ALBANY, NEW YORK

January 17, 1996

3:05 p.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: The Senate will come to order. Ask the members to find their places, the staff their seats. Ask you all to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed.)

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, January 16th. The Senate met pursuant to adjournment. The Journal of Sunday, January 15, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection -

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Paterson. Do you have an objection to reading of the Journal?

SENATOR PATERSON: Yes, Mr. President. We have an objection to the approval of the Journal. As I stated yesterday, the presentation of something that is actually providing the guidance for us as legislators here in the chamber, which is what will be an addendum to our rules, was made yesterday some time after 4:00 o'clock, and it requires a 24-hour notice and here we are at 10:00 o'clock the next morning ready to debate it, and so the Journal for yesterday, which I haven't seen, is an issue that normally -- I don't know what the Journal really is, but it's something that we're objecting to because we just don't feel that something that's that important, that does, looking over it, have a lot of information in it, that the Minority does not disagree with every single thing that's in the new rules. However, it being as important an issue as it is, to at this point early in the morning - which this would be a legislative Tuesday where

the session would usually begin at 3:00 o'clock and we're beginning at 10:00 o'clock, so we've moved up the session up five hours and we've also undertaken the experience of redrafting all of the rules of our Senate and it's something that I honestly, Mr. President, have to oppose in terms of the acceptance of the Journal.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Good morning, Mr. President.

Mr. President, it's unfortunate that we deal so much in tag lines and we don't really get down to what -- to what is behind these lines. I, for one, have admired on many occasions the efforts of the President of the Senate to give us a businesslike environment and so Senator Bruno knows very well that when something is called for 10:00 o'clock, I smile at him at one or two minutes to 10:00 and we're here and it's a -- it's a delight to see him and know that we are really starting on time rather

than the old system which used to take so much time. I approve of that. I think that makes sense. As the Senator also knows, I have a great respect, as he does, for rule and for order and I also have a respect for the fact that government must move and we've got to accomplish things.

One of the reasons that the Governor of the state is given the right to give us a message of necessity is so that we can eliminate three days of waiting in emergencies and I -- Senator Bruno, this isn't meant to be a civics lesson, but we have a lot of time today since we started earlier, so I don't feel any pressure about speaking fast, but the Constitution understood that there would be circumstances where there had to be a rush and, therefore, it gave the Governor the right to issue a message of necessity, which doesn't mean the bill has to pass, as you know. It only means it has to be or can be brought before the body in that period of time. Now, once something is brought before the body, we have

our own rules that deal with how we handle it and how we debate.

In going through the proposed rules that were served yesterday, it was obvious that there was an underlying current, Senator Bruno, that was really offensive, and it was offensive because the rules don't provide that the Senate is going to act in a businesslike, orderly and fast way. It affects what is unquestionably one of the rights that makes this country great, perhaps the most important right, freedom of speech, and in one of the suggestions in the rules, if it were to be adopted and which we may get to by 4:00, 5:00 o'clock today, the suggestion is made that a presiding officer can determine what are the aberrations of somebody's mind.

Now, from the point of view of some of your members, Senator Bruno, I can understand that debate bothers them. I can understand that it is very difficult to live in a country where somebody can say something that's abhorrent to you, but that's what freedom

of speech really is. That's what it really is. It means that somebody can stand up and get you boiling, but whether you have power or not, they don't get shot. They don't get killed. They don't get taken away. You then can respond and the public makes its decisions.

Now, as somebody on your side I'm sure is going to point out at some point along the line today, the public has spoken in the last election and more of your types are elected than our types, and as a result of that, you have a Majority and you have committee chairs and we have ranking members and that part of it, there's really no objection about; we understand that, but the concept that we come up here and have no right to participate -- which is, unfortunately, a philosophy of some of your members, Senator Bruno; I'm not saying you - it's just abhorrent to every American principle there is.

I've said on a number of occasions -- and I don't say it because I think it sounds good. I say it because I believe it

-- that this place is just too political. It really is just overly too political. There are members that have come up here -- and it's interesting as I think of the happenings of this week, there are people that come up here -- and if you happen to think those individuals are marginals in terms of your campaign committee, you might not even let them participate without a fight. You don't want to -- you don't want to let their bills out. You don't want to let anything happen, and sometimes things happen where you think it's good for you and you'll decide that person is a genius and make very, very strong endorsement remarks of that individual even though for a period of time you might have ignored him or her as they acted as legislators. We understand -- we understand those games, but part of the game of power is understanding that you can make rules -- those rules have to be fair rules -- and then we all live within those rules.

Now, the distinguished Deputy Minority Leader, Senator Paterson, has tried

very hard to just bring reason to this chamber, just reason. If there are rules -- if you'll live by the rules, then we'll live by the rules, but the rules are not there merely to hamper the Minority, as Senator Paterson has pointed out on so many occasions very eloquently; they're there to see to it that there's fairness, and those rules, to some extent, are a protection to the Minority. I mean, some of your members, some of the distinguished ones, even some of those with very low handicaps, seem to think that when a bill comes to the floor and it's sponsored by the Majority, "Let's just vote on it and get it done. What's the difference? It's out here", and you have 31 votes and why are we saying anything, and the fact of the matter is that these rules are our protection that things can be said, and whether your side likes it or not, some of the really fine oratory of Senator Paterson and Senator Leichter and -- you didn't bring me coffee, did you -- Senator Dollinger, Oppenheimer, everybody on this side, you can sneer at it, but if those remarks were made

maybe 50 or 70 yards down the hall, then we would have the votes.

So the point is there was a wonderful line from -- I think it was -- what was it, "Smokey and the Bandit" -- where he says how smart you are sometimes depends upon the geography, where you're standing, and some of your members who have come over from the Assembly where there was a different majority, come over here with something inventive -- I forget that whole expression, but I certainly don't want to put it in the record anyway - because now they're going to do to the world what they think was done to them, and the answer was nothing was done to them. They were allowed to debate and they were allowed to participate and say things which were of importance, which brings me back to the Journal which I think is underrated by many of you, and I'm very happy that Senator Paterson decided that we should spend some time on it today. Actually, we started the session at 10:00 o'clock, so I figure by about 12:00 o'clock, we'll finish with

the Journal.

The Clerk starts the proceedings every day by saying we're going to read the Journal -- or actually the presiding officer - I don't want to downgrade your position, Mr. President -- suggests that he read the Journal of the proceedings of the former day, and we hear the Clerk say some words which is really a code, we all understand that, but the Clerk doesn't read the Journal. The Clerk says some words; we all accept that and go from there, and it's really a shame because the Journal itself, if we read it, is a very interesting document.

Now, I have one of them here beautifully bound -- beautifully bound. This is from the 217th session of the New York State Senate. That was last -- that was 1994, so I guess we're in the 219th session -- is my math right, Senator -- and these are beautifully bound books, but aside from being beautifully bound, if somebody wanted to know, for example, in 1994 how many working versus legislative days there were in January, you wouldn't hear the

Journal Clerk read that off, but you can get it if you really saw the Journal.

For example, in January of 1994, we worked on the 5th and the 10th and the 11th. We worked on the 18th and 19th, the 24th, 25th and 31st, but we also had legislative days, as Senator Rath, I know remembers, on the 6th and the 7th, the 12th, 13th, 14th, 15th, 16th. That week was a heavy week for legislative days. The 20th, the 21st, the 26th, 27th, 28th, 29th, 30th, all legislative days, and those days are very important because as everybody knows, on those days somebody comes in, raps a gavel, raps it again and walks out. Now, I don't know how the business of the state would operate without those legislative days. That gavel could get feelings of being ignored which we wouldn't want to do, but interestingly enough in January, whereas we worked eight working days, in February, for some reason which I don't remember, but maybe in response Senator Skelos will remind me, we only worked six days that month. On the other hand, we made up for it

because in January, we only had 14 legislative days, whereas in February, we had 16 legislative days. Now, what can we learn from this? I don't know, but apparently February deserved two more legislative days.

Now, in March we were getting into the budget season, as we all know, so in March it wasn't enough to work eight days as we did in January, or six days as we did in February. In March, we actually worked 15 days -- I'm sorry. I didn't hear that. Oh, I would be glad to read off the days, yeah. 1 -- the 1st, the 2nd, the 7th, the 8th, 9th, 14th, 15th, 16th, 21st, 22nd, 23rd, 24th, 29th, 30th and 31st, and when you consider we had 12 legislative days, we account for 27 days in the month of March of 1994 which were either working or legislative days.

April, apparently we didn't finish the budget on time because we worked - you see what you can learn from this? I know some of you have all kind -- as a matter of fact, in Finance yesterday, there were some

bills offered by Senator Bruno dealing with the budget process, and some people might question whether or not that's an area we should be discussing.

Now, Senator Bruno, all you got to do is take a look at this Journal -- and when I'm finished with it, I will be glad to let you look at it -- from 1994 to see that in April - or in 1994, we apparently didn't finish the budget on time because we have our legislative calendars that we print and we all know how really important those calendars are, and we were supposed to be on vacation -- we were supposed to be on vacation in the beginning of April, but we worked April 5th and 6th and 7th and 8th and apparently we weren't finished, so we came back on the 11th and the 12th and the 13th and the 14th and the 18th and the 19th, the 20th, 25th, 26th and 27th -- we did a lot of work in April, and I guess that was the year we didn't get a vacation, which is okay because the people's work is certainly more important than whether we do, in fact, get a vacation, and I

guess once we got into April-- and we spent 30 days when you count the legislative days also - that just kept us going towards May when we actually worked 31 days -- let me see. 30 days, September, April, June -- yeah, 31 days, that's right. Every day we accounted for in either work or in a legislative day, and in June we worked 17 days which was the most working days that we had so far in 1994. Apparently we must have finished the session right before the July 4th weekend because I see we worked on the 1st and the 2nd and the 3rd, and then we had 11 legislative days after that.

The rest of the year, all we had was legislative days, which is interesting because I remember when I first got involved with the Legislature in 1965 -- and maybe Senator Marchi is the only one who remembers those days; I have to check the book -- but the Legislature operated quite differently because under the Constitution, if both houses finished their work, they would pass a sine die resolution.

ACTING PRESIDENT KUHL: Excuse me, Senator Gold. May I interrupt you?

Senator Bruno, you had your hand up.

SENATOR BRUNO: Mr. President and Senator Gold, forgive my interruption, but I would ask the Chair to help us in the chamber understand where we are in the order of procedure in the chamber as relates to our Calendar. It's my understanding that we are in discussion over adoption of the Journal from yesterday. Is that what this discussion relates to?

SENATOR GOLD: That is correct.

ACTING PRESIDENT KUHL: That's correct.

SENATOR BRUNO: Is that correct? Then, Mr. President, just so we all know where we are, because I know my colleagues join me in wanting to hear all the good things that Senator Gold has to say and his colleagues, and welcome the opportunity for people to express themselves freely as is the usual procedure in this

chamber, but I would just like to know how much pleasure we're going to have and what time frame? Is there a time frame that relates to this discussion? Is it two hours? Is it open ended or are we here 'til midnight, because I would just like to share with my colleagues that I find this fascinating, interesting and appreciate your observations and your comments and want to be here and hear everything that anyone has to say for as long, Mr. President, as the procedures adopted by the Senate rules allow. Can you help us understand what is the time frame that this discussion will take?

ACTING PRESIDENT KUHL: I'll try to, Senator Bruno. We're at the point in the general proceedings that are controlled by Rule 5, Subdivision (2) and it talks in that subdivision about the approval of the Journal of the previous day, and that the purpose of the discussion generally is determined to be for the purpose of addressing any mistakes in that Journal and talking about corrections.

The Chair would recognize that

this is, I believe, a motion properly before the chamber and that the rules that provide dealing with motions would limit debate to two hours, that the two-hour debate started at 10:05, so we're 20 minutes into the debate and that after two hours of the debate, anybody can make the motion to terminate the debate, which the Chair would recognize, and there would be a motion to either accept or reject the motion. So I think that pretty well is the Chair's understanding of what the parameters of the rules are dealing with discussion here in the chamber today.

SENATOR BRUNO: Thank you, Mr. President and, Senator Gold and my colleagues, it would appear then that the purpose of the discussion is to make whatever recommendations, suggestions that pertain to the acceptance of the Journal as read, and if you have some suggestions, corrections, I think all of your colleagues are anxious to hear them and since we have until five after 12:00, Mr. President, you suggested -

ACTING PRESIDENT KUHL: That

would be the correct time.

SENATOR BRUNO: -- that's fine. And I would also like to share, Mr. President and Senator Gold and my colleagues, it's important that we do the kinds of things that we are doing and that I respect the Minority and their discussion and their opinion on this floor. They are part of this process, an important part of the process that takes place here in this chamber, and if it takes discussion through today and tomorrow and Friday, I know that we're all prepared to be here and do the people's business, so we are open ended in our time frames here, and I know that everyone brings extra clothes just for these such contingencies.

So, Mr. President, we're not in any hurry because this is important, what we're doing here. This is freedom of expression, democracy in action, and I just share those thoughts with Senator Gold because I got a little concerned with his opening that there might be some feeling that there's some

suppression taking place here and there is absolutely none of that. Mr. President, it's just the opposite. What we're attempting to do today is further open the process for legitimate differences of opinion and discussion.

So thank you, Senator Gold, for your indulgence and thank you, Mr. President, for your determination.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

Thank you for yielding to that point of information.

SENATOR GOLD: Mr. President, you see why I love that guy? What a -- terrific. Mr. President, just so everybody understands, Senator Bruno, I personally don't have theatre tickets 'til Saturday night, so I'm okay for the next few days.

Senator, you use words -- and the words are often the right words, but unfortunately, there have been too many people killed in this world, even though people were saying the right words. Now, you say you

respect the Minority and you think that we should be able to move along and have legitimate debate, et cetera. That's the problem, Senator. That's the problem right there. What is legitimate; and what I think is legitimate and what you think is legitimate may differ.

As a matter of fact, Senator, if you take a look at the legislation that's been introduced by Senator Abate, for example, I think that this is really well thought out -- a really well thought out program, and if it was up to me, I would put most of those bills out on the Calendar. Now, some of your members have put in things which I don't want to dignify them by calling them dreck, but they are ideas which are very harmful, I think, and yet you put them out. Now, that is legitimate, quotes-unquotes "difference of opinion", but what happens then is that while I may not have the 31 votes, I can express my opinion, and I can tell you the basis of my thought process.

It has always been the rule in this chamber that people are allowed to think

and have different ways of thinking, and you know you'll say to yourself, "Gee, 'X' is very bright. 'X' is liberal" or "'X' is conservative. I may not agree with them philosophically, but they're very bright", can't understand how being that bright they come to a different conclusion, and all that means is that people have different thought processes.

You know very well, Senator Bruno, that what you would like to do today is to cut the thought processes of the Minority. What you would like to do today, which is literally disgusting, is to tell people they have no right to have a thought process that disagrees with the President of this Senate. Now, that is just so un-American. There's no other way to say it. It's un-American. If there's a piece of legislation on this floor, Senator Bruno, and one of your members goes - no, I won't be interrupted unless it's a point of order.

SENATOR SKELOS: Point of order.

ACTING PRESIDENT KUHL: Senator

Skelos.

SENATOR SKELOS: Point of order. Is Senator Gold correcting the reading of yesterday's Journal?

SENATOR GOLD: Yes. Mr. President, if one of the members on that side comes to a conclusion that something is a good piece of legislation because of a certain happening, a certain event, I can understand that. I might not come to that conclusion based upon that event and, therefore, I would get up and say that perhaps I don't agree with that piece of legislation and let me tell you why, at which point under the really abhorrent rules that you would foist upon us, someone sitting and acting as President who you appoint says, "That's not germane. That -- you can't possibly get to the conclusion that you're reaching by -- by doing that. That's not germane", and next thing I know, I'm told I can't say -- freedom of speech, I can't say what I want to say in opposing that legislation.

Now, you have enough votes to

sustain the Chair. Not only that which makes it worse, you don't have one person with enough guts to vote to overrule the Chair even when the Chair is terribly wrong. That's considered bad conduct on the part of a member of the Majority. So if we were debating the issue of whether or not our chairs should have a new color or whether that new color should be green or blue and I stand up and say "it should be blue" and you don't want to hear that, somebody objects, the President says, "That's not germane." I said, "What do you mean 'germane'? The question is green or blue", and the Chair rules -- just 20 seconds -- the Chair rules that even though I'm saying blue, it's not germane, you have the power, we move to override the Chair and the next thing you know, it's the power of the taxes, the power to destroy. The power of a president, an acting president of this Senate to tell me or Senator Kruger or anybody, Senator Gonzalez, what is germane is the power to destroy the debate. You cannot do that. You cannot do that. You can make rules

and you can decide the time limits, you can decide other things, but you can't decide that my time limit is nothing. Can't do it. Be glad to meet you in federal court on that one. You can't tell me that I can't express the operations of my mind.

Now, Mr. President, I've had a message which says that Senator Bruno would like to make some announcements, and assuming I retain the floor, I would have no objection to yielding for that one limited purpose.

SENATOR SKELOS: Thank you - thank you, Senator Gold.

SENATOR GOLD: You're welcome, Senator Skelos.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Local Governments Committee in Room 123 of the Capitol and there will be a meeting of the Transportation Committee at 11:00 a.m. in Room 124 of the Capitol.

ACTING PRESIDENT KUHL: For the benefit of those who are listening, the announcement was that there will be an immediate meeting of the Local Governments Committee in Room 123 of the Capitol and that there will be a meeting of the Transportation Committee at 11:00 o'clock, which is 25 minutes from now, in Room 124 of the Capitol.

Thank you, Senator Skelos.

Senator Gold, the floor is yours.

SENATOR GOLD: Are we back?

ACTING PRESIDENT KUHL: Waiting for you, Senator Gold.

SENATOR GOLD: Senator Bruno, the point is that when you say -- and I think you mean it -- that you respect everybody and you just want legitimate debate and you just want legitimate activities in this chamber, that's the right words. The problem is that -- well, I've give it to you by way of an analogy. Democracy, as we practice it in America, is very, very difficult -- very, very difficult,

except that it's the best form of government that we have on earth, but some people have suggested it's very complicated, and that what you really need is a benevolent dictator, because a benevolent dictator will certainly always do the right things but you don't have to go through the motions of a Legislature and you don't need the courts, you don't need any of that, and then you get to the point, "Well, who should be the dictator; and if I'm the dictator, well, maybe I could buy that kind of government because I know I'm a good, kind person and I'll take care of everyone." That's the problem with your rules, Senator Bruno. You want to be the benevolent dictator and, Senator, I think you're a very nice fellow and I enjoy having a drink with you. I love going to dinner with you, but I'm not ready to make you my benevolent dictator, and that's what you're asking to happen here.

The rights of the Minority in this house are pretty slim, and my congratula tions to Senator Connor who has a sensitivity to

the members of this conference and who has tried very hard to see that we have changes that make it possible for everybody to be able to just do their job and represent their constituencies but, Senator Bruno, as nice a person as you are, I mean, don't talk to me about respect unless you want to take a nice little walk around this place and compare computer equipment, compare mailings, compare, et cetera, et cetera, et cetera, you know, then you can talk about respect, but with all of that, Senator, there are certain things that people can endure and then you get to a lie, and I've known people in my life who people thought acted very courage ously in a certain situation, and I said, "You don't understand the situation. The person is not a giant. The person wasn't courageous. As a matter of fact, in many things the person was cowardly." If you put a person in the corner and you hold a knife there and you're going to kill them, don't be surprised if that person fights back and, Senator, our side has certainly gone out of its way to be cooperative with you

in making the Senate work, but at this point you have put us in a corner with a knife. You have not said, "You can't use the good computer equipment." You haven't said, "We won't do this for you. We won't give you the mailings. We won't give you the expenses. We won't give you the monies to run your offices." What you've said to us is "We're going to shut you up", and if somebody introduces a bill and your side says, "I'm the sponsor. This is a wonderful bill", I can stand up and say, "It's a bad bill" and then sit down, but I can't tell you the operations of my mind? I can't tell you why I think it's a good bill because somebody up there may have a difference of opinion as to whether it's germane or not?

Now, one of the problems I have with that -- just to give you an idea, look at Randy Kuhl. Now, Mr. President, Senator Kuhl and I are 150 yards away from the pin and my opinion is that I need an eight iron, maybe even a seven iron, and he gets up with his pitching wedge or a sand wedge, you know, so he may think

that my eight iron is not germane, but I know that I need that eight iron. You can't take a person and put them as a judge over what members of this side believe is germane. I've heard debates last year and Senator Nanula stood up and spoke about economic matters in his part of the state, and he may have a disagreement with some of your members on your side, even one of your Cornell graduates, and somebody says, "You know, this is terrible. This is very embarrass ing. Nanula sounds like he knows what he's talking about. He's making us sound ridicul ous." "Mr. President, that's not germane." "It's not germane? How can you make those comments", and you now want to put that in the rule?

Senator Bruno, I didn't select as my first choice people like Warren Anderson and people like Earl Brydges because I had a Demo crat I would rather have seen, but I would be lying to this chamber and to the world if I did not suggest that these people cared about the legislative process and did their best as presi

dents pro tem of this Senate, and they survived many, many legislative years and legislative sessions by allowing the Minority to have a voice. It is not the kind of thing which is totally destructive. As a matter of fact, it's the kind of thing that makes America separate and America so great. It even allows an Assemblyperson of the distinction of Nettie Mayersohn to walk into our chamber unharassed on your side of the aisle, as well as on our side of the aisle.

Now, Mr. President, as has been pointed out by Senator Skelos -- by Senator Skelos, we are discussing whether or not the Journal is appropriate, and it's quite obvious that whatever happened here yesterday was not read as part of the Journal and in order to understand that, I would ask Senator Leichter to yield to a question.

SENATOR LEICHTER: Yes, I would yield.

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

Senator Gold.

SENATOR GOLD: Senator, in view of what you've heard and what's been read, perhaps you can tell me what you think about the Journal as it's proposed and what you would do about it.

SENATOR LEICHTER: Well, Mr. President, I think, first of all, we all ought to be indebted to Senator Gold for calling our attention to the importance of the Journal. You know there's a lot of things that go on here. We're all very busy. We're rushed, and so on, and while Senator Bruno obviously has enough clean clothes to last him throughout the week and beyond, you know, we're running from meetings; we're going back to our districts. I went back last night. I just came up this morning, and sometimes we overlook things that maybe ought to get more of our attention. One of them is the Journal, and I think it's healthy for us to take a look at it, see are we adopting a Journal that really reflects what happened; have we had a chance to examine it, to look at

it, to discuss it, to think about it? It's an important document. Anything that is bound this fancy is an important document. I think it's fair to judge it just on its weight. We wouldn't be printing something -- we wouldn't be putting that sort of fancy binding on it if we didn't think what was in here was very significant, important, something that the public, if it looks at, can be assured that it is absolutely correct.

Though I am grateful to Senator Gold and I'm sure all of you are for calling our attention to it and saying, "From now on, let us start each day with a good, healthy, prolonged discussion of the Journal", and I think that we can draw some other conclusions from what Senator Gold said, that maybe other things here happen too quickly. Bills are incorporating a volunteer fire department. Rush through. Maybe it ought to be discussed at greater length, obviously germane. Oh, we wouldn't discuss anything that wasn't germane, but maybe, you know, we find we have this consent calendar and

maybe we would benefit by having a healthier, longer, prolonged discussion on bills. After all, that's what we're sent up here to do, which is to pass legislation which hopefully will be of benefit to the people of this state.

Now, one of the things that concerns me about the reading of the Journal of yesterday was that these rules changes which were proposed, and I assume they will be reflected in the Journal -- and these rule changes, frankly, I find very, very disturbing, and with all due respect, Senator Bruno, I understand that for you what happens on the floor is really very insignificant because the decision has already been made. Wait a second. What are people up here debating things?

You just had your Republican Conference and we know that you make the decisions there behind closed doors; you shut out the public; you legislate in secrecy and then when you come here, it's a matter of just rubber stamping it, confirming it because, unfortunately, the state Constitution doesn't

provide that what the Republican Majority does in conference is the equivalent to the passage of legislation, so you've got to come here to this chamber but, "My God, the Democrats are getting up and debating things that we've already decided. What are they debating it for? I've got 31 votes. This is going to pass. I've decided not to leg... legislation is out. I've decided to put this legislation out. Those decisions are made. Now they want to debate. So how are we going to stifle debate? How can I move this along?" Senator Bruno thinks, "Ah, germaneness. I will use that as a weapon to try to stifle deliberation and debate in the Senate chamber", and that's all that it is. It's totally, absolutely, completely unworkable, and with all due respect, sir, I think what we see here are the proposals that come out of this Pataki administration, that come from my good friend Senator Bruno that are so poorly thought out because let me tell you what's going to happen. If you try to proceed on germaneness -

ACTING PRESIDENT KUHL: Senator

Skelos, why do you rise?

SENATOR SKELOS: Would you just yield -

SENATOR LEICHTER: Sure.

SENATOR SKELOS: -- for one moment? Just -- I know that we're correcting the minutes in the Journal and just to make sure that people understand that you haven't made a misstatement here, because you never would do that, I just recall at one point last year - when you're talking about everything is decided in our conference, there was a point last year where, I believe Senator Connors indicated that the resolution on casino gambling would never pass this house. Senator Bruno could not have that resolution pass this house.

It was announced during, before and after our conference and somehow we passed it. So I just want to have certain minutes, you know, corrected to show that everything isn't just decided in our conference, that there can be open and fair debate, and once in a while, Senator Connors will make a mistake as to what

your conference's position is for or against a bill, just as sometimes we do.

SENATOR LEICHTER: Senator Skelos, I'm, frankly, somewhat dumbfounded that you would give this example because if I understand what happened, it proves precisely my point. Instead of Senator Bruno putting out this resolution on the floor, you had a conference. He twisted everybody's arm. As I understand it from reports, there was this emotional presentation, "Support the leader. Support the leader", and I understand you were extremely -- let me finish, please. I understand, Senator Skelos, that you were extremely eloquent and made a very emotional pitch, so you all decided to come out here on the floor and you had all the votes. It was all decided. That exactly proves my point. I don't know why Senator Bruno -- please, let me finish.

ACTING PRESIDENT KUHL: Senator Leichter -- Senator Leichter -- excuse me - Senator -- Senator Leichter, if I might just kind of keep this under control. Do you

continue to yield to Senator Skelos?

SENATOR LEICHTER: I will if my good friend would just allow me to finish a question that he asked me before.

So I think the point is well made, Senator, and it's well-known in this Capitol that the Republican Conference operates behind closed doors; you shut out the public; you don't let the public know how people vote, what they do in there and you make a decision there because as we know, Republicans like to move in lock step, and what we find is that the Republicans need to be a monolithic voting block.

SENATOR SKELOS: Senator Leichter, would you yield?

SENATOR LEICHTER: Okay.

ACTING PRESIDENT KUHL: Senator Leichter yields.

SENATOR SKELOS: Senator Leichter, is your conference open to the public?

SENATOR LEICHTER: Senator, if we open up our conference to the public and to the

press -- first of all, most of our conferences are. There's all sorts of people in there, but let me just tell you, I don't think any -- I don't know whether anybody would even bother coming. My position, Senator -

SENATOR SKELOS: Is your conference open to the public?

SENATOR LEICHTER: Mr. President, I believe I have the floor. Our conference, Senator, is open on most issues and as I understand it, as I have observed, the staff people, other people, I happen to believe -- and I've taken the position -- and let me just be perfectly candid with you. Some of my members of this side of the aisle don't agree with me. I would open up the conference, and Senator Hoffmann has had a bill or resolution to that effect which I support but, Senator, it's much more significant -- it's much more significant to have the Majority -- to have the Majority open up because you're the ones who are making the decisions. You're making it behind closed doors.

SENATOR SKELOS: Senator Leichter, you know, I wish now -

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

SENATOR SKELOS: I wish I could right now ask my good friends from Newsday or the -- Gus Bliven from Syracuse whether, in fact, they are entitled, since you said your conference is open, from time to time, to attend the meetings of the Minority Conference. Is your conference open? Is it open or is it not open to the public? I would even attend if your conference was open to the public.

SENATOR LEICHTER: I -- Senator, while -

SENATOR SKELOS: Not as a member of the Minority, but I would love to attend.

SENATOR LEICHTER: Senator, we would be happy to invite you, and I assume that you will reciprocate and invite us into your conference. The fact of the matter is I don't think we need to play games here. The fact is that the Majority Conference needs to be open.

You open your conference and I assure you that the Democratic Conference will be open.

Let Senator Bruno -- he's made a lot of announcements over the course of the years about openness, about disclosure, and so on. Some of us are having a little difficulty finding the implementation, Senator Bruno, but the statements are wonderful. They're beautiful. Maybe now we can get a statement from you saying "Of course, I believe in open government. We will open up our conference. I'll let people see how I'm able to get 31 votes for casino gambling when I walked in there and I had seven votes." So I think people would be very interested, and I know Gus and others, as soon as you open the door, he'll be -- he'll be right in there and he should be in there because the people of Syracuse, the people throughout the state are entitled to know how decisions are being made, but what we're coming to here now and what I'm addressing is a totally unworkable rule. This is going to be a Pandora's box for you because in this house, we don't have the

tradition of an impartial -- I'll yield to Senator Bruno.

ACTING PRESIDENT KUHL: Excuse me, Senator Leichter.

Senator Bruno, why do you rise?

SENATOR BRUNO: Senator, I wonder if I might at this time make an announcement; would you give me your indulgence?

SENATOR LEICHTER: I certainly will.

SENATOR BRUNO: Mr. President, I am overwhelmed by the arguments of my colleagues on this side of the aisle, and I want to this morning announce that the Republican Majority Conference will be open to the public and that will be Monday at 2:00 in the afternoon in Room 332. That conference will be open to the public and the public can review how we function in our conference, and that includes Minority members who can see, Mr. President, how government truly works here in this state and in the Senate, because we're proud of our process. It can be open and the members participate, and I would

welcome an opportunity to visit the Minority's Conference at their earliest opportunity to see how government works on that side of the aisle. So please accept this as an invitation publicly to attend our conference. It will start sharply at 2:00 on this coming Monday. I know that they'll all be in town and I know that you will all be interested, so thank you very much, Senator, for your indulgence, and I'll remind you that there is a fine of $1 a minute if you're late, and that includes -- that includes the press -- I'm only kidding -- and the maximum is $10, so bring your wallets, but you're all welcome.

Thank you, Mr. President. Thank you, Senator.

SENATOR LEICHTER: Mr. President, if Senator Bruno would be good enough to yield. First of all, let me thank the distinguished Majority Leader and also thank Senator Gold. I said he had performed a valuable service, as did Senator Paterson, because we have made possibly -- possibly more strides in this than we have

been debating and opening up government in this Capitol than has been made in the 25 previous years that I have been here.

ACTING PRESIDENT KUHL: Senator Leichter -

SENATOR LEICHTER: Senator Bruno, if you would -

ACTING PRESIDENT KUHL: Senator Leichter, just as a matter of procedure so I'm straight as to what we're doing here, can I ask you a question?

SENATOR LEICHTER: I just asked -

ACTING PRESIDENT KUHL: I understand, but you were recognized and the floor yielded you -- I should say the Chair yielded the floor to you for the purpose of responding to a question from Senator Gold. I take it now because you're asking somebody else a question that, in fact, you have answered the question to Senator Gold. You are, for your information, the next person on the speaker list, so you would have the floor automatic

ally. Have we now moved to the point that you're on the floor of your own volition and not as a result of responding to a question from Senator Gold?

SENATOR LEICHTER: Yeah. Mr. President -

ACTING PRESIDENT KUHL: All right. With that understanding, Senator Bruno, do you yield to a question from Senator Leichter?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields, Senator Leichter.

SENATOR LEICHTER: Senator, will that Republican Conference be open from here on? Is this just sort of a nice, friendly tea that you're having on the 22nd, or can we expect that from now on, as decisions are made in the Republican Conference, that it will be open to everybody who brings their wallet, in case they're going to be fined?

SENATOR BRUNO: Mr. President, as

the good Senator has commented, we are making history in this chamber this morning, and as you make history, you have to be careful because it will be recorded for posterity, so that we will see how the conference goes on Monday, and it will be a regular agenda that we will be relating to, and we'll see how it goes and at the conclusion of our discussions, we will make some judgments as to how we go forward and, Mr. President, while we're making history, I am going to suggest the possibility that we have joint conferences, the Minority with the Majority on some issues and, Mr. President, we all know how efficient that would be in terms of public service, that we discuss these important issues together rather than separately, and it's my understanding, Mr. President, that -- and this is a question -- that there will be a conference call from the floor today by the Minority, and I'm wondering if that might be open for us to participate with you since we're here and we will be standing in recess while you conference? I would love to participate if, in

your good judgment, you think that contributes to open government.

SENATOR LEICHTER: Senator Bruno.

SENATOR BRUNO: Yes.

SENATOR LEICHTER: And I see Senator Paterson as Minority Leader will give you probably a fuller answer, let me just point out to you that there are -

ACTING PRESIDENT KUHL: Senator Leichter, are you asking Senator Bruno to yield again?

SENATOR LEICHTER: No, no. I think he asked a question and I'm responding to it and then Senator Paterson will respond more fully, but I just want to point out to Senator Bruno that there are already such things as joint conferences.

Do you know that right now, this is a joint conference? The joint conferences are when we get together here on the floor and have a session, and we have been urging that those joint conferences be open, be fair, that the will of the people be done and that issues

be discussed fully and that debate -- deliberate debate not be cut off under the guise of somebody claiming it's not germane.

I'll yield to Senator Paterson.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I wanted to advise the Majority Leader that last year, I held a joint conference on the issue of the relief for women who are the victims and the children who are the victims of the AIDS virus, and what we decided to do -- and I believe it was on March 16th -- was we decided to invite members of the Assembly. We also decided to invite the Majority, and Senators Goodman and Velella sent representatives and Senator Marcellino came himself, and this was a conference that was designed to enjoy an open exchange of ideas and opinions, and we tried to get to the action -- to the factual issues, and it was really quite helpful because, since it was not an official session and there wasn't a

media opportunity for individuals and it wasn't -- it was really just a conference, I think everybody that was there felt that we came a long way to actually learning about the problem, and we debated and we disagreed on the floor and the bill -- Senator Velella's bill inevitably passed. I voted against the bill but was significantly informed prior to the discussion -- I thought it was one the best debates we had this year, and so to -- before this conversation becomes too obtuse -- because I would never call it not germane -- I was thinking that the issue that brought us to the review of the Journal today is the issue of changing the Senate rules, and perhaps would it not be a better idea or maybe a little more foresighted since there's a desire to change the Senate rules -- I would just like to point out a couple of things that I think were good in the changes.

For instance, under the new rules, a Senator who is not part of the discussion cannot be asked a question and asked into the discussion and actually, the Majority

Leader, I found victimized by that last year and on a couple of occasions I had to ask -- answer questions when I wasn't even part of the discussions. I think that is a significant change that will help this body.

A very interesting new rule that's coming out today that has been suggested by the Majority is the idea that the addendum to a bill -- the bill amendments will be accompan ied by amendments to the bill memorandums. It has often been the problem for all Senators that there's an amendment to a bill but there isn't significant language that explains it, and I think that the amendment process is extremely foresighted and I think it's an excellent idea.

Now, the issue of germaneness is one that is problematic because we would not want the issues that are being discussed to be decided by a presiding officer who disagrees with the point of view of the speaker. I think all of us would agree to that, so it is really a question of subjectivity and a personal interpretation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Yes.

ACTING PRESIDENT KUHL: Pardon the interruption here, but there's an awful lot of noise. I'm having a very difficult time up here. There are members in the back who are speaking, members down on the floor. Can we ask the members, if they have to have a conversation, to please take the conversation out of the chamber?

SENATOR PATERSON: I'm sorry, Mr. President. I wouldn't -- I wouldn't blame those members. Often when the speaker is overly euphemistic and uninteresting, people are driven to have side conversations.

ACTING PRESIDENT KUHL: I think they're probably as confused as I was, Senator Paterson. It seemed to me from the Chair's perspective, that Senator Leichter yielded the floor to you for the purpose of answering a question that Senator Bruno had asked and I have yet to hear the answer, so I think they're

probably as confused as I am.

Now, Senator Leichter, am I correct that you yielded the floor to Senator Paterson for that purpose solely?

SENATOR LEICHTER: Yes, sir.

ACTING PRESIDENT KUHL: Then I would ask Senator Paterson, would you please answer the question that Senator Bruno responded.

SENATOR BRUNO: The question was, are we welcome to attend your conference this afternoon? Is that open to the public, because I am free this afternoon and some of my colleagues are and we would be very happy to be participating in whatever it is that's important.

SENATOR PATERSON: Yes.

SENATOR BRUNO: Yes? Thank you.

SENATOR PATERSON: As a matter of fact, that's exactly what I was explaining, that these are the things we're going to be talking about as far as rule changes, and so we not only would welcome your participation, but we -- we

think that would be an excellent opportunity to sit down and talk about some of these situa tions, and I was defining the areas where we think that this goes beyond stare decisis in the sense that it is creating new rules that will help the body in the areas that we think that some of the rules are a little bit strident and we would advise against them. We can have a more significant discussion of that. We hope that you will be there.

The Acting President, since he's already been confused by my interpretation, he might not want to attend, but we'll be meeting at what time?

ACTING PRESIDENT KUHL: Thank you, Senator Paterson.

Senator Leichter, you have the floor.

SENATOR PATERSON: Right after session.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Would Senator Leichter yield for just one question?

SENATOR LEICHTER: Yes.

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

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator Leichter and Senator Bruno, particularly, I think it's - there's a point we try to make -- and, Senator Leichter, don't you think this is true, it's a point I have been trying to make for years. Senator Hoffmann and Senator Leichter and Senator Dollinger have been pulling at this chamber for years to do certain things and they've made the comment that, if you do it, even though it is Senator Hoffmann who ought to get the credit and Senator Leichter who ought to get the credit and Senator Dollinger who ought to get the credit, when you open your conference on Monday, the fact remains, Senator, you will still get that credit, and that's fine, and I

remember a certain governor saying to me that, you know, this one and that one can do anything they want. When it comes time to sign the bill into law, the governor is one with the pen and you can't take that away from him.

So, Senator Bruno, we understand that, and I think it's terrific that, if nothing else this morning, we have dragged you this way that we have tried to take you all of these years. That's terrific, and I see you shaking your head and I know that when you do that to me like that, that there's nothing -- you don't mean that in any particular way but, Senator, I'm glad that you're smiling about it, because the fact of the matter is that if we can get changes that open up government, that's what we're trying to do.

Now, the one thing, though - Senator Leichter, this is my question -- that I think ought to be out there, Senator Bruno, is that every week we have these conferences and meetings. You may have forgotten about them since you became the Leader. Now, I have a

conference every week with Senator Volker. It's called a committee meeting, and my colleague, Senator Smith, goes to a committee meeting and my colleagues go and we have these conferences but, Senator, what is the good of that if the fact of the matter is that when somebody says, "Why don't we consider one of the Democratic proposals" and all there is is the kind of grim for which you're famous for, Senator, and nothing happens, or if we sit in the room -- if we have joint conferences -- you say we should have joint conferences; we should, as to what the rules are -- as to what the rules are but, Senator Bruno, I don't remember a joint conference before these rules came up.

Now, if it's only a question of sitting in a room and having you be the benevolent dictator and dictate to us what's going to happen, that's not a real conference, Senator. The answer is it's nice when we sit and have a cup of coffee and we feel the freedom to exchange ideas and we listen to each other, but if you're just setting up a mechanism which

is just going to try to legitimatize the same dictatorship that has ruled here, that doesn't do anything. The words are right but nothing happens.

So, Senator Leichter, my question is what do you think about that?

SENATOR LEICHTER: Senator, I think you stated it very well and I think very accurately because I think that by our acting and interacting together, I think that we're going to be doing a better job. There's going to be better -- a better legislative product.

Now, Senator Bruno, you know, unfortunately, democracy is sloppy.

ACTING PRESIDENT KUHL: Senator Leichter, excuse me.

Senator Paterson.

SENATOR LEICHTER: I've got to finish one sentence, but I'll yield to Senator -

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

if Senator Leichter would yield for a question or if Senator Bruno would, I would -

SENATOR BRUNO: I would be happy to, Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter has the floor, Senator Paterson. The normal procedure of the house would be to ask the person speaking and who's been recognized on the floor to yield to a question rather than somebody else.

If Senator Leichter wishes to give up his position on the floor to Senator Bruno, I'm sure that that could be accomplished. At this point, Senator Leichter, do you yield to a question by Senator Paterson -- or from Senator Paterson?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: The Senator yields, Senator Paterson.

SENATOR LEICHTER: Well, I will yield to Senator Paterson and ask the question of Senator Bruno and I'll -

ACTING PRESIDENT KUHL: Senator

Leichter, if you do that, you're yielding your position on the floor. That's not permissible under past experience in this chamber.

SENATOR PATERSON: What I'm going to do, Mr. President, is I'm going to ask Senator Leichter the question and at any point when Senator Bruno can provide some information, he may get up and answer it, so we'll be within the rules. I just thought that we might streamline the process and get right to the point here. Would it not be more in keeping with the new spirit of cooperation and procedure that we table any movement today on the rules pending these conferences, Senator Leichter or Senator Bruno, so that we can have this exchange and have this discussion about the proposed rule changes?

SENATOR LEICHTER: Senator Paterson, I think it makes a lot of sense - before I yield to Senator Bruno, whether I think it makes sense counts very little, but before I yield to Senator Bruno to answer it, if -- if I could just have Senator Bruno's attention for

one moment and, indeed, the point I was trying to make about the rules -- and with all due respect, I don't think it was very well thought out. I understand you would like things to run smoother, quicker, easier, have this body ratify decisions made by the Republican Conference, but the problem with democracy is that you can't put it in a nice, neat little box, and the diffi culty with your rules, Senator Bruno, if you would just listen to this point that I'm making and possibly that would have some impact on how you answer Senator Paterson.

I just want to point out to you, you're opening up a Pandora's box because every time that the President or the Acting President will rule something not germane, you're going to have a challenge; you're going to have a two hour debate; you're going to cripple the opera tions of this house, and I would just point out to you, as I think Senator Gold very reasonably pointed out, germaneness is something like in the eyes of the beholder. I don't think we've had a real problem in this house that people

have gone way off the topic. Maybe at times I have; maybe at times somebody else has, but the fact is that we do operate, I think reasonably efficiency -- efficiently, not always very open, but at least we certainly are reasonably efficient.

We have a two-hour limit on debates as it is, so there's no real risk from your viewpoint the debate is just going to spill over from days to days, and so on, and I'll also just ask you to look at how this is going to be seen by the public, because the fact is that we don't have an impartial president. It's not like the British House of Commons where the Speaker has a reputation of absolute impeccable fairness. We know that even a president as excellent as the presiding officer today -- and he knows the high regard I have for him -- that if he gets a call from the Majority Leader, suddenly we're going to find a ruling that something is not germane, then we're going to have a challenge to the floor, two-hour debate, I think that you will find that things will

become totally out of hand.

So, Senator Bruno, I hope that you will take Senator Paterson's suggestion of -- with due consideration and that you will agree to table it.

ACTING PRESIDENT KUHL: Senator Bruno, I assume you yield to that question.

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

Senator Bruno.

SENATOR BRUNO: Mr. President, thinking about this and reviewing it and mentally going through the pros and cons and - verbally with my colleagues, Mr. President, we have to make a decision to go forward today with this orderly process because we're following all of the rules of the Senate and, Mr. President, I think it's critically important -- and I was hoping that what I'm saying, we could have been saying in a debate and a review of the rules changes when they were on the floor, that we may

not have that opportunity today. We may not get there until tomorrow, so in answer to your question about what are we doing, let me share with you, my colleagues and the public, that everything that we are proposing in rules changes for this chamber, everything, we have learned from Speaker Shelly Silver, everything.

Now, is he a dictator, Senator Leichter? Is Speaker Silver a dictator? He adopted all of these rules last year or the previous year, all of them. Is he a dictator? I don't think so. I think he is open. I think he is responsive. I think his chamber functions in a fairly efficient way. So I am a continual student. I have learned from the Speaker, and having learned from the Speaker, we are adopting rules that he has already adopted. Every one of these rules changes is in Robert's Rules of Order, the accepted parliamentary procedure for the world and Mason's Rules of Legislature - Legislative Procedure which is adopted in the majority of Legislatures throughout New York State, Mr. President. All of the rules changes

that will affect our procedure are in the Assembly as their rules are functioning today and are in Robert's Rules, in Mason's Rules of Parliamentary Procedure.

Now, I know that my colleagues didn't know that -- you didn't know that the Speaker has been my tutor in this, or you wouldn't be making remarks like "dictator, benevolent dictator", because I know that he isn't and you know that he isn't and you know that he believes in openness and good government, as we do. So on his behalf since he's not here, I would like to say, Senators, that he would resent being called a benevolent dictator, and on his behalf, I want to share with you that I would resent that if I were him as well.

So on behalf of the Speaker, let me share with you that he is not a dictator. He has implemented these rules for order and for efficiency and we are now doing the same. I would have hoped that we might have been able to get to those rules in an orderly way, Mr.

President, have them on the floor so that all of us would know exactly what we were talking about, but we still have about, oh, 47 minutes to go on the debate over the Journal, and so we will wait, but I wanted to just share that with you, that these are all adopted already in the Assembly, so I don't want anyone to be concerned or overly concerned that we're doing anything extraordinary or anything that hasn't been tried and proven to create order and efficiency, and we all know how efficiently the Assembly runs their house. We all know how calm and peaceful they get together over there and move things, okay, because many of you have served in the Assembly.

So, Mr. President, I just thought that at this time it might be worth a few minutes to explain so everyone can be comfortable that what we're doing here is very positive, very productive. We have learned from the Assembly on how to do things better, and that's really all that we are proposing here is that we copy the Assembly so that we can do

things better in this house together, and this is really a move towards working closer, better, being open, as we have been, and I really -- I fully appreciate the attitude that you reflect, Senator Paterson, as you are on your feet and as you work with your colleagues to make sure that this procedure is orderly. I have appreciated that and I still do.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, first, I would like to thank the Majority Leader for that reference and would like to say that we would go a lot further in these discussions if we didn't refer to people who have worked as hard in arduous detail in government as dictators. It kind of diminishes the value of a real dictator and what dictators have done over the years, but I would like to remind all of us in the chamber -

ACTING PRESIDENT KUHL: Senator Paterson, there's been a formality that, as the presiding officer, I have to, I think continue,

and that is that I do have a list of speakers going.

SENATOR PATERSON: I'm sorry.

ACTING PRESIDENT KUHL: Senator Bruno did not have the floor. Senator Leichter had the floor.

SENATOR PATERSON: I'm sorry.

ACTING PRESIDENT KUHL: Senator Leichter has seated himself. I assume he has yielded the floor. Senator Gold was next on the list. If Senator Gold wishes to yield to you for the floor, I'm more than happy to recognize you for whatever purposes of debate you wish to pursue.

Senator Gold, do you yield to Senator Paterson?

SENATOR GOLD: No, no. Do I have the floor now? I don't want to yield.

ACTING PRESIDENT KUHL: You have the floor next.

SENATOR GOLD: Good. Senator Paterson, what did you want to say? Would you answer that question and then I'll get the floor

back.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: In response to what the Majority Leader was contending, the Assembly does not have the two-hour debate rule for closure that does exist in the new proposal for rules of the Senate.

Now, Senator Bruno says that everything that has been submitted is in Robert's Rules of Order. Well, it is in Robert's Rules of Order, but it is actually described by Robert's Rules of Order -- and this is not my description. I'm not trying to be shrill -- but it is described in Section 39 of Robert's Rules of Order as a "gag order"; in other words, where there is a debate and it is ruled not to be germane and the debate is now cut off by a simple majority, Robert's Rules of Order does in Section 20 point out that you might want to make that claim, but it goes on in Section 39 to suggest that it be made by a

two-thirds majority, so to suggest that it's in Robert's Rules of Order is somewhat misleading because it is in there but it is in there for purposes of Robert's Rules of Order correcting that as something that is considered to be rather cruel and rather punitive to actually end a debate because you do not agree with the debater, so I want to point out, factually, that these are some new and open rules.

Since our conversation is about the Journal, Mr. President, what I said yesterday -- and I do not know because I haven't been given a copy of the Journal at the point when these were first issued, is that they were not seasonable. They are not issued timely in terms of the amount of time that a new rules change would be reviewed by other Senators, so even the submission of these rules are not in compliance with the rules of the Senate and, therefore, I must respectfully request that we put this over 'til next week, which is what I suggested yesterday at the end of session, for a proper time of review and so that both of our

conferences, the Democratic Conference which will be held today and the Republican Conference which will be held on Monday, will offer time to have a discussion on these issues. In our conference on Monday which we invite the Majority to attend, we're also going to be going over the budget analyses prepared by our staff which we think are extremely comprehensive and extremely detailed, and we think that all members of the Senate should see it since our limited staff and those who are empowered to conduct that research have performed, I think way above and beyond the call of duty and have really set down what may be actually the best analysis of the budget that exists, but in conclusion, what I would just like to say, Mr. President, is that there are just a few examples I have given, but I could go on, that I don't think these rules are consistent with what anyone else has done and, quite frankly, maybe it's time for a little mea culpa on the part of all of us in the Legislature, rather than answering by blaming each other that we sit down

together and have a system that rewards individual... individuality and also allows for leadership.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you very much.

First, Senator Bruno, I have an idea. You seem to be in a receptive mood today which I think is encouraging, and I have a suggestion and it's a serious suggestion, Senator. You're telling us that the Assembly does certain things and you're willing to learn from them. I think that they ought to be willing to learn from you, and I think we all learn from each other. Why don't you suggest today, Senator Bruno, that the four leaders, either themselves or by designees, set up a meeting whereby we can agree, not on joint rules because we have joint rules, but as to a really good set of legislative rules. You'll have four people in there. As it turns out, two

Republicans, two Democrats, and then we will have rules set up that obviously will protect if the Majority is the Majority -- you have your 31 votes to protect that -- but also you can have the ideas from the Minority in the Assembly as to their feelings on Assemblyman Silver's rules; you'll have our feelings on yours and maybe at that point there's a set of legislative rules that might become a standard for the country. Maybe that will work, but I throw that out to you and, Senator, you can take the lead on that and, again, as I said so many times, if you read the Journal today, you'll find I made the comment, but if you do it, the credit is yours. The credit is yours, because the power to enact it is yours.

Something I think is very interesting. There was a legislative counsel years ago, very, very successful legislative counsel and I'm hoping that your counsels didn't learn from him, but whenever there was a bill that was 30 or 40 pages long, you always knew that the problem in the bill was about three or

four pages from the end, because they figured by the time people read page 1, 2, 3, 8, 10, you know, they start to get a little tired; they start to get a little bored, so if there was a little pizzazz or something that was going to go into the bill, you knew it was near the end.

I tell that story because I have in my hand a press release. It says "News from Senator Joseph L. Bruno" and it is January 17th, "Senate approves changes in the rules" and you say you expect it to happen. I'm not pointing it out to suggest you're arrogant -- and I know you're not and I don't mean that, but this is your release and I think it's fascinating, and I asked the press to take a look at it because you'll understand the story I just told.

What is the first thing? Adoption of the rule changes, housekeeping issues including:

One, "Establishing a Committee on Racing, Gaming and Wagering." Well, that's the first thing he wants the press to focus on.

The second thing he wants the

press to focus on is changing the official name of the Senate Energy Committee to the Senate Committee on Energy and Telecommunications.

The third thing which brings us to the bottom of the page is "Conforming Senate rules with a Court of Appeals decision which dealt with recalling." Now, that's the first page, obviously, I guess, the most important things that he wants to point out.

On the second page, though, there is more, such as requiring something to do with hostile amendments, and I think Senator Paterson referred to that.

Then there's something else, "Clarifying committee attendance reports are filed."

Then there's something else, "Eliminating prohibitions against introduction of bills on Friday." That's -- that is heavy stuff, but it's not as important as the creation or establishing a Committee on Racing and Wagering.

Then there's another one,

"Clarifying the rule which requires that when a bill is amended there be a sponsor."

Now, that's where the arrows stop, all right? He's got one, two, three on the first page and one, two, three, four -- four on the second page. Seven arrows.

Then it says, as just a fleeting last thought, "The Senate rules also amended to clarify that orderly debate must be germane to the issues." It says, "Another rule will enable the Temporary President and the Minority, et cetera, to make a motion on the previous question." I mean, this is just other things that are thrown in.

Senator Bruno, you are a smart man and I know that and your counselors over there are pretty shrewd guys. Aside from a golf course, I don't want to deal with Dean Skelos too much; he threatens me, but I don't think it's an accident, Senator, that those were sort of thrown in at the end as afterthoughts, and what's today's debate all about, those things you threw in? Why? That's the killers, we all

know that.

We're not concerned that you're changing the name of a Senate committee. I don't think we are. It doesn't bother me, but I love that, after you point to the press and say, "Fellows, take a -- and gals, take a look at these seven arrows. These are heavy things", you just throw it in at the end, "By the way, we're going to stifle debate and cut it off any time we want", but that doesn't really mean anything.

On the one hand, Senator, I think you could have done that honestly because since your conference believes that the Senate is them and not all of us, you may not think that stifling debate and cutting off questions means anything. From our point of view, Senator, we think that's pretty heavy stuff.

And so, I say to you, Senator Bruno -- and I hope this doesn't come up in campaign literature, but I really do believe you want some good changes here. I really do believe it, but the problem, Senator, is that

there's nothing wrong with talking the things out. Just as Governor Cuomo said to me, "Let them say whatever they want. When I sign the bill, I'm the one signing it." Senator, if we have a joint meeting before we do any more rule changes and we have people sitting down like you and, if you want, Senator Velella who nobody is going to take advantage of, I'm sure, and we'll have some people on our side and Assemblyman Reynolds and Assemblyman Silver and we just talk out what are fair rules, that isn't going to change the fact that your committee chairmen can still discriminate, unfortunately. It's not going to change a lot of facts around here, but when you and Assemblyman Silver and Senator Connor -- and it's "Connor", Senator Skelos, not "Connors" -- and Assemblyman Reynolds stand up and announce that there are, in fact, these new rules, the quotes are going to be principally yours and the quotes will be principally Assemblyman Silver's, and that's okay, because when people fight to have changes made, it is still the people in power who have to get some

credit for taking some power away from themselves and helping open up the system.

I have my doubts about a lot of things and, as I said over the years, you know, the Majority sets the rules and then it's my job to work within those rules and so far you haven't been able to pass one that -- excuse me, do you want -- you want an interruption?

SENATOR BRUNO: Mr. President, if Senator Gold would stand for a question.

ACTING PRESIDENT KUHL: Senator Gold, do you yield to Senator Bruno for a question?

SENATOR GOLD: Of course, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR BRUNO: Thank you, Mr. President. Thank you, Senator Gold.

Senator Gold, my question is whether or not you recognize that we do not have on the floor any of the rules changes that you have been discussing and debating.

SENATOR GOLD: Yet.

SENATOR BRUNO: And that the necessity of our making the rules changes are illustrated by this debate, this discussion taking place right now for one hour and 40 minutes on the first item, Mr. President -- the first item to appear before this chamber. We have not been able to pass the bills on the Calendar, debate the bills on the Calendar because there is discussion that is not germane to the Journal, correcting the Journal, so there is an abuse presently, Mr. President, of the process of governing, and if we're going to govern in a businesslike and efficient way, I think this is a perfect illustration of the necessity of moving forward because, Mr. President -- and I ask Senator Gold, wouldn't it be more appropriate to have allowed your colleagues to proceed in an orderly fashion with a calendar and as we bring the rules to the floor, debate them, make recommendations for tabling, do whatever is appropriate and germane to the issue on the floor. What's happened here for an hour and 40 minutes, or whatever time

frame it is, is that we have been discussing what, the Journal and changes to the Journal? I have yet to hear the first change that anyone has suggested.

So, Mr. President and Senator Gold, it's apparent that what's happening here is to delay government, delay the people's work, delay what we all get paid to do, deliberate over bills, discuss bills, pass or reject bills. We haven't been able to do that, Mr. President. I almost feel as if we should be giving back part of our pay for the day because we haven't been able to function. I don't suggest or recommend that, Senator, but we have not been able to move, so I plead and I'm asking the Senator if he agrees, Senator Gold, that this is a perfect illustration of why we need these rules changes in this house so that we can do the people's business that we're elected to do in an efficient, businesslike, orderly manner.

SENATOR GOLD: Thank you.

SENATOR BRUNO: What do you think

of that?

SENATOR GOLD: Mr. President, I cannot believe that Senator Bruno didn't think I was expecting that question and I'm just shocked it took an hour and 35 minutes for him to ask it. The answer is this debate is a perfect example of why your rules change is terrible. We are doing the people's business by fighting for the right to have open debate on issues in the United States Senate, to have a filibuster rule. Well, we don't have that kind of a rule, but what does it recognize, that rule? It recognizes that it is not the Majority putting out a bill and passing a bill that's doing the people's business. What is doing the people's business is recognizing that minorities have rights. That's part of the people's business.

Now, the people in my district elected me to do a lot of things, one of which is very local. We have a local district office and we do work. One of us -- one of it is to propose legislation, and I'm one of the lucky ones. I have been able to pass the laws.

The other job is just as important. Maybe it's even more important, and that is when I think that you're wrong, as a Majority, I can speak out and I can voice the concerns of people who don't agree with you. That is the people's business and, Senator Bruno, with the greatest respect to an old friend, that's what you don't understand. You don't understand what the people's business is. The people's business is more than having an idea that you like and forcing it down someone's throat. The people's business in this wonderful, beautiful chamber is to have free and open debate and to have things said that you don't like, and I have seen great Majority Leaders who have sat there boiling at me and others, but they understood that that was part of the job and you had to take it.

Now, unfortunately, you don't have the luxury, I guess, that Warren Anderson had and that Earl Brydges had, to have members who understood that. Some of your members have ants in their pants and not only that, they have

terrible guilt feelings because when they hear something said that they don't agree with, they go bananas and they say, "Wait a minute. We're the Majority. Wait a minute. I'm the Majority. You can't say that", and the answer is, "Baloney, I can and I will and there's no rules change that you're going to pass that's going to quiet me down."

The bottom line here is very simple. You have a certain amount of power and that power puts a responsibility upon you and you're not ready to accept that responsibility, and these rules say that to me. These rules say to me, "Senator Connor, I cannot accept the responsibility of sitting here and being uncomfortable by speech." You're telling me that if somebody on this side of the aisle has enough intellect to challenge you, or even without a great amount of intellect, has a heart and a soul that tells him something's wrong, that you just can't sit there and take it. Why? Maybe because you know we're right, but for political reasons you don't want to do

what's right because you think that what's political is better for you and it's not right, so it makes you uncomfortable.

Senator, I want to tell you something. It would be my delight to have Senator Connor sitting in your seat, Senator Bruno, and I'd like to sit in one of the other seats, and I'll sit there for two hours and have the Minority say anything they want to and then bring things to a vote and then have the people decide whether I'm right or wrong. That's doing the people's business. If you think that doing the people's business is stifling free debate, you don't understand the people's business.

Mr. President, would Senator Hoffmann yield to a question?

SENATOR HOFFMANN: Yes.

ACTING PRESIDENT KUHL: Senator Hoffmann, do you yield to a question from Senator Gold?

SENATOR GOLD: What do you think about the people's business?

SENATOR HOFFMANN: Senator Gold,

I appreciate you asking me the question because I had several issues on my mind and I wanted to address Senator Bruno as well. Perhaps you could yield the floor long enough for me to expand upon some of these thoughts on my own and -

ACTING PRESIDENT KUHL: Senator Hoffmann, the Chair would recognize the fact that it's not the normal custom to just pass the mantle of "talkmanship" around the floor. I also would note that, in fact, you are next on the list, so this isn't necessary.

So, Senator Gold, you don't need to ask the question if you don't want to. Senator Hoffmann, the Chair would recognize -

SENATOR GOLD: I didn't have a question.

ACTING PRESIDENT KUHL: I didn't think you did, Senator Gold. Thank you.

SENATOR HOFFMANN: Senator Gold does not have any questions for me, Mr. President?

ACTING PRESIDENT KUHL: He

doesn't have any questions. He withdrew them all.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT KUHL: He knew that you would be too competent in answering them.

The Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I appreciate the opportunity to be recognized on what I believe is a rather momentous occasion, and I would be remiss if I did not compliment my good friend, Senator Bruno, for several of the things that he has undertaken today and in past days, although my praise is somewhat tempered by concern, which I will explain in a little bit more detail; but I must say that I was astounded when I walked into the chamber, oh, about 40 minutes ago following a committee meeting to discover that there had been a call by the Majority Leader for an open conference, and I would just ask, Senator Bruno,

because I wasn't here -- Mr. President, would Senator Bruno yield briefly for a question?

ACTING PRESIDENT KUHL: Senator Bruno -- Senator Bruno?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Would you yield to a question from Senator Hoffmann?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields, Senator Hoffmann.

SENATOR HOFFMANN: Senator Bruno, I was not in the chamber. As you know, it is the habit of the Senate to occasionally call a committee meeting off the floor. The committee meeting called for Local Governments at 10:30, on which I'm the ranking minority member, did not convene until 11:00 o'clock, due to lack of a quorum, so I was not back in the chamber until 11:10 or 11:15, and I deeply regret not having been in the chamber at the time you apparently announced a conference -- an open conference.

Just so I can hear it with my own ears, would you be so kind as to restate the concept of this conference?

SENATOR BRUNO: We are in conference, Mr. President, Monday at 2:00 p.m. in Room 332. Every week we meet on Mondays at 2:00 p.m., and my announcement was that Monday's meeting will be open to the public. Our regular conference will be open to the public, and that was in response to Senator Leichter who inquired as to whether that was a possibility.

SENATOR HOFFMANN: Mr. President, if Senator Bruno would continue to yield for a few more brief questions on the same subject.

SENATOR BRUNO: Yes.

ACTING PRESIDENT KUHL: Senator Bruno continues to yield.

SENATOR HOFFMANN: Thank you, Mr. President.

Senator Bruno, I compliment you on that most momentous announcement.

SENATOR BRUNO: Thank you.

SENATOR HOFFMANN: I would ask if

you envision this conference to be one in which all members of the Senate would be able to participate with general discussion, or is this a conference limited to only Republican Senators with anybody else in the room being an observer?

SENATOR BRUNO: You just said it exactly as it will be, Senator. Naturally, our conference is for the Majority members. Your conference is for the Minority members. So the people that will participate and talk and question will be the Majority members and the discussion will be open to the public so that they can observe how we function in our conference in the Majority.

SENATOR HOFFMANN: Thank you, Senator Bruno. Thank you, Mr. President.

I very much appreciate your clarifying that for me, Senator Bruno, and I have a few reactions to this extremely significant announcement which I would share with you.

First of all, I pulled out of my

desk drawer my last newsletter which is dated September 1990. I haven't been writing to my constituents a great deal. I meet with them frequently. We seem to be engaged in fairly earnest conversation on a personal level, and I chose some time ago to curtail, at least temporarily, newsletters in the interest of saving the taxpayers some money, which I believe is a rather considerable sum by this state, although I have no idea how much I've saved and have never seen a full accounting of newsletter expenditures, but I'm pleased with the way this newsletter is still so current and yet I'm sad that we are now achieving possibly the beginnings of some of the things that I talked about back in September of 1990, and I just hope that there is a way that we can fast-track some of these changes because I think this is progress and I believe that you are sincere, Senator Bruno, as are many of the members of this house in wanting to improve the way we deliver government to the taxpayers of this state, but this newsletter that I sent out in

1990 stated, "Dear friends: After years of late budgets and last-minute legislative maneuvering to fund pet projects, it's time to change the rules of the state Senate. With the deficit growing ever larger, New York State can no longer afford secret deals made by a handful of men behind closed doors. Today, I believe the public climate for reform is stronger than ever. I have followed legislation and continue to support changes in the rules which would, and number 1, is open the legislative process to the press and the public so major decisions are not made in secret" and, Senator Bruno, at least with one party conference, it appears that you have now acceded to the request that I made back in September of 1990 and earlier and has been made by countless individuals and organizations across the state.

I am not alone in requesting that the closed door party conference be buried and that we enter a new era. Organizations as diverse as the League of Women Voters, Change New York, Common Cause, NYPIRG, many organized

labor groups, the New York State Grange, dozens of other organizations have filed memoranda of support and communicated with us individually and collectively in asking us to end this archaic practice of convening in secret under party banners to discuss the people's business and to make decisions for which there is no accountability.

This step that you're making Monday, Senator Bruno, should be expanded on, and I urge you over this weekend, over the next few days, to consider seriously taking the next appropriate step to truly bring our state Senate into the '90s. Please consider eliminating all closed door party conferences except when they are necessary for political discussions and instead allow the issues of the state to be reviewed and voted upon in open committee meetings.

There is no logical reason why people from across this state who are elected by 300,000 individuals in each district should be meeting under a party banner. It's an artificial

label. It does not fit us as individuals. It boxes us into ridiculous thinking and posturing at times when the voters, the taxpayers of this state are furious that we appear to be more preoccupied with our own benefits, with our own future, with our own creature comforts than we are with delivering services and dealing with the root problems of this state.

You have said many times that as a new leader, you wanted to do things differently and you have made major steps. No other leader in my tenure in 12 years has done anything approaching which you've done, and I recognize that the people who have selected you as leader on the other side of the aisle do not all embrace the idea of openness and many of them probably wish to maintain the standard to which they have become accustomed as Majority members in this separate and not anything close to equal legislative body, but you have the power, Senator Bruno, and I believe you have the courage and the wisdom to know it has been changed if we are ever to redeem ourselves in

the eyes of the public.

And, Senator Bruno, with all due respect, it is really beneath you as an individual and it denigrates your own sense of dignity to justify some of the changes which would curb speech in this chamber by suggesting that it's simply the same as what is done in the Assembly, therefore it's okay. I know you as a person hold yourself to the highest individual standards, and I know you as a Senator and as the Acting President of this Senate, hold this Senate to the highest possible standards and will not be governed by standards established by any other legislative chamber. We have a responsibility to do what is right for the people of this state as we see it, not as some other legislative chamber sees it.

Therefore, it is progress to see one open conference, but it's only a beginning. This chamber can only function for the tax payers' best interests if we make the other changes that are necessary. We don't need separate and unequal staffs. We do not need

4,000 legislative employees, the largest number of any state in the nation, including California which has a full-time Legislature and vastly more population. All we need is one central professional staff and then the individual staffs for each Senator.

I talked recently at a Medicare conference with a couple of legislators from Kansas. We were discussing the committees on which they served and I asked about their staffing and the central staffing and asked who it was who appointed the staff, and they said they really weren't sure, and I said, "Are they Republicans or Democrats", and both of these legislators looked at each other and said, "Gee, I don't know. I never thought about that before. They just do what we ask them to do and they just staff the committee for all of us." What a marvelous concept. How I would love to be able to explain to the people in Madison, Oneida and Onondaga County that we have professionals staffing our Finance Committee who are concerned about the issues of the state

deficit and the delivery of necessary, critical services to the people of this state and they're concerned about those issues first, not scoring political points against the other side of the aisle.

Every year for 12 years I have watched us go through this ridiculous budget circus where we have competing sides of the aisle, not dealing with the issue of the deficit or with the need for services, but we have people lobbing brickbats over walls at the other side and building ever-increasing walls until it's impossible to see over the top and then suddenly only in the face of enormous public outrage when we're weeks, sometimes months late with the budget, somebody burrows a hole through that wall and they meet some place in secret in one of these Capitol anterooms and begin to have discussions in the middle of the night to cut through some of this impasse. None of that would be necessary if we would exercise some common sense, some civility and some restraint, if we would put aside these political

differences and stop clinging to the way of the past.

The people in my district have very limited interest in what political party I am or what political party you are, Senator Bruno. They want to know that we are here out of concern for the taxpayers and not out of concern for our political fiefdoms, but all too often they are subjected to press releases and news stories that begin: "The Republican Majority did --" or "The Democratic Senators responded --" or "The Democratic-controlled Assembly initiated --" they don't care. They don't think like Democrats or Republicans when they pay their mortgage, when they go to the bank, when they get foreclosed on, when they lose their jobs and they don't expect us to think like Democrats or Republicans when we are dealing with their life and death issues. They want us to put that aside and simply do the bidding of the people in an open and genteel way.

I would ask you, Senator Bruno -

I will send over this newsletter, special delivery momentarily, because every one of these issues is still valid. Every one of these issues still needs to be addressed and you, in your wisdom a year ago, undertook one of them and did it in a very modest way, but you can do the rest of them.

I was thrilled -- in fact, I put out a press release complimenting you on implementing one of my reform proposals in the form of a rules change when you took the same language that I had espoused for six or eight years and in one fell swoop, your very first order of business, you said we won't have any post-midnight sessions and now you want to make that a permanent rules change. Not only am I personally gratified, I'm proud. I'm proud that you would do that. I'm proud that as Temporary President of this Senate, you were willing to do that and that you did it in such an unselfish and straightforward way, and I have confidence that you can enact the rest of these changes and that you can win the accolades of the people of

this state and the respect of your conference, the respect of the people over here, more appropriately, the respect of the taxpayers by making the rest of these changes happen.

Change the procedure that would allow a review by all of the appropriate committees, any legislation, not just Republican legislation. Allow everybody the opportunity to be heard. Why should we have a separate status for the people in the 48th Senate District or the 51st Senate District because they have chosen to elect a Democratic Senator and on somebody's score card that is considered to be a Republican district? Why are those people not allowed to have legislation introduced on their behalf, or why must it only come on the final day of session after some personal toll has been extracted by that Senator? These things are now understood around the state. These abuses are documented and they have become so prevalent and so commonly used here that the public has lost faith in us even when we do something that is magnificent and in their best interest. When we

make sweeping changes, they're still suspect of us because these old practices are still in place.

We need to make the Senate less political by disclosing which Senators were offered sponsorship on a bill. I'm still incredulous when I recall the time during my first term that a group lobbying me came into my office in utter outrage because my name was not on a bill that would enhance salaries for child care workers. I had campaigned on the issue that we needed to recognize child care as an important responsibility, that we had to do more to help child care workers of this state earn a living wage and most of the other Senators in my neck of the woods had been rather disinterested in that issue. Shortly after my election, there was a furious race to see who could come up with the best child care enhancement salary bill, none of which ever came to me for co-sponsorship and yet those same Senators who were so busy breaking their arms patting themselves on the back for having this wonderful idea, had the

audacity to tell the people who came and lobbied them that "Senator Hoffmann's name isn't on these bills any place. I guess she just doesn't care." What an insult to the intelligence of those people, and when they found out how badly they were being treated, how this process was being used, this manipulation of information to them, they were determined to take those people out of office. They wanted people that would be honest and upfront with them on the way legislation is enacted into law in this state, and I know that you want the respect of the people of this state.

I know, Senator Bruno, that you don't want people to distrust our motives when we introduce legislation, so I implore you as Acting President, use your powers to create the rest of these reforms that are necessary. Virtually all of them can be done through rules changes, a few of them should perhaps be in the form of legislation, but you can do this, Senator Bruno, and just as you're willing to open your conference for discussion so that the

whole world can hear how these things are analyzed, I'm sure that the Democrats are willing to open their conference as well, but more importantly, we should have these discussions in the committee meetings. You could order today -- it's in your power -- you could order each of these committees to take up all of the reform measures that I have introduced that languish in those committees, have languished, in some cases for years; you could order them to sit and discuss the merits of having open meetings as a standard practice. You could sit and order them to have open dis cussion on every one of those issues, including a disclosure of the budget for the state Legis lature, or at least for the Senate. You could order them to establish a procedure whereby any local bills are brought automatically to a committee and not instead shelved because they're introduced by a Democratic Senator. That is within your power, Senator Bruno.

So I would urge you to use this wonderful power that you have for the interest

of the taxpayers of this state and to do not just one or two changes around the edges, but to make the sweeping reforms that would once again earn us the respect and the stature that we all would fervently hope exist for the New York State Senate. This is the Empire State. Let us begin to redeem our state reputation in this chamber under your leadership by bringing about meaningful reform on behalf of the people of New York State.

ACTING PRESIDENT KUHL: The Chair reminds the members this debate began at 10:05. Two hours will have expired at 12:05. There is still one individual who wishes to speak.

Senator Dollinger.

SENATOR DOLLINGER: I rise because I'm concerned about the Journal and, frankly, I can't wait to read the Journal tomorrow to tell us what we did today because I can't, quite frankly, understand everything that I heard in this discussion about the Journal.

I feel a little bit like the guy at a carnival sideshow with three little

thimbles in front of him, and he is told there's a pea under one of the thimbles, and one of these thimbles has got to have something inside of it.

The first thimble is labeled, "due process." It's been talked about today, that old notion that Americans hold dear that says that you are entitled to notice and an opportunity to be heard before something happens to you, affects your rights, affects your responsibilities, that old due process thimble.

I hear the discussion today about the Majority's interest in due process, and I turn over the due process thimble and look inside expecting to find that little pea, that little kernel of substance; and what do I find? I find that we didn't get the 24 hours notice of these rule changes. I've never even been served with these proposed rules changes. I've never been given the opportunity. I guess I will be given it later when we get through this discussion about the Journal. But that old idea of notice as the prerequisite of due process, I

turn over the due process thimble, there's nothing there, so I know it's got to be in one of the other two thimbles.

The second thimble is labeled with that definition of "openness." Open up the process. End this closed way that we've done business, and I agree with Senator Hoffmann and Senator Gold who have spoken before, about how the process has been shielded from the public, giving the perception that government isn't doing credible things, but instead we're doing something silently behind the public's back. I take the openness thimble, and I flip that over looking, expecting to find something that will be of substance; and what do I find? Lo and behold, I now had an opportunity to read the proposed rule changes, which were not distributed to me by the Majority but, instead distributed -- in fact, all I have is a draft. I don't even have the final rules changes, but I've got a draft and I'm working off a draft. Since it wasn't served to me yesterday, I'm not sure whether it's the draft or the final. We'll

have a discussion about that when we do the rules, but, anyway, I flip over that little pea, that little thimble about openness; and what do I find?

All the rules involve closing things, closing up the process, cutting down on our openness, restricting and gagging the ability to speak. Senator Gold talked about that right to speak at length. I don't need to repeat it here, but it's obvious the substance is not under the thimble described as openness.

There's only one thimble left, and that's the thimble of leadership. I think Senator Bruno and others have talked about the importance of this body leading the way in the state, opening up our books, opening up our process. Senator Bruno has talked about opening up the conferences. That's real leadership. I support that.

So I flip over the "leadership" thimble, expecting to find the real substance there, and instead what are we told? Well, these are all the gag rules that are in effect

in the Assembly. So we're simply going to follow the Assembly down the road to cutting off debate. We're simply going to follow. Senator Bruno talks about Speaker Silver being his teacher, his tutor, in this whole process of how do we gag and restrict the debate about the substantive issues that affect New Yorkers.

So I guess I'm one of those little carnival guys who paid a dollar to figure out whether he could guess which of the thimbles has the pea underneath it, and all I see is a lot of hand work moving the thimbles around with great rapidity, but when you knock all three of them over, you don't find a pea under any one of them, not under the leadership one, not under the openness one, not under the notion of due process.

And what are you left with? You are left with that sense that you paid your dollar and you've been had. I hope that isn't the case. That's a little bit how I feel after this debate today. As I said, I can't wait to read the Journal tomorrow. I took Senator

Leichter's copy of it, and I was astounded that it seemed to contain lots of numbers, but not a lot of anything else, and I'll be very interested to read the Journal tomorrow to see what the Journal says about this debate, and maybe then I can find out whether there was actually something under any one of those thimbles.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: All right. I'll be brief. There has been a number of good statements made, I think, on both sides of the aisle, and we are at a point where I have seen milestones reached over the years.

I remember in 1961, 1960, there was the question of allowing televised coverage of commission meetings when they were being held pursuant to a schedule outside the chamber, and we were left to our own devices. I remember that there was a great feeling on both sides of the aisle that this might be the subject of abuse, that there would be a culling of

embarrassing pictures maybe when we were not at our best and we didn't have our proper profile in focus.

The matter of fact was that -- I remember there was Gabe Pressman that came in. He was the first one to cover a hearing at Suffern, New York, and it didn't take very long. I mean after a couple of minutes people were just oblivious that there was someone there watching. They were more taken up with the subject matter and they got into that.

The same thing happened with the cameras and coverage of proceedings in the chamber, and it took a long time before we were able to get limited access but proper access with a certain request for deportment which has been honorably observed by those who were televising over the years.

Same thing about coverage of the committee meetings, how this would be an opportunity for grandstanding. Nothing like that ever happened. We had our committee meetings, and whatever happened before continued

to happen, simply because of the absorption that both sides of the question manifested.

You look at that press row. That press row is empty. Gus Blivin over there honors, in a very exemplary way, an old tradition, and I'm not casting any aspersions on other correspondents who should be there and were there many years ago; but with the squawk box, they have the sanctuary of being able to listen, and they work very hard. I think that they don't -- they don't appreciate the fact that the presence of the press in the chamber on us, us on them, in human dimensions and in describing and feeling and capturing the spirit of the thing is valuably served by the service that Gus Blivin honorably continues to carry.

So we come to the present on the question of coverage and the openness of confer ences. The conferences are not dispositive of anything. If I have conversations with my staff and sometimes I have -- even a brand new staff, I like to have general discussions; and if they say, You are off your rocker, they don't say it

in so many words but there has been a very active dialogue in my office even with the latest newcomer or intern, and that's as it should be. We all have something to learn from the people that we associate with.

But that business of formulating and reaching a position on issues is something that is taken with the greatest freedom, much as we do when we are in our own sanctuary, within our own office and trying to elicit a point of view that's reasonable. Senator Bruno has made a very, very important -- I think it's historic in national terms to invite this observance when we are in the process of making up our mind and, if the past is prologue, the answer probably is that we're just going to be doing what we have done traditionally, the pros and cons of the positions that we take that we later manifest on the floor, but not always because there are exceptions. I have seen votes change. I have seen them on both sides of the aisle change, but this is a very, very historic point, and it depends on the honor and also the willingness of

the members to be cooperative in -- but they always have been in the past in almost any kind of a test to do it honorably and with fairness.

So that it's a great opportunity, I believe, that the Senator is putting it on a trial basis because he hasn't suggested any change or really sanctifying it in terms of specifics, but he is inviting a process, trusting on the honor and the reputation and the feeling that this membership has for greater openness, but let it never separate us from the responsibility that we have as Majority and Minority for carrying forth legislation; and this can change. It's happened during my life time and the same thing is true of the Assembly. We have positions. People attach a certain importance to the positions that we as parties represent and, if it's not responsive to popular need, sometimes changes come and are, indeed, made.

So it's a great historic moment. I don't think without surveying other states that we're going to find, if any, anything like

this, and I certainly congratulate Senator Bruno for being a pioneer in opening up the process. He already gave indications of that in his initial approaches to our discussions beginning last year, and he has opened this process. He has exhorted and obtained promptness in our attendance, so that I think it has enriched our processes immeasurably.

ACTING PRESIDENT KUHL: The motion is to approve yesterday's Journal.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(Response of "Nay.")

The Journal is approved.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Clerk will read.

THE SECRETARY: Senator Wright, from the Committee on Alcoholism and Drug Abuse,

reports the following bills:

356, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to prohibiting disposition of DWI offenses;

357, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to limiting options;

379, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to suspension and restoration of a driver's license;

394, by Senator Skelos, an act to amend the Vehicle and Traffic Law, in relation to increasing the period of time during which a driver's license is suspended;

973C, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to operation of a motor vehicle;

1745, by Senator Velella, an act to amend the Vehicle and Traffic Law and the Criminal Procedure Law, in relation to authorizing the discovery of blood samples.

Senator Levy, from the Committee

on Transportation reports the following bills:

Senate Print 347, by Senator Levy, an act to amend the New York City Charter and the Public Authorities Law, in relation to the inspection of the Metropolitan Transporta tion Authority, reported with amendments;

623, by Senator Stafford, an act to amend the Highway Law, in relation to abandonment of certain town highways;

1075, by Senator Skelos, an act to amend the Vehicle and Traffic Law, in relation to the enforcement of handicapped parking regulations;

1181, by Senator Cook, an act to amend the Vehicle and Traffic Law, in relation to allowing volunteer fire fighters;

1474, by Senator Volker, an act to amend the Vehicle and Traffic Law, in relation to suspensions for failure to answer;

2429, by Senator Goodman, an act to amend the Vehicle and Traffic Law, in relation to regulations of delivery bicycles;

4482, by Senator LaValle, an act

authorizing the village of Port Jefferson in the town of Riverhead to authorize the county of Suffolk to maintain traffic control devices;

4952, by Senator Marcellino, an act to amend the Vehicle and Traffic Law, in relation to special number plates.

Senator Rath, from the Committee on Local Government, reports:

621, by Senator Stafford, an act to amend the Real Property Tax Law, in relation to the assessment of private forest lands;

624, by Senator Stafford, an act to amend the County Law, in relation to authorizing the county of Franklin to appoint up to three public defenders;

688, by Senator Saland, an act to amend the County Law, in relation to enhanced emergency telephone system surcharge;

2010, by Senator Rath, an act to amend the General Municipal Law, Chapter 708 of the Laws of 1992, amending the General Municipal Law;

4514, by Senator Tully, an act to

amend Chapter 972 of the Laws of 1962;

5372, by Senator LaValle, an act to amend Chapter 311 of the Laws of 1920, relating to the assessment and collection of taxes in Suffolk County;

5803, by Senator Larkin, an act to amend Chapter 708 of the laws of 1992, amending the General Municipal Law.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills will be directed to the order of third reading.

Reports of select committees.

Communications and reports of state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Mr. President, may we at this time adopt the Resolution Calendar.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar on

the members' desks.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: May we at this time, Mr. President, take up the noncontroversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 8, by Senator Lack, Senate Print 5754, an act in relation to collective bargaining between the Unified Court System and the New York State Court Clerks Association.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 9, by Senator Skelos, Senate Print 602, an act to amend the Public Health Law, in relation to the Senator Tarky Lombardi Nursing Home Without Walls Program.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: I want my name called to explain my votes.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: This is Calendar Number 9, is it?

Yes, Mr. President, the only thing I want to say about this is, this is an example of a piece of legislation where had the sponsor consulted me and I think some other members on this side of the aisle, we would have been glad to cosponsor it. I know very well some of the work of Senator Lombardi in this area, and there are some programs which he instituted which I think are really magnificent when it comes to the level of care being given to people and the economics behind that, and I certainly am going to support this and, as I say, I would have been proud to have been a cosponsor.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative. Announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 24, by Senator Tully, Senate Print 188, an act to amend the Penal Law, in relation to sexual performance by a child under the age of 18 years.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 25, by Senator Rath, Senate Print 208B, an act to amend the Criminal Procedure Law, in relation to prohibiting issuance of an order of recognizance or bail.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: To explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote on Calendar Number 25.

SENATOR DOLLINGER: Mr. President, this is a bill that has particular pertinence to the community which I represent in which two individuals have been at liberty in violation of bail orders granted after they were convicted of sexual offenses, and I think this

is a good solid step in the right direction to deal with a problem that has been, unfortunately, very much on the minds of the people in Monroe County, in two highly publicized instances in which individuals had been convicted, were set free on bail and unfortunately then fled and led to, in one case, a nationwide manhunt.

One of those individuals, Ronald Vahue, is back in Monroe County in which he is again before the courts. Had this law been in effect, neither of those individuals would have had the opportunity to be free on bail, and the public would have been able to rest assured that these convicted sex offenders would not be at liberty to prey on others.

So I commend Senator Rath and others for the sponsorship of this bill. I would have liked to have been on it myself. I still don't understand why in this house that's the case that we're not, but this is a step in the right direction to attending to a problem that we face in Monroe County, and I think is

faced throughout the state, as well.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Maziarz to explain his vote.

SENATOR MAZIARZ: Mr. President, to explain my vote. I would just like to follow up a little bit, and also I'm a proud cosponsor of this piece of legislation.

In Monroe County, as the previous speaker pointed out, we had a couple of terrible cases where, in one instance, an individual who had previously been convicted of sexual offenses involving a minor was convicted -- I believe it was maybe a second time -- and was released after conviction for -- actually, believe it or not for a holiday weekend, for the 4th of July weekend and, of course, he walked out of the courtroom and very shortly disappeared for several months.

Had this bill been passed last year by the other house, that situation would have rendered it impossible; and I just want to commend Assemblyman Charley Nesbitt, who introduced this bill in the other house, and

maybe send message to the leadership over there that this is a good piece of legislation and should soon be put on the calendar in the other house.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 26, by Senator Sears, Senate Print 210D, an act to amend the Penal Law, in relation to disseminating indecent material to minors through any computer communication system.

ACTING PRESIDENT DEFRANCISCO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first day of November.

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 27, by Senator DiCarlo Senate, Senate Print 500A, an act to amend the Criminal Procedure Law and the Penal Law, in relation to felony sex offenses.

ACTING PRESIDENT DEFRANCISCO: Read the last section.

THE SECRETARY: Section 14. This act shall take effect on the first day of November.

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 28, by Senator Skelos, Senate Print 522A, an act to amend the Penal Law, in relation to increasing the penalties for custodial

interference.

ACTING PRESIDENT DEFRANCISCO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 15th day of November.

ACTING PRESIDENT DEFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT DEFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 30, by Senator Johnson, Senate Print 1638, an act to amend the Penal Law, in relation to possessing an obscene sexual performance by a child.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: Lay the bill aside.

SECRETARY: Calendar Number 32, by Senator Volker, Senate Print 4262, an act to

amend the Criminal Procedure Law the Penal Law and the Civil Practice Law and Rules, in relation to assault against a child.

ACTING PRESIDENT DEFRANCISCO: One moment, please.

SENATOR SKELOS: Please lay aside Calendar Number 32 at the request of the sponsor.

ACTING PRESIDENT DEFRANCISCO: The bill is laid aside.

THE SECRETARY: Calendar Number 33, by Senator Volker, Senate Print 5479A.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT DEFRANCISCO: The bill is laid aside.

THE SECRETARY: Calendar Number 57, by Senator Maziarz, Senate Print 5434A, an act to amend the State Finance Law, in relation to establishing a transportation mobility revolving loan fund.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT DEFRANCISCO:

Senator Skelos.

SENATOR SKELOS: I believe Senator Dollinger asked that it be laid aside.

ACTING PRESIDENT DEFRANCISCO: I apologize.

SENATOR DOLLINGER: Yes, I did, Mr. President.

ACTING PRESIDENT DEFRANCISCO: The bill is laid aside.

That completes the reading of the noncontroversial calendar.

SENATOR SKELOS: Please take up the controversial calendar.

ACTING PRESIDENT DEFRANCISCO: Secretary will read.

THE SECRETARY: Calendar Number 30, by Senator Johnson, Senate Print 1638, an act to amend the Penal Law, in relation to possessing an obscene sexual performance by a child.

ACTING PRESIDENT DEFRANCISCO: Senator Abate.

SENATOR ABATE: Yes. Would

Senator Johnson yield to a number of questions?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson, will you yield?

SENATOR JOHNSON: Yes, Senator.

SENATOR ABATE: I would like to preface my questions by a brief remark.

Last year, I voted for this bill, and I reread the bill this year, and I have a number of concerns and questions and perhaps you can clarify these concerns.

I want to make it clear you have two sections that you wish to amend, Penal Law sections, creating two new sections 263.11 and 263.16. It is my understanding, but I want confirmation from you, that what would be required by the prosecutor is to prove scienter, and what I mean by scienter is that the defendant knew that he or she, they were in possession of the material and also knew that the material was either pornographic or indecent.

Under these proposed changes, I make the assumption that the prosecutor must

prove not only knowing possession but the intent to possess such material. That's how I read the statute, and I wanted to seek clarification from you.

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: Your question is whether the person knew that they possessed the material; is that it?

SENATOR ABATE: And that the prosecutor would also have to prove that they intended to possess and knew that this material was pornographic.

SENATOR JOHNSON: Well, Senator, I don't know if I can answer your question directly. I know that this material is already illegal to produce and distribute and sell, and so forth, and what we're saying in here is that if a person is indicted for the possession of this, apparently there's feeling that he did know that he had it and that he knew that it was illegal.

SENATOR ABATE: The difference in

standard between strict liability and one in which the prosecutor has to prove that the defendant knew he or she had possession and also knew that the material itself was pornographic or obscene, and there's language in the changes that say that the -- "has to know the character and content thereof." I make the assumption that the burden of proof would be on the prosecutor to prove scienter. If that's the case, I just would like confirmation that that language means that the burden of proof is on the prosecutor.

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: Well, I would say, pretty obviously, that the case has to be proven that they have this material and it's obscene. They don't have to prove that they know the age of the child. That's been debated before, as you know.

SENATOR ABATE: So by the language, clearly, that the prosecutor would have to prove that the person possessed the

material. Would they also have to prove that the individual knew that the material was obscene? For instance, Senator Johnson, there could be someone who buys a magazine and looks at the cover and is not aware that in the middle of that magazine there is a picture that may be obscene or indecent, because the second part of the statute change talks about indecent material. Would the prosecutor have to prove that the individual knew?

SENATOR JOHNSON: Senator, we debated in the past whether or not a painting by Botticelli or something would be obscene, if you would be arrested if you had that in your art gallery. I think there is pretty well established cases of what is pornography, what is deviate sexual performance, obscene performance. They've all been litigated before.

I don't think many people possess child pornography unknowingly and innocently and indecently and if they do, indeed, no one's aware of it. The fact -- we're trying to get at

the pedophiles who deliberately gather this material, use it to show to other people, to entice youngsters perhaps to come and see what they have, to probably demonstrate to them, "See the little boy; he does this; you can do this, too." We're talking about people who abuse this. We're not talking about innocent possession of something that they're unaware of. That person would never come before the Court in the first place, Senator.

ACTING PRESIDENT DEFRANCISCO: Senator Abate, do you have another question?

SENATOR ABATE: Yes, and, Senator, I am certainly sensitive to the issues you raise, that children are among the most vulnerable people we have in society. We have to do everything we can to protect them. I'm just trying to understand exactly what the statute means.

Again, I voted for it last year, but I'm not sure if I understand the language of it. Clearly, the Courts have defined what is obscene. What I'm asking is, what is the role

of the prosecutor in proving this crime? Is it the fact that an individual buys a magazine, the Court determines the material is obscene, and they are not aware that in the centerfold there's something obscene and the rest of the magazine is absolutely harmless? Does the prosecutor have to prove intent to possess this material? And that's different from whether any of us agree or want to banish obscene material from the marketplace.

SENATOR JOHNSON: Senator, all I can tell you is that child pornography or pornography in general is very well defined, and I don't think one page in a 40-page thing would necessarily indicate the purpose to buy, possess and use pornography.

So, Senator, you can perhaps debate more the finer points of the law because you are a lawyer and you have been involved in that. I'd say this bill is essentially modeled on bills which have been done in 39 other states based upon the decision in Osborn versus Ohio, where they said just possession could be

illegal, and we're trying to do that. Making possession of things that are already illegal to be produced to be illegal to also possess and, certainly, demonstrated use in a manner.

SENATOR ABATE: I guess -

ACTING PRESIDENT DEFRANCISCO: Senator Abate, are you asking Senator Johnson to continue to yield?

SENATOR ABATE: Yes, thank you.

ACTING PRESIDENT DEFRANCISCO: Do you continue to yield, Senator Johnson?

SENATOR JOHNSON: Yes.

SENATOR ABATE: Then I will be making the assumption, because I do not hear otherwise from anyone on the floor, that the bill does require the prosecutor to show scienter, and I certainly welcome a response from anyone on the floor if I'm reading the statute incorrectly.

Senator Johnson, would you yield to another question?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson, you are being asked to yield

again. Do you yield to another question?

SENATOR JOHNSON: Yes, Senator.

SENATOR ABATE: There are two parts of the Penal Law change. The first part, Penal Law 263.11, deals with possession of obscene sexual performance.

SENATOR JOHNSON: Right.

SENATOR ABATE: The second section, which is 263.16, deals with possession of sexual performance. What is the difference? One is obscene and the other is just sexual performance.

SENATOR JOHNSON: Senator, you can look up Section 235 and that explains what those terms mean, Senator.

SENATOR ABATE: I did read it, and it's not clear. One deals with obscenity, and one deals with indecency.

SENATOR JOHNSON: Senator, we're not changing those sections of the law. Whatever they say, they've said for years. All we're saying here is, if somebody has this material in their possession, under 230... -

under 236.16 or 236.11, et cetera, they will be guilty of this violation of this law.

I might say, Senator, your previous question about knowledge perhaps is answered when it says here, "knowingly has in his possession or control any obscene performance", et cetera. It's knowing. It's that he's aware that he has it, knows he's got it, and he knows he's illegal, and he possesses it. I think essentially this bill answers your previous question.

SENATOR ABATE: Right. Good, and I appreciate that clarification.

My other concern is around whether this legislation is drafted too broadly, or I hope, in the process of the discussion between the Senate and the Assembly, some of these issues will be refined and clarified because I think we have a sense of what may or may not be obscene but, the second section, I don't know whether we give enough guidance around what is indecent, and there are issues around the Calvin Klein ads and other

provocative advertisements and pictures that it may not be clear around what is indecent and what should be prosecuted as an E felony.

Is there a reason that you established the penalty of crime as an E felony for both crimes, one being possession of obscenity, the other being possession of indecent material?

SENATOR JOHNSON: That's the way we chose to draft the bill, Senator.

SENATOR ABATE: Pardon me?

SENATOR JOHNSON: That's what we chose to put in the bill.

SENATOR ABATE: But was there a reason not to differentiate -

SENATOR JOHNSON: No, well, because -

SENATOR ABATE: -- between possession of indecency and -- as compared to possession of obscenity?

ACTING PRESIDENT DEFRANCISCO: Excuse me. Senator Abate, would you please address the question through the Chair so that

we don't have an unruly debate here.

SENATOR ABATE: Yes. I apologize, Chair, for not following the rules.

ACTING PRESIDENT DEFRANCISCO: Okay. Thank you.

SENATOR ABATE: We know how important the rules are.

ACTING PRESIDENT DEFRANCISCO: Absolutely.

Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Senator. I think, Senator, if you want to study or revise the entire section dealing with pornography and child pornography, Senator, you are free to do that.

As far as we're concerned child pornography is evil in this society. That's why the possession -- rather, the creation and dissemination and sale of this material is illegal now because it is a blight on society which has to be dealt with. What we're saying is under the present law these things are

produced, and so they legally should not be possessed. That's the only way, Senator, to stop -- what shall I say? -- the growth of this industry, because if there is a threat that, if you possess it, you may be prosecuted, then I think perhaps they will be less interested in buying it and less interested in people producing something which people do not care to buy or possess.

Senator, we have to deal with the real issue of child pornography. You heard a little discussion the other day -- I mean a short while ago about a case, I think, in Rochester. I think Mr. Dollinger mentioned that, where a person was engaged in criminal acts with children and this person was free on bail and committed another act prior to being sentenced, et cetera.

Now, these people get their juices flowing with child pornography. That's what we're attacking, Senator. We're attacking the material which promotes the interest in this and gets people deciding to engage in illegal

acts with children because they have been stimulated by this type of material, Senator. We're trying to stop that process.

ACTING PRESIDENT DEFRANCISCO: Senator Abate.

SENATOR ABATE: On the bill. Can I be heard?

ACTING PRESIDENT DEFRANCISCO: On the bill.

SENATOR ABATE: Yes. Senator Johnson, I could not agree with you more. I have a child who is 16 years of age. I have had a lot of experience working with children. Child pornography cannot be encouraged. It's against the law to distribute, to disseminate, to procure.

My concern is -- and I will probably vote for this bill, but my concern is that when this bill goes through the process of negotiation, when the Assembly and Senate come together, we look at the second section which does not deal with obscene material but deals with what we call "indecent material," and it's

not clear by any individual standards what that means. Is it the Calvin Klein ad which we may feel is provocative and not appropriate in terms of advertising jeans? Is that enough? Do we want people to be prosecuted because they had that Calvin Klein ad in a magazine, or are we talking about some other kind of material?

I want to ensure that the right people are prosecuted, that children are not abused, and that the law, as drafted -- and I hope it's refined in some ways -- does exactly what you want it to do. Child pornography, involvement of children in such heinous activity, should be in any way we can stopped and prohibited in the future.

But I hope there will be some debate and some discussion to see if we can more carefully draft this bill, so when there are legitimate First Amendment rights, we protect them but we also don't allow the use of First Amendment to continue child pornography.

So I will support this. I do have some concerns. I hope these concerns will

be addressed before the bill is signed into law; and, again, I do compliment the sponsor. This is something that everyone in this chamber, whether they vote for it or against it, knows that it's a problem. It has to be stopped, but we have to be very careful, when we draft legislation, we, in fact, do what we intend, and I'm glad to hear that no one has refuted the notion that this bill would still put on the prosecutor the responsibility to prove that the defendant knew that he or she had possession and that the person intended to possess obscene or indecent material. I think that's a very important element of this bill; and because everyone seems clear that this is included in the bill, I am much more comfortable in supporting the bill.

Thank you very much.

ACTING PRESIDENT DEFRANCISCO: Senator Waldon.

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

Would the learned Senator from -

I forgot which county you are from, Owen, but out my way on Long Island -- please respond to a question or two?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson, will you yield?

SENATOR JOHNSON: Yes, Mr. President.

SENATOR WALDON: Senator, I noticed in the bill it said "knowingly." Do you know who Tracy Lord is? Have you ever heard the name Tracy -

SENATOR JOHNSON: I think I probably missed out on something, Senator. You will have to explain it to me.

SENATOR WALDON: Beg pardon, sir.

SENATOR JOHNSON: I say I missed out on any performances by this young lady who you are familiar with. I don't know her.

SENATOR WALDON: Tracy Lord, as I am advised, was a stellar pornographic star, and she became such well before she was the age of 16. At age 18, she held a press conference and announced her true age and threw the porno

industry into a tizzy; and I'm just wondering, if someone were to pick up a film at a video place today and it happened to have scenes of Tracy Lord when she was 15 engaged in all kinds of sexual activity, would this bill cause them to be arrested and prosecuted?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: Mr. President. Your question is -- rather, Senator Waldon, your question is what?

SENATOR WALDON: My question is, would someone in possession today of a film depicting Tracy Lord engaged in sexual activities at age 15 cause the person who is in possession today to be prosecuted under this bill?

SENATOR JOHNSON: Well, of course, we did have a previous discussion with Senator Abate, where I referred to the "knowingly" possess this, and there is an affirmative defense that this must be demonstrated by the evidence, et cetera.

So I would say, Mr. President, that Section 263.20, et cetera, et cetera, states there will be affirmative defense if a defendant in good faith believed a person appearing in a performance was 16 years or older.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT DEFRANCISCO: Why do you rise, Senator Gold?

SENATOR GOLD: I would really like to hear this. Senator Johnson, you are saying this low.

SENATOR JOHNSON: Oh, really.

SENATOR GOLD: Could you say it a little louder?

SENATOR JOHNSON: I said that there is an affirmative defense. The question of knowing is there, and Section 263.20, an affirmative defense is set forth there, and it states, "There will be an affirmative defense if the defendant in good faith believed the person to be over 16 years of age.

ACTING PRESIDENT DEFRANCISCO:

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. May I ask another question?

ACTING PRESIDENT DEFRANCISCO: Do you continue to yield, Senator Johnson?

SENATOR JOHNSON: Yes.

SENATOR WALDON: I thank you, Senator Johnson. Senator, permit me to create a hypothetical. Someone who goes to these stores where they rent video films and sees a title which intrigues him or her and rents the title based on the intriguing words of that title, something they found somehow exciting, and they go home and they find out that that film has scenes of children engaged in sexual activity of some sort, and a zealous police officer happens to visit that home, finds the person in possession of that tape, and makes the arrest. Is the affirmative defense available under those circumstances?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: Senator, I don't know how the police work where you are, but I mean police don't usually walk into somebody's house and look at their videotapes and see what's on them and decide to haul them into the nearest stationhouse, so that's a pretty outrageous scenario, I'd say, Senator.

And the fact is that if that happened he would be violating your right unless he had a search warrant, in which case you were probably a dealer, et cetera, et cetera. So you are getting into far off realms of fantasy.

But I would say, generally speaking, it still says knowingly; and if you didn't know what was in it, I guess you would have a pretty good defense, Senator.

SENATOR WALDON: Last question, if I may, Mr. President.

ACTING PRESIDENT DEFRANCISCO: Do you continue to yield, Senator Johnson?

SENATOR WALDON: I preamble my question -

ACTING PRESIDENT DEFRANCISCO:

Was that a yes?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT DEFRANCISCO: Okay. Thank you.

SENATOR WALDON: I preamble my question with this statement. I recognize what police officers can and cannot do. That was put into the question for a purpose. Let me ask this. That is a convoluted question, Senator Johnson. One, would written material describing activities be governed by this bill, or is it only if it is a tape or film governed by this bill?

SENATOR JOHNSON: What was your question, Senator?

SENATOR WALDON: Mr. President, if I may, I will repeat the question. Would descriptions of this illicit sexual activity involving people under the age of 16 in written form be covered by what you're proposing or is it only if it is in a pictorial representation either on videotape or other forms of, in quotes, "film"?

SENATOR JOHNSON: We did have many books which were banned for years and illegal. I think, generally speaking, written descriptions are not illegal any more. But what we're talking about here, and it says, "Any play and motion picture, photograph or dance." That's what a performance is defined as, Senator. So I'd say that probably is not a book.

SENATOR WALDON: Thank you very much, Senator Johnson. I appreciate your indulgence.

If I may, Mr. President, on the bill.

I am one who feels that the safety net for people who may innocently come into possession of this type of material is too small under this bill. I feel that those who practice pedophilia should be put not only in the jail but, if possible, under the jail. However, the mere possession of such a pictorialization, ergo, does not mean the person is a pedophile or someone who supports and

practices that insidious activity, and I would encourage my colleagues to recognize that this is still America.

We still have the grace to treat each other with respect in terms of our ability to read and absorb whatever material for artistic or other reasons in the privacy of our homes. At least that is the opinion of Al Waldon.

Thank you very much, Mr. President.

ACTING PRESIDENT DEFRANCISCO: Senator Gold.

SENATOR GOLD: Thank you.

Senator Johnson, I appreciated your letting me interrupt, because I had a question and, by speaking up, you answered that question. I appreciate it.

But I just want to clarify a couple things very quickly, if the Senator will be kind enough to yield.

ACTING PRESIDENT DEFRANCISCO: Will you yield, Senator Johnson?

SENATOR JOHNSON: Yes, Mr. President.

SENATOR GOLD: You pointed out to Senator Abate that there is an affirmative defense in Section 263.20. But before we get to an affirmative defense, is it your understanding that as part of the prosecutor's case he or she would have to prove that, in fact, the child was under the age of 16 years?

SENATOR JOHNSON: Well, I would say yes, Senator.

SENATOR GOLD: If I may put it in perspective, because some people in chambers are not lawyers. When a judge charges a jury, a judge usually sets up elements of the crime and, as you have pointed out, you have in here that it must be, for example, an obscene sexual performance by a child, must be -- they would - knowing the character and contents thereof. So, for example, if someone bought a magazine and hadn't even opened it up you couldn't arrest them, I assume, walking away if they didn't know what was inside the magazine.

But would a judge, in your opinion, have to charge a jury that they, in fact, must find that any child in the picture was in fact less than 16 as an element of the crime?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: Senator, you could probably explain that better than I because I'm not familiar with the procedure of judges charging, but I would say that -

SENATOR GOLD: Yes, that is an element.

SENATOR JOHNSON: -- if they didn't do that, then I think there'd probably be a mistrial or certainly some error committed by the judge which would not result in a conviction.

SENATOR GOLD: All right. Senator, let me ask you this question. My understanding -- and please correct me if I'm wrong -- is that it is a crime in New York to make pornographic material with children. I

believe it's a crime in New York to sell pornographic material that is made by children. I believe it is a crime to possess it with the intent to sell. I think it's a crime to distribute. Am I correct? All these things are crimes, am I right?

SENATOR JOHNSON: That's correct.

SENATOR GOLD: I think it's a crime to induce children into this.

So what I'm trying to figure out, then, Senator, is what, if anything, we're doing for the world with this particular bill which I have opposed in the past, and that's where I'm hung up.

Now, Senator Waldon mentioned a specific person who I don't know, but I do know that a few years back -- and this could be 15, 20 years back -- there was a Miss America winner who was disqualified because they found out that she had been married when, I think, she was about 16. I don't remember whether she had a child or not. I don't think so, but had been divorced. Do you remember that incident at

all?

SENATOR JOHNSON: I'm not familiar with that, Senator.

SENATOR GOLD: All right. Well, the reason I bring it up, Senator, is this. You have someone who has material that comes into their possession, let's say, through an estate, I don't know. They take possession of books, and there are pictures in that book that you might believe are pornographic and there are children in the book, pictures in the book. We don't know who the children are.

Would it be your opinion that is something that is not prosecutable since the prosecutor, not knowing who the child is, could not prove the age of the child?

ACTING PRESIDENT DEFRANCISCO: Senator Johnson.

SENATOR JOHNSON: We're not talking about family albums with pictures of children in them, Senator. We're talking about sexual performances by children which are, I think, not in a typical family album; and,

despite that, unless someone had knowledge of that, obviously, the person would not be arrested and indicted, convicted or anything. Nevertheless, I think that person's obligation is not to -- under this law is not to possess these things. Many people possess things they shouldn't have, but until it becomes an overt act that brings it to someone's attention, of course, nothing happens.

ACTING PRESIDENT DEFRANCISCO: Senator Gold.

SENATOR GOLD: Yes. Senator, if you will yield to a question.

See, Senator, I think you're right on target. If there is an overt act, I don't think you need your law. If you have a person who is a pedophile trying to induce a youngster to do something, I think that's a crime already. If you have someone who tries to sell it, it's a crime already.

All your law does, so we keep it clear, is say that in a situation where somebody were to possess -- if your law were on the books

right now, if there was a book in someone's house and somebody wanted to get that person and call the police to come to the house for a book that's just sitting on a shelf, under your law, that person has now committed a crime, even though there would be no evidence in that case of the person being a pedophile. There would be no evidence in that case that the person tried to induce any youngster to sell, make, or do anything. Isn't that true, Senator?

SENATOR JOHNSON: Senator, I guess you could create any scenario which you choose to do. I think it's unlikely, Senator, that that person would be convicted of anything under those circumstances.

SENATOR GOLD: Well, Senator, what I'm curious of then so that I understand it -- and as I say, I voted against this bill in the past. I have heard Senator Abate whom I have a great respect for and other people here who I have a great respect for who have voted for this, and I'm trying to say to myself, Senator, can you give me what is in your mind

the example of how this will help prosecutors because there is a situation on the books today that is not prosecutable but that this will make it prosecutable? In other words, what do you envision? You certainly don't envision that they are going to indict a book store seller who's selling it, because he's selling it. It's against the law. They're not going to use it against someone who's making it, it's against the law. They're not going to use it against someone distributing it.

So who is out there right now that is a danger to society that this bill is going to prosecute. That's what I'm trying to find out.

SENATOR JOHNSON: I don't know if my advice is any better than my own thoughts, but let me just say this, Senator, that it is my opinion that if you make the possession of something illegal that would to some extent diminish the people in the act of selling it because they wouldn't have the market which is presently out there to encourage the production

and sale of these products, and I think that's significant, Senator, in an attempt to dry it up to make the possession illegal, just as we do with drugs to make them illegal because they are harmful to society -- to make the possession illegal so some people prosecuted for possession may not be interested in buying any shortly thereafter since they have already paid a penalty, in a sense, for possessing those drugs, and so forth.

So I think we have to try to dry up the market for pornography just as we have for drugs, Senator, and this bill will help to achieve that end.

ACTING PRESIDENT MARCELLINO: Senator Leichter, why do you rise?

SENATOR LEICHTER: Mr. President, I would like to ask Senator Johnson a question.

ACTING PRESIDENT MARCELLINO: Senator Johnson, do you yield for a question?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MARCELLINO: Senator Johnson yields.

SENATOR LEICHTER: We have had this bill before us before, and you and I debated the very issue that I want to ask you a question on. I just want to preface it by saying that like Senator Abate, like all the other members of this chamber, certainly you, I think all of us deplore child pornography. We certainly deplore exploitation of people under the age of 16 for sexual purposes, and I can see some merit in saying, well, if we punish the knowing possession of child pornography material that that will dry up the demand for that material. I don't know how great the demand is. But, obviously, there's some demand, and that's what you are trying to do. I have no problem with that.

What I and Senator Gold in other years and Senator Waldon and others have been concerned about, and something that I think that Senator Abate also asked you on, and you gave a clearer answer today than I think you did on those other occasions that we debated it, and that has to do with the scienter, knowing.

Now, your bill makes it clear that you have to know the contents. What has always bothered me is, do you have to know that this was a child? And, some years you seem to say, Well, you do, and we'd say, "Well, put it in the bill," and you'd say, Well, I don't have to put it in the bill; everybody knows it.

But, today, when Senator Abate talked to you about what the prosecutor has to prove, I think I heard you say -- and that's really my question to you, whether I heard correctly. I think I heard you say that the prosecutor does not have to prove that the person knew that the performer in this pornographic video, whatever it is, was an infant -- not an infant -- was a minor. Did I understand you correctly?

SENATOR JOHNSON: Senator, you know, we have debated this before, as you said, and you've always approached it from the other side, saying that this bill should say that the person who possessed the material knew that that person was under 16. You know, they don't have

any way of knowing. It's a judgment call, almost, isn't it?

I mean a child is pretty obviously a child if its on a bear rug and it's lying on the rug, and it's less than a year old. But what I'm saying here is they should have known this child was under 16. We don't have to prove that they knew that the child was under 16, but they should have known that there was a child under 16.

SENATOR LEICHTER: But, Senator, that I must tell you really disturbs me because, as we know, people develop differently. Some develop very quickly. Some develop very slowly. You are saying, then, that someone who goes in to or buys a video, a sexual X rated video, and then without any intention of consuming child pornography, but it later turns out that that performer was 15-1/2, now, that person is subject to a Class E felony, and that's why we have asked you to put in there that the possession with knowing the contents also includes knowing that this was a minor.

And if you put that in, I will support the bill. If you don't put it in, then I think that it's a terrible loophole that is going to catch people who I don't think you intend to subject to these penalties.

SENATOR JOHNSON: Well, Senator, all I can tell you is that there is an affirmative defense, which I mentioned earlier in debating it with Senator Gold, that you were unaware this was a minor under 16 years of age. I mean I think that's pretty clear that you do have a defense in that case. Fifteen, sixteen, you're right, sometimes you couldn't tell the difference, pretty obviously, but the fact is that you do have a defense if that was the case. But child pornography seems to be a separate category, Senator, which is principally child pornography and not just one shot of children and other types of pornographic materials, and so forth.

So, Senator, I would say that you do have a defense right now, and your previous presentations on this bill over the past five

years have said you've got to prove that person knew that person was under 16. There is no way the prosecutor can prove that this person knew the age of this child. They do not know this child. They have no way to know that it's under 16 and they deliberately got it if it's under 16, but they should have perhaps, you know.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 30 are Senators Leichter, Montgomery, Paterson, Santia... Waldon. Ayes 51. Nays 4.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Volker, Senate Print 5479A, an act to enact the Persistent Child Sexual Predator Act and to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: An explanation has been called for.

Senator Volker.

SENATOR VOLKER: Mr. President, this bill, as was read, is known as the Persistent Child Sexual Predator Act. This bill, which is a Governor's program bill, came down last year from the Governor. We passed it, I believe, virtually unanimously right at the end of the session. At the time of the debate, Senator Gold and Senator Leichter pointed out to me in the debate that there was a problem with the bill. We discussed it. The problem was that there was a section that would include a

misdemeanor as one of the so-called predicate felonies, and so forth.

So we looked at it, and we discussed it at the time and, in the meantime, after thinking about it, we decided that Senator Gold and Senator Leichter were right and eliminated those provisions from the bill, and that is the amendment that -- I know, Senator Skelos, you are probably going to beat on me after this is over, but, well, we felt, "What the heck," they were right so, you know.

So, anyways, we amended the bill, and that's the bill that's -

ACTING PRESIDENT MARCELLINO: Senator Volker.

SENATOR VOLKER: Yes.

ACTING PRESIDENT MARCELLINO: Are you suggesting that, as a result of open debate in this chamber, decisions were revised and changed and we're not lockstepped?

SENATOR GOLD: Recommit.

ACTING PRESIDENT MARCELLINO: Thank you.

(Laughter.)

SENATOR VOLKER: That's a very good characterization, one that I was thinking about addressing, but you are absolutely right, Mr. President. As we always try to do in the Codes Committee, we always try to listen to our colleagues whenever possible whether they are Democrats, Republicans or otherwise, and that's how the bill was amended.

SENATOR GOLD: Mr. President. Will Senator Volker yield for a very quick question?

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR VOLKER: Certainly.

SENATOR GOLD: Will you accept nomination as benevolent dictator?

ACTING PRESIDENT MARCELLINO: I think the Chair should rule that question as not germane.

SENATOR VOLKER: My wife asked me that question several weeks ago...

What this provides is that, if a

person is charged with an offense under 7006 of the Penal Law which relates to sex abuse against children under 14 years old and is convicted of a second offense under that section, felony child abuse, children under 14 years old, that person would be sentenced to what amounts to a life term -- an A1 felony, which is 15 to 25 to life -- and, in other words, if the judge saw so, that person actually could be in jail for an absolutely minimum of 25 years and for a maximum, obviously, of life; and that's basically what this bill provides, very simply.

Any questions?

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer.

SENATOR OPPENHEIMER: This is not a question. I just want to congratulate -

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, you want to ask Senator Volker a question on the bill?

SENATOR OPPENHEIMER: No.

ACTING PRESIDENT MARCELLINO: You want to speak on it?

SENATOR OPPENHEIMER: I'm sorry.

SENATOR VOLKER: No, go ahead.

SENATOR OPPENHEIMER: I just want to congratulate -

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, you have the floor on the bill.

SENATOR OPPENHEIMER: Thanks. I just want to congratulate Senator Volker and hope that we will be able to move ahead with this. The idea of requiring a child, a youngster, to try to recall the dates, the times, of when the sexual abuse took place is simply inhuman, and this bill will rectify that, and I hope we will get speedy endorsement, both houses.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Abate.

SENATOR ABATE: Yes, I would just like to make a comment on the bill.

ACTING PRESIDENT MARCELLINO:

Senator Abate on the bill.

SENATOR ABATE: I, too, last year raised the issue that I could support the bill if there was an exclusion of the language detailing misdemeanors.

SENATOR GOLD: Mr. President, point of information.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Yes. Senator Abate did not debate two. She debated one, and then I think we became two.

SENATOR ABATE: Thank you for the recognition of my colleagues.

But what I'm here is not to talk about what I did or did not do last year. It is to compliment again Senator Volker and his staff, because when we raised the issue on the floor and followed up thereafter, they were absolutely willing to take a look at that bill, give full consideration what we as Minority members of this chamber had to say. That's the way this process should work.

That's the way, when we look at bills, if we give full consideration, substant ive debate, and we don't put labels because we're Democrats, our opinions should not be held seriously. Again, you make this chamber a more meaningful chamber, and I compliment the Senator again for his participation and willingness to look at the merits of an issue.

ACTING PRESIDENT MARCELLINO: Senator Gold, why do you rise?

SENATOR GOLD: I am not going to echo the words of Senator Abate because if any more of us say nice things about Senator Volker they will take away his committee chairmanship.

ACTING PRESIDENT MARCELLINO: Read the last section on that high note.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 57, by Senator Maziarz, Senate Print 5434A, an act to amend the State Finance Law.

ACTING PRESIDENT MARCELLINO: Senator Skelos. Excuse me. Senator Skelos?

I'm sorry. Finish reading the bill first, I'm sorry.

THE SECRETARY: -- an act in relation to establishing a transportation mobility revolving loan fund and making an appropriation therefor.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Is there a message of appropriation at the desk?

ACTING PRESIDENT MARCELLINO: Yes, there is, sir.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MARCELLINO: Motion to accept the message of appropriation. All in favor, say aye.

(Response of "Aye.")

All opposed.

(There was no response.)

The ayes have it. The message is accepted.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MARCELLINO: Of the message or of the bill?

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, this bill is a Governor's initiative. It creates a transportation mobility revolving loan fund to be funded with $5 million in federal funds for use in the Niagara Frontier Region of New York.

The money is to be utilized for advanced technology mobility improvements in international transportation in the Niagara Frontier Region of New York State and the Niagara Region of Ontario, Canada. The details of this were outlined in an application submitted by the DOT, and the grant was awarded

by the Federal Highway Administration in April of 1994.

This legislation is necessary in order to access those federal funds.

SENATOR LEICHTER: Senator, if you would kindly yield.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, do you yield to a question?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Do you know under what provision of the Federal Highway Law this money is coming to New York? As I gather, it's monies that's being provided by the federal government, and what we're doing by this bill is making it available to the Niagara Frontier, whatever the name of the -- it is the Niagara Frontier Authority; right?

SENATOR MAZIARZ: Yes.

SENATOR LEICHTER: Okay. Now, my question is under what provision of the federal law is this money coming into New York State?

SENATOR MAZIARZ: I don't know the exact provision of the federal law, but it's a provision to increase the mobility of traffic at international border crossings.

SENATOR LEICHTER: Okay. Now, is the receipt of this money by the state and its allocation, as we're doing by this bill, does this diminish other transportation money that we're getting from the federal government?

SENATOR MAZIARZ: No, it does not, Senator.

SENATOR LEICHTER: Good. Thank you.

SENATOR MAZIARZ: You're welcome.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Maziarz yield to a question, Mr. President?

ACTING PRESIDENT MARCELLINO: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO:

Senator yields.

SENATOR DOLLINGER: The bill provides on page 2 that the Commissioner of Transportation shall have the power to make loans from this fund; is that correct?

SENATOR MAZIARZ: Yes, that is correct.

SENATOR DOLLINGER: Are there currently loans in place for which these funds are specifically earmarked? I just want to make sure I understand it. This is a sum of money that comes from the federal government; the Department of Transportation makes it available. Will they put out RFPs, solicit projects for this international mobility fund?

SENATOR MAZIARZ: Yes. None of that has been done yet, Senator. There is a memorandum of understanding subject to the approval of this legislation of this memorandum of understanding on allocating these funds. It's been signed by the Ministry of Transportation of Ontario, the New York State Department of Transportation, the New York State

Thruway Authority, the Niagara Frontier Transportation Authority, the Buffalo and Fort Erie Peace Bridge Authority, the Niagara Falls Bridge Commission, the Erie County Executive and the Erie County Legislature.

SENATOR DOLLINGER: Again, through you, Mr. President. Just so I understand it.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, do you yield to another question?

SENATOR MAZIARZ: Yes, I do.

SENATOR DOLLINGER: All of those agencies have agreed to establish this fund, and then they will handle the process of -

SENATOR MAZIARZ: Yes.

SENATOR DOLLINGER: - applications and disbursements?

SENATOR MAZIARZ: That's correct, Senator.

SENATOR DOLLINGER: One final question, if the sponsor will yield.

ACTING PRESIDENT MARCELLINO: He

yields.

SENATOR DOLLINGER: Is the government of the Province of Ontario also putting money into this fund?

SENATOR MAZIARZ: I don't know the answer to that question, Senator.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Stachowski.

SENATOR STACHOWSKI: Just to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Stachowski to explain his vote.

SENATOR STACHOWSKI: I'm voting in support of this bill. It's a bill that brings to a conclusion, at least from New York State's perspective, what is necessary to expend some federal dollars that were made available by the Secretary of Transportation, who had personally came to Buffalo to meet with the Western New York delegation, which, I think, was before Senator Maziarz took office, and he met with not only the Western New York state representatives but also local officials, talking about money to be made available to speed up border crossings, and I think that's the pot of money that, quite possibly, was identified for Senator Leichter where this money is coming from, which federal pot.

For those reasons, I'm voting in support of this bill.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

with the consent of the Minority, we're going to just go back to motions so we can make an amendment.

On page number 6, I offer the following amendment to Calendar Number 29, Senate Print 654A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: Amendments are received. It will be done.

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

ACTING PRESIDENT MARCELLINO: Senate will be at ease.

(The Senate was at ease briefly.)

Senator Bruno, we have completed the controversial calendar.

SENATOR BRUNO: Yes, Mr. President. I offer up the following resolution amending the Senate rules which were handed up yesterday and ask that the title be read and move for their immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following resolution:

Senate Resolution 2205, amending:

Section 6, of Rule II of the Senate rules, in relation to the powers of the Temporary President;

Section 1 of Rule III of such rules, in relation to powers of the presiding officer;

Rule V of such rules, in relation to the hours in session;

Section 8 of Rule V of such rules, in relation to a motion for the previous question;

Subdivision (a) of Section 9 of Rule V of such rules, in relation to reconsideration of bills;

Sections 1, 2, 3 and 4 of Rule VI of such rules, in relation to introduction, sponsorship, printing and forms of bills;

Subdivisions (a) and (e) of

Section 9 of Rule VI of such rules, in relation to introduction of resolutions on Thursdays and Fridays and resolutions recalling bills;

Section 1 of Rule VII of such rules, in relation to membership of standing committees;

Paragraph 1 of Subdivision (a) of Section 3 of Rule VII of such rules, in relation to attendance of members at committee meetings;

Subdivision (b) of Section 5 of Rule VII of such rules, in relation to reports of a committee membership;

Subdivision (a) of Section 3 of Rule VIII of such rules, in relation to the Third Reading Calendar;

Subdivisions (a) and (b) of Section 4 of Rule VIII of such rules, in relation to the filing of amendments;

Section 6 of Rule VIII of such rules, in relation to final passage of bills;

Section 8 of Rule VIII of such rules, in relation to recall of bills;

Subdivision (f) of Section 2 of

Rule IX of such rules, in relation to presence of a quorum;

Section 3 of Rule IX of such rules, in relation to debate on bills;

Subdivision (b) of Section 4 of Rule IX of such rules, in relation to statements by Senators;

Subdivision (g) of Section 2 of Rule X of such rules, in relation to admission to the floor of the Senate;

Section 1 of Rule XI of such rules, in relation to suspension of rules;

Rule XIII of such rules, in relation to expenditure reporting; and

Rule XIV of such rules, in relation to freedom of information and to repeal Section 3 of Rule X of such rules relating to Freedom of Information.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, might we indulge the Majority for a brief explanation of the significant rule changes that

will go into effect?

ACTING PRESIDENT KUHL: Senator Bruno, Senator Paterson has requested an explanation of the proposed rule changes.

SENATOR BRUNO: Thank you, Mr. President.

Mr. President, this morning we had a rather exhaustive debate as related to the adoption of the Journal and during that debate, we covered a lot of what we might have covered normally at this time.

Why are these rules before us for a vote? Bottom line, to create a more orderly process in this chamber so that we can more efficiently and more effectively do the work that we are elected to do in this chamber.

I commented this morning, Mr. President, that there isn't anything that we're doing here in this chamber that hasn't already been adopted in the other chamber. Now, does that mean that everything they do we do and what we do they do? Not necessarily. But we should take the best of what they do and what we do and

maybe exchange thoughts and ideas.

I also commented, and will again, that these rules changes are all part of Robert's Rules of Order, and also part of Mason's legislative rules of order and two-thirds of the 99 legislative bodies in the United States function by Mason's rules, and Senator Paterson in his comments talked about the potential of calling the previous question, which is one of the rule changes before us, in that it was perceived to be a gag rule.

That's not the case. Let me read from Mason's legislative manual. "There is no more reason for requiring a two-thirds vote to order the previous question than to require a similar vote in deciding the main question, and such a requirement is at variance with the basic principle of majority rule."

So we're talking about Mason's, Robert's, rules of order, pertaining to majority rule. Now, there are two pages worth of rule changes. There are three or four that really are of consequence to the people in this

chamber. One of them has to do with germane ness of debate, and germaneness of debate is exactly that. The Chair will have a responsibility to make a judgment on whether debate is germane to the issue before the floor. Now, that is common sense. That is good judgment; that is good business.

Another rules change talks about not being able to single out any member on the floor, asking them questions that's unrelated to what they are involved in or prepared to talk about; and, Mr. President, the necessity of this in the Assembly as well as here is that some people -- no one in this room, but some people would single out a member, maybe somebody new to the chamber, ask them what they would think would be embarrassing questions on a subject that they would have no reason to know anything about other than how they want to vote, by way of explanation and detail. So the Chair would make a ruling that a person was not required to answer.

Calling the previous question is

an accepted procedure in any house that meets, convenes and debates, and it is part of almost any parliamentary procedure. Basically, what it says, while you're debating, the leaders of Minority or Majority or their designee -- and that's important to understand; that is, the leaders, both sides of the aisle or their designee, can call the previous question, and that stops debate on that particular issue. Now, that is probably -- and I know Senator Gold was talking about that primarily, I think, this morning because that sounds heavy. It sounds as if someone wants to suppress discussion. It's not the case. It wasn't the case in the Assembly when they adopted that rule, and it isn't the case in this house. Not at all.

And let me remind my colleagues that we had adopted a rule a lot of years ago - I believe it was a lot of years ago -- that the leader in this chamber has the responsibility and privilege to star a bill. Any bill that's on this calendar, the leader can star and there will be no debate on that bill on this floor

unless the star is removed, and then the debate takes place 24 hours later. Now, that's the prerogative of this chamber adopted by the Majority members in this chamber to give the leader some control over the proceedings in this chamber.

Mr. President, I have not once in the year that I have served as leader invoked that rule in this house. Not once have I starred a bill. We might have asked one of our colleagues if they would star the bill, and they usually do, but never once have I just said "Star the bill" without the sponsor being involved in that decision. Now, that's been my style. That's the way I function, and that's the way I operate, and that's the way I would continue to function and operate.

So for my colleagues, who I know they are being good natured and well intention ed, who this morning talked about benevolent dictatorship and that kind of thing, and I know you do it smilingly, but as Senator Paterson well pointed out that no matter how you smile

the message is still the same, and it's a negative message, and it is not really appropriate to the occasion, because what we're doing is truly intended to help this body in the process of governing be more responsive to the people, more open.

When I talk about openness, Mr. President, I believe at about 1:00 o'clock today -- and I believe I'm correct -- we issued a joint release with the Speaker of the Assembly that we will have full expenditure review of the Senate and the Assembly budgets made public. We released that together today. I had committed when I became leader that that would happen for the first time in my knowledge in the history of the Legislature, where we will have full and open public expenditure review. That means every line item, members, how you spend your money on both sides of the aisle. The Majority and how we spend our money, the Minority and how you spend your money, will be open to the public.

Now, we weren't dragged kicking

and screaming, the Speaker and I, his colleagues, our colleagues, to do that. We have done that because we feel that open and responsive government is better government.

And so what we're doing here today is just a continuation, Mr. President, of our being responsive to the needs of the people of this state who elect us to represent them, and I want to assure my colleagues that there will be none of the concerns that were represented here this morning, demonstrated in this chamber, because we exchanged greetings at the beginning of this session, Senator Paterson, Senator Connor, and we made a decision on behalf of the people of this state that we would go forward together, hand in hand, and govern and do things in a collegial, good-natured, representative way, and we are doing that, and this process of disagreeing is a healthy process. That's what governing is all about.

Working together doesn't mean that you have to agree on everything, but we are debating an issue that is of great consequence

and we are doing that together. We will disagree on this issue and we will disagree on other issues, but we will agree more times than not; and after this exhaustive debate, we will come to some conclusions and we will vote, and rest assured that the people of this state in the great majority will be better served by what we do here today.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President. Would the distinguished Majority Leader please yield for a question?

ACTING PRESIDENT KUHL: Senator Bruno, do you yield?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Thank you. Senator Bruno, first of all, I'm glad that you are aware that we wanted to clear up any of the personality or character references that are

diminishing from this debate, and we're just going to try to stick to the issues. The issue I would like to address to you is the one about the move for closure of debate.

At the time that you raised it a couple of hours ago, you cited Robert's Rules of Order. Now you've cited Mason's Manual of Legislative Procedure, a document that I would suggest to you is not used very much in accordance with legislative procedures in the predominant numbers of legislative bodies around the country. But since you first raised Robert's Rules of Order, my statement was that Robert's Rules of Order does raise the issue of the move for closure of debate and says, if I may quote it, that it is "sometimes referred to as the gag rule". That wasn't my attempt to be shrill. That is what is said in Robert's Rules, and says that, actually, the simple majority should not be the amount that would deem to be necessary to close debate; that that should be by a greater margin than that. That's why I pointed that out to you.

Now, I will look at Mason's Rules of Legislative Procedure, but I'm trying to suggest to you that the United States Senate does not have this as a rule because of the fact that it is perceived -- and I'm going to look at that now and thank you for handing that over - it is perceived that that is an attempt to close debate, and you will agree -- and this is my question -- that the subjective determination of a presiding officer, even with good intention, can often be in just the process a detriment to the process because there's misunderstanding.

We had a situation in here last year, where Senator Connor was explaining his vote and was asked whether or not his explanation of his own vote was germane to the topic. It was just an oversight by the presiding officer, but in a situation involving a serious disagreement between the two sides of the aisle, I'm suggesting to you that this is a very dangerous part of the rules change, amid some very good rules changes, but this is one that I think we need to reconsider, and would

like to hear your response.

SENATOR BRUNO: Thank you very much, Senator. We looked at Robert's Rules and we looked at Mason's, and we made a choice, of the two, that Mason's was more representative; and I believe that the Assembly made the same choice, in that they operate in the same procedure with a majority, and that's how we got where we are. So we did look at both and, again, I just want to be reassuring that what we're doing here is intended to create more efficiency and more responsiveness on our behalf with the public that we serve and not to serve any other purpose other than that.

SENATOR PATERSON: One last question.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you for answering that question, Senator Bruno. We have a number of rules changes here and this is an issue that I would just like to ask for clarification. Under our current rules, under

Rule IX, Section 3, which is pointed out to me by Senator Dollinger, we have the opportunity - and it could be an immense opportunity in this situation -- to vote on some of the rules changes separately.

How are we actually going to vote on this? Because as I pointed out earlier, you have some things in here that I think a number of members on this side of the aisle are quite pleased with. You do have that particular issue that, although Robert's apparently didn't concur, we found Mason; and if Mason hadn't been written that way, I'm sure we would have found Dixon, or somebody.

But the point is that I suggest that maybe we might want to vote on these when we finish with the debate -- not to have separate debates but just to vote on some of the rules changes separately.

SENATOR BRUNO: That was a question, Senator?

SENATOR PATERSON: Yes.

SENATOR BRUNO: I would feel

that, again, we talked about this for a couple of hours earlier today. We'll talk about it probably for another couple of hours this afternoon, and we are really talking about rules changes that are in total, or individual lines and instances but in total. So it really would seem to me that we are better serving ourselves and the public by talking about these rules changes as they interrelate to each other and move them forward in unison rather than take each individual line and try and act on it, pretty much as we might a very comprehensive bill that might be on the floor where we don't try and take it apart but deal with it in its totality.

So I would, respectfully, request that we go forward in this nature, dealing with all of the rules together and act on them together.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: You have a list.

ACTING PRESIDENT KUHL: I have a

list going. Senator Lack is next, then Senator Dollinger, then Senator Leichter, then Senator Gold.

SENATOR LACK: Thank you, Mr. President.

I rise to make some general comments about, if I can, these rules changes and I've heard, you know, if not Mason's so I guess then comes Dixon's, and I heard earlier this morning, when I walked in, this is some kind of Republican gag rule.

Let me, if I can, explain for a moment perhaps, some of my colleagues who don't know, exactly what Mason's Manual of Legislative Procedure is.

It is -- first of all, the copy right and publication rights are owned by the National Conference of State Legislatures which this body, the Assembly, and all other states contribute to each year. The rights to Mason's Manual were willed by John Mason to NCSL. NCSL formed a Mason's Manual Revision Commission, which is comprised of such prominent Democrats

as Pat Flahaven, Chair of the Minnesota House; Betty King, the Clerk of the Texas Senate; Don Schneider, the Clerk of the Wisconsin Senate.

It is also used by the United States Information Agency under this Democratic Administration as the Manual of Legislative Procedure to be taught to emerging parliaments in 12 African countries, in Ukraine, Mongolia, China and, as Senator Bruno mentioned, it is used by 69 of the 99 state legislative bodies in the United States.

Mason's itself in terms of its citations uses both of Cushing's works, Dementor Haskill's Precedents of Proceedings in the House of Commons, Edward Wakefield Hughes' American Parliamentary Guide, Thomas Jefferson's 1781 Manual, the Massachusetts Manual from the State of Massachusetts Legislature, the New York Legislative Manual of 1936 to 1948 and '49, Thomas Reed's A Manual of General Parliamentary Law, Robert's Rules of Order, Alice Sturgis' Standard Code of Parliamentary Procedure, John Tillson's Parliamentary Law and Procedure,

Tillson's Manual of Parliamentary Procedure, and the Rules of the United States Congress, as well as Rufus Hoople's A Handbook on Parliamentary Practice, all of which are cross cited under Mason's Manual of Legislative Procedure.

If anybody would like, I can go on for about 20 minutes on the difference between Mason's and Robert's and why Mason's was designed for legislative use and, indeed, is used in the vast majority of legislative bodies in the United States.

Senator Bruno went over with you the sections in Mason's with respect to calling the previous question. If I can, I would like to mention two other sections in Mason's, Section 121, on breaches of order of the house, and Section Number 101 on debate is limited to the question before the house. In both those sections, it says a member who resorts to persistent irrelevance or to persistent repetition after the attention of the house has been called to the matter may be directed to discontinue the speech, by the presiding

officer. This is the procedure that is used in the vast majority of American legislative bodies now and has been since Paul Mason started writing this manual some 60 or 70 years ago.

For any member of this house to try to stand up and say that this is a Republican gag rule that we're putting forth or anything else when the vast majority of the editors and members of the Mason's Manual Commission, one, are Democrats and, two, those who are not are in the minority, are either Republicans or nonpartisan. This is American democracy. This is the most used publication and the publication that is proselytized as much as possible throughout the world by the United States government of our American democracy.

As a matter of fact, Senator Bruno, if I can, on behalf of the National Conference of State Legislatures and, in effect, violating a rule in Mason's to bring in a document that isn't part of the house, Senator, I would like to, on behalf of NCSL, give you the whole Manual of Legislative Procedure that is

owned by NCSL, the latest 1989 edition. This one, by the way, is in English.

Just six months ago, NCSL at the request of the federal government published a Spanish language edition, and it is being utilized in all the South American democracies, as well.

But I would strongly suggest that, since we are one of the few parliamentary bodies in this country that doesn't use Mason's, that we adopt, besides our own rules, Mason's as a backup document and that everything in it, Senator Paterson, as I said, is well understood and you are welcome to look at any of the citations yourself.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: If Senator Lack would yield either for a question or to give us the 900 number so that this infomercial will end and we can buy a copy of this document.

All I was trying to point out,

Senator Lack, was that the document had not been in discussion for an hour and 40 minutes, and I was following the information that was given to me under Robert's Rules of Order; and if you are now saying that you want to supercede that with another document, I will read it and I'm not going to presume to comment on it until I have taken a look at it; but knowing that it has been used in 69 of the 99 legislatures and in Mongolia and China, which I wasn't sure you would be willing to admit, but, nonetheless, I am going to look at it and see if under Section 121 if you are not correct. I'm sure it is valid, and I will look at it.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger on debate.

SENATOR DOLLINGER: Mr. President, I don't get many privileges as a single Senator, but I think under the current rules I have the right to ask that these questions be divided and that each of these amendments be considered separately by the house. I would invoke my privilege under Rule

9(3)(A). I believe this proposal meets all of those requirements; and, therefore, I would ask that this be divided into separate parts, that we vote on each of these individually, because each of them contains different statements of fact. They contain distinct principles; and, frankly, I have a series of amendments to propose to these rules to change them, and I would like to deal with each one of these amendments in order.

ACTING PRESIDENT KUHL: Certainly, Senator Dollinger, under the rules of the house, Section 3A, there's reference -- and that's a Rule 9 -- there is reference to the divisibility of matters before the house, and you do have the right to make that motion that this resolution to be divided for that purpose, and the Chair will entertain what you have just said as a motion to do that.

SENATOR DOLLINGER: Mr. President, I would simply ask there's nothing in the rules that requires that it be made by motion. It is a privilege granted to each

Senator in this house. There is nothing that suggests it has to be made by motion. It is a right of a Senator provided that the factual circumstances are met.

As you read that rule, it says, "The division called for embodies a distinct principle." All of these involved distinct principles whether the, quote, "gag" rule to the notion of whether the Temporary President will have control over property that's owned by the Senate and the extent of that control, very distinct different questions. There's statements of fact. They meet distinct principles. There's nothing that suggests this is subject to the vote of the house, Mr. Chairman.

You will find in the rules, we specifically say, "It will be done upon motion." Upon motion, a Senator may have the right to do this. Upon motion, a Senator may have the right to do this. Nothing in these rules requires that this be subject to a motion. This is a privilege created under the rules for each of

the 61 people in this house provided that the factual circumstances are met. It appears to me, based on the facts of this proposal, we clearly meet the test under 9(3)(A), and I'm clearly entitled to that division without a vote of the house.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I'm not sure it's wise to comment on -- I don't know if it's appropriate, but to comment on Senator Dollinger's -

ACTING PRESIDENT KUHL: Chair rules that it is not appropriate at this time.

I will state, as in the previous fashion relative to the adoption of the Journal, that when there is no provision in the rules that calls for a motion, I'm outlining it, Senator Dollinger, and this is not subject to debate; that is, very simply, that you have made a motion, in the Chair's terms, to have the resolution which is currently before the house subdivided in accordance with this rule.

The Chair would rule that it is the determination of this house to make that decision as to whether or not that is divisible, and that that is a motion properly put for this house to decide.

Now you can -- I would remind you that this is all going to be part of the two-hour time limit which is part of the resolution that is before the house, and it would be the Chair's ruling, in addition to the one I have just made, as a method of amplifying that ruling that the rules are not set up, particularly this provision, for the purposes of allowing you to extenuate the debate beyond the two-hour time period. So if you wish to challenge the ruling of the Chair, you will still be subject to the two-hour time limit which is provided to any article or any provision that is before this house.

So with that, the question is on the motion of Senator Dollinger to divide this particular provision.

SENATOR DOLLINGER: May I be

heard on that ruling, Mr. President?

ACTING PRESIDENT KUHL: Pardon?

SENATOR DOLLINGER: May I be heard on that ruling of the Chair that it requires a motion?

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Would Senator Dollinger indulge me for one moment? Because with Senator Bruno's permission and Senator Dollinger's permission, the press release of Senator Bruno sets forth accurately, I believe, that there are a number of things that we're talking about -- as a matter of fact, seven of them on top -- which probably we could just separate and get rid of in terms of a vote, and make one or two things which are in issue. Now, as Senator Bruno knows, with regard to the Resolution Calendar we often do that. We pass the whole Resolution Calendar. We hold one or two out, and we have a discussion.

So, Senator Bruno, I don't know,

maybe there is a compromise here, Senator Bruno. From our point of view, there are these seven things the Committee on Racing, the Energy Committee issue, the calling bills from the Governor, the clarifying the attendance reports, those things which we probably can just get rid of.

Excuse me, Senator Lack. Your voice is very good, so I can hear. Nobody is suggesting, Senator Bruno, that we're going to take two hours on everything. We're talking about how the voting takes place. I didn't see Senator Paterson say we want two hour times nine issues. We're not talking about that. We're talking about taking seven matters and getting rid of them, and then I assume we will debate the other matters within the two hours. I don't think that's a problem, but just take separate votes on those things, and I think that if they are as significant as you believe them to be, that you would feel very proud to just have those separate votes. I don't see where that is a problem.

SENATOR DOLLINGER: Mr. President, I'm not sure who has the floor at this point.

SENATOR GOLD: Mr. President, I also understand that there's some concern about the integrity of the rules and breaking things up. Nobody is suggesting that bills be subdivided. As a general rule, in the beginning of a session, the Majority offers its rules. We vote on it as a package. Senator Bruno, I don't see anything wrong with that.

But I think that, as an accommodation, Senator Bruno, there's nothing wrong. You were the one, Senator Bruno, who made comments earlier today, which I take very seriously, about us cooperating and working things out. I think if you take these seven things, maybe we can even vote on them now, get it done; and then within the context of the two-hour debate, we are going to discuss some of the other matters and then take a couple of votes. So I think you are talking about two votes. I don't think that's destructive of this

house, and maybe it's a compromise that saves us some time and energy.

I don't know, Senator Bruno, if you want to address that or not.

ACTING PRESIDENT KUHL: Senator Bruno, would you wish to respond to Senator Gold's inquiry?

SENATOR BRUNO: Mr. President. Yes, in response, it is my understanding that the resolution that is before the house is in total, and we have been talking about separate parts of that total resolution, and it's my understanding that the present rules of the Senate dictate that the Chair will make a judgment on whether that is so, and it is also my understanding that the Chair has ruled that this resolution is before us to be voted on in toto, and the prerogative of others who disagree would be to appeal the ruling of the Chair and, as you pointed out, that would relate to part of the time frame of the debate on this bill.

ACTING PRESIDENT KUHL: Yes, Senator Bruno. Just to reaffirm the ruling of

the Chair, the ruling of the Chair is that Senator Dollinger has the right to make a motion relative to the divisibility of this particular resolution, and that motion is before the house for debate.

Now, Senator Dollinger, do you wish to appeal the ruling of the Chair?

SENATOR DOLLINGER: Yes, I do, Mr. President. May I be heard on the motion of the ruling?

ACTING PRESIDENT KUHL: Pardon?

SENATOR DOLLINGER: May I be heard on the issue of the appeal of the ruling of Chair?

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

SENATOR DOLLINGER: One of the reasons why the debate over rules is so important is because, at least under my understanding, once you have rules you agree to abide by them.

With all due respect to the

presiding officer, with all due respect to his judgment, when I read this rule, when I'm looking for guidance as to what power has been given to each individual Senator in this house, in the power given constitutionally to this body to enact laws for the people of this state, in the power given to this body to adopt rules that govern the way we do business, I read a rule that says "if the question in debate contains several points." It's undisputed, I believe. I never heard anybody say, thus far, that this doesn't involve several points. It involves, in fact, changes to approximately a dozen of the rules of this house. Each of them are separate points.

"A Senator" -- it says, "a Senator." It doesn't say has to make a motion. It doesn't say that you have to ask for approval of the house. It doesn't say that you have to ask approval of your leader. It doesn't say that you have to ask for approval of the chairman of the committee. It could say all of those things. It could draft it to say all of

those things. But this body, some prior Senate, decided in using its majority power to create a rule that gives every single Senator the right to do, what? "He may have the same divided." He can have it divided provided the division called for -- the only limitation on the power of any one of 61 of us is that it embodies a distinct principle -- the division embodies a distinct principle or a statement of fact.

Not one word that I have heard thus far suggests that those factual criteria for exercising a power given by these rules to a single Senator are not met in this case.

Why do I want to do this? Two reasons. One, with all due respect to the Temporary President, he talked about how important it was because we don't subdivide big bills. We don't take single items that are pending before the house, complicated bills, and break them down into several specific points. I can understand that rule as it would apply to a big bill because those bills come out of committee. They are considered by the Codes

Committee. They are considered by the Insurance Committee. They are considered by the Judiciary Committee. They are big bills. They get lots of review in committee. We get lots of notice we have ample opportunity.

None of those things happened in this case. These rules were told to the minority 24 hours beforehand. Actually, 22 hours ago we were told there would be changes. We were never served. I have never been served with any copy of these proposed rules. Our counsel somehow obtained one. I wasn't given notice. I wasn't given primary due process.

So what I seek to do is to use the rules that we're now about to change to exercise my prerogatives as a single Senator to ask that they be subdivided. If you believe in the rules, if you believe in the rules of this body and the power of any one to pass rules that should be abided by when they have been approved by a majority of this house, it seems to me you must vote to overrule the determination of the Chair, because there's nothing in the facts that

says I'm not entitled to it. There's nothing in this rule that says I'm not entitled to it; and, in fact, the procedure here, with this last minute springing of a whole new set of rules, calls for it's enforcement in this case.

I will point out one other thing. I have five or six changes, proposed amendments to the rules, a proposed amendment to the proposal from Senator Bruno. It is my intention -- if this ruling of the Chair is overturned, I will bring forward those changes one by one, because I think we need to change these proposed changes. I don't think they go far enough. I think they go too far in some instances, and I would like to have the opportunity to individually introduce an amendment to this resolution to change the way that it's been proposed. The only way to do that is to divide it into separate parts. I will propose an amendment to separate parts.

If you believe in the rule of law and if you believe in the concept of rules, seems to me you have no choice but to overturn

the President's determination. I'd simply point out, if you allow this ruling to stand, not only are you stripping the power that all 61 of us have but you are also demonstrating that the rules don't mean anything.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the appeal to the ruling of Chair?

(There was no response.)

Hearing none, the question is on the appeal of the ruling of the Chair that the motion by Senator Dollinger to allow this resolution to be divisible is not possible under the rules.

All those in favor of upholding the ruling of the Chair, signify by saying aye.

(Response of "Aye.")

SENATOR LEICHTER: Party vote in the negative.

SENATOR SKELOS: Party vote in the affirmative.

ACTING PRESIDENT KUHL: Party vote in the negative. Party vote in the

affirmative. Secretary record the results. Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 36, nays 19; party vote.

ACTING PRESIDENT KUHL: The ruling of the Chair is upheld. It is sustained. The motion is before the house.

Senator Dollinger, do you wish to speak on the motion?

SENATOR DOLLINGER: Mr. President, I believe I just lost the right and the power to do this individually. I can't believe that we're departing from the rules. We're about to have a debate on the rules, and someone has said the rules don't mean anything.

But, I guess, under the ruling of the Chair I will now move that this be divided into separate questions and that each amendment to each rule be considered separately by this house. I hate to think that the rules of law

have no meaning, but I guess -- I can't come away with any other message.

ACTING PRESIDENT KUHL: Senator Skelos, on the motion.

SENATOR SKELOS: The rules of the Senate do not allow a resolution to be amended, and this is a resolution.

If Senator Dollinger would wish at some time to offer up proposed rules changes such as Senator Bruno did in a timely fashion, then he certainly would be entitled do so.

SENATOR DOLLINGER: Point of order, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Would the Deputy Majority Leader show me where it says that in the rules?

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me just a -

SENATOR LEICHTER: Point of order.

ACTING PRESIDENT KUHL: Senator

Leichter, why do you rise?

SENATOR LEICHTER: Point of order. I believe there is a motion on the floor that has absolutely nothing to do -

ACTING PRESIDENT KUHL: Senator Leichter, there is already one point of order on the floor. Let me address that first, will you please.

SENATOR DOLLINGER: If I may.

SENATOR SKELOS: In the rules when we talk about amendments, it refers to bills. It does not refer to resolutions.

SENATOR DOLLINGER: Mr. President, point of order.

ACTING PRESIDENT KUHL: Senator Dollinger, you already stated one point of order. I'm trying to address that right now if you will just give me a second.

SENATOR DOLLINGER: I apologize, Mr. President. Overanxious.

ACTING PRESIDENT KUHL: Senator Dollinger, thank you for your indulgence. I apologize for the delay, but it's taken me a

couple of minutes to review the appropriate sections of the rules and those as they apply. It would appear as though the point of order which Senator Skelos has raised is in fact founded; and while I don't have to explain that ruling to you, I think it's important that you understand the basis of my ruling.

In researching the rules, I go through and under Rule VIII, I find that there are provisions in that, particularly Subdivision 4 of that particular rule, that talk about amending bills, and other portions of those particular provisions talk about the proper procedure for, in fact, providing notice and the necessary notice that's required to, in fact, bring it before the house. I would note and it would be my ruling that, because there is such particularity with regard to amending bills, it would appear that there should be the same kind of particularity that would be there relating to the amendment of resolutions; and that without exclusive provisions being included within the rules, that it is the ruling of this chair that

there is no provision for amending resolutions. Therefore, your motion which you have brought to divide or, in essence, to amend the current resolution before the house is out of order.

Now, it seems to me that that leaves you with the provision of either adopting this resolution that's before the house or defeating it, and that is the ruling of the Chair which you are entitled to appeal.

SENATOR DOLLINGER: Can I have an inquiry from the presiding officer -- is that a permissible parliamentary -- just to explain the ruling so I make sure I understand it, Mr. President.

ACTING PRESIDENT KUHL: I think in this particular case I would be more than happy to try to explain it as best I can.

SENATOR DOLLINGER: Does Robert's Rules of Order govern the Assembly in the absence of the specific rules in the Senate?

ACTING PRESIDENT KUHL: We're in the Senate, number one, and I don't really want to get into that. What I particularly want to

do is confine my discussions to this particular ruling of the Chair -

SENATOR DOLLINGER: Right, but -

ACTING PRESIDENT KUHL: -- with regard to this particular motion that you have made, and I have ruled the point of order is well founded and that your motion is out of order.

At this point, I have laid it out because there needs to be some specificity in the rules, okay, to in fact allow that to happen; and with it not being provided for, my interpretation that it is not, therefore, authorized under the procedures of this house.

So with that as a ruling, you are left with the option to either appeal the ruling of the Chair if you'd like or you can let the ruling stand.

SENATOR DOLLINGER: I appeal the ruling of the Chair.

ACTING PRESIDENT KUHL: Do you wish to speak on the ruling of the Chair?

SENATOR DOLLINGER: Yes, Mr.

President, I do.

ACTING PRESIDENT KUHL: Senator Dollinger, on an appeal to the ruling of the Chair.

SENATOR DOLLINGER: Mr. President, here we go again. We get notice one day at 4:00 o'clock in the afternoon. The next morning at 10:00 o'clock we debate these rules. I've got suggestions, specific things that I think would improve the rules, would preserve the integrity in this house, would preserve the integrity of each member of this house, and I'm not going to be able to do it.

I'm not going to be able to do it because I'm now ruled out of order when there is nothing in the rules that says it's out of order, so I can only conclude again, Mr. President, that the rules have meaning to some people but no meaning to anybody else. I don't understand it.

ACTING PRESIDENT KUHL: The question is on the appeal of the ruling of the Chair to find Senator Dollinger's motion to

divide the resolution out of order.

All those in favor of upholding the ruling of the Chair, signify by saying aye.

(Response of "Aye.")

All those opposed to the ruling of the Chair, nay.

(There was no response.)

The ayes have it. The ruling of the Chair is sustained.

We're back to debate on the main resolution. Senator Dollinger, you still have the floor.

SENATOR DOLLINGER: Mr. President, let me tell you what I would have done so the body might know what I would have done in these rules.

On the first rule that deals with the extension of the Temporary President's authority over a Senator's office, I would simply have moved in this body to say, the Temporary President can have authority over property except the personal property in a Senator's district or LOB office, which property

shall be under the control of each Senator. I don't know, frankly, why Senator Bruno wants to have control over what happens in my office when, frankly, the people of the State of New York are the people I'm accountable to and not to Senator Bruno. I think we're giving too much power to the Temporary President to control our own offices. I think every one of the 61 members in this house ought to be offended by the notion of what this involves.

I also would have amended the rule to require that the germaneness issue which, of course, is an issue that frankly with the same presiding officer in the Chair was the subject of some extensive debate last year on the issue of germaneness, as the presiding officer may recall, involving my particular attempt to determine the definition of germaneness. I believe that this provision is overly restrictive. I would change one word in the rules. One word. Instead of saying "the" question under discussion, I would have said "any" question under discussion, expanding the

scope of what is determined to be germane, somewhat limiting the power of the Temporary President.

I would also have changed one other thing, and that is the provision that requires the previous question to cut off debate. I know it hasn't been used often in legislative assemblies, but I would simply say that we ought to have the same rules as the United States Senate. We ought to recognize that a motion for closure requires the votes of 38 Senators, all of them present and voting at the same time. It seems to be that that would strike a better balance between the openness that the Senate Majority Leader talks about and the reality of what's contained in these rules.

I believe this starts us down the road to stifling debate. I think it starts us down the road if not carrying us to the conclusion where the Majority Leader and his colleagues, voting by majority, can take away the rights of any Senator, and I would just simply point out -- what's the chance that it

will happen? -- it happened ten minutes ago when a ruling in this body specifically said every Senator has the right to have it divided, and this house held it doesn't mean that. Don't bother to take the rules seriously. Forget the rules. You've got the power. You've got the votes. The rules don't matter. The rules don't matter. You know them like that; they don't matter.

I wonder sometimes. All of my colleagues across the aisle who want to send all of those messages to people in this state about how important rules are, how they ought to abide by the law. We don't abide by them ourselves. How can we send that message with any kind of clear and coherent voice?

I think this is a farce, Mr. President.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. Senator Bruno, earlier today, said

on a number of occasions, "Well, we're just doing what the Assembly is doing. I've learned from Speaker Silver."

Let me say that this house has its own traditions, its own practices, its own rules. I came to this house from the Assembly many years ago, and there was a marked difference. This house is run in a more collegial fashion, partly reflects the fact that we're 61 members -- at that time I think we are 60 members -- that more is done in collaboration, cooperation. Certainly the Majority is always in the position to enforce its will, but there isn't the same sort of efforts to suppress the Minority as I found in my experience in the Assembly.

Now, what we're seeing is that some of the practices of the Assembly -- and maybe some of them are necessary because as I said the larger number of members of the house, but some of them are not. We have criticized the Assembly. I don't think anybody here on this side of the aisle would get up and say the

Assembly and its practice is a model of a democratic body.

Now, what has happened is that as Republican Assembly members come here as Republican Senators, they bring grievous offenses that they felt were committed while they were members of the Assembly and they bring those into this house.

Now, there are two lessons to learn from the experience that you had in the Assembly. One is that's a terrible way of doing things and I'm not going to do it this way because I'm going to opt for democracy and openness and collegiality and deliberation. That would be one response. The other response is to come here and to say, boy, now that I'm in the majority I want to suppress the minority the way I was suppressed when I was in the Assembly.

Unfortunately, instead of the dovish attitude, instead of what I would submit is a more reasonable attitude, we find that hawkish attitude, and I'm distressed that people

who I find generally so reasonable, as Senator Skelos and Senator Velella, and as I look around there are so many of you who came from the Assembly and probably still bear bitter remembrances of your service there; that your attitude here is, "Why are we giving any rights whatsoever to the Minority? Let's do to the Minority in the Senate what was done to the Minority in the Assembly when I served there." And I can understand, coming in here as abused persons and still bearing your wounds and your scars from your service in the Assembly that you have taken the road of suppression rather than the road of collegiality.

So, Senator Bruno, you did not serve in the Assembly, but I can tell you from my service there that the Assembly not in all instances is the model of the way that we ought to do things. We have our traditions, our practices and, by and large, they have served us well, and I think that we are a more deliberative body as a result, a more collegiate body, but that's being changed by these rules.

Now, we have a strong leader system in this Senate. Senator Bruno probably has more powers than the legislative leader of such great democracies as Senator Lack called our attention to as Mongolia and China, who used Mason's. If you used Mason's, you are a great democracy. I guess that's the test of whether you have a democratic government.

But I would just say that the powers of the Majority Leader, enormous as it is -- I mean he can deny you paper, phone calls. He has all the powers that you would want and then some, but that obviously was not sufficient for Senator Bruno. He wants to limit the rights of the Minority to get up and debate. He is doing this in two ways. One is by introducing the practice of ruling somebody out of order by not being germane, and I certainly could not improve -- I don't think anybody can improve on the point that Senator Gold made that it is such a subjective standard, and you know and I know that that's going to be used against the Minority. If you are uncomfortable with what

somebody says or you think it's a little late in the afternoon and you would like to go and relax, then the way to cut off debate is to say, well, the member isn't germane.

Secondly, you try to limit debate and the rights of the Minority to present their viewpoint by now providing a new means of cutting off debate at any time; and when you consider the fact that we have a two-hour rule -- which, by the way, the Assembly doesn't have. They didn't have in my day and I still think they don't have, so that they are acting in a different environment and a different context in regards to some of these rules.

We have a two-hour rule. In my experience, it's rare that the debate on most issues goes on. In the course of a session, there may be four or five bills where the full allotted two hours will be used up, so I don't know what you gain or why you need this effort to try to limit debate in this house. Actually, it's just going to boomerang, as I pointed out, because it will mean that you will have all

these contentious debates because the president or the acting president will say it's not germane. I challenge the ruling, and then we have a two-hour debate on the ruling. It doesn't make sense. You don't need it. You don't need it.

I used to argue in Senator Anderson's day -- he had the power to star bills -- you don't need it. You can keep any bill from coming to the floor as it is. Why assume this extra power when it's unnecessary and when it's so blatantly anti-democratic? Now, to Senator Bruno's credit, he hasn't used that power. I don't think Senator Marino ever used that particular power, but you still want it in the rules. It's still stated in the rules.

Maybe we're going to find that also the provision as to germaneness will not be used. I certainly hope so because I think that all of us, whether we're in the majority or in the minority, that we ought to have a certain pride in the free exchange of ideas, of reason and challenges, if you will, to legislation.

That's what we're sent up here to do.

I made the point earlier today that one of the reasons that you really don't want to spend time in this chamber is that you make your decisions in secret conference. Senator Bruno jumped up and said, okay, I'm going to open up my conference. At least, he will open up the conference that's scheduled for Monday, January 22. Maybe he'll start a practice, start something that should be done; that when in a conference decisions are being made as to how you are going to act on legislation, that certainly ought to be made public and I'm sure that the Democratic conference will respond similarly.

The third rule that I find particularly reprehensible is the power of the Majority Leader over all facilities, over all property of the Senate. I don't know what it means. I don't know, can he go to my office and say, "Well, I don't like where your secretary sits; I want her to sit there; I want you to move the Xerox machine"? What is the aim of

it? What's the purpose?

I think that in toto what we see here is really the tyranny of the Majority. It's an effort to deny the Minority the ability and the right to function, to be effective. In part, it's your embarrassment, I think, in having to defend positions at times which are pretty indefensible, put forth legislation that maybe you can't defend. What are you afraid of? What are you afraid of in debating issues? What are you afraid of in saying that the Majority Leader has to take possession of anything and everything that he sees and can touch which he claims is part of the Senate.

I think this is a serious step backward. It's a break from the traditions of this house. I think it unfortunately brings us into practices of the Assembly and maybe some other chambers, which nobody has ever accused of being democratic. I think our aim, our effort here, should be to be more open, more democratic. I think it's more important that we do a good job than we be efficient. I know it's

important to run the trains on time, but it's also important to get the train going in the right direction and I would like to see a little more attention paid to that.

So I regret these rules changes. They put us in the wrong direction. They are tyrannical. They are dictatorial. They do inhibit democratic practices and customs in this house.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

In view of the fact we've really made a lot of the points, I'll try to be on the brief side.

The first observation I'll make is that Senator Bruno was our leader during 1995 and I can imagine that there may have been one or two uncomfortable moments, but he certainly was able to run his job under the existing rules, and so it seems to me that the rules changes are really unnecessary. Somebody said

earlier, it's like a cannon to take on a minor -- a minor situation, but in response to Senator Lack, who I respect very much, any rules of any legislative body must be looked at in a context, and when you go out throughout the United States -- I know years ago I went to a couple of meetings of NCSL. It was very, very enjoyable.

I met members of Legislatures where it was from the farmland areas and maybe they didn't meet every year and the type of legislator was reflective of the state. You had people from farm country and whatever. There are Legislatures in this country where people get elected and when they come together, their party affiliation doesn't mean what it means in New York. So the point is that you have to have rules that fit the situation.

Now, whether we like it or not - and some of us like it and some of us very much do not like it -- New York State is ultra political, and you can see that when you look at the bills that come out on calendars and so many

other things, so we have to look at our rules in that context.

The issue here of the pacific - of the specifics that you are offering bother me for a number of reasons: For example, we have a two-hour debate limit. If we now have a rule that says you can move the previous question, I don't see anything that says that can't be moved after ten minutes, so are you now telling me that the two-hour rule means nothing and that you can end that in ten minutes?

On the issue of members not being asked questions if they're not involved in a debate, I want to say the following because I've heard, you know, some of the scuttlebutt that this rule is aimed at me. The fact of the matter is I don't know anybody on this side, Senator Skelos, who has used the debate opportunity to try to embarrass a member. I can't -- as a matter of fact, I'm looking now at one of your distinguished new members on the other side who I had occasion to have some debates with last year, and I would use that

gentleman as a character witness. I don't think anything I ever said to him or anybody ever said to him in a debate was with the attitude, "This is a freshman here a week or two new and we can embarrass the individual." I don't think that's ever, ever been done. So I think that, you know, we can set up straw men or women and then change the rules, but it really has no meaning.

I made my comments earlier and I'm really not going to repeat them all now. I think that you are making a mistake and you're making an unnecessary mistake because you have been able to run this house and do whatever you wanted to do and still allow free and open debate. I see no reason to change.

The last comment I will make - and I'm sorry that Senator Bruno is attending other work so he had to leave the chamber and we understand that, but he made a comment that he issued a release or had a meeting with the press with Assemblyman Silver earlier today and that they've agreed to make public the expenditures of the Senate. I found that interesting. He

also said that he didn't have to be dragged to do that.

Well, I'll tell you what's true and not true in my perception of that. Certainly I can't hold Senator Bruno responsible for his predecessors, but certainly the concept of open -- opening the books is something that we have fought for years -- for years, so if you want to take your Majority, the answer is yes, we have taken your Majority, dragging and screaming to that point, but what I'm really interested in is that my recollection is that Senator Bruno said last year that he would make last year's figures public, and my understanding was that he even said that, with Mr. Sloan's permission, if Mr. Sloan allowed it, that after December 31st, we were going to see how every penny of taxpayer dollars were spent in '95.

Now, I interpret Senator Bruno's comments earlier today as being a change in that and I hope I'm wrong, and if Senator Bruno hears me, maybe he can correct the comments. I'm now getting the opinion that Senator Bruno is now

saying that, you know, six months from now, he'll let people know what happened in the first three months of this year. Last year is now seemingly disappearing into the land of Oz.

Now, just so people understand what that means, it means that by the time we get to elections, you in the Majority will be protected, at least for this year, from the public really knowing what happened because you will have the capacity to be very frugal in the first three months and then do everything you want to in the next six months before the election to do all the shenanigans you've always done and maybe some of it will come out after the election, maybe some of it won't, but with all due respect to Senator Bruno, I'm glad that he makes the numbers public. I just think, though, that there is a breach of a commitment if he doesn't make the '95 budget available.

And having said that, I will tell you that if you are insisting on one vote, we will give you one vote and I will vote no, and I'm not voting no, for the record, because I'm

against the committee on racing and gambling - gaming. I'm not going to vote no because the official name of the Senate Energy Committee is being changed and all of that kind of nonsense.

The only one last thing which I think -- I know Senator Skelos is very, very good at this kind of stuff and I don't want him to forget something because there is one great maneuver that Warren Anderson pulled and, Senator, you may want to do this, you know, and I hope that Senator Connor doesn't get mad at me for alerting you to this great technique, but I remember when we wanted separate votes on questions of overriding a governor's veto line items, you people said "No, it's no vote. We voted once" and then you ordered the Clerk of this house to create, I think it was 182 or 400 or whatever, separate roll calls, so not only did we not get to vote individually, but you guys in your infinite gall then created roll calls that didn't even take place, and some judge who I think had a bad night the night before said, "You can do anything you want."

Maybe now that we've made the motion of separate votes, make us vote once but create the roll call.

I mean, you people want this to be the land of Oz and what can I tell you? That's the way you're doing it. I think you're going too far, but I guarantee you one thing, because I owe this to you out of the -- out of the depths with which I love every member of the Majority. You change the rules, you change them every day you want, you're not going to quiet us. You're not going to take our freedom of speech because we're going to find some way within the rules. We've always done that. So it's a shame you've forced people to do that. It's shame that we can't walk in here and look each other in the eye and just say, "Look, vote any way you want. Say anything you want, and the will of the Majority be done." That would be so easy to do. If you don't want to do it that way, we will have to find some other way to do it, and then you can argue to the press, as Senator Bruno does -- today's debate is the best

example -- oh, there he is. There's my leader. Best example -

Would Senator Bruno yield for one quick question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno yields.

SENATOR GOLD: Senator, you made the comment earlier -

SENATOR SKELOS: I believe you have to conduct debate from your chair, Senator. (Laughter.)

SENATOR GOLD: I would ask that the Chair waive the fine in this one case.

Senator Bruno, I'm sorry. You indicated earlier, and I was glad to hear it, that there was some kind of press conference and you've agreed that the expenditures of the Senate will be made public.

My question is, I recall last year your comment that at the end of 1995, that something would be put out which would explain

every single penny and expenditure. Are you now abandoning 1995 and are you only going to deal with 1996, or will we, in fact, get for 1995 what you publicly promised we would get?

SENATOR BRUNO: Mr. President, I want to thank Senator Gold for the question and for an opportunity to clarify what's in that press release.

People don't always hear what others say. This is not a revelation to many of you. Studies have been made and some of my colleagues have heard this before but, Senator Gold, it's been proven over and over and over, that 70 percent of what you say or I say to someone, they either don't hear, they don't understand your intent, and this is a perfect example because you are 30 percent right and 70 percent wrong.

SENATOR GOLD: That's better than I usually am.

SENATOR BRUNO: And I say that respectfully because I said we will make full disclosure as part of our conference starting

January 1st, '96, that is correct, and that is exactly what we will be doing as related in this press conference.

I had some of my assistants research what we actually said because there was some contention that I might have said that we would be talking '95 reported on January 1st, and I was concerned about that because many times I, unlike many of you, am not clear in what I'm saying. It was pointed out that I was very specific in saying January 1st, '96. That's what we will be doing. January 1st, '96, which is exactly what I said and the Speaker, by the way, has said, mechanically, we -- if we wanted to and technically could not go back retroactive because we didn't have the technology and the computers and the software of recording the specifics and the detail that we will be reporting to the public going forward from January 1st, '96 on. So even if we wanted to go back to '95, we're not equipped, not here and not in the Assembly to do that, so we didn't have a press conference either, and I just say

that; it was a press release that you may have in your hand that we did jointly. We didn't do a press conference.

SENATOR GOLD: Senator -- if the Senator will yield.

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

SENATOR BRUNO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: I understand what you said about people hearing and understanding and all of that, but know that's the reason I'm asking the question, so I can get it really clear. In other words, as we stand here now, as I understand it, whether it was a commitment or not -- and you're saying a commitment was not stated properly by me -- the fact of the matter is as you stand here now, there is no indication, as I understand, that the Senate will make public the expenditures that were done in 1995 on a line-by-line basis, is that correct?

SENATOR BRUNO: That is correct. It will be January 1st, '96 forward, from then on, and our disclosures will be very similar to those made in Congress, full disclosure by member and by Majority and Minority in terms of what represents their staffing.

SENATOR GOLD: Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the rules change resolution?

Senator Paterson.

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

If the Majority Leader who's answered a number of questions today would yield for one further question.

ACTING PRESIDENT KUHL: Senator Bruno, do you yield to Senator Paterson?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, the

part of the rules change that relates to personnel who are allowed on the floor and also the control over property around the Senate parlor, maybe I would just start by asking what was the catalyst for this kind of rule change? We've had a long-standing rule about who might be on the floor and we're not aware if there were any violations or anything that caused us to feel that it was in need of some addendum.

SENATOR BRUNO: Excuse me, Mr. President. I am just being briefed because the question surprises me. What we're doing is sort of putting in rules what the practice is now in this chamber, and there's some question about who has access to this chamber, and we are clarifying by these rules that guests are welcome in the chamber in an orderly fashion and indicating that in the rules, and it's more for clarity than for change. So I'm not sure that you will see any change in anything that goes on in accessing the chamber. It's more an orderly procedure that we're putting into the rules.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: What's in the rules now is where it says the Senate parlor and we've changed it to the Senate floor, that's what caused me to think that because of the change in the physical location description, and so I didn't know the answer to the question. That's why I asked it, to try to understand. Was there anything that was prompting the change or -- if what you're saying is that we're just codifying it. I thought that the signal that there was some change was the change in the language, changing it from the parlor to the Senate floor.

SENATOR BRUNO: No. I didn't understand it either, Senator, so thanks for the question, but it really is truly just clarity.

For instance, we may have a guest in the chamber today -- you may have a guest, and some member might object to that guest being in the chamber and ask that that guest be removed from the chamber. So we are simply clarifying our rules so that you can have a

guest and others that are welcome into the chamber can be here and someone in the chamber, one of your colleagues can ask for their removal. It's that kind of thing that we're just trying to correct, nothing sinister in any way.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Very good. That's a clarification. I understand it well. Thank you very much, Senator Bruno.

Just on the rules changes.

ACTING PRESIDENT KUHL: Senator Paterson on the resolution.

SENATOR PATERSON: On the resolution, just to speak to this particular part of it, we did have a situation in here last year that was very sensitive that I just want to raise in this discussion on this particular part of the rules change to this resolution in which the lobbyist for a piece of legislation was in the chamber. However, the lobbyist tragically was a family member who was victimized by the

murder of another family member, and while it was most appropriate that the Senate and members hear from her because of her unique experience, some of the members who were voting on the legislation felt a little uncomfortable about the legislation not wanting to in any way suggest that we diminish this tragedy by casting a vote against the actual legislation. I certainly hope that in the future that we'll be cautious because there was certainly no objection to this individual being present in the chamber and actually being referred to, but we do have to bear in mind that when we are arguing legislation, that there is, in our rules, a restriction against those who are actually desiring passage of a piece of legislation exerting any undue influence even by their presence even as well intended as it may be in that proceeding. I did not know that the rules change was an adjustment to any circumstances that occurred last year. The Majority Leader has assured me that it is not. It seems quite clear in the legislation and I

thank you, Mr. President, for allowing me the time to put those pieces of information on the record.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution?

(There was no response.)

Hearing none, the debate is closed. The question is on the resolution dealing with rules changes. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

Senator Paterson.

SENATOR PATERSON: Mr. President, I would like to open the year by asking for the first slow roll call.

ACTING PRESIDENT KUHL: Senator Paterson has requested a slow roll call. Are there five members requesting such? Being five standing, the Secretary will read the roll call slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.
THE SECRETARY: Senator Babbush.
SENATOR BABBUSH: No.
THE SECRETARY: Senator Bruno.
SENATOR BRUNO: Yes.
THE SECRETARY: Senator Connor.
(Negative indication.)
THE SECRETARY: No.
THE SECRETARY: Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator DeFrancisco.
(There was no response.)
Senator DiCarlo.
SENATOR DiCARLO: Senator Dollinger.
SENATOR DOLLINGER: Mr. President, to explain my vote.
ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.
SENATOR DOLLINGER: Mr. President, I understand the need of a body to have rules and I've certainly discussed my view

of these in the debate and in my motions and in my attempt to sever them and in my attempt to divide them.

Unfortunately, I can only draw one conclusion from my own personal experience today and that is no matter what the rules look like, they won't mean much because the Majority will be able to change them or not respond to them or interpret them any way they deem fit and, frankly, for someone who respects the rule of law, I am disappointed that today's experience tends to suggest to me that the rule of law is really just simply the rule of the Majority.

I'm voting nay.

ACTING PRESIDENT KUHL: Senator Dollinger will be recorded in the negative.

Continue to call the roll slowly.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Farley.

SENATOR FARLEY: I vote aye.

THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
SENATOR GOODMAN: Yes.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoblock.
SENATOR HOBLOCK: Yes.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Aye.
THE SECRETARY: Senator Mendez,

excused.

Senator Montgomery.

(There was no response.)

Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

(There was no response.)

Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

(There was no response.)

Senator Santiago.

SENATOR SANTIAGO: No.
THE SECRETARY: Senator Sears.
(There was no response.)
Senator Seward.
(There was no response.)
Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
(There was no response.)
Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
(There was no response.)
Senator Stavisky.
(There was no response.)
Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(There was no response.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: The Secretary will call the absentees.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Espada, excused.
Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Hoffmann.
SENATOR HOFFMANN: Can I have my name called?
ACTING PRESIDENT KUHL: Senator Hoffmann to explain her vote.
SENATOR HOFFMANN: I was

initially pleased to see that there were some interesting proposals for reform. First, when the new Majority Leader was selected a year ago and upon the initial announcement this year, there were several things that looked very - very positive, very bright, including creating in a rule form something that I had proposed for many years, which is the elimination of the late night sessions, using the same language that I have had in bill form for a number of years now, but I cannot in clear conscience support a series of measures under the guise of reform which would actually limit free speech in this chamber and will further relegate to the hands of a leader, the ability to control the flow of information and the control of legislation in this chamber.

Therefore, with great sadness, I vote no.

ACTING PRESIDENT KUHL: Senator Hoffmann will be recorded in the negative.

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Saland.
(There was no response.)
Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Aye.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stafford.
(There was no response.)
Senator Stavisky, excused.
ACTING PRESIDENT KUHL: The Secretary will announce the results.
THE SECRETARY: Ayes 34, nays 17.
ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Monday, January 22nd, 1966 at 3:00 -- 19... why do I keep saying '66?

SENATOR PATERSON: Mr. President -

SENATOR SKELOS: I'm sorry.

ACTING PRESIDENT KUHL: Senator Skelos, before we do that -

SENATOR SKELOS: If I could withdraw that for a moment and please recognize Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson wants to announce an open conference, I believe, of the Minority.

Senator Paterson.

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

I would like to announce a conference of the Minority in the Minority Leader's Conference Room to be held this year.

ACTING PRESIDENT KUHL: There

will be an immediate meeting of the Minority in the Minority Conference Room following session.

SENATOR SKELOS: Senate will stand in recess, pending return of the Minority from conference.

ACTING PRESIDENT KUHL: The Senate will stand in recess -- the Senate will stand in recess until the return of the Minority from conference.

(The Senate stood in recess from 2:50 p.m. until 3:24 p.m.)

SENATOR KUHL: Mr. President.

ACTING PRESIDENT LARKIN: Senator Kuhl.

SENATOR KUHL: At this time, I'd ask you to call the Senate to order.

At this time, in consultation with the Minority Leader, I'd like to hand up the following committee assignments and ask that they be filed with the Journal. This is on behalf of Senator Bruno.

ACTING PRESIDENT LARKIN: Notice will be filed in the Journal.

SENATOR KUHL: There not being any other business at this time, Mr. President, I move that the Senate at this time be adjourned until January 22nd, 1996 at 3:00 p.m., with all intervening days to be legislative days.

ACTING PRESIDENT LARKIN: Without objection, the Senate stands adjourned until Monday, January 22nd, 1996, at 3:00 p.m., intervening days to be legislative days.

(Whereupon at 3:35 p.m., the Senate adjourned.)