ALBANY, NEW YORK

May 2, 1995

11:04 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: Senate will come to order. Find your places.

Ask everybody in the chamber to rise with me and say the Pledge of Allegiance to the Flag.

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

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

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 1. The Senate met pursuant to adjournment. Senator Kuhl in the chair. Prayer by the Rabbi Butman. The Journal of Sunday, April 30, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: 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.

Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Velella, please remove the sponsor star from Calendar 222.

ACTING PRESIDENT KUHL: At the request of the sponsor, the star will be removed on Calendar Number 222.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we at this time adopt the Resolution Calendar?

ACTING PRESIDENT KUHL: The question is on the Resolution Calendar.

All those in favor of adopting it, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

The Resolution Calendar is adopted.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President. We're offering up a resolution. It's at the desk. Move that it be read in its entirety and move its immediate adoption.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution at the desk, by Senator Bruno, in its entirety.

THE SECRETARY: Legislative Resolution, by Senator Bruno. Legislative Resolution condemning the ruthless bombing of Oklahoma City Federal Building and the tragic death and injury of innocent citizens, and calling for the prompt and certain prosecution of justice.

Whereas, America has been shocked and repulsed by a senseless assault upon life and property in Oklahoma City, Oklahoma; an

incomprehensible and cowardly attack within the country's heartland which has defiled the very ideals and values upon which our society and nation was founded.

With the blast of a massive bomb, terrorists rained death and destruction upon hundreds of defenseless children, employees and visitors, within the Alfred P. Murrah Federal Building on the morning of Wednesday, April 19, 1995.

This cruel and despicable act has brought tragedy and anguish to countless families, unleashed a national sense of injustice and brought forth a great outpouring of compassion from concerned citizens across this great state and nation.

Among those bringing aid and comfort to the grateful citizens of Oklahoma City were the highly skilled and dedicated members of the EMS and law enforcement teams from the State of New York.

The passing days have revealed the enormity of this tragedy and its impact upon

not only the people of Oklahoma City but an entire nation; through the mirror of media, America has watched the anguish of families torn by missing, dead, and injured members; the far-reaching destruction of buildings and businesses; and a new disturbing presence of fear within a people whose faith in public safety has been so violently shaken.

While a weary yet determined cadre of emergency personnel continued their skillful and courageous mission of mercy, a prayerful nation joined hands and hearts in response to the declaration of a National Day of Mourning on Sunday, April 23, 1995; a day dedicated not only to mourning but a day for extending comfort, hope, and strength to others, and a day of rededication to the values which have given strength to, and so justly personified, the character of America.

The full measure of law enforcement has been firmly dedicated to the application of swift, certain and severe justice, and now the task of hopeful citizens

and its leadership to put anger aside, to seek the harmony of tolerance and fellowship and to insure the preservation of the rights of all citizens in a society dedicated to good will and good citizenship; now, therefore, be it

Resolved, That this Legislative Body declare this... terrorist bombing of the Oklahoma City Federal Building and the tragic loss of life and injury to its victims; adding its grateful praise for the distinguished work of the EMS and the law enforcement teams from New York State as well as the heroic efforts of all who responded to help; calling for the swift application of justice upon all perpetrators; and extending the deepest condolences and heartfelt prayers of the citizens of the State of New York to the brave people of Oklahoma City, Oklahoma; and be it further

Resolved, that copies of this resolution, suitably engrossed, be transmitted to President Bill Clinton, Attorney General Janet Reno, Oklahoma Governor Frank Keating, and Governor George E. Pataki and the members of the

New York State Congressional Delegation.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Bruno on the resolution.

SENATOR BRUNO: Thank you, Mr. President. On the resolution.

Mr. President. What happened in Oklahoma City is like the worst nightmare that anyone could ever imagine, and it is still hard for us all here in this state and all over the country to comprehend the pain, the suffering, that's been created. We can think about it and we can talk about it, but it's almost impossible to just fully appreciate what has happened to those families -- 150 people dead. 15 babies. You think about that happening as someone's malicious act, it's kind of hard to comprehend.

But it's fitting that we recognize for these moments that tragedy. It's fitting, Mr. President, that we think about the victims, their lives which have been shortened in this tragic way, but we also think about families, their friends, all of the survivors that mourn; and that we remember these people in

our thoughts and in our prayers; and that we pray that time will truly heal those wounds that are so open now for the people that were close and for the people all over the country, all over the world, that can't help but focus and think about the pain and suffering that's there, and it goes on and on and on.

So we pray for the victims. We pray for the families, and we pray for their friends, and we recognize them in this way on this floor as they will be recognized and remembered all over this great country of ours; and, hopefully, by focusing attention on this, we might in some way inhibit any of the tragedies that might occur in the future, causing people to just think about what they're doing to innocent people.

Mr. President. I would at this time suggest that we open up this resolution and its sponsorship to any of the members that are in the chamber today.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Bruno, I see that there are several members that would like to be on it. Why don't we take the position that we put all the members, because of the delicateness of this resolution, on the resolution except for those who would signify to the desk later that they don't wish to be on the resolution.

The chair recognizes Senator Paterson on the resolution.

SENATOR PATERSON: Mr. President. I think it is a tremendous gesture that we are making today in the Senate by pausing in our deliberations to recognize such a horrible tragedy in this country.

Last Wednesday, which was the one week anniversary, we opened our session an hour earlier so that at 10:02 a.m. eastern time we were able to comply with the President's wish that at 9:02 central time which was the one week anniversary of that horrible disaster that we paused in a moment of silence. I thought that was a wonderfully sensitive gesture on the part of our Majority Leader, Senator Bruno.

There have been a few very unfortunate incidents that have occurred, personally to some of our members and also in the world, that we have recognized this year, and I am very grateful for that.

You have to wonder about the personality or the mind-set that feels comfortable being the catalyst for such a horrible, terrible disaster. You have to really dismiss any ideological certainty that is being advanced by such an act. One wonders what kind of government these individuals, terrorists around the world, whether they be in the Middle East, whether they be right here in the United States, whether it be at the World Trade Center or from whatever source it's coming, what kind of government are they suggesting that we live in where those who are trying to change the government destroy lives, destroy children, destroy the hopes and dreams of a whole community, a whole city and put an everlasting blemish on our country's history.

It is really one of the saddest

state of affairs that we could ever be addressing in this chamber, and yet as public servants we have to address it. These are issues that are actually happening in our society now. With all of our advanced technology, with all of our increased humanity, we are still fighting the inability of human beings to recognize each other's right to live on this planet.

And, certainly, we should never in any way compare the disagreements that we have in this chamber with any kind of endorsement of these types of acts because the philosophy that the individuals may be spouting as they commit these acts has nothing to do with the acts themselves. They are just convenient excuses and avenues to violence, because that's all it really is. Violence that is manifested in the conduct that is so loathsome and despicable that we just notice is really coming from a sick and twisted mind or a group of sick and twisted minds.

So I am very happy that we would

have this resolution today. I hope that the families and the survivors who were injured in that disaster will somehow try to take something from what we're offering today. We are really offering in our own small way, in our own human way, the gesture that we care.

ACTING PRESIDENT KUHL: Senator Dollinger on the resolution.

SENATOR DOLLINGER: Mr. President, just briefly.

I want to commend Senator Bruno for taking the leadership on this issue and sending a message to the people of Oklahoma that we in New York, who had our own experience with terrorism, understand what the devastation is that's wreaked on the families by these villainous acts.

I have only one suggestion. I'm not sure it needs to be put on the resolution, but I would recommend that we send a copy of this resolution not only to those who are listed on the resolution but to the families of the victims, as well, so that they will have an

expression from us that we in New York recognize that we are a nation of families. We share their family's grief. We share their family's disappointment and distress, and that we will send a clear message to them that we in the New York family do not tolerate violence in any form.

I just recommend that we send it. I'm sure we can get a list of families that lost someone and, perhaps, send if to the parent or the spouse so that they will have a memorial from us of the importance of the American family and our tradition against violence.

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

(Response of "Aye.")

Opposed, nay.

The resolution is unanimously adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we return to reports of standing committees,

and I believe there is a report from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: There is a report of a nomination at the desk, Senator Bruno. I will ask the Secretary to read.

THE SECRETARY: Senator Stafford from the Committee on Finance offers up the following nomination: Member of the New York State Racing and Wagering Board, Jerry Bilinski, DVM, of North Chatham.

ACTING PRESIDENT KUHL: Chair recognizes Senator Bruno on the nomination.

SENATOR BRUNO: Mr. President, on the nomination. I am very pleased to be able to stand in support of this nominee. I have known Dr. Jerry Bilinski for a lot of years, as I have known his wife Darlene that joins him here in the chamber today.

I know him to be a true professional in his field of veterinary medicine. I know him to be a business person who has had one of the more successful veterinary clinics in the state. I know him as

a horse person, raising horses, brood mares, standing stallions, one of the most outstanding stallions in the state.

So it is very refreshing to have someone take on a position of responsibility that is as important to the people of this state as this one is, and it's especially worth noting that Dr. Bilinski is extremely successful in his business world and in his professional world and has a lot of things that he could be doing with his time if he so chooses. He is choosing to do this public work on behalf of the great majority of the people of this state. I want to commend him for that.

I commend his wife, who has supported him in all of his activities, and just want to urge the support of all of my colleagues in the chamber because we have a person in Dr. Bilinski that will do all of the good things that need to be done for an industry that needs a lot of attention, a lot of help, a lot of sophistication, a lot of knowledge, a lot of enthusiasm, a lot of energy, and Dr. Bilinski

possesses all of those qualities and attributes.

So I am pleased to move his nomination, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Nozzolio on the confirmation.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President. My colleagues. I rise to echo the comments of my Majority Leader in support of this nomination. It's an extremely important position and the challenges ahead are great and significant. I haven't in or near my Senatorial District Fortune 500 companies like Kodak and Xerox, but the largest private sector employer in my district is the Finger Lakes Racetrack. It's an important component not only to the employment directly but also the very important aspect of tourism in our Finger Lakes Region. I'm very pleased in my conversations with Dr. Bilinski that he recognizes the importance of this economic entity and its important contribution to the Finger Lakes economy.

The discussions -- I'm also pleased that the nominee, Dr. Bilinski, is committed to working with us here in the Legislature to do more, to do better, on behalf of those horse interests and racing interests in our state.

Mr. President, I support this nomination and urge my colleagues to do likewise.

ACTING PRESIDENT KUHL: Chair recognizes Senator Farley on the confirmation.

SENATOR FARLEY: Thank you, Mr. President. I rise to support this nomination. Racing is one of the most important industries in this state. Very important to Senator Bruno and myself that we share with Saratoga County, and I know of Senator Bruno's love of horses and his recommendation of the good doctor is significant because, of course, horses do play a large part of the racing industry.

And I am pleased to support this nomination. I think, of course, the doctor is eminently qualified and will serve us well, and

I applaud the Governor on this outstanding appointment.

I vote aye.

ACTING PRESIDENT KUHL: The question is on the nomination of Dr. Jerry Bilinski of North Chatham to the position as a member of New York State Racing and Wagering Board.

All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

We are very pleased to be joined by Dr. Jerry Bilinski. He's in the gallery with us, together with his wife, Darlene.

Dr. Bilinski, congratulations and good luck.

(Applause.)

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President.

Can we at this time take up the noncontroversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 97, by Senator Goodman, Senate Print 926A, an act to amend the Tax Law, in relation to additional tax on receipts from the sale of parking services rendered in certain cities.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. 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 103, by Member of the Assembly Tokasz, Assembly Print 2444, an act to amend the Education Law, in relation to the practice of optometry.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 155, by Member of the Assembly Tonko, Assembly Print 2331, an act to amend the Civil Service Law, in relation to notifying candidates.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of January.

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 204, by Senator Saland, Senate Print 2598, an act to amend the Family Court Act, in relation to extensions of child placement and child protective proceedings.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

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 206, by Member of the Assembly Pillitiere, Assembly Print 917, an act to amend the Navigation Law, in relation to vessel lighting and the operation of personal water craft.

SENATOR DeFRANCISCO: Would you please lay that aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 275, by Member of the Assembly Lopez, Assembly Bill 5097A, an act to amend the Private Housing Finance Law, in relation to housing loans.

ACTING PRESIDENT KUHL: Secretary 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Levy, Senate Print 364, an act to amend the Vehicle and Traffic Law, in relation to imposing an additional fine, imprisonment for DWI offenses.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 41. Nays 1. Senator Kuhl recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 320, by Senator Saland, Senate Print 2118, an act to amend the Domestic Relations Law, in relation to orders for child custody and support.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect in 120 days.

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 358, by Senator Trunzo, Senate Print 3655, an

act to amend the Retirement and Social Security Law, in relation to providing that vested members shall not lose vested status.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. 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 367, by Senator Skelos, Senate Print 520, an act to amend the Education Law, in relation to notification to parents of an elementary school pupil's absence from school.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of September.

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 380, by Member of the Assembly Luster, Assembly Print 1541, an act to amend the Criminal Procedure Law, in relation to authorizing the presence of a counselor.

ACTING PRESIDENT KUHL: Secretary 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 382, Member of the Assembly Gromack, Assembly

Print 3039, an act to amend the Criminal Procedure Law, in relation to conferring peace officer status.

ACTING PRESIDENT KUHL: Secretary 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator Trunzo, Senate Print 3983, an act to amend the Civil Service Law, in relation to the adjournment of certain arbitration proceedings.

ACTING PRESIDENT KUHL: Secretary 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 396, by Senator Trunzo, Senate Print 3984, an act to amend the Retirement and Social Security Law, in relation to providing ordinary death benefit coverage.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 11. 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 417, by Member of the Assembly Gottfried, Assembly Print 3826A, an act to amend the Public

Health Law and the Insurance Law in relation to radiation therapy.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

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 418, by Member of the Assembly Gottfried, Assembly Bill 5759, an act to amend the Public Health Law, in relation to prohibition of financial arrangements.

ACTING PRESIDENT KUHL: Secretary 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 425, by Senator Saland, Senate Print 2113, an act to amend the Family Court Act and the Criminal Procedure Law, in relation to authorizing the court to permit a petitioner.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the noncontroversial calendar.

SENATOR SKELOS: Yes, Mr. President. Is there any housekeeping at the

desk at this time before we go to the controversial calendar?

ACTING PRESIDENT KUHL: There is none at the desk reported by The Secretary.

SENATOR SKELOS: If we could proceed then with the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will call the controversial calendar.

THE SECRETARY: On page 9, Calendar Number 103, by Member of the Assembly Tokasz, Assembly Print 2444, an act to amend the Education Law, in relation to the practice of optometry.

ACTING PRESIDENT KUHL: Senator Skelos, an explanation.

SENATOR SKELOS: May we stand at ease for a moment. I believe Senator Volker is in the Finance Committee meeting, and we'll get him in.

I know that a couple of members would like to vote at this time. If we could call the roll for purposes of Senator Trunzo voting.

ACTING PRESIDENT KUHL: Secretary will read the last section on Calendar Number 103.

THE SECRETARY: Section 6. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Trunzo, how do you vote?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: Senator Trunzo will be recorded in the affirmative.

Secretary will withdraw the roll call.

SENATOR SKELOS: May we just stand at ease for a moment.

ACTING PRESIDENT KUHL: We will stand at ease momentarily, awaiting Senator Volker.

(The Senate was at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order.

Chair recognizes Senator Skelos.

SENATOR SKELOS: I believe you have another report from the Finance Committee.

ACTING PRESIDENT KUHL: We do. We have called up Calendar Number 103, Senator Skelos, so why don't we lay that aside temporarily. We'll return to reports of standing committees. We have a report of the Finance Committee. I will ask the Secretary to read.

THE SECRETARY: Senator Stafford from the Committee on Finance reports the following bill: Senate Print 4579, Budget Bill, an act to provide for payments to certain municipalities under the Municipal Assistance Program and making an appropriation therefor.

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

Senator Skelos, do you wish to take this up at this time?

SENATOR SKELOS: Mr. President. Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: Yes. I will ask the Secretary to read the bill, and then we will have a substitution, and then we will take the message.

Secretary will read.

THE SECRETARY: Senator Stafford moves to discharge from the Committee on Finance Assembly Bill Number 7485 and substitute it for the identical Senate Bill 4579.

ACTING PRESIDENT KUHL: Secretary will -- substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Yes, is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is a message of necessity on the Assembly bill, Senator Skelos, at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

Secretary 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 47.

ACTING PRESIDENT KUHL: The bill is passed.

Chair recognizes Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Tourism Committee in Room 332 of the Capitol.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Tourism Committee in the Majority Conference Room, Room 332.

SENATOR SKELOS: And at this time, Mr. President, if we can take up Calendar Number 103, Senate 1186.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 103.

ACTING PRESIDENT KUHL: Chair recognizes Senator Saland.

SENATOR SALAND: Thank you, Mr. President. I was out of the chamber at a Finance meeting, and would request unanimous consent to join you, Mr. President, in the negative on Calendar 303.

ACTING PRESIDENT KUHL: Without objection, Senator Saland will be recorded in the negative on Calendar Number 303.

SENATOR SALAND: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 103.

THE SECRETARY: Calendar Number 103, by Member of the Assembly Tokasz, Assembly Print Number 2444, an act to amend the Education Law, in relation to the practice of optometry.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of the bill was asked for when it was brought up the last time by Senator

Dollinger.

Chair recognizes Senator Volker for an explanation.

SENATOR VOLKER: Mr. President. First of all, let me say and I think this certainly is a very important bill.

ACTING PRESIDENT KUHL: Senator Volker, excuse the interruption.

Ladies and gentlemen, may we have the members please take their chairs and take the conversations out of the chamber. It's extremely noisy in here. We won't proceed until it quiets down.

Senator Volker.

SENATOR VOLKER: First of all, I might say, I think that is important bill; and, in a sense, I want to apologize to my colleagues and at the same time thank my good friend Senator Ken LaValle for the hard work that he did on this bill and also for the fact that, very honestly, this bill should have been signed into law last year and would not even be here.

This bill passed the Senate by a

vote of 49 to 11 last year. It was not a real controversial bill. It was agreed to by virtually everybody involved.

But like so many other areas, especially areas where there is turf involved, one of the parties involved who had agreed to it, some of the members of that organization started backing around and saying, "We don't know if this was such a good idea," and some very powerful members of that organization then got to the medical society and said, "You know, if you let this happen, why other groups will be coming in and wanting to impinge on us," and so forth and so on. The next thing you know, the medical society that had been very quiet all of a sudden got involved.

So what has happened here is that we have a situation where you might be interested to know there are 48 states in the Union -- 48 -- that allow for the kind of statutes that we presently have, that allow, in other words, some form of drug use for eyes in the -- that we do in this state already. There

are 41 states in the Union that provide some form of therapeutic drug treatment contrary to what some of the nonsense that has been -- that has been distributed around.

In fact, interesting statistic that I found out was that two of the three examinations that are done in this state are done by optometrists and not by ophthalmologists, which I think may give you an idea of one reason why some ophthalmologists are concerned here.

Let me just, if I might, read you -- and there's a reason why I'm doing this. I am going to read you a little statement of how we came about here, partly because I think it is important to this issue and also because I think there is just so much misunderstanding about what has happened. So I'm going to give you just a brief history of what's before us.

An almost identical bill passed this house last year. The chair of the Assembly Higher Education Committee, Ed Sullivan, asked for a few technical amendments which were

included in the chapter amendment. That chapter amendment failed to get a message of necessity, and those of you that were here then obviously remember there were some problems at the end of last session with messages of necessity.

Those chapter amendments have been included in this bill; and except for the effective date, the bill is the identical to the marriage resulting from the original piece of legislation that was passed and the chapter amendments' technical amendments.

The chairs of the Higher Education Committees, Senator Ken LaValle and his counterpart in the Assembly, had previously asked the Education Department to conduct an analysis of the issues surrounding optometric use of therapeutic drugs. The Department's report, which was issued in June of 1993, became the framework for almost a year's effort in developing a bill which reflected public need, the Education Department's proposals, and the position of optometry and ophthalmology and the chairs of the legislative committees.

The bill currently before us has the support of the Education Department. The Health Department -- that is, the new Health Department -- has taken no position. Optometry is strongly supportive and the representatives of ophthalmology had indicated they had signed off on the legislation. In fact, they were part of the discussions that went on for a long period of time.

The medical society has begun to voice objections to the bill asking for a collaborative agreement. The only physicians with whom the optometrists could possibly have a collaborative agreement would be the ophthalmologists, and they have agreed to this legislation in the past. While there may be individual optometrists and ophthalmologists who are unhappy with the negotiations, the bill does, in fact, reflect the final position of both of those organizations.

I am convinced that the medical society is fighting a battle on nurse practitioners and nurse anesthetists and others

who are looking to expand their scope of practice to include areas heretofore the exclusive purview of physicians. So other than the medical society as a whole, the other components including that group of medical practitioners most directly affected have actively participated and have been instrumental in developing this proposal and had no objection to this legislation.

The bill redefines optometry by permitting those optometrists who have the requisite clinical training to use certain specified drugs. The drug utilization is divided into two phases. In the first phase, topical medication is used for relatively common routine diseases such as inflammation of the eye. Before an optometrist may participate in Phase I, he or she must have acquired a minimum of 300 hours of clinical training. Ophthalmologists are actively participating in this review process as they are in an evaluation committee which will assist in determining if optometrists who apply for certification have

the necessary clinical experience.

There are particular procedures to be followed in the event that steroids or antiviral medications are dispensed or prescribed. The language and protocols for these medications were developed in consultation with the Education Department, members of the New York State Medical Board, and the ophthalmological society's representatives. All parties concurred with the approach in this bill.

During the first 12 months of this Phase I utilization, all optometrists prescribing drugs must advise a review committee of the illness treated, the medication provided -- prescribed and the outcome. Ophthalmologists are actively engaged in this component as they are in the committee which will write the initial report on the experience of optometrists prescribing medication.

In Phase II, optometrists are permitted to use certain glaucoma medications; however, glaucoma patients must be co-managed

with an ophthalmologist during the first three years but not for fewer than 75 patients. The issue raised by the medical society on collaborative agreements was resolved by optometry, ophthalmology, and the chairs of the committees by requiring this co-management relationship between ophthalmologists and optometrists.

Optometrists must have an additional 100 hours of clinical training solely in glaucoma management prior to being authorized to use Phase II drugs. Optometrists must have a notification in their office advising patients of the condition in which they are practicing. They will be held to the same standards to which physicians in the community are held. They must participate in conditioning education programs.

Similar legislation has been enacted in 41 other states. New York is late to the authorization although the SUNY College of Optometry has been one of the premier clinical programs in the country. The Education Department has submitted a memorandum in support

while the new Commissioner of Education has taken no position -- Commissioner of Health. I'm sorry. The Health Department in prior years has endorsed this legislation stating, "The authorization of optometrists to use drugs will encourage and facilitate greater access to health care services; may also reduce or limit the increase in costs of vision care services provided by publicly financed health care programs."

This bill is an evolutionary step in the development of scope of practice for ancillary health care providers. It has been carefully reviewed, negotiated by the chairs of the Senate and Assembly Higher Education Committees.

I want to especially thank Senator LaValle for not only all the work that he did but also because -- those of you who may remember that a major reason why the bill was late in last session is that it occurred after I had had some major surgery, and I had anticipated coming back before the end of the

session. Unfortunately, that didn't work out, and I was not able to come back by the end of the session; and as a result, Senator LaValle moved the bill late in the session and did a Herculean job; and if wasn't for some of the things that occurred, really, outside the - outside of our control, the bill would have, presumably, been signed into law and we would not have this bill before us today. So I just wanted to make that clear.

And I will be glad to try to answer any questions anybody might have.

SENATOR DOLLINGER: Mr. President. If Senator Volker will yield to a couple of questions?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Dollinger?

The Senator yields.

SENATOR DOLLINGER: First of all, Senator, I appreciate your effort with this bill. I know this has been a long time in

working through. I'd just like to go through and make sure I understand a couple components of it.

First of all, with respect to glaucoma, which is an issue that, at least to my recollection, was not at least clearly understood by me last year when we did the bill, and I know that the medical society, the ophthalmological society have come forward with information that suggests that glaucoma is a slightly different animal in this arranged pattern of diseases that affect the eye and, frankly, that there are different treatments.

Just for the record, how many states in the United States now permit optometrists to treat glaucoma? Do you know how many? You have used the number of 41. I believe that applies to general therapeutic drugs. My question is, what about the issue of glaucoma?

SENATOR VOLKER: I think general -- I think that's true, and I think that there are a great number of those that do,

although I don't know if we have an exact number. There are 30 -- 30 states, according to the information I have, allow some form of treatment of glaucoma. Not all, of course, in the same vein allow it. Some allow it in collaboration with ophthalmologists; some allow it separately, but all of 30 states allow treatment of glaucoma.

SENATOR DOLLINGER: Again, through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger is asking Senator Volker to yield. Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, are you familiar with the characteristics of glaucoma and why the ophthalmological society is concerned about having optometrists, even with the additional training, treat glaucoma and its effects?

SENATOR VOLKER: Yes, I think I

am, and I think -- keep in mind that the treatment of glaucoma is in the second phase here and we have set up a system whereby it would be done in conjunction with ophthalmologists as a co-management type of operation. You are aware of that, I assume.

And the reason for that is to allay some of the concerns that some of the ophthalmologists had; and, remember, that this bill was the result of a long and tortuous process that did involve both ophthalmologists, optometrists and so forth, as well as the legislative people, and that that's where this agreement came from.

I think what has happened is that -- and let's face it. I think some of this is obviously turf, not that there aren't people that are concerned, but I think what has happened here is that some people on both sides, the ophthalmologists and the optometrists -- the optometrists think this didn't go far enough; the ophthalmologists think maybe this went too far. It is, I think, one of the classic cases

of people not involved directly in the process who are saying, "Well, maybe we shouldn't have done this," but their basic -- both groups, agreed to this.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: The issue of the co-management, as you describe it, Senator, with respect to glaucoma, raises a troubling question of liability and malpractice; and that is, how do you apportion, how do you deal with the malpractice issue that flows from co-management versus what is currently the singular management by a physician for glaucoma?

SENATOR VOLKER: I think the way you would deal with it were if the proper

procedures are followed and if the training and so forth is -

SENATOR DOLLINGER: Mr. President. I am kind of having a problem hearing.

ACTING PRESIDENT KUHL: So am I, Senator Dollinger, and you raise a good point. Why don't we see if we can get the members to take their conversations out of the chamber, see if we can get the sergeant-at-arms to the close the doors so we don't have noise coming in.

SENATOR DOLLINGER: Thank you, Mr. President.

SENATOR VOLKER: I think, Senator, that what I was about to say was that as long as you use the standard of care that is normally used by any physician -- in fact, right in the bill on page 2, line 34, where it talks about standard of care, it says, "An optometrist authorized to use pharmaceutical agents for use in the diagnosis, treatment or prevention of ocular disease shall be held to the same standard of care and diagnosis, use of agent and

treatment, as that degree of skill and proficiency commonly exercised by the physician in the same community."

So what you would have is a situation where that optometrist would be held to the same standard; and as long as the -- or as long as he complied -- he or she complied with the rules as set forth in this bill and practiced in the normal -- with the normal care, that would comply with those kinds of -- those kinds of issues.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will yield.

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

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: In these co-management situations between optometrists and ophthalmologists, does the bill specify - and I apologize for perhaps not being able to cite chapter and verse here, but does the bill specify who is the primary care provider or who

is the primary manager of the care to be provided?

I'm simply -- and, again, through you, Mr. President, I'm simply trying to decide who, by law, are we apportioning the major responsibility for treatment so that in the event of a malpractice action we have some - are we in any way tinkering in this law with that, the apportionment of liability responsibility?

SENATOR VOLKER: We're not tinkering. I think what we're doing here is that the -- what we're doing -- we have a section, by the way, that deals with consultation, and that's on page 3, Section 6, and it talks about how the consultation is set up, and so forth, and I think what we would be doing was, as long as there was compliance with the rules, I think the question would be -- if there was some sort of malpractice, I guess the question would be, if it was on behalf, obviously, of the optometrist, it didn't comply with the agreement, he or she, quite clearly,

would probably be the one primarily responsible; where, I suppose, if the ophthalmologist didn't act -- or didn't act in compliance, then there could be some question as far as the ophthalmology but primarily the optometrists would take the heavy risk as long as he or she would comply with the consulting but didn't properly do it, then that person would, under the rules of -- common rules of evidence and so forth, I suppose, would be primarily responsible.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will continue to yield.

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

The Senator continues to yield.

SENATOR DOLLINGER: Does this bill, in any way, deal with the issue of a claim against an optometrist and the coverage through the excess medical liability coverage that we now have in place for physicians? At least it's my understanding it's for physicians. In a

claim against an optometrist, would the victim of malpractice have access to the medical liability umbrella that we now put in place for physicians?

SENATOR VOLKER: I think the answer to that is, probably no, because they are not a physician and, therefore, they wouldn't technically be -- that wouldn't be applicable to them.

Of course, they have their own coverages and the coverages of optometry now, as I understand it, is not as extensive because they don't do the kind of invasive type of thing that a medical physician would do. Keep in mind that despite the fact that we are expanding the practice of optometry here, we are not expanding it to anywhere near what an ophthalmologist could or would do. We are not, for instance, doing the kind of invasive type of thing that an ophthalmologist does now. This is very limited.

I have been told that there are some states in the Union, by the way, that go

considerably beyond what we are proposing to do here in allowing optometrists to practice.

SENATOR DOLLINGER: Just, again, through you, Mr. President.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Is my understanding correct, that if there were a claim brought against an optometrist who was a co-manager under the system that we have, and it was determined that the optometrist was liable for loss of sight, which is -- as I think everybody recognizes, is a significant compensable injury, that the victim would not have access to the excess coverage that we now have available for physicians, and that the purpose of that pool is to both shield the risk from individual physicians and to pool the insurance so that we have funds available for those kinds of judgments?

Is my understanding that the optometrists would not have access to that and they would only be relying on the primary coverage?

SENATOR VOLKER: I think that's true. But, of course, remember that it is excess to start with and that the medical -- a physician has his own primary coverage to start with, that the excess coverage is in additional to their regular coverage, so that the optometrist clearly would have his or her own coverage; and, presumably, one of the things that will happen here -- as the scope of risk increases, they will probably have to have increasing coverage, it is true. But, again, I say not to the same extent as a physician would because an optometrist would not be allowed to do the kind of invasive treatment and so forth that an ophthalmologist would.

SENATOR DOLLINGER: Again, through you, Mr. President. One thing that this bill does do, however, is it increases the role of the optometrist as a diagnostician, and that

is in the sense of his ability to diagnose and to treat ailments that can progressively lead from one form of disease rapidly to another, at least as I understand the physiology of the eye.

SENATOR VOLKER: It doesn't really increase it that much. They're doing it right now. What happens now is, if an optometrist looks at somebody's eye and makes a determination that that person, for instance, has glaucoma, or whatever, he refers him to an ophthalmologist; and, in fact, what would happen here is now -- and this is at the request, in fact, of the ophthalmological people. You have the consultation that goes on here; and presumably, in severe cases, you would still have to reference to an ophthalmologist because there are many things that an optometrist still will not be able to do, and one of the things that this bill will do, by the way, is do something -- and I think it may be extremely important in the medical field in this area; and that is, develop a much better relationship - although the relationship has been much better

than I think people realize, between optometrists and ophthalmologists.

For instance, I don't believe I have ever been to an ophthalmologist. I think my entire history has been to optometrists, which I think most of us don't realize because, fortunately, I don't believe I have ever had any disease or anything. I just had examinations and so forth, because most of the examinations that are done in this state, as I say, are done by optometrists themselves; and it's only when there is an indication of some disease or something of that nature that ophthalmologists come into play.

SENATOR DOLLINGER: Again, through you, Mr. President.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: That really highlights my concern is that under this bill

the optometrist becomes not only the first stop in detection, which as, I agree with you, under the current practice optometry may be, but it also becomes the first stop in the treatment process because they will have treatment abilities for certain types of diseases, which if untreated or improperly treated could lead to more severe consequences.

That's my concern in this bill, is the effect of creating this first level of treatment for optometry, especially when -- at least from what I understand about the diseases of the eyes is that they are often progressive in nature. What starts out as X Y Z ends up moving, if improperly treated, to something else with relative rapidity.

SENATOR VOLKER: Yes, it was pointed out to me that the -- that the treatment is limited to three basic types of drugs, beta blockers, alpha agonists and direct acting chlorogenic agents. The reason for that is - and that was one of the things that the ophthalmologists wanted was to keep the

treatment -- whatever treatment was going to be made by the optometrists would be in a very limited vein, so that anything after that would clearly go and would be referred to the ophthalmologists; and, remember, that these would be done in consultation with the ophthalmologists to start with, initially, and that you have all sorts of training that ensues, and so forth, to increase the ability of these people to deal with these kinds of things.

But I think the answer is, I think you should understand this, that nothing in this bill is going to give optometrists unfettered ability to make decisions as far as treatment to any massive extent. That still is going to be in the hands of ophthalmologists even after this bill passes, consultation or not. The prime responsibilities for disease control and for treatment is still going to be in the hands of ophthalmologists.

I believe Senator DiCarlo -

ACTING PRESIDENT KUHL: Senator Dollinger, please excuse the interruption.

Chair recognizes the Acting Majority Leader, Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President. There will be an immediate meeting of the Environmental Conservation Committee in Room 123, and any members on that committee who wish to vote now, please let us know.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Environmental Conservation Committee in Room 123, immediate meeting.

Chair recognizes Senator Tully. Do you wish to vote?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator

Tully, how do you vote?

SENATOR TULLY: No.

ACTING PRESIDENT KUHL: Senator Tully in the negative.

Senator Farley, how do you vote?

SENATOR FARLEY: No.

ACTING PRESIDENT KUHL: Senator Farley in the negative.

Senator Leichter, how do you vote?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Leichter in the affirmative.

Senator Stachowski, how do you vote?

SENATOR STACHOWSKI: Yes.

ACTING PRESIDENT KUHL: Senator Stachowski in the affirmative.

Senator Sears, how do you vote?

SENATOR SEARS: Yes.

ACTING PRESIDENT KUHL: Senator Sears in the affirmative.

Senator Hoblock, how do you

vote?

SENATOR HOBLOCK: No.

ACTING PRESIDENT KUHL: Senator Hoblock in the negative.

Senator Goodman, how do you vote?

SENATOR GOODMAN: No.

ACTING PRESIDENT KUHL: Senator Goodman in the negative.

Senator DeFrancisco, how do you vote?

SENATOR DeFRANCISCO: Negative.

ACTING PRESIDENT KUHL: Senator DeFrancisco in the negative.

Senator Oppenheimer, how do you vote?

SENATOR OPPENHEIMER: No.

ACTING PRESIDENT KUHL: Senator Oppenheimer in the negative.

Any other committee members on that wishing to vote?

(There was no response.)

Roll call is withdrawn. Debate

is resumed.

Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Again, with Senator Volker's continuing indulgence, just one last line of questions.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, as I understand it, the effect of this bill will be to create, in essence, four categories of optometrists: Those who are bound by current law, who have the options available under current law; those who are diagnostic optometrists who have some access to drugs and drug therapy; therapeutic optometrists who will deal with a more expanded scope; and then those that have the glaucoma powers. This bill establishes a series of additional training for those who participate or qualify for those

additional responsibilities.

SENATOR VOLKER: Additional hours eventually.

SENATOR DOLLINGER: Additional hours of training.

SENATOR VOLKER: Right.

SENATOR DOLLINGER: My question is, what procedure is set up under this bill to notify the consumer of the varying levels of expertise that will now be available for these various optometrists?

SENATOR VOLKER: First of all, there is in the bill when the optometrist is initially enabled to practice, and so forth, under the new rules, there is a -- in the bill, it speaks of posting on the wall a notice that tells exactly what the scope of the optometrist is; and, for instance, when the optometrist is in the second phase and dealing with the co management or consultation with the ophthalmologist, that that notice must be placed for anyone to see to make sure that there is an understanding by anyone that is treated by that

person as to exactly what the scope of that optometrist is; and the idea of that is to make it clear as to exactly how this person -- what this person's scope is; and then at the end of the process, there is also a notice where the optometrist will be able then to notify his clients that he has been certified -- he or she has been certified to exactly what their scope of authority is, and so forth.

So there is an attempt in the bill -- and by the way, there is -- there is a continuing process that goes on, a committee that is set up as a continuing education process, not only to review what is occurring as time goes on, also there is a course of a committee set up for certification and things of that nature with two optometrists and two ophthalmologists on it and a third person that is set up for a review committee, person appointed by the SUNY Chancellor through the Education Department, to certify people. But all that is going to be noticed to the public, and the optometrist has to clearly notify his

patients as to what his authority is.

Just one more thing, Senator LaValle noted to me that on page 4, Section 8, on the notice to the patient, it lists a detailed area which the medical society requested, a series of language options that the medical society requested to make it very clear as to what the scope and authority of an optometrist is, and that's Section 8, from lines 3 through line 24.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I thank Senator Volker for continuing my enlightenment through this process. I think I have been talked to by just about every ophthalmologist in Rochester and by every optometrist in Rochester about this bill and what it means.

But I think, as my questions to Senator Volker indicate, I am concerned about a number of things in this bill. One is the issue

of liability and access to liability insurance.

I know that one of the reasons why -- at least it's my understanding - optometry is a less expensive form of diagnosis and treatment for some illnesses of the eye is because, frankly, they are not carrying the liability exposure that physicians carry.

In addition, I'm fearful that if there were claims against optometrists under this bill, that they wouldn't have access to the medical liability coverage that we now provide for physicians as excess coverage in the event that there's significant judgments.

I note that that system is in place as a way to shield physicians from significant increases in their malpractice policy, but I would like to think that consumers who are perhaps unfortunately victimized, if they would be -- by malpractice by optometrists, would have access to the same availability of funds.

I think optometry may also find that once it gets in the business of providing

these kinds of treatments that its malpractice premiums significantly expands and the cost savings that optometry might have experienced will no longer be present because they will have to pick up large increases in malpractice insurance.

In addition, Senator Volker pointed out at one point in response to my question that the person who continues to bear primary responsibility is the ophthalmologist, and my concern is that the ophthalmologists will only bear responsibility in instances in which the optometrist may have already begun treatment; and if there are conflicts between the ophthalmologist and the optometrist about the course of treatment or professional judgments made by the ophthalmologist that the treatment was inappropriate, we may have a very serious apportionment problem in the liability of malpractice claims brought by those who are victimized, and I think, as we all know, the danger in optometry and in ophthalmology is you are dealing with sight. It's, frankly,

something that, if you were to lose your sight, I am fearful of significant judgments.

The final question that I am concerned about is the classes of optometry and how that system is going to work. I understand that there has been a lot of effort put into it. For myself, in dealing with scope of practice issues, I agree, they are the most difficult ones possible, because I am not an ophthalmologist. I'm not a physician. I don't have really any good information that I have in my own personal experience about how to treat eye disease, about how to treat problems whether they be minor or major problems.

I do know that the physiology of the eye is such that untreated or improperly treated problems in the eye can cause very, very significant consequences, and I sometimes wonder, when we are called on to make these scope of practice determinations. I don't know that there is a right answer. I appreciate those who have been working to try to get to that right answer or whatever it may be.

But at least on this one I'm convinced that the training that an ophthalmologist gets gives them a particular expertise that in dealing with eye treatments we ought to continue to respect.

I know that 12 states agree with New York and prohibit any of the uses that are contained in this bill. I think still there is value in that. I think that as technology expands, as we get further down the road, we might be in a position three years, five years from now, where we would look at this issue again.

But at least at this stage, based on the liability problems, the apportionment problems, the prime responsibilities still rest with an ophthalmologist. He is going to be held liable for the primary care and the treating, and yet he may run into problems in dealing with the optometrist and the treatment in the course of the treatment.

I still think that the thing to do in this particular case is to say that we

will continue to allow ophthalmologists to provide the care and treatment for the eyes that they have been trained to do.

So under those circumstances, I will be voting in the negative.

ACTING PRESIDENT KUHL: Chair recognizes Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President.

As Senator Volker indicated, this house last year passed this bill I would say overwhelmingly, and the bill for really technical reasons at the end of the legislative session got caught up in a little administrative detail like a message of necessity, or else this bill would have been on the Governor's desk and the final result, I don't know what would have happened. I presume that the Governor would have signed the bill.

I would first like to start by thanking as I did last year the Committee on Higher Education that has been really terrific on matters of scope of practice issues. Many

cases, there's a willingness to duck these issues because they are very complex and they deal with, very honestly, economics, many times shifting dollars from one profession to another, and so the committee last year developed a very innovative procedure in bringing to Albany and putting at the table those individuals who are out in the marketplace dealing with patients, and that is optometrists and ophthalmologists, and it goes to Senator Dollinger's point that we many times -- most times -- do not have the expertise to deal with these matters, and so we really were facilitators at the table to resolve problems between the two professions, but in every instance, we honored the expertise that was brought to that table by the professions.

After a very, very long and arduous set of negotiations, both the optometrists and the ophthalmologists agreed that this was in the best interest of their projections. As Senator Volker said and as we all know, practically, associations and groups can support a bill but there will always be

individuals who will have a disparate view on that bill and that certainly was the case last year and I think that is what has really driven some of the debate this year.

Senator Dollinger, in listening to the exchange that you and Senator Volker had, I would simply say this. There are many things that Senator Volker read into the record on the patient notice. That language was put in very specifically at the request of the medical society, and there were other provisions, whether it be standard of care or a very, very restrictive and lockstep procedure on how you get to treat a patient with glaucoma; and even there, the field is narrowed to a set of drugs.

And so as we know, you can't have both a sword and a shield at the same time in terms of language. You can't say I want this and then hide behind it and say, well, there is possible litigation when you developed specific standards of care, developed the educational standards, the clinical standards, the continuing education standards. All this was

done in a give-and-take process.

This bill is not only the most innovative in the country, but it is also very, very restrictive. Part of the problem in this debate is not the bill. It is the innovative points that have been developed; and as Senator Volker said, the real issue here is not the issue between the ophthalmologists and the optometrists but it is for future issues and future debates and scope of practice. That's what this debate in 1995 is all about.

We could not have listened to people who negotiated a bill in '94 and then listened in '95 and hear different things? Were we deaf to these things that were being said? Were we blind to what was being negotiated? The answer is "not." Nor were the members who voted for this bill. This bill did not change in the period from 1994 to 1995.

There are provisions here as Senator Volker issued that establish a review process to say we have to go slow in our deliberations here because we are moving in a

very innovative way, even though we have established a lockstep procedure in moving from the use of Phase I drugs to Phase II drugs to the kind of training and the number of patients that you have to see in a clinical way of no less than 75 patients -- the written consultation.

I would say to you, Senator, that we all respect your legal skills, but I would say that, you know, in terms of the consultation agreement, doesn't that contractual agreement establish some sort of duty of care for the parties? We have locked in the standard of care, the level that we expect each person to perform in that relationship, and so there will always be issues to be argued in the courts for those people who feel they've been harmed, but I think that's outside of what this bill is all about.

This bill is a scope of practice bill. This bill is not a malpractice bill. This bill deals with trying to provide some very innovative things in broadening the level of

care for our patients.

I remember last year Senator Markowitz brought to the floor, as he does, in a very spirited way, what does this mean for his constituents? This means that for his constituents there will be more opportunities to diagnose eye problems, and it provides a very specific lockstep procedure on how that patient can get the best care should there be a complicated situation.

This body, this Legislature, put into law the fact that optometrists could use topical drugs for diagnostic purposes. We debated that very, very arduously, but it has worked over these many, many years, and so we say now we're ready for an additional step.

The work that Senator Volker has done on this bill is exemplary. I think that the people who had confidence in this bill, in this language, in 1994 should have the same level of confidence. Nothing has changed. The words have not changed. The negotiations that took place between the experts, the optometrists

and the ophthalmologists are the same negotiations and the same words in this bill.

So I would hope that the people who supported this bill in 1994 will stay the course because you were right in '94 and I think you will be right in 1995.

ACTING PRESIDENT KUHL: Senator Kruger.

SENATOR KRUGER: Yes, will Senator Volker yield to a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR KRUGER: Senator Volker, it's a well-documented fact that both the therapeutic as well the diagnostic drugs that are used by the optometrists can and could have an acute adverse effect on the patient. What mechanism has been built in to deal with problems like tachycardia, possible asthmatic attack, mental status changes, that are

associated with the use of some of these drugs?

SENATOR VOLKER: What method is -- well, first of all, remember, that the second phase of the bill, which I think is - and there really isn't good documentation as to extreme problems in the initial phase, the optical phase -- and, by the way, there is a nationwide experience on this that has shown that there have been comparatively few problems resulting from this type of limited, extremely limited treatment.

But in the therapeutic side, which is the second side, one reason why the decision was made to use the collaborative - the collaborative association with an ophthalmologist -- let me also point out to you, Senator, that the training of an optometrist is very extensive. I think that it should be understood that those that graduate from the school of optometry have four years of post graduate training and have treatment or have education in how to deal with some of the very problems that in fact you are talking about,

very, very similar to what medical people have to deal with; and so should there be any untoward problems that they are advised -- that they are advised, and they do learn about the possibility of how to deal with that stuff on an initial basis.

Clearly, they would then be referred to a primary physician if there were any such problems; and as they point out within the bill, there is language in the bill that talks about the need to refer those people within five days, obviously, to an ophthalmologist; and keep in mind that during the period of the therapeutic treatment, you have these limited -- the consultation and the limited observation and so forth.

In addition to that, as part of this bill, we have the continued training occurring which will deal with -- continually deal with some of those issues as the optometrist gets into these issues which, you know, could result in a potential for more serious situations.

I just want to while -- and in response to you, because I think it's important. I received a letter in September of 1992 from the vice-president of the Great American Insurance Company, and he said, "For years, we have monitored the experience in therapeutic states versus nontherapeutic states. Our data indicates that there are not significant differences in the number and severity of claims between therapeutic and non therapeutic states."

The reason I mentioned that is there have been states that have had therapeutic treatment for many, many, many years; and, of course, Senator, as you may be aware, our first bill that passed this house and became law, sponsored by Senator Kehoe that dealt with the use of diagnostic drugs, was in 1983, and it has been, you know, on the books of New York since then, and the experience as far as anyone knows and even the ophthalmologists admit has been very, very good, and we have not had, to the knowledge of virtually anyone, any severe

problems.

We have had some certain ophthalmologists who have come up with some stories about problems with optometrists much of which seems to be turf fighting more than anything else, and that I think is part of the problem here, so I think the answer to your question is that there are a lot of -- not only built into this bill but I think built in the body of law already, what must be done should anything of untoward nature happen.

SENATOR KRUGER: Again through Mr. President.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR KRUGER: Senator Volker, on a hypothetical level, a patient comes into an optometrist. The optometrist wants to perform certain diagnostic procedures using these drugs that we're talking about today. That

individual, that patient, has an adverse reaction to any of those drugs. If that same patient was in the office of an ophthalmologist, that ophthalmologist would obviously have life saving drugs. He would also be able to counteract some of the effects of the drugs that were being used. He would also be able to resuscitate a patient if need be. Where on the other side of the coin, an optometrist's scope of practice is very limited. His ability to use any resuscitation or any other drugs is nonexistent. What would happen in that kind of a circumstance?

SENATOR VOLKER: Senator, I can't think of an indication. We have not heard of any such situation where an optometrist because of the -- because of his observation, has been in that kind of a situation, and I think the ophthalmologists would probably be in a very similar situation to what an optometrist would be; and that is, would probably be consulting - if he got an adverse reaction, would probably be consulting a hospital or whatever to take that

person there and to provide further treatment.

I think what you are saying to me is if somebody has an adverse reaction, would he be able to get further medical treatment, and the answer is the ophthalmologist might not be able to give him that further medical treatment immediately either and would have to consult a hospital or whatever to take that person because he would not be able to deal necessarily with every emergency.

The optometrist, I think, is educated to then refer that person or get immediate help for that person just, I think, as an ophthalmologist would. I don't think the ophthalmologists necessarily would be able to deal with the absolute emergency any more than an optometrist would.

SENATOR KRUGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Kruger on the bill.

SENATOR KRUGER: Mr. President. Everyone seems to be raising the issues that

have been discussed many, many times concerning this particular piece of legislation. If we look at the current status of it, the Medical Society of the State of New York is opposed to this bill that is in front of us today.

Secondly, when we want to raise issue with the question of standard of care, an individual, a consumer, a patient, that is coming to an optometrist is coming to an optometrist, theoretically, for a cursory eye examination and perhaps being fitted for glasses.

We do now approach the question of glaucoma with mass screening tests, which is basically nothing more than a puff of air to determine whether or not there is a measurable difference and, consequently, the person would be referred to an ophthalmologist for further examination and treatment.

There is a question now, not the question of turf, but the question of what is appropriate care for a patient to get when they're visiting that particular physician. We

wouldn't go to a podiatrist if we had a broken leg. The same way is we shouldn't go to an optometrist if there is an eye problem. An eye disease should be treated by a doctor, a doctor that has premed, a doctor that has gone to medical school, a doctor that has a fellowship in ophthalmology, and a doctor that hopefully is board certified in ophthalmology.

Today, we have an opportunity to raise issue with, when we talk about managed care, the direction that health care will take in the future, because what we're doing is we're opening up a door; and we're opening up a door to what I call paramedicine, whether it's a paralegal that is going to take more and more workload off of an attorney or whether it's another health care professional that is going to take an additional workload and additional patient care away from the person that is most trained to handled that particular medical problem, in this case, a licensed physician, an ophthalmologist.

I think this is a bad bill. It

is a bad bill for a lot of reasons; but, most importantly, I think it's a bad bill because we're not addressing one issue and one issue only, the question of quality of care and scope of care; and I think that the Medical Society of the State of New York has made a very persuasive argument that the question should be revisited and we should not in any way support this legislation today.

Thank you.

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

Excuse me. Senator Volker.

SENATOR VOLKER: Mr. President. Let me just finish up by saying very quickly -

ACTING PRESIDENT KUHL: Senator Volker to close.

SENATOR VOLKER: I understand the concern and I think Senator LaValle, I think, put it much better than I would really be able to have been able to put it; and that is, that this is an historic bill, although historic as it may be, it is not as if this is something

altogether new; and when you start talking about treatment of eyes or examinations, it's something that has been done in this state since 1983.

And I think that -- I guess in response to Senator Kruger, let me tell you, Senator, the education that is done today of optometrists is altogether different from what was done some years ago. An optometrist in the college of optometry, particularly in this state, which is considered one of the 12 major optometry colleges in the country, gets basically the same kind of training that an ophthalmologist gets. Maybe not on the same detail, but on the other hand the scope of authority that is given even by this bill is much, much more limited.

The experience in states that have had even broader bills than this one has been that the kind of problems that you are describing just have not occurred or have occurred in extremely limited fashion. The truth is that what this bill will do is to

expand the ability of people in many areas of this state to get further and, in many cases, better treatment not because the optometrists can necessarily give totally better treatment than the ophthalmologists but the ophthalmologist is not available. Certainly will cause the cost of health care in this area to decrease because a lot of the treatment that is being done by ophthalmologists, I think many who are familiar with the field would agree, is not necessarily necessary.

Let me just quote to you, and I hesitate to do this, because ophthalmologists get upset when this is done, but it's a fact of what happened last year. The president of the ophthalmological society said after this bill was agreed to and he had said grudgingly because of turf problems and so forth that he was reluctant, but he admitted that this bill was the most innovative and restrictive bill in the country; and despite the fact that he knew some of his members had problems, he had to admit that this bill was a move in the right

direction, depending I guess on your perspective and especially I think because of something, as I said, you should understand, that two out of three examinations that are made in this state of eyes are made by optometrists anyway, and we have to move to deal with those kind of issues, otherwise we may in the long run be creating greater problems for ourselves.

Let me just read to you -- a note was handed to me here. I was just about to read to you something which -- a statement from the Health Department. Now, this Health Department under the present governor has not yet taken a position, but the Health Department under the past Commissioner, Axelrod, stated, "This legislation will encourage and facilitate greater access to health care of services while insuring the quality of services provided by health care providers. We believe this legislation will promote better access to vision care services in New York State, including among segments of our population which have been historically underserved and in underserved

geographic areas. This legislation may also reduce or limit increase in the cost of vision care services provided by publicly financed health care programs for eye care for the beneficiaries of such programs."

I can give you some other statements, but I think that speaks for itself. I would not, in fact, sponsor or support legislation like this unless I truly believed that this legislation is in the best interest of the consumers of this state and of the health care of the people of this state.

Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Those in the negative please raise their hands.

The chair recognizes Senator

Hoffmann to explain her vote.

SENATOR HOFFMANN: Thank you, Mr. President.

I listened with great interest to what Senator Volker said and, as always, it is a very thoughtful and well-researched issue as he presented it, but I have in my hands a copy of a letter from the chairman of the Department of Ophthalmology at the State University of New York Health Science Center in Syracuse in which he restates his position and that of the department in opposition to this bill, and I will just recap one brief element of this letter in which he states -- this is Dr. John A. Hepner -- states that allowing nonphysicians to practice medicine seriously compromises the quality of medical eye care in New York State and unnecessarily poses a potential significant threat to public safety.

I did listen to the list of drugs that would be allowed to be prescribed by non physicians under this measure, if passed, and it causes me great concern, and I will, therefore,

respect the wishes of Dr. Hepner and the Department of Ophthalmology, once again, and I will cast my vote in the negative.

ACTING PRESIDENT KUHL: Senator Hoffmann in the negative.

Senator Jones to explain her vote.

SENATOR JONES: Yes. I would just like to explain that Senator LaValle said something about somebody being blind and deaf. I am willing to admit that I was last year. I was of the opinion that it was agreed upon, and yet that's not the information I am getting this year. My concerns, and I've listened to both sides of this debate -- but my concerns continue to be -- Senator Dollinger asked about how I would know as a consumer when I go to the optometrist whether or not they were Phase I or Phase II. I guess I am uncomfortable that a sign on the wall is going to be enough.

I'm also concerned that no one brought up today the issue of HMOs. I guess I feel as we're clearly headed more and more to

that system, I guess the referral process in here is a concern to me. We would now have a nonphysician in charge of this referral; and, currently, you go to your family doctor that is a doctor, and he is the one who says you need a specialist. I'm concerned how this would play out under an HMO system.

I did contact the current Commissioner of Health because, again, I admit I'm not a medical person, and I don't have that kind of expertise, so I did put it in writing to the Commissioner of Health and ask for her opinion on this particular bill; and as you indicated, she has not, obviously, come up with a position yet.

So with the information that I have this year, I definitely do not feel comfortable supporting this bill, so I'm going to be voting in the negative.

ACTING PRESIDENT KUHL: Senator Jones in the negative.

Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 103 are Senators Babbush, Cook, DeFrancisco, Dollinger, Farley, Goodman, Hoblock, Hoffmann, Jones, Kruger, Levy, Marcellino, Maziarz, Nozzolio, Oppenheimer, Padavan, Present, Saland, Skelos, Stafford and Senator Tully. Ayes 37. Nays 21.

ACTING PRESIDENT KUHL: The bill is passed.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. There will be an immediate meeting of the Crime Victims Committee in Room 332 followed by a Transportation Committee meeting in Room 332; and a reminder that the Education Committee will meet at 1:00 o'clock in Room 124. Energy Committee will meet 1:00 o'clock in Room 307 of the LOB.

Mr. President. Could you recognize Senator Montgomery.

ACTING PRESIDENT KUHL: For those listening, there will be an immediate meeting of the Crime and Corrections in Room 332 to be immediately followed by the Transportation

Committee in the same room, 332. There will be an Energy Committee meeting at 1:00 o'clock in Room 307 of the Legislative Office Building, and there will be an Education Committee meeting in Room 124 of the Capitol.

Chair recognizes Senator Paterson.

Excuse me. Senator Montgomery.

SENATOR MONTGOMERY: Thank you. Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 367.

ACTING PRESIDENT KUHL: Without objection, Senator Montgomery will be recorded in the negative on Calendar Number 367.

Senator Johnson.

SENATOR JOHNSON: Without objection, I ask to cast my vote in the negative on Calendar Number 303.

ACTING PRESIDENT KUHL: Without objection, Senator Johnson will be recorded in the negative on Calendar Number 303.

Senator Skelos.

SENATOR SKELOS: Mr. President.

Is there any other housekeeping at the desk?

ACTING PRESIDENT KUHL: Secretary informs me that all the housekeeping has been taken care of, Senator Skelos.

SENATOR SKELOS: Therefore, there being no further business, I move we adjourn until Wednesday, May 3, 1995, at 10:00 a.m. sharp.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, May 3, at 10:00 -- I repeat, 10:00 a.m.

(Whereupon, at 12:40 p.m., Senate adjourned.)