really work. It is a good program. It
23 does good things.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the last section.

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 49.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 328, by Senator Seward.

13 SENATOR BRUNO: Mr. President.
14 Can I, on behalf of Senator Tully, announce an
15 immediate meeting of the EnCon Committee in Room
16 123.

17 ACTING PRESIDENT KUHL: There
18 will be an immediate meeting of the
19 Environmental Conservation Committee in Room 123
20 of the Capitol.

21 THE SECRETARY: Calendar Number
22 328, by Senator Seward, Senate Print 2014, an
23 act to amend the Public Service Law, in relation

1 to restricting access to telephone messages.

2 ACTING PRESIDENT KUHL: Senator
3 Seward, an explanation has been asked for by
4 Senator Paterson.

5 SENATOR SEWARD: Certainly, Mr.
6 President. The bill before us authorizes the
7 Public Service Commission to promulgate the
8 rules and regulations to prohibit the access to
9 phone messages that are deemed harmful to
10 minors. Persons wishing to have access to these
11 types of messages must first get a personal
12 identification number, a so-called PIN number,
13 and in so doing would have to prove that they
14 are 18 years of age or older. I would just note
15 that the bill references the Penal Law, Section
16 235.20, Subdivision 6, in setting forth a
17 standard in determining what is harmful to
18 minors.

19 The bottom line is that the bill
20 is an effort to establish on a statewide basis
21 standards for the access by adults to these
22 messages and the bill would ensure that we have
23 a consistent standard in process statewide in

1 dealing with this issue.

2 ACTING PRESIDENT KUHL: Senator
3 Paterson.

4 SENATOR PATERSON: Mr.
5 President. To Senator Seward, that was a fine
6 explanation. Actually, I heard a far more
7 abridged explanation. Senator Mendez stopped by
8 to tell me that this is a good bill, and I agree
9 completely. It is a good bill, and we do need
10 to restrict access, particularly from minors,
11 when it comes to these types of pornographic
12 material.

13 The issue that I want to raise,
14 Mr. President, if Senator Seward will yield to a
15 question?

16 ACTING PRESIDENT KUHL: Senator
17 Seward, do you yield?

18 SENATOR SEWARD: Certainly.

19 ACTING PRESIDENT KUHL: Senator
20 yields.

21 SENATOR PATERSON: Mr.
22 President. My question is, in order to protect
23 those adults who would happen to want to engage

1 in using that service, which using a service by
2 an adult is not illegal -- I mean in order to do
3 that, do you think the PIN number establishes
4 some sort of identification that might be used
5 against the adult in the future?

6 SENATOR SEWARD: Mr. President.
7 In response to the question, I would refer
8 Senator Paterson to, on page 2 of the bill,
9 Paragraph C which does -- there is language
10 there which does protect the individual in terms
11 of not allowing the list of the customers who
12 have applied for the PIN numbers or in fact have
13 these PIN numbers -- they can not be revealed to
14 anyone except in a matter involving an
15 enforcement, law enforcement issue in terms of
16 investigating the possible violation of this
17 section of the law.

18 SENATOR PATERSON: Mr.
19 President. I noticed that section in the bill,
20 and I'm glad Senator Seward put it in there
21 because it does establish a protection. What I
22 am thinking of more is a prevention, and so what
23 I was going to suggest to Senator Seward is, for

1 instance, with every accompanying telephone
2 number, what if the telephone company mailed to
3 the subscriber an ID number? In that way,
4 everyone who has a telephone -- I'm sorry, not
5 an ID number, a PIN number. So now everybody
6 has a PIN number; and if you want to exercise
7 the service, you use a PIN number. It wouldn't
8 fall into the hands of children because even if
9 children know the telephone number of the -
10 where the pornographic material is, the children
11 can't dial the number without the PIN number.
12 The PIN number would be mailed to the customer.
13 At the same time, you would not have a list of
14 PIN numbers in which you know everybody who has
15 a PIN number is using the service.

16 And my question, if Senator
17 Seward would yield for a question, is, do you
18 think that would be a way you would establish
19 privacy and stop minors from using the
20 pornographic service at the same time?

21 ACTING PRESIDENT KUHL: Senator
22 Seward.

23 SENATOR SEWARD: Well, Mr.

1 President, I would suggest that Senator Paterson
2 write a letter -- assuming this bill becomes
3 law, you can then write a letter to the Public
4 Service Commission with that suggestion because
5 they, in fact, will under this bill set up
6 exactly what the process is in terms of getting
7 the PIN numbers out to persons who are 18 years
8 of age and older. Our only requirement under
9 this bill is, to obtain a PIN number, you have
10 to be over 18, and exactly how that will work is
11 a matter that will become part of the rules and
12 regulations of the Public Service Commission, so
13 I would suggest that you contact the Public
14 Service Commission once this bill becomes law.

15 ACTING PRESIDENT KUHL: Chair
16 recognizes Senator Paterson.

17 SENATOR PATERSON: Mr.
18 President. I would like to thank Senator
19 Seward. I think that that is really very
20 sincere, and I would be willing to write that
21 letter. In other words, that would be a method
22 in which I think we could enforce privacy.

23 As we know, there was certainly a

1 rumor, if not more, that a recent proceeding
2 involving the nomination of a Supreme Court
3 justice was almost shrouded in conflict when the
4 opposition was going to raise the fact that he
5 had used a video store to obtain pornographic
6 material legally; and in spite of whatever
7 presumptions might have been made about this
8 individual, who happened to have a rather
9 conservative political point of view, it
10 certainly would not have been fair to have
11 delved into any of his social actions that
12 really didn't relate to the proceeding and were
13 all legal.

14 And so I just raise it as a
15 matter of trying to protect individuals and the
16 right to privacy of adults who wanted to in
17 their homes use telephone numbers or get
18 videotapes or whatever it is that they want to
19 do; and so I think that the suggestion is well
20 thought out by Senator Seward; and, otherwise, I
21 think at this time, as Senator Mendez said, that
22 this bill is quite laudatory. This is something
23 that we definitely need to protect individuals

1 who are under 18 from the invasion into our
2 homes of, often, material that we would prefer
3 not to have.

4 Thank you.

5 ACTING PRESIDENT KUHL: Senator
6 Dollinger.

7 SENATOR DOLLINGER: Mr.
8 President, one question -

9 ACTING PRESIDENT KUHL: Excuse me
10 one minute, Senator Dollinger.

11 SENATOR DOLLINGER: If the
12 chairman of the Energy Committee would yield,
13 Mr. President.

14 ACTING PRESIDENT KUHL: Just a
15 minute, with your indulgence, Senator Dollinger.

16 Chair would recognize Senator
17 Bruno at this time for an announcement.

18 SENATOR BRUNO: Mr. President.
19 On behalf of Senator Nozzolio, I would like to
20 ask for an immediate meeting of the Crime
21 Victims Committee in Room 332.

22 ACTING PRESIDENT KUHL: There
23 will be an immediate meeting of the Crime and

1 Corrections Committee in Room 332, the Senate
2 Majority Room.

3 Chair recognizes Senator
4 Dollinger.

5 SENATOR DOLLINGER: Mr.
6 President. Will the chairman of the Energy
7 Committee yield to a question?

8 ACTING PRESIDENT KUHL: Senator
9 Seward, do you yield?

10 SENATOR SEWARD: Certainly.

11 ACTING PRESIDENT KUHL: The
12 Senator yields.

13 SENATOR DOLLINGER: I don't think
14 I brought this up in committee, Mr. Chairman,
15 but the issue of access through the Internet to
16 pornographic information, does this bill extend
17 to those Internet connections that you can make
18 through your television screen and that
19 telephone device or that telephone line, or does
20 this only involve what you would call the
21 straight "dial-a-porn" in which you dial a
22 number on your telephone?

23 SENATOR SEWARD: Mr. President.

1 This bill would be limited to the use of the
2 actual telephone instrument itself not any of
3 these other -

4 SENATOR DOLLINGER: I guess, Mr.
5 President, I'm going to vote in favor of this
6 bill as I have in the past. I think that may be
7 something we also want to look at because with
8 the explosion of Internet and other access
9 devices and the increasing frequency of
10 pornographic messages available on that, it uses
11 the telephone transmission line to connect, and
12 it seems to me it poses the same problem we have
13 here, although I acknowledge it probably poses
14 an even bigger privacy issue because it involves
15 access to a computer which is a different
16 machine from the telephone.

17 It would be interesting to just
18 explore that issue as well and what
19 restrictions, if any, we can put on access to
20 pornographic messages on that, as well.

21 I'm going to vote in favor of
22 this bill, Mr. President.

23 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

2 THE SECRETARY: Section 4. This
3 act shall take effect immediately.

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 ACTING PRESIDENT KUHL: Senator
8 Waldon to explain his vote.

9 SENATOR WALDON: Thank you very
10 much, Mr. President.

11 I believe, Senator Seward, that
12 it would have been better for the suggestion to
13 come from yourself as the prime sponsor of the
14 bill to incorporate the suggestion made by
15 Senator Paterson. I think that once the horse
16 is out of the barn, to protect one's privacy in
17 the manner that he suggested to insure that
18 young people will not have access to this
19 prurient type of information, it's done once the
20 horse, so to speak, is out of the barn.

21 And I was also very sensitive to
22 the issue Senator Paterson raised in regard to
23 the Supreme Court Justice, Clarence Thomas. I

1 can recall when I was a police officer at the
2 academy and the standard was established in
3 regard to what the community could sanction and
4 accept in terms of pornographic material; and I
5 remember -- I had a staff of 39 -- all the guys
6 on the job wanted to go to see "The Green Door,"
7 "Behind The Green Door," something like that,
8 so that they could make a personal judgment as
9 to what was salacious material regarding the
10 community standard.

11 When Senator Paterson was
12 speaking, I reflected back and thought, "What
13 would have happened had they all repaired to the
14 theater and had someone seen them there en masse
15 as the instructors at the police academy?"
16 Would that have haunted them later as the
17 situation haunted Clarence Thomas? Not
18 necessarily relevant to what we're saying, but I
19 think that we should not put this into law
20 before those provisos to protect, as suggested
21 by Senator Paterson are included.

22 On that basis, I am going to
23 again do as I did last year, but for a different

1 reason this year, vote no.

2 ACTING PRESIDENT KUHL: Senator
3 Waldon in the negative.

4 Announce the results.

5 THE SECRETARY: Ayes 49. Nays
6 1. Senator Waldon recorded in the negative.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 Chair recognizes Senator
10 Hoffmann.

11 SENATOR HOFFMANN: Mr.
12 President. I wonder if the Majority Leader
13 would be willing to yield for a question?

14 SENATOR BRUNO: Yes, Mr.
15 President.

16 SENATOR HOFFMANN: Mr. President,
17 through you to Senator Bruno. I have been
18 watching over these last couple weeks the
19 information coming to us from the Assembly, and
20 I know all members today are anxiously awaiting
21 an announcement from you as to the next few days
22 for the members of this body so that we can plan
23 our activity, and over the last few weeks one of

1 the most exciting achievements to come from this
2 Capitol has been the great progress made through
3 the conference committee established to
4 negotiate the 65 mile an hour speed limit.

5 With that and with the other
6 great improvements in mind that have taken place
7 recently in a more enlightened and a more opened
8 atmosphere, I wonder, Mr. President, if it might
9 not be possible for the Majority Leader to
10 arrange a vehicle by which the Finance Committee
11 in this house could begin some preliminary
12 review of those figures emanating now from the
13 Assembly -- I would like to say "from the Ways
14 and Means Committee," but, perhaps, if they are
15 not from the committee, even if they are from
16 the house -- from whatever vehicle the Assembly
17 chooses, to send them up.

18 It seems incumbent on us to take
19 a position to begin a thoughtful and a very
20 public review; and I would ask you, Mr. Majority
21 Leader, if you would be willing to convene the
22 Finance Committee of this house, preliminary to
23 that perhaps to ask the staff to review the

1 figures emanating from the Assembly, so that in
2 the most timely way possible we would be able to
3 meet and to vote on some budget documents when
4 they do come to us?

5 SENATOR BRUNO: That was quite a
6 long question, Mr. President.

7 SENATOR HOFFMANN: I haven't
8 spoken in some weeks, Senator Bruno, and -

9 SENATOR BRUNO: Yes, it's good to
10 see the good Senator back and looking well and
11 speaking well, as articulate as usual; and,
12 Senator, in response, we're in total agreement
13 on our opening up the process here in the
14 Legislature and the budget process; and we, as
15 you know, have -- we initiated the call for
16 conference committees, and I was very pleased
17 with the success of our first conference
18 committee and hopefully we will see that bill
19 enacted into law.

20 We have talked with the Speaker,
21 with the Governor, about doing a conference kind
22 of committee on parts of the budget. The
23 attitude has been that if the Speaker would do

1 his budget, if the Assembly would pass a budget,
2 we could then make judgments on doing parts of
3 those bills, the individual bills in a
4 conference committee setting and hopefully move
5 the process forward, but that, of course, as you
6 know, hasn't happened.

7 So what the Assembly has done as
8 I guess you have observed, they passed their
9 state op's budget piece, they passed the debt
10 service and they did their own tax package.

11 And you are suggesting that we
12 look at the state op's piece, and we have talked
13 about doing that, and I think it's good judgment
14 and good sense. We are contemplating and I
15 guess you are recommending that rather than do a
16 conference committee that the Finance Committees
17 in the house review that, and we're going to
18 look at that because I think it has merit, and
19 we had discussed before whether we could even
20 conference the bill itself as a conference
21 committee. It's a large group. The Finance
22 Committee represents a large group, and it
23 doesn't really represent negotiation. It really

1 represents review.

2 But I think that anything, Mr.
3 President, that we can do in this house to help
4 move the process forward and to get the Assembly
5 to focus on the budget, we ought to try and do,
6 because it has been frustrating as we sit here
7 day after day waiting for the Assembly to do a
8 budget bill. We have done 70 Article 7 bills
9 that relate to the budget -- 70. The Assembly
10 has done three, and that is a matter of fact.
11 That isn't a matter of parties. Three.

12 So anything that we can do to
13 move the process forward, we are open to and
14 responsive to. So I would ask that, Monday -
15 the Chair of Finance and I have conferred and we
16 have been talking about this somewhat -- that
17 you take a look, if you will, with your
18 committee on the state op's budget to see how we
19 might reconcile the increased spending that's in
20 their piece -- they substantially increased
21 spending, as all of you know, because I know
22 you've studied the bill in both houses; I know
23 Senator Mendez has because we've been discussing

1 it -- how you will finance the restoration. You
2 see, that's the missing piece.

3 So I think the Finance Committee
4 might be the appropriate place to make a
5 judgment on where would you finance the
6 additions? Where would the money come from to
7 finance the additions that are in that state
8 op's piece?

9 So, again, in an attempt to move
10 the process forward in a nonpolitical,
11 bipartisan spirit, I think we ought to do that.
12 So I know the Chairman of Finance is prepared to
13 move forward in that way.

14 Thank you, Mr. President.

15 SENATOR HOFFMANN: Thank you very
16 much. I want to thank Senator Bruno for his
17 very thoughtful and eloquent response to my
18 request and for his willingness to implement
19 what is an entirely new procedure at this point
20 in this stalemate.

21 SENATOR CONNOR: Point of order,
22 Mr. President. Is there a matter before the
23 body?

1 ACTING PRESIDENT KUHL: There is
2 not at this time.

3 SENATOR CONNOR: Thank you.

4 ACTING PRESIDENT KUHL: Senator
5 Connor, why do you rise?

6 SENATOR CONNOR: Mr. President.
7 I would like to ask, since it seems to be the
8 practice here now, if Senator Bruno would yield
9 to one question from me?

10 SENATOR BRUNO: Yes, Senator.

11 ACTING PRESIDENT KUHL: Senator
12 yields.

13 SENATOR CONNOR: Thank you.
14 Senator Bruno, I appreciate your parliamentary
15 style in having Question Day.

16 SENATOR BRUNO: Point of
17 information, Mr. President.

18 SENATOR CONNOR: Happy to make
19 you prime minister any time you want, Senator.
20 But, Senator, could we also ask the Finance
21 Committee to look at bills that this house has
22 passed and try and figure out where the \$540
23 million in revenues is that would be represented

1 in the Governor's Article 7 bills that this
2 house has not considered because there is a \$540
3 million deficit in the bills this house passed?

4 So could we ask the Finance
5 Committee to take a look at that on Monday, too,
6 Senator?

7 SENATOR BRUNO: Mr. President. I
8 would be happy to ask the Finance Committee out
9 of deference to our very esteemed Minority
10 Leader to do exactly that. But if I did that,
11 Mr. President, I would be asking them to waste
12 their time because we already know the answer;
13 and the number is not 540 million, Mr.
14 President, but it is 499 million that was in
15 those -- that's in the 70 budget bills that we
16 passed -- 499, Mr. President. And that comes
17 from moving around 164 million. We did some
18 additional cuts, and we did some additional
19 restorations, as everyone in this house knows.

20 And we had an agreed on revenue
21 source with the Speaker and the Minority Leader,
22 and the Minority Leader in the other house and
23 the Governor that there would be 335 million in

1 additional revenues next year. So we use the
2 335 plus the 164 in moves and that's 499 and
3 that's exactly what we passed in the budget, and
4 that budget was balanced, Mr. President, and,
5 again, we await the Assembly to do something
6 similar.

7 So I appreciate all the
8 suggestions from both sides of the aisle on how
9 in a constructive way we can move this process
10 forward, because we're all interested in doing
11 that. We have a great interest in getting a
12 budget together for the people of this state and
13 for ourselves so that we can have done
14 diligently the work that we're elected to do;
15 and how well we're doing that I think is suspect
16 presently.

17 So any other suggestions, we
18 would welcome and we thank you, and I can see
19 that the Senator is interested in listening to
20 my response diligently.

21 Thank you, Mr. President.

22 ACTING PRESIDENT KUHL: Senator
23 Bruno, the last bill that passed completed the

1 controversial calendar.

2 Senator Waldon, why do you rise?

3 SENATOR WALDON: Mr. President.

4 While the Majority Leader was speaking, a
5 thought came into my head and I was trying to
6 get your attention to ask him would he yield to
7 a question, and you began to make your statement
8 as he sat.

9 I was wondering, would he be kind
10 enough to respond to a question or two?

11 ACTING PRESIDENT KUHL: Senator
12 Bruno, Senator Waldon is asking whether or not
13 you would yield to a question?

14 SENATOR BRUNO: Mr. President.

15 SENATOR WALDON: Germane.

16 SENATOR BRUNO: I would be very
17 pleased to answer a question.

18 ACTING PRESIDENT KUHL: Senator
19 Bruno yields, Senator Waldon.

20 SENATOR WALDON: Thank you very
21 much, Mr. President. Let me preface my
22 question, Mr. Leader, by saying this is going to
23 be quick, not elongated, and there is a real

1 purpose in my asking you to yield.

2 Senator Bruno, do you recall when
3 this session began that we swore in or were
4 sworn in as Senators of this fine institution?

5 SENATOR BRUNO: Yes. I'm
6 sorry -

7 SENATOR WALDON: Do you recall
8 that we all were sworn in?

9 SENATOR BRUNO: Would you just
10 repeat that? I'm sorry. My counsel was
11 whispering in my right ear.

12 SENATOR WALDON: Okay. And I
13 know that Senator Skelos is capable of
14 whispering rather loudly. Do you recall as our
15 session began -- this session, this year, began
16 that we were sworn into office?

17 SENATOR BRUNO: Yes, I do recall
18 that, Mr. President.

19 SENATOR WALDON: And do you
20 recall also that our Governor was sworn into
21 office.

22 SENATOR BRUNO: Mr. President, I
23 have a strong recollection of that.

1 SENATOR WALDON: Very good.
2 Sharp. Sharp today. If I may continue and I'll
3 try to be brief, Mr. President.

4 Would the Senator continue to
5 yield?

6 ACTING PRESIDENT KUHL: Senator
7 Waldon, the chair -

8 SENATOR BRUNO: Yes, Mr.
9 President.

10 ACTING PRESIDENT KUHL: Senator
11 yields.

12 SENATOR WALDON: Thank you very
13 much. In our oath of office, Senator, and the
14 oath of office for all of us who are elected
15 officials, maybe not precisely, but do you
16 recall in words and substance that we were all
17 supposed to uphold the laws of this state and
18 the laws of the federal government as part of
19 that oath?

20 SENATOR BRUNO: That's my
21 recollection, Mr. President.

22 SENATOR WALDON: Senator, you
23 were talking about moments ago -- if I may

1 continue, Mr. President?

2 ACTING PRESIDENT KUHL: Senator
3 Waldon. Senator Bruno, do you continue to
4 yield?

5 SENATOR BRUNO: Yes, Mr.
6 President.

7 ACTING PRESIDENT KUHL: This is,
8 of course, totally out of order, and you all
9 know that.

10 SENATOR BRUNO: Yes, and some
11 moment soon we have to return to a structure
12 here.

13 SENATOR WALDON: I will get to
14 it as soon as I can, Senator. I apologize for
15 the slowness of the process.

16 Made me lose my thought, Randy.

17 In our swearing in, et cetera, et
18 cetera, which you just addressed, Senator -- no,
19 let me rephrase that.

20 It is my understanding, Senator
21 Bruno, that you do not personally support
22 denying employees their salaries for work done.
23 Is that correct, sir?

1 SENATOR BRUNO: Is that a
2 question as to my -

3 SENATOR WALDON: Your personal.

4 SENATOR BRUNO: Yes -

5 SENATOR WALDON: One last
6 question.

7 SENATOR BRUNO: Mr. President.
8 Yes, is that your last question?

9 SENATOR WALDON: The next one is
10 the last one.

11 SENATOR BRUNO: Oh!

12 ACTING PRESIDENT KUHL: Senator
13 Bruno, do you yield to one last question?

14 SENATOR BRUNO: Did I answer that
15 one yet, Mr. President?

16 SENATOR WALDON: I think you said
17 "Yes."

18 SENATOR BRUNO: No, let me just
19 be clear on this. I feel that as elected
20 representatives of the people, we have a
21 responsibility to represent the people and
22 sometimes we have to put our personal wishes and
23 desires aside and do what we feel is in the best

1 interest of the great majority of the people in
2 this state; and, consequently, I supported the
3 legislation before the house yesterday because I
4 think it is most representative of how we can
5 govern in moving us to a budget for the people
6 of this state.

7 ACTING PRESIDENT KUHL: Do you
8 have one last question still, Senator?

9 SENATOR WALDON: Last question.

10 ACTING PRESIDENT KUHL: Senator
11 Bruno, do you yield to one last question?

12 SENATOR BRUNO: Yes, Mr.
13 President.

14 ACTING PRESIDENT KUHL: Senator
15 yields.

16 SENATOR WALDON: Senator Bruno,
17 the Constitution of the United States requires,
18 through implied contract, that those who work be
19 paid. Understanding that, would you violate the
20 Constitution of the United States in terms of
21 denial of pay; or would you support the concept
22 -- or do you support the concept that those who
23 work should be paid and that -- without

1 addressing it directly, that perhaps the
2 Governor is off base by refusing to pay people
3 who should be paid and is, in fact, in conflict
4 with the Constitution of the United States?

5 I thank you, Mr. President.

6 That's my question. I put it out there for
7 Senator Bruno, and I appreciate his indulgence
8 and the indulgence of my colleagues.

9 SENATOR BRUNO: Thank you,
10 Senator.

11 Mr. President. All of us know
12 from our own personal experiences with our own
13 checkbooks that it is against the law to write a
14 check when you know that there are insufficient
15 funds in your account to cover that check; and,
16 Mr. President, there are presently insufficient
17 funds in the state's checking account because by
18 law the budget ceased on March 31, and we are
19 going by special appropriations; and since there
20 are insufficient funds, Mr. President, the poor
21 hard-working, dedicated, committed employees of
22 this Legislature can only be paid partially for
23 their good work; and two weeks from tomorrow,

1 they will be paid zero for their good work
2 unless we get a budget in place.

3 So, Mr. President, I would hope
4 that the overdrafts that presently exist here in
5 New York State because of the Assembly's
6 inability to help us move a budget forward,
7 Senate employees, Assembly employees, cannot be
8 paid in full this time or at all next payday.
9 So it really is incumbent on all of us, and I
10 would ask you while you are asking these
11 questions and making these comments that we
12 direct our attention to the Speaker of the
13 Assembly.

14 And the Speaker, as I understand
15 it, is going to have a press conference at 2:45
16 today, and I think it's open to the public; and
17 any of you that would like to attend, I'm sure
18 he would like to see you there; and at the
19 bottom of that information for the press, there
20 is a statement that says -- I don't have it in
21 front of me, but "This will be a photo
22 opportunity, so be there."

23 Now, while we in this house have

1 been diligent in passing our budget bills, we
2 have been here, prepared to do the public's
3 work, the Speaker is preparing photo
4 opportunities this very afternoon, and I can't
5 wait to see what kinds of pictures, Mr.
6 President, that photo opportunity will produce.
7 We can all conjure up in our imagination all
8 kinds of goings on.

9 What I would like to conjure up
10 is a picture of the Speaker as a representative
11 of the Assembly, myself in representing this
12 very distinguished body, the Governor, signing
13 budget bills that we have agreed on as they move
14 forward to become the budget of this state.
15 That would be an outstanding photo opportunity,
16 Mr. President, and I would hope that this press
17 conference this afternoon might give some
18 reference to some timetable when we might see a
19 budget move through the Assembly so that they
20 then would at least have done what we have done
21 in this house, where we worked so hard and so
22 diligently to do a budget for the people of this
23 state by March 31st, and we did that.

1 We did that, and that is a budget
2 that was negotiated first three ways. When I
3 say three, Assembly, Senate, and both houses,
4 both sides of the aisles represented, and with
5 the Governor; and then two ways, because the
6 Speaker decided that he couldn't participate in
7 what we were coming to an agreement on, so we
8 passed that budget.

9 So, Mr. President, having done
10 our work, I am very cognizant of the fact, as
11 the good Senator pointed out, that we are not
12 writing checks to some people that deserve
13 them. But we in this house since we have done
14 our work will go home, and we will go home and
15 we will meet with our constituents. We will
16 confer with them and we will answer their
17 questions about the budget that we passed and
18 the budget that the Assembly is unwilling to
19 pass. So I think that is incumbent on all of us
20 to be doing that, and we would return here on
21 Monday.

22 Now, Mr. President, since there
23 is a cash shortage, we should also note that

1 every day the Legislature is in town costs the
2 taxpayers of this state about \$25,000 in per
3 diems, both houses. It's 15-16,000 with the
4 Assembly; and since there is nothing happening
5 in session there that relates to moving a budget
6 forward, it would appear that it might be more
7 prudent that they go home until they are ready
8 to do the people's work, pass budget bills,
9 consequently save the taxpayers money.

10 We're going to have a leaders'
11 meeting at 5:00 o'clock today, I believe. We
12 will have a leaders' meeting whenever the
13 Governor calls it. We'll be there, and he has
14 had any number of them, unfortunately
15 nonproductive. But the least that we can do is
16 be back in our districts with our constituents
17 explaining to them what this process is all
18 about, and the bottom line is you can't have a
19 budget, Mr. President, unless it passes the
20 Senate and the Assembly in identical form and
21 gets signed by the Governor. The Senate with
22 the Governor have passed identical bills, bills
23 that we agree on. We're awaiting on the

1 Assembly. So while we wait, we will go do our
2 work in our districts; and there being no
3 further business to come before the Senate -

4 ACTING PRESIDENT KUHL: Excuse
5 me, Senator Bruno.

6 Senator Galiber.

7 SENATOR BRUNO: Mr. President.
8 Would you recognize Senator Galiber.

9 SENATOR GALIBER: Mr. President.
10 Thank you. I would like to request unanimous
11 consent to be recorded in the negative on 294
12 and 328. The Senate numbers are 2908 and 2014.

13 ACTING PRESIDENT KUHL: 294 and
14 3...?

15 SENATOR GALIBER: 328.

16 ACTING PRESIDENT KUHL: Without
17 objection, Senator Galiber will be recorded in
18 the negative on Calendar Number 294 and 328.

19 Senator Libous, why do you rise?

20 SENATOR LIBOUS: Could I ask the
21 Majority Leader where might that photo
22 opportunity be taking place, if he can give us
23 the location for some of us who might like to

1 have our photo op.

2 ACTING PRESIDENT KUHL: Senator
3 Connor has volunteered to get the information
4 for you.

5 SENATOR BRUNO: Mr. President.
6 There being no further business to come before
7 the Senate, I move that we stand adjourned until
8 Monday at 3:00 p.m., intervening days being
9 legislative days.

10 SENATOR CONNOR: Mr. President.
11 On the motion.

12 ACTING PRESIDENT KUHL: Senator
13 Connor, on the motion.

14 SENATOR CONNOR: Mr. President.
15 There are some things I think -

16 ACTING PRESIDENT KUHL: Senator
17 Connor, excuse me. The motion is not debatable,
18 moving to adjourn.

19 SENATOR CONNOR: The motion to
20 adjourn is debatable.

21 ACTING PRESIDENT KUHL: I don't
22 believe so.

23 SENATOR CONNOR: We can have a

1 slow roll call, and I can explain it.

2 We have unanimous consent to make
3 a brief statement.

4 SENATOR BRUNO: Explaining his
5 vote, Mr. President.

6 SENATOR CONNOR: Thank you.

7 ACTING PRESIDENT KUHL: Chair
8 recognizes Senator Connor to explain his vote.

9 SENATOR CONNOR: Thank you.

10 Thank you, Mr. President. That
11 press conference will be on the second floor,
12 and the purpose of it is the Speaker and I are
13 going down to see if we can find the Governor.
14 I think we won't find him there because he is
15 back on the campaign trail as he's been since
16 last Wednesday. The Lieutenant Governor we
17 haven't seen except for one brief sighting in
18 Albany in about a month.

19 The Governor is back on the
20 campaign trail. He won't find the budget on the
21 campaign trail. He will find the budget in
22 Albany at the negotiating table. It was clear
23 after the controversies of early last week,

1 after the ice cream -- excuse me, Senator Bruno.
2 I don't want to ascribe cholesterol and calories
3 to you. After the frozen yogurt, that the
4 Speaker and the Governor were going back to the
5 table and, lo and behold, the Governor decided
6 rather than negotiate he would rather go back on
7 the campaign trail, although judging by the
8 reception he's received in certain places, I
9 don't know why. But if he wants a budget, he
10 should be here in Albany negotiating.

11 With respect to paying the staff,
12 hear me. That's the legislative and judicial
13 budget. It's passed this house. Senator Bruno
14 would call it flat. It's not flat. For some
15 reason, apparently the judiciary was cut \$31
16 million, and we know the legislative budget as
17 it pertains to the Senate is not flat because of
18 the \$1-1/2 million in the reappropriations.

19 Be that as it may, all it takes
20 is for Senator Bruno to sit down with the
21 Speaker, and I'll bet in one day they could
22 negotiate. They could negotiate a legislative
23 and judiciary budget. I heard the Speaker say

1 to Senator Bruno the other day -- he said, "Joe,
2 you've got state op's. Let's negotiate about
3 that. You've got two versions of that; and, by
4 the way, let's sit down and do a legislative and
5 judicial budget. It won't take us but a few
6 hours to agree on that." Having agreed on that,
7 that could pass both houses, and the hard
8 working staff of the Legislature, which is
9 legally entitled by the laws of this state as
10 well as federal laws to be paid, would be paid.

11 Now, the only answer -- the only
12 answer as to why they might not be made would be
13 if the Governor vetoed that bill. But if it's
14 agreed upon by the Speaker and Senator Bruno, I
15 can't imagine he would veto it for any
16 substantive reasons. It's for all intents and
17 purposes a virtually flat budget, so to say we
18 have to see all the other budget bills to see if
19 it's in balance is pure nonsense. The Majority
20 Leader claims it's a flat budget. Flat budget,
21 no significant extra spending. We know a couple
22 million slipped in the Senate side but that's
23 not a lot of money.

1 So why not pass that? Why not go
2 talk to the Speaker instead of adjourning.
3 Let's have some care for our employees. Go talk
4 with the Speaker, agree on a legislative and
5 judicial budget, and we'll pass it tomorrow or
6 the next day. Then the staff will get paid.
7 That's what we ought to do. I can't believe
8 despite all his threats the Governor is going to
9 club the staff members by vetoing that bill. It
10 has no major fiscal plan implications. It's
11 virtually flat. So there is an answer other
12 than this political posturing, other than this
13 campaign trail rhetoric, Mr. President.

14 ACTING PRESIDENT KUHL: How do
15 you vote on the motion, Senator Connor?

16 SENATOR CONNOR: I vote no.

17 ACTING PRESIDENT KUHL: Senator
18 Connor in the negative on the motion to adjourn.
19 Senator Skelos.

20 SENATOR SKELOS: Mr. President.
21 If I could explain my vote.

22 ACTING PRESIDENT KUHL: To
23 explain his vote.

1 SENATOR SKELOS: I'm going to
2 support the motion to adjourn because the Senate
3 under the leadership of Senator Bruno, we have
4 passed a budget on March 31. We're not looking
5 to photo ops as is Senator Connor and the
6 Speaker. They should be spending time passing a
7 budget in the Assembly.

8 Now, in terms of the Governor,
9 the Governor is performing his responsibilities
10 right now, Senator Connor, because he is in the
11 city with the Mayor, your Mayor of New York
12 City, explaining how the various welfare and
13 Medicaid restorations that the Assembly is
14 looking to impose upon the people of the State
15 of New York will cost the taxpayers of New York
16 City \$750 million. In Nassau County -- in
17 Nassau-Suffolk, close to \$52 million that he
18 wants to impose upon my homeowners and real
19 property taxpayers and, certainly, your real
20 property taxpayers; and, in fact, in the rest of
21 the state, it would be an increase of taxes of
22 potentially 7-1/2 percent.

23 So, Mr. President, I think we

1 should adjourn because the Senate has done its
2 business. We don't want to spend \$25,000 a day
3 needlessly, as I guess the Speaker wants, unless
4 he's passing budget bills. We want to help the
5 hard-working taxpayers of the City of New York
6 where the Governor is now again with Mayor
7 Giuliani trying to protect them from \$750
8 million in tax increases that the Speaker wants
9 to force upon them.

10 So, Mr. President, my vote is to
11 adjourn.

12 ACTING PRESIDENT KUHL: All those
13 in favor of adjourning, signify by saying aye.

14 Senator Paterson to explain his
15 vote.

16 SENATOR PATERSON: Mr.
17 President. I don't know how anyone could vote
18 for this motion because everyone obviously wants
19 to continue this discussion and prolong it as
20 long as possible, but there are just a couple of
21 points that I would like to make. One is just
22 that the notion that we are writing checks for
23 which we don't have an account, in the \$499

1 million of spending that are in the budget that
2 we the Senate passed allegedly before April 1,
3 there are \$225 million that I can't account
4 for. 115 million, I believe, are going to
5 eventually come from a quickdraw game and 110
6 million are going to come from a pension fund
7 raid that will probably account for 225 million
8 of the 499 million in spending. However, our
9 budget never demonstrates where the money that
10 we're spending is actually coming from. The
11 proposed cuts to the welfare system, even with
12 the Governor's acknowledging that the Assembly
13 has some good ideas about how to save money, are
14 further than what the savings would actually be,
15 and so these are issues that can only be
16 negotiated, and so to put the argument on the
17 table by passing a budget prior to an agreement
18 is a way to demonstrate one's point of view.

19 But to put that point of view out
20 there without explaining where the funding is
21 coming from is really part of the negotiations
22 itself, and so I would support Senator Connor's
23 notion that we should stay; if nothing else,

1 that we should try to redeem ourselves for the
2 fact that we did not reappropriate money to pay
3 all of the staff. We reappropriated money to
4 pay some of the staff.

5 And I would just like to put on
6 the record that we didn't have budgets in this
7 state until 1920. We just raised revenues and
8 paid out the proceeds. So, legally, we are
9 entitled to pay those individuals who work for
10 us. What we did is met our legal obligation by
11 reappropriating money to actually pay them and
12 then they can draw from that amount of money,
13 and this is something that can be very simply
14 accomplished. But I would suggest to those
15 employees who tomorrow will receive 70 percent
16 of their salary, and on May 3 may receive none
17 of their salary, that they have a remedy in this
18 country and they have a remedy in a court of
19 law, and I think I'm going to spend the time not
20 only conferring with my constituents if we do
21 adjourn, but conferring with some attorneys
22 about how to bring that process to fruition.

23 ACTING PRESIDENT KUHL: All those

1 who wish to vote against adjourning, signify by
2 saying nay.

3 SENATOR PATERSON: Party vote in
4 the negative.

5 ACTING PRESIDENT KUHL: The
6 secretary will call the roll.

7 (Secretary called the roll.)

8 Record the party line vote.

9 THE SECRETARY: Ayes 33. Nays
10 20. Party vote.

11 ACTING PRESIDENT KUHL: Senate
12 stands adjourned until next Monday at 3:00 p.m.,
13 April 24.

14 (Whereupon, at 2:20 p.m., Senate
15 adjourned.)

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