ALBANY, NEW YORK

January 31, 1996

11:02 a.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and join me in the Pledge of Allegiance.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Tuesday, January 30th. The Senate met pursuant to adjournment. Prayer by the Reverend Peter G. Young, Blessed Sacrament Church, Bolton Landing. The Journal of Monday, January 29th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up the non-controversial calendar. And Madam President, would you at this time recognize Senator Padavan.

SENATOR PADAVAN: Thank you.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Madam President, on page 9, I offer the following amendments to Calendar 117, Senate Print Number 667, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

Senator Kuhl.

SENATOR KUHL: Yes, Madam

President.

On behalf of Senator Bruno, on page 5, I offer the following amendments to Calendar Number 58, Senate Print 5597, and ask that the bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR KUHL: Madam President, on behalf of Senator Bruno, on page 6, I offer up the following amendments to Calendar Number 59, Senate Print 5598, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR KUHL: Thank you.

THE PRESIDENT: The Secretary will read substitutions.

THE SECRETARY: On page number 11, Senator Skelos moves to discharge from the Committee on Judiciary Assembly Bill Number 4641 and substitute it for the identical Third Reading Calendar 141.

And on page 15, Senator Velella moves to discharge from the Committee on Insurance Assembly Bill Number 7351-D and substitute it for the identical Third Reading Calendar Number 174.

THE PRESIDENT: Substitutions ordered.

The Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 40, by Senator Levy, Senate Print 322-A, an act in relation to requiring the Commissioners of Motor Vehicles, Transportation and Education, to develop a uniform definition of the terms "school" and "school bus".

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 41, by Senator Levy, Senate Print Number 331.

THE PRESIDENT: Read the last section.

THE SECRETARY: An act to amend the Vehicle and Traffic Law, in relation to distinctive plates.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 47, by Senator Levy, Senate Print 3488-B, an act to amend the Public Authorities Law, in relation to requiring the Metropolitan Transportation Authority to implement and maintain subway station signs.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Marchi, Senate Print Number 3367.

SENATOR PATERSON: Lay aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 118, by Senator Padavan, Senate Print Number 670, an act to amend the Penal Law, in relation to making unlawful immigration a Class C felony.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Oh, lay it aside,

please.

THE SECRETARY: Calendar Number 121, by Senator Volker, Senate Print Number 1113, an act to amend the Penal Law, in relation to the crime of false personation.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 126, by Senator Maltese, Senate Print 4521-A, an act to amend the Penal Law, in relation to increasing the penalty for serious assaults.

SENATOR PATERSON: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number

127, by Senator Volker, Senate Print Number 5499-A, an act to enact the Criminal Procedure Law Reform Act of 1996, and to amend the Criminal Procedure Law.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 174, by the Assembly Committee on Rules, Assembly Print 7351-D, an act to amend the Insurance Law, in relation to extending the expiration date for Article 54 of such law.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 175, by Senator Velella, Senate Print 5926, an act to amend the Insurance Law, in relation to determining extent to which a pre-existing condition limitation has been satisfied in certain contracts.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

Senator Bruno, that completes the non-controversial reading of the calendar.

SENATOR BRUNO: Madam President, can we at this time take up the controversial

reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 88, by Senator Marchi, Senate Print 3367, an act to repeal Section 630 of the Business Corporation Law, relating to the liability of shareholders for wages due to laborers.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: This is an old bill, Madam President. We discussed it last year and -- I can't argue the merits.

THE PRESIDENT: Excuse me. Senator Bruno.

SENATOR BRUNO: Would Senator Marchi suffer an interruption and ask the Chair to recognize Senator DeFrancisco for an announcement.

THE PRESIDENT: Senator Marchi, would you like to invite Senator DeFrancisco to make an announcement?

SENATOR DeFRANCISCO: Yes, I'd

like to call and ask the Majority Leader to call an immediate meeting of the Tourism Committee in the Majority Conference Room.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: We will call that meeting, Madam President. Thank you.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: The current law makes the top ten shareholders of a corporation personally liable for the wages of employees should the corporation go bankrupt. I can't really debate the merits. I wish the state of Delaware changed its laws to conform to what we have here now, but the point is that there are very few incorporations take place in the state of New York.

This does not affect publicly held corporations, but the smaller ones that make an end run and incorporate in Delaware or some other jurisdiction and then they can do whatever they want when they come here. There are very, very few incorporations that take place. This would at least bring them back to

the state of New York.

On the merits, it's easily avoided or evaded. I should say evaded more than avoided.

THE PRESIDENT: Thank you, Senator Marchi.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

If Senator Marchi would yield for a couple of questions.

SENATOR MARCHI: Yes, Senator.

THE PRESIDENT: Senator Marchi will yield.

SENATOR PATERSON: O.K. Now, Senator Marchi, we are talking about non-public corporations, I would assume because in the legislation you say that they are quoted -- if they're not quoted on the stock market and they're not listed in the national register so we are talking about non-publicly held corporations.

SENATOR MARCHI: Right.

SENATOR PATERSON: Thank you very much.

If the Senator would continue to yield.

THE PRESIDENT: Senator Marchi?

SENATOR MARCHI: Certainly.

SENATOR PATERSON: Senator, when this section was first adopted, which research reveals was in 1961, can you tell me what the reason was that the Legislature chose to put this section in at that particular time, and I guess what I'm leading up to is why you felt the necessity to change the law. In other words, what has changed from then to now that would necessitate removing the section?

SENATOR MARCHI: Well, I can see a good motive for introducing and adopting this legislation. I may have voted for it at the time. I was here, so it's probably on my conscience. But the effect has been, of course, to -- it's easily avoided and evaded by just going to another jurisdiction and then they can do what they want here. There's no liability.

Now, if I'm wrong, well, then I stand corrected but these are the -- these are the facts.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. I don't know whether or not you're wrong, Senator Marchi, but let me suggest that wouldn't it be the non-publicly held corporation that would be least likely to conduct this kind of forum shopping based on the fact that they probably don't have the resources to go into another state?

SENATOR MARCHI: I -

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I agree that that, on the face of it, it would seem to me that the smaller ones would not go to the bother, but that's not the -- it doesn't prove itself out. The -- they incorporate -- very, very few incorporations take place in the state of New York.

There are other provisions in the

law that are easily evaded and avoided and this is one of them, and it's not in the record.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

I want to move to the issue of the employees. What remedies do the employees have? In other words, they're not in the financial position we'd assume as the top 10 shareholders. What remedies do they have in this period of time where we have spiraling unemployment, where we have a changing labor practice, where we have a number of problems that workers are having?

These are just the working people. These are just the individuals who are employed by corporations. The corporation goes under. What remedy do they have to try to get the money that they feel they earn?

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: The number of cases that can possibly come up if they happen

to incorporate in the state of New York but there are so few that it's not a factor. There just aren't any. I mean they go into another jurisdiction and circumvent that period.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. I actually agree with Senator Marchi, that there have been very few instances where the employees have brought these kinds of actions against the corporation. What I am somewhat concerned about is that at this particular time, with 177,000 New Yorkers having lost jobs recently, a 6.4 percent unemployment rate, that this would become an option that would be exercised by employees and that we're about to remove it from the law. In fact, we have a situation right now where the employees would actually fall and go right alongside the other creditors in this kind of an action and we think that between the shareholders, and we understand the problems they may have and the employees, we would assume the former, under the

"deep pocket" theory, to be better able to sustain the loss particularly since the wages were something that were earned and, therefore, I do not encourage the adoption of this legislation, but I do want to thank Senator Marchi for his gracious answers.

SENATOR MARCHI: Madam President.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I just want to add to that, Madam President, that this takes effect prospectively so that at that point, I mean it's a prospective action; there's no one who loses any benefits presently.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to a couple questions, Madam President?

THE PRESIDENT: Senator Marchi?

SENATOR MARCHI: I'm sorry.

THE PRESIDENT: Would you yield to a couple questions?

SENATOR MARCHI: Remember last

year on the basic law now.

SENATOR DOLLINGER: Yes, I just have two specific questions.

THE PRESIDENT: Senator -

SENATOR DOLLINGER: Madam President, I'm having some difficulty here.

THE PRESIDENT: I'm having some difficulty hearing Senator Marchi, Senator, through the -

SENATOR DOLLINGER: Senator, through the President, what is the trend in other states regarding the liability of shareholders for unpaid wages to employees? Do you know whether any other states have removed this kind of worker protection?

SENATOR MARCHI: Well, I can't give you precise information on this, but my - from what I understand, there are very, very few who come from other jurisdictions who impose this liability.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Senator

Dollinger.

SENATOR MARCHI: As I said to Senator Paterson, this came in in 1961, in the train of circumstances that called for this type of legislation, but the fact has not been a happy one.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Marchi will yield to just one other question.

THE PRESIDENT: Senator Marchi.

SENATOR DOLLINGER: Under current law, my understanding is that the officers, shareholders and directors of a corporation, small corporation, can be held liable for unpaid taxes, personally liable for unpaid taxes, the theory of that being that their payments to the state of New York -

SENATOR MARCHI: Right.

SENATOR DOLLINGER: -- are the kind of responsibility that we're not going to allow them to use the corporate form of doing business.

SENATOR MARCHI: I wouldn't want

to see that changed.

SENATOR DOLLINGER: Well, I guess that's my question, Madam President. Why would we protect the State of New York's interest in our income but not protect an individual worker's right to their income?

SENATOR MARCHI: The -- I would imagine that every state, acting in some enlightened self-interest, would have similar provisions.

SENATOR DOLLINGER: Madam President, I'm having some difficulty.

THE PRESIDENT: Yes. Senator Marchi, do you have your mike on?

SENATOR MARCHI: Yeah. O.K.?

THE PRESIDENT: Thank you.

SENATOR MARCHI: I imagine that every state must have comparable legislation to protect their own revenue stream at whatever there is. It's in enlightened self-interest to do it, but the net effect of this is just it's an invitation to go somewhere else, and they do, plain and simple. There are very, very few

incorporations take place in that category in this state.

SENATOR DOLLINGER: O.K. Madam President, on the bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Senator Marchi, you and I had this discussion last year as you recall, and I think we just have a slightly different philosophical view about what the statute is and what it does.

I understand the problem that there may be evasive techniques that corporations can use to avoid the reach of this statute, but I believe that the beneficial purpose that drove this Legislature in 1961, I would assume perhaps even with your consent, Senator, to put this in our law, that that beneficial purpose still exists.

The theory is that a worker's payments -- we have a number of worker beneficial provisions in our law -- we require, for example, that they can't be paid by check

unless the employee says they're going to be paid by check. You would theoretically have to still pay them by cash. Even today, I think we still have that in our law. We require that they be protected by Workers' Compensation, that they be protected by employment insurance.

These are not things that we give corporations options to do because we believe it's someone's right to receive income for their personal services which is perhaps one of the most important, if not the most important, building blocks in our economy.

This statute says that a corporation cannot use its corporate form to avoid paying wages. For example, Senator, imagine this circumstance: A corporation is on its last legs. It's producing a final product. It has $100,000 in the bank. It uses all of its employees for two weeks to get the final product out the door. The final payment is made. The president of the corporation and sole shareholder then says, "I've got $100,000 in the bank. I will take that $100,000 out of the

bank, give it to myself and the employees will have no recourse except to go to an empty shell of a corporation to try to get paid."

It seems to me, Senator, that that would be grossly unfair, that that would violate everyone's fundamental assumption of fairness, and from my point of view that's what this bill allows. It would allow the president of the corporation, its sole shareholder, to take money out of the corporation and to tell the employees, "I'm sorry, you can't get paid," and if that's the direction, and I think it's the direction and the consequence of this change, I am fearful that this will send the wrong pledge to small corporations and what it would send to them is the message that you don't have to pay your employees, and I know that -- I know that you don't agree with that, but I see that this bill inevitably leads to that.

SENATOR MARCHI: Senator, you've very lucidly and with great clarity given me aid and comfort for the vote that I cast in 1961, but that's not the experience, and we're better

off, I think, in -- unless we have a uniform law, you know, encourage it in that fashion.

SENATOR DOLLINGER: And I agree with you, Senator, that I wish we had a uniform law, and the Congress of the United States had the courage to pass this kind of worker protective act for the entire nation.

SENATOR MARCHI: Yes, I agree with you. We're together on that.

SENATOR DOLLINGER: And I agree with that. I'm just saying that I think that for us, a state that's led the nation in protecting its right for workers to be paid, that for us now to say we're going to remove that protection is taking New York in the wrong direction and, unfortunately, what it does is it protects the small business entrepreneur who doesn't want to pay his employees.

We don't want to send that message. We want to send a message that says, if you're using our corporate form, you have to use our employees or you're personally liable for them.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, if someone comes to your office and they want to incorporate and they want the best advice possible, the advice they're getting -- I've never had them, but the advice they're getting is to go to another state, and they do. That's what -- that's what happens. We don't get them. So we're on the horns of a dilemma. I agree with you it should be -- it should be a matter of Congressional address, I think.

SENATOR DOLLINGER: O.K. And I - just to conclude, I think, I voted against this last year. I think that when we remove personal liability for the payment of individuals' wages we send a wrong message to everybody in this state. We should be sending a message that, if you work for a small corporation, you're not going to allow that corporation to use its corporate shell given to that individual by us through its certificate of incorporation, we're not going to allow that corporate shell to be used as a tool to foil a worker's right to be

paid.

I think this sends in the wrong direction. I understand the Senator's point about what happens in other states, but I don't think New York should be retreating from its commitment to workers' rights, and the most important right, that to be paid.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 88 are Senators Abate, Dollinger, Onorato, Paterson, Santiago and Senator Stachowski. Ayes 46, nays 6.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 118, by Senator Padavan, Senate Print 670, an act to amend the Penal Law, in relation to

making unlawful immigration a Class C felony.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

This legislation would make alien smuggling a Class C felony and provide for the seizure of assets and instruments used as part of the smuggling of illegal aliens into this country, into New York State specifically. It would make such seizure part of current forfeiture laws.

This bill passed the house last year, was debated and discussed. Be happy to answer any questions.

ACTING PRESIDENT KUHL: Read the last -

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would the Senator yield to a question?

ACTING PRESIDENT KUHL: Senator

Padavan, do you yield to Senator Waldon?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

Senator, can you tell us how much of what you're attempting to cover in this proposal is currently covered by federal legislation?

SENATOR PADAVAN: Senator, we discussed that last year, and I'll be glad to reiterate some of the things that we did talk about.

First, the federal government does have the authority to deal with all aspects of illegal aliens, including the apprehension of those who smuggle them into this country for payment, as well as the seizing of those assets, as they do with drugs.

In New York, however, we also in the category of drugs, have parallel statutes

which serve our best interests in terms of not only keeping those assets but in doing more than the federal government has either had the will or the capacity to do.

Currently, in the metropolitan area, we have over half a million illegal immigrants. The economic burden on our city and our state is enormous, runs into the billions of dollars annually. At the same time, we also see all kinds of terrible things happening to aliens who are being smuggled here. You read about it almost every other day in the newspaper -- kept in bondage, ransoms, all kinds of horrible things.

Clearly, the federal government, because of the enormity of the problem specifically in certain regions such as New York, has been unable to stem this tide of illegal immigration, to deal effectively with the heavy burdens on our state and our city - economic burdens predominantly, but other issues as well, overtaxing of resources, scarce resources.

And so, for these reasons, we think it's appropriate, using the age-old admonition "the good Lord helps those who help themselves," to take action that is for our best interests, desirable and appropriate.

SENATOR WALDON: Would the Senator continue to yield?

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, I have no doubt that the basis for your statements just made in regard to the federal government not clearly carrying out its mandate are based on some data that you've discovered. Would you please give us, if you have it at your finger tips, some indication as to how many cases - potential cases of illegal immigration of the nature described in your proposal, the federal government has failed to prosecute?

SENATOR PADAVAN: I can't give

you any quantitative number, but I think that the existing statistics illustrate that it is happening in New York City as an example. I said earlier, all one has to do is follow the daily papers and read about alien smuggling going on, and those who suffer the most in many instances are the aliens themselves.

So obviously it exists, and it exists in a significant -- to a significant degree. How many individual cases the federal government could have acted upon and did not, is subject to anyone's good judgment, but I would suggest to you that that number is not insignificant.

SENATOR WALDON: Mr. President, if I may continue, if the Senator would continue to yield.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator Padavan,

as you probably know better than I, we are in the throes of a very acute budgetary crisis.

SENATOR PADAVAN: I didn't hear what you said. I'm sorry.

SENATOR WALDON: I'm sorry. I suggested, as you know better than I perhaps, we are in the throes of an acute budgetary crisis. Have you or have any of your designees done a cost-effective study as to how much of a financial burden this would place on New York State if this legislation that you propose -- if this bill that you propose should become legislation?

SENATOR PADAVAN: We have published two reports, the Majority Task Force on Immigration. The most recent report indicates the net cost of immigration, including and substantially a part of illegal immigration, to the state of New York and to our localities particularly the city of New York.

Anything we can do to deter illegal immigration will bring those costs down. When a smuggler knows that the chances of

his assets used in the commission of that crime -- and it is a crime under federal law -- may be seized, if he knows that he stands the potential of being incarcerated as a Class C felon, it is logical to assume that that, in itself, would be a deterrent.

Carrying that logic one step further, if that is a deterrent and the number of illegal aliens coming into our city and state would thereby be diminished, there would be a net savings to the state of New York.

The value of assets seized is not the major issue. Obviously there is value there, but the major savings would be in the effectiveness of reducing the numbers coming into our area, which are a heavy economic burden.

So, therefore, to answer your question very directly, it would be a savings, not a cost.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator

Waldon, on the bill.

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

My colleagues, I believe that Senator Padavan's idea is well founded. He's not a person who, to my knowledge, is prone to frivolous activity. However, I think there is a redundancy if we should pass this which is in conflict with what the federal government already provides for in terms of the finding of these acts in terms of the people who commit them, the arrest and prosecution of same.

The federal government has greater monetary capacity than does New York State, the Empire State. The federal government has a long history of prosecuting people who violate the immigration laws of this great nation; and so I think, despite what's happening here, meaning people coming across New York's domestic borders in violation of federal crime, it is not our role to substitute New York State for what the federal government already does, and I would encourage us not to accept that

burden.

I intend to vote no on this proposal.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

Senator Markowitz.

SENATOR MARKOWITZ: Thank you very, very much.

Senator Padavan, this is not the first time that I've heard you explain bills not only on this issue but any other issues relating to what you see as a problem in New York State as it relates to immigration, and I think some of us, all of us here should express over and over again that immigrants were the ones that made this state great. I know you agree with me on that and I am quite sure, Senator -- in fact, I would challenge any statistic that you have - that the immigrants that have made New York their home have contributed far more than taking from this society, and I think it's important when these bills are presented that we clearly indicate to one and all in our society the

important contributions that those that enter our country continue to make to improving the quality of life for all of us.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

SENATOR MARCHI: The knowing violation -- this is with knowledge and with intent, there's no -- this is not even a classic immigration problem, this is a question of federal law, and they're in violation, there's nothing that should impede the state of New York from complementing the efforts of the federal government. It's supportive of the federal effort.

I don't -- we haven't seen any messages from them saying, Please don't do it. I think it's supportive action on our part and Senator Padavan, I think, deserves support on this bill.

ACTING PRESIDENT KUHL: Secretary -- excuse me. Senator Marcellino.

SENATOR MARCELLINO: Yes. This bill deals clearly with those who would

perpetrate a crime and that crime is illegal immigration.

I'm the product of immigrants that came to this country, and I'm proud of it, and I know of no one in this chamber who would do anything to demean or lessen that impact. We are a nation of immigrants, and I support any law that brings in legal immigration from anywhere, and I believe Senator Padavan does the same.

It is illegal immigration that both damages the immigrant and this country and I think anything this state can do to stem that tide and bring in people who want to come here to better their lives legally, should be en couraged.

I'll vote yes on this bill.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of

November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 118 are Senators Espada, Gonzalez, Markowitz, Montgomery, Paterson, Santiago, Smith and Waldon. Ayes 45, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 126, by Senator Maltese, Senate Print 4521-A, an act to amend the Penal Law, in relation to increasing the penalty for serious assaults.

SENATOR WALDON: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of the bill has been asked for by Senator Waldon.

SENATOR MALTESE: Mr. President,

this bill -- the purpose of the bill is to increase the penalties for assault resulting in a disfigurement, extreme pain or disability and to reduce the evidentiary threshold to the proof of "physical injury" and "serious physical injury" changing the definition of those two terms that are terms of art and to establish evidentiary standards for such proof.

In addition, it lowers the threshold for second and third degree assault by changing those definitions and increases the penalty for assault in the first degree to a B felony from a C felony.

Basically the -- there is a great deal of support for the change from a C felony to a B felony, but the changing of the definitions has apparently aroused some inquiry.

This is an Association of District Attorneys bill. Just recently we had a press conference that was participated in by the Governor, the Attorney General, Assemblyman Brian McLaughlin, the Assembly sponsor, and many

other law enforcement officials including district attorneys from 33 counties.

Basically this is a bill that has been adopted by victims' rights groups, especially many of the women's groups, because it fits very well by changing the definition into protecting many of the abused spouses and abused children.

The change in the definition is one that is recommended in the model statutes. At the Codes Committee meeting, an inquiry was made as to the specific terms within the changed definition, and the definitions are taken from the model statutes, the Model Penal Code as approved by the American Law Institute. Two of the colleagues at the Codes meeting inquired about the specific terminology, and these were rules that replaced the former rules of criminal procedure. These were adopted in 1974, and it was done by the National Conference of Commissioners on Uniform Law, and they are composed of commissioners from each of the states, the District of Columbia and Puerto Rico.

In addition, with reference to this specific terminology and this specific changing of the definitions, I've been advised by "Joe" Hynes, the District -- excuse me, the District Attorney of Kings County, that this language, with minor variation, whether bodily -- replacing "bodily" for "physical" and "physical" for "bodily" which has no real bearing on the definition, has been adopted in 26 states.

Now, one of the problems we have is that in the law we, I suppose, have a maximum expressio unius est exclusio alterius, which basically says the expression -- expression or mention of one is the exclusion of all others and, therefore, since we have chosen to put the definitions right in the Penal Code, the judges, many of whom are very liberal, end up taking the definitions and twisting them out of all rationality and common sense, and I have two illustrations of those, Mr. President.

One is a fairly recent case from the Second Department, April of 1989, and the

judge threw out the conviction for assault on the basis that the complainant did not suffer physical injury within the meaning of the Penal Code, and this is -- this is the facts of the case. The name of the case is the People of the state of New York vs. Kenneth Franklin, a Kings County case.

The evidence adduced by the prosecution indicated that the complainant was hit on the head and passed out, but regained consciousness a minute later. The complainant testified that he felt dizzy and achy for about four or five hours and there was slight bleeding from his head, and then the judge says, Under these circumstances, the evidence was legally insufficient to establish that the complainant suffered physical injury within the meaning of our present definition.

The other case that defies explanation is People of the state of New York vs. Jose Robles. It's a 1991 case from the First Department and this is the reasoning of the learned jurist: "We reduce the assault in

the first degree conviction, however, because the evidence does not establish beyond a reasonable doubt that defendant's third victim suffered" -- this is the "serious physical injury" clause, and then the judge recites: "This victim suffered two stab wounds, one at the base of the neck and one on the right shoulder. The record discloses that the wounds required irrigation, suturing and overnight observation in the hospital and that, therefore, the victim had some trouble eating. He also stayed home from work for several weeks because he had difficulty walking," and then after reciting this litany of disability, the judge says, "Taken together, this evidence does not establish a protracted impairment of health or protracted loss or impairment of the function of any bodily organ."

So what we're attempting to do by this statute is change the definitions, make them so crystal clear that, in addition to the ordinary citizen understanding them, maybe some of our learned jurists can understand them.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Mr. President, would my learned colleague from my home county of Queens yield to a question?

ACTING PRESIDENT KUHL: Are you sure you want to ask?

SENATOR WALDON: I'm positive.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield too Senator Waldon?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator Maltese -- thank you, Mr. President.

Senator Maltese, I'm attempting to understand portions of your proposal, and on line 6 I see the phrase "palpable mark". Can you tell us what that is, what it means?

SENATOR MALTESE: Mr. President, anticipating that perhaps my learned colleague from Queens might ask, and since I had very little idea of what "palpable" meant, I looked

it up in the dictionary, and "palpable" means "capable of being felt or touched, tangible, easily perceived, plain."

So, if we go to the sixth line - I'm informed by Senator Marchi, an eminent linguist as well as a Senator, that it is from the Italian, but I can't pronounce what he just told me.

At any rate, so we have physical -- the presence of a "visible or palpable mark". I guess what we're trying to do is make it very plain especially in the case of abused wives that if a victim has a discernible injury which isn't the case now, the -- it would then fall within the statute and satisfy the requirement of physical injury.

SENATOR WALDON: Mr. President, if the gentleman would continue to yield?

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, on line 7, your proposal reads that "the injury may be," and I quote, "established through the testimony of the victim alone." Could the victim alone establish this palpable mark?

SENATOR MALTESE: Mr. President, I assume that this would mean that if a victim testified that they suffered various ailments that were only visible to themselves, for instance perhaps as a result of an injury to the abdomen, that they testified that they had recurring pain, stomach upset, none of which would be apparent to the naked eye, that that would be sufficient to -- to qualify as "physical injury", at least within the confines of the law if it be -- if the testifying witness was credible.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Mr. President, would the Senator yield again?

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Maltese.

Going down to line 15, your proposal reads "impairment of the function of any bodily member." Suppose someone is kicked in the groin. I'm being very serious now. The pain is severe, but it may not be long lasting. However, if the person giving testimony alone could attest to that kick and say they suffered severe pain, could that not qualify under your proposal for a "serious physical injury" and then result in many, many years of confinement if the person as charged was convicted?

SENATOR MALTESE: Well, Mr. President, as far as the -- Madam President, excuse me -- as far as the definition of "serious physical injury" it is not much different than what it replaced which indicated the protracted loss or impairment of the function of any bodily organ. So while the word

"protracted" -- and that's one reason we're replacing it -- I'm not sure, by the mere reading of it, why that would be applicable to both loss and impairment, but at any rate, the -- it would not seem that the injury described by my colleague would fall within a category that would either be loss -- loss or impairment of the function unless there were some permanent injury and, if there was a permanent injury that could be adduced by other evidence, it seems that it would certainly be "serious physical injury" considering the specific organ mentioned by the Senator.

SENATOR WALDON: If I may continue, Mr. President, if the gentleman continues to yield.

ACTING PRESIDENT KUHL: Senator Maltese, continue to yield? Senator continues to yield.

SENATOR WALDON: I appreciate your continued indulgence, Senator Maltese.

Let's go down to line 18, where it speaks to surgery. For example, someone who

is defending himself from an aggressor and has a tooth broken and a tooth is not knocked out cleanly, but it's fractured in the gum and in order to remove the remnants of that tooth one has to go to an oral surgeon. Would that qualify under "surgery" and elevate this act in terms of the penalty to the level that you're proposing?

ACTING PRESIDENT KUHL: Senator Maltese, would you -

SENATOR MALTESE: It most certainly -

ACTING PRESIDENT KUHL: Senator Maltese. Senator Maltese, could you just think about that for a moment, and pardon the interruption, and the Chair recognizes Senator Bruno for an announcement.

SENATOR BRUNO: Senator, thank you, and pardon me, but I would like to ask that we call an immediate Rules Committee meeting in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate Rules Committee meeting in

the Majority Conference Room, Room 332. Immediate Rules Committee meeting in the Majority Conference Room, Room 332.

Thank you for suffering the interruption. Senator Maltese, the floor is yours to answer.

SENATOR MALTESE: Mr. President, I suppose this is one of those areas that no matter how we go to clarify the law and be specific, that there are some areas that perhaps require some clarification. In this case, I assume that, if I were the lawyer for the defendant, I would argue that that oral surgery did not qualify. Yet, by the terminology, it would seem that it would qualify and just on the merits of the specific case indicated by the Senator, it would seem that the permanent loss or damaging of a permanent tooth would seem to qualify as "serious physical injury".

SENATOR WALDON: Mr. President, would the Senator continue to yield?

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: If you will permit me, Senator, let's create a hypothetical for discussion's sake. Someone wishes to rob me. They have a weapon and, because I'm quick on my feet, we begin to fight. The weapon is dropped, and now we're in a fist fight and because I grew up in Brooklyn and I know a little bit about the streets, I actually am able to get some good shots in on this person, and I injure the initial aggressor.

Can I be charged, even though I was the defendant initially, under this statute if I cause "serious physical injury" to the person who initiated the criminal action against me?

SENATOR MALTESE: Well, Mr. President, I -- I assume that brings in all the normal defenses, and I think the question would be, I assume, whether the specific injury spoken about would end up qualifying as a "physical

injury" or a "serious physical injury".

Senator -- Senator Waldon has indicated the one other section, I believe, robbery, that includes the same definitions, "physical injury" and "serious physical injury" so I -- I guess in all these instructions and specific language, what we're attempting to do is clear the law up here in the Legislature so that a judge in the Second Department wouldn't rule any different than a judge in the First Department, at least within the definitions of "physical injury" and "serious physical injury".

The cases -- the instances brought up by the Senator would seem to be questions that would come before individual judges. What I am saying, Senator, is that this clarifies the situation and rather than leave an unsettled area so that jurists can make judicial law, what we're attempting to do is to legislate and clarify that within certain parameters for the judges.

SENATOR WALDON: May I continue,

please?

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

SENATOR WALDON: Senator, I'm a little bit baffled and confused. I was really trying to focus on primary aggressor language which really seems to be absent in your proposal so that someone who is an innocent minding his or her own business could not subsequently be charged by police and, in fact, prosecuted when all he or she was merely doing was defending self. I don't see that in here.

SENATOR MALTESE: If, Mr. President, what we are -- this is only changing the definitions rather than the prime assault statute. The prime assault statutes are under 120, and they speak about the intent to cause physical injury to another person. So the intent, the requisite intent, is still required in -- to cause physical injury so I don't know that -- none of the other law relating to assault, first, second or third degree, is

changed in any way except that, one, we're trying to change the definitions and, number two, we're trying to increase the penalty.

SENATOR WALDON: Last question, Mr. President, if the learned Senator would yield just one more time.

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

SENATOR WALDON: Senator, have you, in your deliberations about this proposal, had any second thoughts regarding the severity of penalties for palpable marks, for serious physical injury, for the fractured tooth, for the inadvertent puncture, someone in a fight as sometimes happens even between spouses, causes some form of injury and yet that can end up in nine years of imprisonment and, under Governor Pataki's new proposal, as much as 25 years of imprisonment?

What are we accomplishing by such severe incarceration?

SENATOR MALTESE: Well, Mr.

President, one of the areas that we're seeking -- if -- if the good Senator means have I discussed this with other Senators, both Minority and Majority, the answer is yes, as well as with himself; whether other Senators on both sides have come up and talked about especially the changing of the terminology, the answer is yes. We've discussed it with various district attorneys that have called expressing support for the bill.

As far as the severity of the - the assault statute itself, the assault in the first degree, a similar bill -- well, with everything but the changes in the definitions, was adopted -- was adopted unanimously in the Assembly, so I think that the Assembly at least had no problem with increasing the penalties for first degree assault.

Now, if we look at the lowest rate of assault as a former district - assistant district attorney, I know that most of these so-called minor assaults are treated as harassments and they're treated as harassments

as a violation with the maximum sentence 15 days; so -- so it's 15 days. So rather than have a situation where someone who is either constantly abused as an abused wife or a part... a victim of an assault where there are injuries that fall within these categories, it seems that at least justice would require something more than harassment as a violation.

We -- there was a -- a model case where a Marla Hanson was slashed many -- many times in the face and required, I believe at the time it was something like 50 or 55 stitches and they found or at least ruled that it did not qualify as assault in the first degree. It seems, and even though it qualifies -- it would qualify as assault in the second degree, that the penalty did not fit the crime.

The assault one is now a Class C violent felony. Assault two is a Class D violent felony and assault three is a Class A misdemeanor. With assault three, what happens is that the -- the average assault does not fit into assault three, and it immediately falls

down into harassment as a violation and gets treated very cavalierly by both judges and even prosecutors.

The only -- I guess the main point I seek to make in this is that the normal criminal justice system is so beset by multiplicity of suits and causes and defendants and crimes that, before a defendant gets to the point where a district attorney insists on treating even a crime classified as a Class A misdemeanor punishable by up to a year in jail as a misdemeanor, you usually have some prior history of assaults or criminal behavior so that they attempt to treat it as a Class A misdemeanor and just about everybody knows it gets reduced anyway to a Class B or some -- or some violation.

So I don't think that the penalties that we're talking about, a Class C violent felony is minimum of one half the maximum and from four and a half to 15 years. A Class B violent felony is one half the maximum but six years to 25 years.

We're talking about serious crimes, assault in the first degree, assault in the second degree, and even assault in the third degree which is more than a mere harassment, and what we're seeking to do is have the punishment fit the crime.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: First, let me thank my colleague, Senator Maltese, for whom I hold the highest esteem.

On this particular proposal, I see gaps and it causes me trouble in an intellectual sense. I think that the definition of "physical injury", despite your explanation, Senator, is still unclear. I think the bill lacks "primary aggressor" language.

I also have historically, for those of you who have known me a long time, been very reluctant to interfere with judges in terms of their discretion sitting on the bench and

viewing a case first-hand. While we deliberate here in this chamber they are actually trying the cases in their chambers.

I think the omission of duration al requirements in regard to extreme physical pain and loss of impairment, et cetera, et cetera, is unclear in the bill, and I think the standard of proof of serious physical injury may be unnecessarily low.

I understand not only what Senator Maltese is attempting to do but what the prosecutors in this great state are attempting to do, but I find my analysis that they've fallen short and, for those reasons, I will not be able to support this legislation as is proposed now. Perhaps we will get a chance to look at it again somewhere down the road.

I intend to vote no.

Thank you very much, Mr. President. Thank you, Senator Maltese.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Would

Senator Maltese yield to a number of questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator Maltese yields.

SENATOR ABATE: Senator, I applaud your bill which does address the need to punish individuals who are charged with heinous assaults, and there is a need to elevate that from a C felony to a B felony.

My concerns are around the position you're taking around definitions and, in fact, that the definitions clarify and give enough guidance to the judges and district attorneys to make appropriate decisions.

I'm confused about two -- a number of areas, but one in particular. "Physical injury" means, and it lists and it talks about "impairment of physical condition" and then "serious physical injury" talks about "impairment of health". What is the difference between "impairment of physical condition" and "impairment of health" and if that requires physicians' guidance to the judge and district

attorney to make a differentiation between what's "physical injury" and what's "serious physical injury"? I'm troubled by that language.

SENATOR MALTESE: Mr. President, I -- I'm not a medical expert as my colleagues know. It would seem just on a question of definition, "impairment of physical condition" would seem to be some -- some disabling, whether temporary or permanent, of some function of the body that's ascertainable, and "impairment of health" means, it seems to me the -- some condition not readily apparent, irritability and loss of sleep, illness, nausea, intestinal problems, something that would not be -- the phrase is, the -- the difficulty that my colleague has with the phrases is an attempt by, I assume, these framers of the Model Penal Code to cover every eventuality.

I imagine that these commissioners, from all these states, get together, most of them are -- according to the explanation, are judges or attorneys, and I

assume they sit around and they try to figure out every phrase that would cover every -- every bit of terminology that would cover what they wanted to cover, and that's why they came up with impairment of -- impairment of health as opposed to impairment of physical condition.

I -- as I said, these -- this terminology was suggested by the District Attorneys' Association, and upon our inquiry from our colleagues, they then indicated for the first time to us that it was, in fact, from the Model Penal Code that they had adopted it, so I assume that unless one of them was on the actual conference commission, that they just took it in toto after some deliberation and made it one of their prime statutes for adoption.

SENATOR ABATE: Would the Senator continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: But I'm confused. I don't know whether "impairment of

physical condition" is more serious or less serious than "impairment of health" and we are speaking about judges and district attorneys who do not have medical degrees. They will be relying on lay interpretations, and I don't understand the differentiation between these two medical conditions and why we're now saying that if someone has been impaired, their health is impaired, it's serious physical injury, but if your physical condition has been impaired, it's less serious.

I would think that either could be serious or not so serious depending on interpretation. So, Senator, my question, wouldn't it be a better bill putting aside the model code and whatever someone did some place else, wouldn't this be a better bill if we could more clearly define the differences between these two conditions?

SENATOR MALTESE: Mr. President, our present -- our present definitions of "physical injury" and "serious physical injury", look at the definition of "physical

injury", they have the exact phrase "impairment of physical condition" which we've repeated, so there -

SENATOR ABATE: Which I don't have a problem with that.

SENATOR MALTESE: What?

SENATOR ABATE: But if you look at the "serious physical injury," why did you change "protracted impairment of health?" Why did you eliminate the "protracted"?

SENATOR MALTESE: Oh, Mr. President, the reason was that we wanted to make it easier to fit within the definition of "serious physical injury". We wanted to make what was "impairment of physical condition" not fit within a protracted period, so if you have an impairment of -- and I keep going back and forth -- an impairment of physical condition, we, or at least the Model Penal Code -- and I agreed with that section -- did not want to make a requirement of it that it had to extend over a period of time and be protracted.

SENATOR ABATE: By definition,

could you give me an example of an impairment of a physical condition and what is an example of an impairment of health? I really -- I don't understand the differentiation.

SENATOR MALTESE: Well, perhaps an impairment of health would be a sickness, and an impairment of physical condition would be some physical disability, the inability to fully use an arm or a leg, or that would seem at least as a matter of common sense, perhaps not of linguistics, to fit within the -- within the definitions, and so an impairment of health would perhaps be something not readily apparent to the eye, and an impairment of physical condition would be something that would be apparent to any onlooker, I'd assume, or at least be able to be described if not readily apparent.

SENATOR ABATE: Senator Maltese, would you consider sending this back to committee, because I think many of us agree there needs to be rewritten definitions, but to try to work on this language so that every lay

person -- and we gave guidance to police and district attorneys, that there's a differentiation between impairment of health and physical condition, if we could just look at those words, because I am afraid that one judge in one area will be interpreting the law one way, another judge in another area another, district attorneys likewise, and that we as a Legislature will be creating more chaos instead of more clarity and that people will, in fact, be prosecuted for the wrong crimes.

SENATOR MALTESE: Mr. President, I'd be glad in the future to propose -- to examine the proposals and perhaps draft -- have drafted added definitions, I believe most of them are in Section 10 -- to act... to actually define the two conditions spoken of by the Senator. So I think that would be a partial answer.

The other more practical answer why I would rather have it passed by this house at the present time is that the Susan Johns bill that was passed unanimously was passed last

week, that is without these definitions. Brian McLaughlin, the Assembly sponsor, and I conferred yesterday. He advised me that he had 24 Democratic sponsors for the bill as is in the Assembly, so the -- there is no companion for the Susan Johns bill.

So I believe that by the passage of this bill today, we would take one step further toward the adoption of perhaps not this exact bill, but a bill that could be reconciled, where language could be reconciled between the two houses, and a bill that could be adopted into law.

SENATOR ABATE: Thank you.

On the bill, just very, very briefly.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: I asked these questions without having reached a conclusion about whether I was going to support the bill or not.

Having heard you speak and with

the commitment that there will be an opportunity to redefine and clarify and clean up this bill, I will support it, but I still have reservations around the issues that Senator Waldon raised that maybe there has to be written in the bill that if someone is a primary aggressor, there will be justification that will be viewed early on in the arrest proceeding because what we don't want to do is to have women who have been -- are truly the victim, resist the man, scratch, and then there are cross-complaints and both of them are arrested.

We may be able to put in some justification language, some primary aggressor language, and then language that really clears up definitionally what is "physical injury" compared to "serious physical injury".

Many of us, I think most of us, agree that the enhancement is a good idea. So with that commitment of mine that we will seek to clean up the language of the bill, again, with reservations, but I support it with the hopes and commitment that the bill will be

cleaned up down the road.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 126 are Senators Leichter, Montgomery, Paterson, Smith and Waldon. Ayes 50, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Leichter, why do you rise?

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative

on Calendars 88 and 118?

ACTING PRESIDENT KUHL: Without objection, hearing none, Senator Leichter will be recorded in the negative on Calendar Number 88 and 118.

Senator Skelos.

SENATOR SKELOS: Mr. President, just a reminder that the 1995-96 Senate picture will be taken Monday promptly at 2:30. The men, the photographer has suggested dark suits and light colored shirts photograph the best.

Senator Smith, would you like to comment?

SENATOR SMITH: I leave that to Senator Montgomery.

SENATOR MONTGOMERY: The women will be wearing their "power" costumes. Thank you.

SENATOR SKELOS: Thank you, Senator Montgomery.

Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Senator

Abate, why do you rise?

SENATOR ABATE: Yes. I would like unanimous consent to be recorded in the negative on Calendar 118.

ACTING PRESIDENT KUHL: Without objection, hearing none, Senator Abate will be recorded in the negative on Calendar Number 118.

There is no housekeeping at the desk.

SENATOR SKELOS: There being no further business, I move we adjourn until February 5th, 1996 at 3:00 p.m. sharp, intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection the Senate will adjourn until February 5th at 3:00 p.m. Reminder, 2:30 will be a picture of the chamber. Senate stands adjourned.

(Whereupon at 12:15 p.m., the Senate adjourned.)