ALBANY, NEW YORK

May 15, 1996

11:00 a.m.

REGULAR SESSION

SENATOR JOSEPH R. HOLLAND, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT HOLLAND: The Senate will come to order.

Would everyone rise and join me in the Pledge of Allegiance to the nation's flag.

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

In the absence of clergy, can we all bow our heads in prayer, please.

(A moment of silence was observed.)

Thank you. Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 14th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. Prayer by the Reverend Peter G. Young, Blessed Sacrament Church, Bolton Landing. The Journal of Monday, May 13th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT HOLLAND:

Hearing no objection, the Journal stands approved as read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, please remove the sponsor's star from Calendar Number 347.

ACTING PRESIDENT HOLLAND: The star will be removed.

Senator Saland.

SENATOR SALAND: Mr. President, will you please star Calendar 1094, Senate 4059.

ACTING PRESIDENT HOLLAND: Senate 4059 will be starred at the request of the sponsor.

SENATOR SALAND: Yes, Mr. President. It's my bill, not yours.

ACTING PRESIDENT HOLLAND: I know.

Senator Skelos.

SENATOR SKELOS: Mr. President, I hand up the following resolution on behalf of Senator Bruno and ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT HOLLAND: Secretary will read, please.

THE SECRETARY: By Senator Bruno, Legislative Resolution commending Carl W. Risch, Lodge Secretary and Post Exalted Ruler of the Clifton Park Lodge 2466 B.P.O.E., upon the occasion of his installation as state vice-president for the Northeast District of the New York State Elks Association, May 18, 1996.

ACTING PRESIDENT HOLLAND: The question is on the resolution. All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I hand up a resolution and ask that the title be read and move its immediate adoption.

ACTING PRESIDENT HOLLAND: Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution memorializing the Honorable George E. Pataki to proclaim the month of May 1996 as Arthritis Month in the state of New York.

ACTING PRESIDENT HOLLAND: The question is on the resolution. All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Sears?

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Saland. May we please have the title read and move for its adoption, but prior to its adoption would you please recognize Senator Saland.

ACTING PRESIDENT HOLLAND: Secretary will read.

THE SECRETARY: By Senator Saland, Legislative Resolution extending the grateful appreciation of the Senate of the state of New York to Angelo M. Nero, Sergeant-at-Arms, in recognition of his faithful service.

ACTING PRESIDENT HOLLAND: Senator Saland.

SENATOR SALAND: Mr. President, thank you for recognizing me.

It is indeed an extraordinary pleasure for me to rise and say some genuinely fond things about a man who has served us well as a Sergeant-at-Arms, now for I think quite longer than we even deserve, Angelo. We know we're not the easiest people at times to serve.

You've been a marvelous gentleman, a man who has -- has enriched and every day contributed to really the well-being of this house.

The resolution at great length talks in terms of your valuable contributions to your community, talks about your life of public service. While we certainly would like to join with you in any number of those endeavors that you've been involved in, there's one particularly that I would hope that none of us ever have the opportunity to have the benefit of your fine work, and that is your position as Columbia County Coroner. That I would hope would befall others.

Angelo has served us and served this institution with the kind of quiet competence, general good will, certainly a willingness to work with and work for each and every member of this house, 61 strong. He's been a credit to the entire staff of the Sergeant-at-Arms who serve us so admirably. He's been really a credit to this institution.

We thank you for everything that you have done for us. We -- I'm sorry to see you depart, but we know that it's only for the best of reasons, because short of falling on bended knee, I'd love to have you stay, Angelo. We wish you nothing but the best and thank you and we'll always remember your service with the greatest of appreciation.

Mr. President, I would like to open this resolution to all the members and certainly I would welcome their joining in honoring Angelo as he departs this institution.

ACTING PRESIDENT HOLLAND: I'm sure all members would like to be placed on this resolution, Senator Saland. If not -- Senator Gold.

SENATOR GOLD: Thank you. I obviously would like to be on it, and this is the kind of one that makes us smile because in a very, very, very, very political environment it's nice that there are people here who love the institution and treat all of us the same.

I remember that day when I put my

Diet Coke down for a minute and Senator Skelos went for it, and Angelo slapped his hand, even though he was a Republican. I was very grateful for that; but the bottom line, that there really are a lot of political things that happen here but there are some staff, the desk staff and the Sergeant-at-Arms, and Angelo particularly shows this in his personality, who make some of us in the Minority feel like we are Senators on a day-to-day basis and we are certainly very, very grateful for that, and I know I wish him well.

ACTING PRESIDENT HOLLAND: Senator Skelos? Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

Angelo, I'd have to say, you know, in this partisan house you're certainly very non-partisan and everyone loves you and what you've done for us as Senators and the professional way that you've handled that little lounge in there, Angelo's Boutique, whatever you want to call it. You've been a dear friend. We all hate to see you leave. As a matter of fact,

we were going to try to hope that you wouldn't leave because you've done such a great job.

We're certainly going to miss you, but I can't recall a single time when you lost patience, and there's a lot of times that you could be impatient but -- with this crew as they hang around the table there, and he has to keep restocking it and doing all of those things that make our life a little bit more pleasant around here.

We're proud of you. We're grateful to you, and we wish you well. All the best wishes to you, Angelo.

ACTING PRESIDENT HOLLAND: Senator Skelos.

SENATOR SKELOS: Mr. President, just following up on Senator Gold's comments, I want to assure Senator Gold that I treat him no differently than I treat Senator Stachowski.

But this is a wonderful - wonderful institution, and one of the reasons why we have a great institution is the staff and the Sergeant-of-Arms and all the people that

really accommodate us on a daily basis and make our lives so much better and, Angelo, you've been an integral part of that.

If there was a place to go in and have a little peace and quiet, it wasn't necessarily in the lounge part but by where you were. You treat us with respect, you treat us well. You've got decaffeinated coffee for me which I do appreciate, and on behalf of Senator Bruno, we just want to say thank you as a body for the great service that you have given us and again for making our life a lot more pleasant.

We thank you and we wish you good health.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Angelo, on behalf of all the members, thank you for being with us.

(Standing applause.)

Senator Skelos.

SENATOR SKELOS: I believe there are some substitutions at the desk. Can we please make them? No? No substitutions.

ACTING PRESIDENT HOLLAND: No substitutions, Senator.

SENATOR SKELOS: O.K. Is there any other motions or resolutions? Then, Mr. President, if we could take up the non-controversial calendar.

ACTING PRESIDENT HOLLAND: Secretary will read.

THE SECRETARY: On page 30, Calendar Number 800, by Senator Velella, Senate Print 4451-C, an act to amend the Retirement and Social Security Law, in relation to making certain technical corrections.

ACTING PRESIDENT HOLLAND: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT HOLLAND: Laid aside.

THE SECRETARY: Calendar Number 801, by Senator Maltese, Senate Print Number 4722-A.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 802, by Senator Maltese, Senate Print Number 4725-A.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 804, by Senator Maltese, Senate Print Number 5911, an act to allow correction members of the New York City retirement system.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: There is a home rule message at the desk. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

SENATOR LEICHTER: Is this 802?

ACTING PRESIDENT HOLLAND: This is 804, Senator.

SENATOR LEICHTER: O.K., what happened to 802?

ACTING PRESIDENT HOLLAND: 802 was laid aside, Senator.

SENATOR LEICHTER: Thank you.

THE SECRETARY: Ayes 34.

ACTING PRESIDENT HOLLAND: Was there a request to lay this bill aside?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 805, by Senator Larkin, Senate print 6866, an act to amend the Retirement and Social Security Law, in relation to the borrowing of contributions.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 806, by Senator Trunzo, Senate Print 7042, an act to amend the Education Law, in relation to the benefits to be provided.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 812, by Senator Skelos, Senate Print 744, an act

to amend the Vehicle and Traffic Law, in relation to out-of-state convictions.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 813, by Senator Wright, Senate Print 2262, an act to amend the Vehicle and Traffic Law, in relation to having care or control of a motor vehicle.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 818, by Senator Levy, Senate Print 6492, an act to amend the Vehicle and Traffic Law, in relation to periods of license revocation.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37 - Senator Gold.

SENATOR GOLD: If I could briefly explain my vote.

ACTING PRESIDENT HOLLAND:

Senator Gold to explain his vote.

SENATOR GOLD: Yeah, I know I'm not the only one here, and it's both sides of the aisle, but when I see the last three bills it's very depressing. I know we have passed a number of bills unanimously and now this is a new one dealing with the area of driving, driver's license, and it's depressing to me that we keep seeing them and we don't seem to get a breakthrough, and I'm not blaming certainly the members in this house.

I don't know where the blame falls, but as recently as I think this last week, a pregnant -- seven-month pregnant woman in the city of New York was mowed down by an auto accident that occurred between someone whose license had been suspended three times and someone whose license had been suspended 12 times. The seven-month fetus was killed; the woman has been in the hospital in serious condition. I don't know the latest on her, but the point is that I just don't think it's enough for one-house bills, and I put no blame on

Senator Levy or anybody in the Majority, but I think that wherever the fault lies, this maybe ought to be the year to stop it.

There's no way to explain to the public-at-large why people whose licenses are constantly suspended are allowed to continue driving, or why, as Senator DiCarlo and I have suggested, the automobiles are not taken away and forfeited; why some of these people are not put in jail for drunk driving on the first occasion or that we do something.

We are allowing citizens to be mowed down every day, and it is our joint responsibility.

I vote yes.

THE SECRETARY: Ayes 37.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 823, by Senator DiCarlo, Senate Print 7068, an act to repeal paragraph (l) of Subdivision 4 of Section 541 of the Executive Law.

ACTING PRESIDENT HOLLAND: Read

the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 837, by Senator Maziarz, Senate Print 6874, an act to amend the Highway Law and others, in relation to filing of appropriation maps.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 847, by Senator Levy, Senate Print 7352, an act to amend the Vehicle and Traffic Law, in relation to civil penalties.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 851, by Senator Saland, Senate Print 1437-A, an act to amend the Penal Law, in relation to certain consecutive sentences of imprisonment.

ACTING PRESIDENT HOLLAND: Read the last section.

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

November.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 852, by Senator Velella, Senate Print 1851, an act to amend the Penal Law and the Criminal Procedure Law, in relation to forgery and illegal possession.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of November.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 865, by Senator Velella, Senate Print 7118, an act to amend the Penal Law, in relation to including certain documents.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 880, by Senator Skelos, Senate Print 1965-A, an act to amend the Vehicle and Traffic Law, in relation to distinctive license plates for gold star mothers.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect January 1.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 889, by member of the Assembly Pordum, Assembly Print 8844, an act to redistribute 1996 bond volume allocations.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 903, by Senator Nozzolio, Senate Print 7092, an

act to amend the Real Property Law, in relation to rules and regulations.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 950, by Senator Larkin, Senate Print 6150, an act to amend the Election Law, in relation to the hours for voting at primary elections.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 959, by Senator Saland, Senate Print 3623-B, an act to amend the Insurance Law, in relation to permitting an employer or employer-sponsored

irrevocable trust.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 989, by Senator Spano, Senate Print 6209.

SENATOR SKELOS: Lay aside for the day.

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

THE SECRETARY: Calendar Number 1015, by Senator Maziarz, Senate Print 7431, an act to authorize the construction of new school facilities.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1024, by Senator Holland, Senate Print 2245, an act relating to solid waste treatment and disposal in Orange County.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number

1032, by Senator Skelos, Senate Print 6170-A, an act authorizing the assessor of the county of Nassau to accept applications.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1033, by Senator LaValle, Senate Print 6196, an act to amend Chapter 767 of the Laws of 1987, amending the Town Law.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1036, by Senator Cook, Senate Print 6634, an act to amend the General Municipal Law, in relation to establishing the Fallsburg-Liberty-Thompson Industrial Development Agency.

ACTING PRESIDENT HOLLAND: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1037, by Senator Maziarz, Senate Print 6694, an

act to amend the General Municipal Law, in relation to the creation of a special study commission.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1040, by Senator Holland, Senate Print 6927-A, an act authorizing the issuance of bonds.

ACTING PRESIDENT HOLLAND: There is no home rule message at the desk. Lay the bill aside.

THE SECRETARY: Calendar Number 1044, by Senator Tully, Senate Print 7336-A, an act authorizing the assessor of the county of Nassau.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 1082, by Senator Sears, Senate Print 7033, an act to amend the Tax Law and Chapter 644 of the Laws of 1984.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT HOLLAND: The

bill is passed.

THE SECRETARY: Calendar Number 1105, by Senator Saland.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

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

SENATOR SKELOS: Mr. President, if we could take up the controversial calendar at this time.

ACTING PRESIDENT HOLLAND: The Secretary will read.

THE SECRETARY: On page 30, Calendar Number 800, by Senator Velella, Senate Print Number 4451-C, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT HOLLAND: Senator Velella, an explanation has been requested.

SENATOR VELELLA: Could we lay that aside temporarily until I have a chance to

get my file on it. I'll be back with it in five minutes.

THE SECRETARY: Calendar -

ACTING PRESIDENT HOLLAND: Lay aside temporarily.

THE SECRETARY: -- Number 801, by Senator Maltese, Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT HOLLAND: There is a home rule message at the desk.

Senator Maltese. He has asked for an explanation.

SENATOR MALTESE: Mr. President, this bill would allow Tier II and Tier III New York City correction officers below the rank of captain who participate in the 20-year improved benefit retirement plan to borrow against their own accumulated contributions.

This bill was requested by the Correction Officers Benevolent Association and is backed by the Correction Captains Association.

Tier I and II, New York City employees are now granted this right to borrow against their accumulated member contributions and this would give equity to these correction officers.

The fiscal implications have been estimated as approximately $300,000, and the bill is supported -- the bill is opposed by the city of New York.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President.

If Senator Maltese would yield. Senator, I want to direct your attention to the memorandum in opposition of the City. Let me read sections of it, and I'd appreciate your comments on it.

The memorandum states, and I quote from a paragraph: "This bill will result in a large increase in costs to the City if it is enacted. On that basis alone, the City strongly opposes its passage by the

Legislature. However, the City's opposition is further strengthened by the fact that this bill would further circumvent and negate the terms of various collective bargaining agreements entered into by the City and the unions representing employees in Department of Correction titles."

And then it goes on to say, "In the letter attached to each of these agreements, the City and these unions agreed to jointly support legislation which provides pension Tier II and Tier III correctional personnel with an enhanced half pay pension plan after 20 years of service. These increased benefits are funded solely from pension contributions made by the participants. In the negotiation of the agreement, the parties clearly agreed that the City would not incur any costs for these enhanced benefits. The subsequent legislation enacted these improved pension plans in strict adherence to the term of the agreements between the parties."

Senator, do you know whether there was such an agreement between the unions

and the City which was part of a collective bargaining agreement?

SENATOR MALTESE: Mr. President, I am advised that there was, in fact, such an agreement.

SENATOR LEICHTER: If there was such an agreement, Senator, on what basis are we now, the Legislature, disregarding that agreement that was apparently entered into by the union, and enacting a benefit that the union agreed to forego?

SENATOR MALTESE: Mr. President, it's on the basis of equity. This benefit is now granted to other similarly situated employees of the City and there's a feeling that this disparity, this inequity should be corrected by giving the Correction Officers Benevolent Association and their members the same benefit.

The City traditionally opposes these changes in the -- in the law on the basis of cost. The -- while the City's estimate of cost is somewhat different than the cost

estimated by the proponents of the bill, at the same time it does not seem an inordinately large sum to correct a benefit that, subsequent to the agreement, was in fact granted to other employees similarly situated.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: If you'd continue to yield, Senator Maltese, let me see if I understand this and everybody understands it.

There was an agreement between the city of New York and the union in which the union explicitly agreed that it would not seek this particular benefit for some of its workers, and that was reached through collective bargaining. Whether it was a wise agreement on the part of the City and/or the union, I do not know, but I know it was reached. It is reduced to writing, and you're saying now that the Legislature is going to tear up this agreement that the union made and give the union a benefit that, through collective bargaining, it agreed

not to seek.

SENATOR MALTESE: Mr. President, I have not examined the agreement per se as a - and I would respectfully ask Senator Leibell - I'm sorry, Senator Leichter, if he in fact has examined the agreement.

I think, like many agreements, it could very well be subject to various interpretations. If I had the agreement before me, I would be glad to study the individual paragraphs and sections and what have you, but the fact of the matter is that the correction officers and the correction captains have requested this.

There has been a considerable period of time for the City to -- to bring these agreements up to Albany. Their representative, Robert Harding, sees us on a weekly basis. The agreements themselves were not -- were not provided to me, and I can only act on the basis of correcting an inequity that I believe is the Legislature's function, and that's why this bill is on the calendar today.

SENATOR LEICHTER: Mr. President, if I could ask Senator Maltese to continue to yield.

ACTING PRESIDENT HOLLAND: Senator Maltese, you continue to yield?

SENATOR MALTESE: Excuse me?

ACTING PRESIDENT HOLLAND: Do you continue to yield?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: Senator, I just read you a statement by the City where the City stated explicitly that there was such an agreement. I asked you if that is so, and you said yes. Now, you tell me, well, you're really not sure, you have not read the agreement. I have not read the agreement. I just read your memo and the City's memo earlier today.

In view of that, Senator, and it may well be that there was not an agreement, I haven't talked to the proponents of this legislation, I'm going to ask you if you will kindly lay it aside so that you and I will have a chance to look at the agreement. After you

look at the agreement, you may wish to modify your position. There may be an answer to it, but I certainly think that we have an obligation as legislators to know whether, in fact, there was such an agreement which you seem to say there was. We ought to look at that agreement because certainly if there was an agreement that explicitly -- where the union explicitly agreed not to seek this benefit, then I think that's something that all of the members here ought to know.

SENATOR MALTESE: Mr. President, the -- the bill has been in print since May 3rd. The City Council of the city of New York who is in the best -- that is in the best position to look over the ramifications of the agreement and the fiscal aspects of the agreement, provided a home rule message. In their collective wisdom, they have in effect supported the bill. Only for the support of the two associations representing those persons affected, I feel that that is adequate support for the bill, in my view.

SENATOR LEICHTER: Senator, if you'd continue to yield. While I share your high opinion of the City Council of New York, and I understand what you're saying is, if the City Council put its imprimatur on it that's like gold, that's good enough for you and, Senator, I wouldn't disagree with you because my respect for that body is unbounded.

Nevertheless, you and I or Senator DiCarlo and all of us have responsi bilities. We're voting on this now, and I don't think it's asking too much of you if you would please put this aside so that we may look at the agreement. I think that this Legislature and everybody here, I know I have been embarrassed time and time again voting on pension bills where we find out that the situation is somewhat different than represented. We have all acted in good faith but we didn't really fully know and understand it, and I accept your statement that you have not looked at the underlying agreement which is really essential.

So I'm going to ask you please to

lay it aside until Monday. That's not going to affect this bill as far as the effective date, because I think you and I should look at the agreement and then proceed from there.

I really think that's the responsible thing to do and, Senator, while you and I differ with substantive issues, I've always known you to be extremely fair-minded and certainly you try to be responsible, and I think the responsible thing for us at the very least is to look at the agreement. Maybe it doesn't do what the City says. Maybe there's an answer to it. Maybe it does do what the City says and we ought to know that, so I'm going to renew my request that you please lay this aside.

SENATOR MALTESE: Mr. President, the -- the interpretation of agreements is always something that is made by individuals. We could arrive -- we could put this over and, at the same time, come to different conclusions as to what is contained within the parameters of the agreement. At the same time, we have a collective responsibility here to pass

legislation that we feel is -- requires passage and enactment into law. Rather than lay this aside, I'd prefer for it to remain and to be voted on by our house today.

SENATOR LEICHTER: Mr. President. Let me just -- just ask one final question, Senator Maltese. Senator Maltese, it's perfectly true that agreements could be subject to different interpretations but they are parts of agreements that cannot.

If an agreement says this shall be done by May 15th, you can't argue, Well, I can do it by June 15th. There are provisions of agreements that are very clear and explicit. The city of New York seems to say -- doesn't seem to say, it says bluntly and directly that there was an agreement here where the union agreed, consented to give up the very benefit that you are pursuing here.

Maybe that's wrong. Maybe it's subject to interpretation, and I may very well on Monday, if you lay the bill aside and we look at the agreement, say to you, Yes, Senator, I

understand why you're doing this, but I -- I think for you to publicly say and, frankly, to bring all of the members along with you, Well, we really don't know what we're saying but the City Council said it was O.K., I don't think we want to be in that position.

So I know three times you're out, and this may be the third -- third time, but I really ask again, out of a sense of responsibil ity -- I'm not asking it for myself or any collegiality -- I'm just saying I think as far as the obligation that we have as a body to know what we're doing.

This -- this bill does carry with it significant financial impact for your city and my city, a city that is in financial trouble. Let's at least be one hundred percent sure that we know what we're doing. I don't think it's asking too much to say to look at the agreement, particularly since you've said, "I have not looked at it," and I certainly haven't, and I don't believe there's any member here that has seen the agreement, and that really goes to

the very heart of what we're doing by this bill.

So, a third attempt, Senator Maltese, to appeal to your sense of responsi bility and fairness. Will you please lay this bill aside so we may look at the agreement?

SENATOR MALTESE: Mr. President, I have a great deal of respect for Senator Leichter and a respect for his responsibility, but I feel in this case that while I specifically personally have not looked over the agreement, I have had counsel review the agreement with the counsels for the correction captains, with the counsels for the correction officers.

They have indicated that they were, in fact, satisfied that this corrected an inequity, that the City subsequently -- subse quent to the -- to the agreement, granted those rights to other people -- to other officers similarly situated, and, therefore, I respect fully decline my distinguished colleague's request to lay the bill aside.

SENATOR LEICHTER: Senator Maltese, I thank you. I acknowledge that three times and you're out.

But I do regret it, and I think you do a disservice not to me, Senator, but I think to this body and to, I think, the obligation that we have to the people of the state of New York and here specifically to the people of the city of New York.

I think, when the city of New York says in a memorandum -- and I just want to bring this to the attention of everybody, and I don't think there's anybody in this chamber, I certainly will not take second place to anybody in my support of employees and public employees, and I appreciate what they do and certainly the correction officers, they got an extremely difficult job and we ought to be as supportive as we can be -- but if a union, through collective bargaining, agrees to a particular provision and then comes up to this Legislature and says, Well, you know, it really isn't fair. We ought to change it, and so on, that I think

is wrong. We shouldn't do that.

Now, maybe we're not doing that here, but, Senator, in view of your inability to tell us that the agreement is either subject to different interpretation or doesn't state what the City says -- and I want to remind you, your first statement when I read the City's memorandum to you was, Yes, that's correct, there was an agreement where the union specifically agreed to forego the benefit that it now seeks through this legislation.

If we then just disregard this - and all I ask for, I didn't take the City's memorandum as gospel. I said let's look at the agreement. You refuse to do so for reasons that, frankly, I don't understand, and I think it's somewhat an aberration of your usual collegial and fair style, but be that as it may, we're now asked to vote on it and in view of somebody not being in a position to say, Hey, the City's memorandum is wrong, I have to up hold the collective bargaining agreement.

I think too often, I guess out of

our sense of generosity and our sense of support for public employees and other employees, sometimes employees of this chamber or of the Assembly, we have voted benefits that are totally outrageous, that then embarrass each and every one of us.

You, Senator, claim to be a fiscal conservative. You claim to pay attention to home rule, and I appreciate the City Council said they'd like to see this passed, but the Mayor said, Please don't do this; this is going to cost me money, and you agree that this bill carries a price tag with it. Let's at least be sure that what we're doing is right, is fair, is in accordance with law or in accordance with the collective bargaining agreement and it - Senator, in view of your inability to show that this is a right action on our part, I'm going to vote against it, and I just think the responsible thing for any member here is to vote against this bill.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52, nays two, Senators Leichter and Waldon recorded in the negative.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Velella.

SENATOR VELELLA: Mr. President, my bill, Calendar Number 800, would you lay that bill aside until Monday. We're waiting for some additional information.

ACTING PRESIDENT HOLLAND: Certainly.

The Secretary will continue to read, please.

THE SECRETARY: Calendar Number 802, by Senator Maltese, Senate Print 4725A, an act to amend the Administrative Code of the city of New York.

ACTING PRESIDENT HOLLAND: There is a home rule message at the desk.

SENATOR LEICHTER: Lay aside - well, I'm sorry. Which bill is this?

SENATOR ABATE: 802.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT HOLLAND: Explanation has been requested.

SENATOR MALTESE: Mr. President, I could -- I could ask the stenographer to read back the debate from the prior bill, but I will explain -- seek to explain this bill.

This permits uniform members of the New York City Department of Corrections, only those appointed prior to July 1st, 1976, to purchase credit for up to six months service rendered prior to joining the New York City Retirement System. The members would have one year to purchase this time, and this time would count towards retirement credit.

The justification for the legislation is again that an inequity exists for those few members who joined the department

prior to July 1st, 1976, but did not immediately join the retirement system. The bill would enable them to purchase credit for that period of continuous prior service.

The fiscal note attached to this legislation, and I also pointed out that this also received a home rule message from the City Council, is approximately $35,000. The bill is supported by the correction officers, and it's supported by the correction captains and the exact same opportunity was given to Housing and Transit Police officers.

SENATOR LEICHTER: If Senator Maltese will yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT HOLLAND: Senator will yield.

SENATOR LEICHTER: Senator, in view of the productive exchange we had last time, let me call to your attention again the memorandum of opposition of the city of New York and just ask your comments on it.

The City's reasons for opposition

as it states are, "This bill would allow for bought back service time of up to six months to be counted towards a minimum active membership period for entitlement to a service pension for correction officers. NYCERS generally require a minimum of five years active service out of ten years of paid contribution in order to entitle a member to vest in the system. This measure would cause a minimum membership period to be shortened and would result in an increase in cost to the City resulting from the earlier vesting (and potential retirement) of members who elect to repurchase the time."

Doesn't seem as if we have an agreement here, Senator, not that that would matter very much anyhow, but I would be interested in your comments.

SENATOR MALTESE: Mr. President, according to the memos that have been supplied me, this would -- and I would try to determine exactly how many members would be -- would fall into this. Now, we got the figure. It is less than a hundred members who would be eligible and

whether all the hundred would take advantage of that is problematic. The -- it is employees who would have been in the system before July 1st, 20 years ago, not a great deal of members.

The City did not provide any fiscal estimate. The correction officers and the City Council provided a fiscal note approximately 35,000 in expense. The same opportunity was offered Housing and Transit Police officers.

The City's memo is five or six paragraphs shorter than the other one in opposition, so perhaps they don't have as many good reasons in opposition, so I would respectfully indicate that despite the City's memo, this is something that should be passed by the state Senate.

SENATOR LEICHTER: Mr. President, if Senator Maltese would continue to yield.

ACTING PRESIDENT HOLLAND: You continue to yield, Senator?

SENATOR MALTESE: Yes.

SENATOR LEICHTER: Senator, you

know whether other members of the correction officers -- well, whether other correction officers, other than those in Tiers I and II can purchase credits of up to six months of service?

SENATOR MALTESE: Since the only -- the only officers that were indicated to me who -- who could do this, who would fit into this window, was Transit and Housing, I would say the answer is probably no.

SENATOR LEICHTER: If you'd continue to yield.

SENATOR MALTESE: Yes.

SENATOR LEICHTER: Senator, the last bill you presented to us there is a matter of equity, you wished to give benefits to correction officers who were not in Tier I and II the benefits of those in Tiers I and II.

Now, after you give this benefit, are we then going to find a bill that out of equity is going to give these benefits to other officers?

Mr. President, it would appear that since this is going to affect a relatively

small number of people, that is a possibility but not a possibility or probability that would entail a great deal of expense to the city of New York.

SENATOR LEICHTER: Mr. President. Senator, you're actually correct. The amount seems to be minuscule which makes me think we're trying, in effect, to benefit one specific person or two specific people. Do you know, has it been brought to your attention whether there is a specific individual or two specific individuals that are seeking to benefit here?

SENATOR MALTESE: Mr. President, no. It was only today that, in contacting the representatives, that we ascertained that it was less than a hundred who would be eligible. We don't know how many, of course, would take advantage of the opportunity, but I don't know of any specific individual who would be eligible.

SENATOR LEICHTER: Let's see.

ACTING PRESIDENT HOLLAND:

Senator Leichter.

SENATOR LEICHTER: Yeah. If Senator Maltese would just bear with me a second. I'm -- I haven't had a chance to study the bill, but I see the memo says that this seeks to benefit appointed correction officers who, through inadvertence or misinformation, failed to join the pension system until up to six months after appointment.

Are they going to have to establish under this bill if it becomes law that indeed they failed to receive the information, or through inadvertence, or will this be automatic?

SENATOR MALTESE: Mr. President, I'm advised that the terminology "misinformed or failure to take action" was the same rationale when the Transit and Housing officers were given the benefit of -- I don't know what procedures would be in effect in order to apply. I'm sure they would have to prove that they were, in fact, in that category, that as far as the time factor is concerned, but usually, I'm advised in

these cases the statement that they were misinformed or otherwise advised that they didn't fit into the appropriate category would ordinarily be sufficient to have them fall within that category of eligible employees.

SENATOR LEICHTER: Mr. President, again, if Senator Maltese would continue to yield. I just wish to point out, Senator Maltese, looking through your bill quickly, I don't see anything in the bill which states that these members would have to show that they were given misinformation or that there was some inadvertence on their part. I think it's automatic to anyone who wishes to buy back.

Thank you.

Mr. President, on the bill.

ACTING PRESIDENT HOLLAND: Senator Leichter, on the bill.

SENATOR LEICHTER: Not only because the City's memo is only one paragraph whereas the other one was longer, I mean in the other instance where the City says there was a collective bargaining agreement, here Senator

Maltese makes the point that this benefit has been given to other employees.

The cost to the City is fairly minimal, so I will support this bill.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays 1, Senator Goodman recorded in the negative.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Goodman.

SENATOR GOODMAN: May I please be recorded in the negative on the bill which preceded this, Calendar Number 801.

ACTING PRESIDENT HOLLAND: Without objection, Senator Goodman will be recorded in the negative on the previous bill.

Secretary will continue to read.

THE SECRETARY: Calendar Number 804, by Senator Maltese, Senate Print Number 5911, an act to allow correction members of the New York City Employees Retirement System.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT HOLLAND: Senator Maltese.

SENATOR MALTESE: Mr. President, this bill would allow correction members of the New York City Employees Retirement System to elect the benefits provided by Chapter 936. The purpose is to permit correction members who failed to elect to make the additional employee contributions required in order to be eligible to retire after 20 years of service before the expiration of the window period, to make such an election retroactive to the effective date of the legislation, December 19, 1990 for correction officers, November 1st, 1992 for correction members in the rank of captain and above.

The justification is that these members would be assessed contributions

retroactive to the original effective date of the legislation and the fiscal -- as far as fiscal note, the -- despite the claims to the contrary from the mayor's memorandum, the indication is that there would be no cost to the City and this, again, was endorsed by the City Council with their home rule message.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Yes, if Senator Maltese would yield.

SENATOR MALTESE: Yes.

ACTING PRESIDENT HOLLAND: Senator will yield.

SENATOR LEICHTER: Senator Maltese, we do have another memo in opposition on the part of the City. First of all, the City says that this will result in a significant cost to the City. I see the -- the fiscal note says that there will be no cost to the City in the fiscal year 1996-1997, but is it possible there will be a cost in subsequent years or is it your

position that the City is absolutely wrong in stating that there's any cost?

SENATOR MALTESE: I'm advised that the requirement is to state it if there is a fiscal cost for subsequent years so apparently what we have is the City on one side indicating that there is a cost and the correction officers and captains and the City Council accepting the -- the fiscal cost as being -- as being de minimus.

SENATOR LEICHTER: Well, Mr. President, if Senator Maltese will continue to yield.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT HOLLAND: He does.

SENATOR LEICHTER: Senator, it's hard for me to see how there would not be an increased cost to the city of New York because of these people enrolling in an enhanced pension plan.

Now, I can understand the fiscal note, and it very specifically states there will be no cost in 1996-1997 because I guess until these people enroll and they retire, that probably cannot occur in the present fiscal year or in 1996-1997.

But certainly subsequently to say that there will be no cost whatsoever to the City defies logic, reason and belief.

SENATOR MALTESE: Mr. President, they -- in order to avail themselves of this opportunity, they would have to make payments retroactive. I'm not aware if those payments would have to be enhanced by any possible or probable interest that may have been accumulated by the pension fund in the intervening years, but the intervening years are fairly -- is a fairly short period of time, so I don't believe that amount would be very appreciable, but aside from that possible loss in amount since they are making the contributions in order to -- in order to participate in this plan, I -- I still would adhere to the -- to the merits of the correction

officers' memo rather than that of the city of New York.

SENATOR LEICHTER: Well, let me read you this paragraph from the City's memo and see if you -- if that changes your response that you just made: This bill would allow correction members of NYCER to enroll in the enhanced pension system where such person established by existing law during a new open enrollment period which would expire on December 31st, 1996.

The original legislation provided for finite enrollment periods as agreed to by the parties and the levels of the members' additional contributions were premised on these time limits. Any re-opening of the enrollment periods would wholly undermine the premise on which the enhanced plans are based and the adverse selections that would result would lead to an increase in cost to the City which is estimated by the City's Office of Management and Budget to be approximately 3- to $4 million per year.

These increased costs to the City

are in clear contradiction of the agreement between the City and the unions, namely, that the entire cost to the enhanced pension plans would be borne by the employees who opted to enroll in them.

SENATOR MALTESE: Mr. President, accepting that paragraph with the exception of the monetary amount at face value, it would seem to me in analyzing a pension plan and its benefits that the figures are based on those eligible to participate. Since we take for granted that these people who would now opt, and it is the fact, would have been eligible at that period in time, they had to be factored in, it would seem to me at the -- in the original calculations as most possibly availing themselves of the opportunity, that the available contributions would be based on the full amount, the full amount of employees including these employees who apparently did not opt to participate in the plan.

SENATOR LEICHTER: Mr. President, if Senator Maltese -- I can understand that

answer that you give, but I think that again we have a problem here where the City says we've got a collective bargaining agreement. It explicitly excludes these particular benefits. It was based on a finite period for enrollment. I guess projections were made as to how many people would enroll, and the union agreed to it.

Now, let me ask you, have you looked at the agreement that the City claims bars this particular benefit unless we as a Legislature decide to tear up that agreement?

SENATOR MALTESE: Mr. President, the wording of the City memos indicate that in the negotiation of the agreement, the parties clearly agreed the City would not incur any costs for these enhanced benefits. It is the position of the correction officers and the correction captains that no additional costs are being incurred. So even if we accept the City's wording at face value, I don't see an inconsistency here because the correction officers and correction captains indicated that

there would not, in fact, be an increased cost to the City.

SENATOR LEICHTER: Senator Maltese, if you'll yield again, just getting back to this question of increased costs, how is it possible that there would not be increased costs if now an additional number of people opted into this enhanced benefit system?

I -- I must say it -- it just doesn't make sense to me to say that there will be no cost. I can see there won't be any costs in 1996-1997, but for the years subsequent, to say there will be no cost, now it may well be that the City's figure of between 3- and $4 million is an exaggeration. We've had other instances where the City tends to be somewhat loose with its figures, but there's got to be some cost.

How can there not be a cost if people now sign into this plan when the plan originally did not foresee or encompass that number being part of it?

SENATOR MALTESE: Mr. President,

it would seem that the position of the supporters of this legislation is that the contributions which would be retroactive to the date of eligibility would cover the increased benefits ultimately payable.

SENATOR LEICHTER: Yeah, but, Mr. President, if the Senator would yield, doesn't this -- this is a City match here, and while the members may cover their part, the City now has to cover a part that it never budgeted, that it never expected to make.

SENATOR MALTESE: Mr. President, that's -- that's the point I think, and the area of -- of controversy between myself and the distinguished Senator, is that I believe that since these officers were eligible ab initio at the beginning of the plan that they were, in fact, factored into the ultimate cost of the plan and while it is possible that the city was planning to make a saving on the backs of these officers, that saving now, if this legislation becomes law would not, in fact, materialize.

SENATOR LEICHTER: Mr. President,

Senator, I'm going to ask you, as I asked you in regard to the previous bill, would you give us a chance to do the responsible thing, to know what we're legislating, not to guess but to take a look at the agreement and maybe it will turn out that you're one hundred percent correct and that the City's memo is wrong, but in the absence of looking at the agreement or your telling me at least, "Leichter, I've looked at that agreement, doesn't say that at all," and I have respect for your integrity and certainly also your legal acumen, but you've told us, Well, you know, I haven't looked at the agreement.

Can we have until the next legislative day to take a look at the agreement?

SENATOR MALTESE: Mr. President, unlike the first bill, I don't see that the agreement has a real significance with respect to this legislation because what we have is an inconsistency in the views of the opposing parties as to the relative cost. So absent some close minute perusal of the financial aspects and the employees and the benefit plan and the

retirement plans, and so on, that I feel has been done and will be done in the course of this legislation progressing, I don't feel it would really lend anything to our debate.

So I think, given the parameters of the agreement -- of the proposed legislation, the limited number that would be, in fact, eligible, I feel the legislation should be - while I am ordinarily very deferential to the wishes of my distinguished colleague, I feel that it could best -- we would best be served by considering this legislation today.

SENATOR LEICHTER: Mr. President, one final question to my good friend, Senator Maltese.

Senator Maltese, if the City turns out to be correct and this has a cost to it, would you be willing to agree on behalf of yourself and the distinguished Assembly sponsor, Senator Seminerio, that the City can take back whatever that additional cost is in reduced police service to your Senatorial District? Would you guarantee this bill to that extent?

SENATOR MALTESE: Mr. President, of course, I would not in any circumstances endanger the police protection of my Senate District or anybody else's Senate District and, of course, I realize the good Senator is being facetious to make a point, so obviously I could not give that guarantee in good conscience.

SENATOR LEICHTER: Thank you. Mr. President, Senator Maltese, let me tell you, in a sense the example maybe would seem facetious but the point is not facetious, because if this is going to cost the City -- if the City says 3- or $4 million a year, and maybe that's not the figure, maybe it's $1 million, but we're a financially strapped city and this is going to -- if these costs are incurred, there's going to be a reduction in services, maybe police, maybe sanitation, maybe paving of streets. This is a city that is already seeing a significant deterioration in services.

Now, it's very easy for this Legislature, and I participate, you can -- we can play the big shot; we can show great

largesse because it ain't our money, and I acknowledge that all of us want to be supportive of public employees and, as I said previously, I think I've been supportive as anybody here.

I think they do a wonderful job. I have the world of respect for correction officers, but when the city of New York comes here and says, We've got a collective bargaining agreement, and while it may not be as explicit as the first bill that you and I debated, Senator Maltese, the City makes a prima facie case with their memo that a collective bargaining agreement precluded these benefits.

To have a union or some employees go through a back door, do an end run around a collective bargaining agreement and then come to the Legislature and say, Listen, we know you guys are always very generous when it comes to pension, yeah, we made this agreement, but you know, equity and fairness and all that, please give us these benefits, and then the Legislature does this, I think it's wrong and it does have a fiscal impact on the city of New York.

At the very least, as with the previous bill, we ought to be one hundred percent certain that collective bargaining agreements did not preclude this particular benefit.

So, Senator Maltese, I just think it's an irresponsible way for this Legislature to act. I think we ought to have a much better idea what we're doing, why we're doing it, what the consequences are. We are dealing with the taxpayers' monies. We're dealing with services in your city and my city and it may seem like, you know, a nice thing for us to do, but let's take a look at the consequences and, therefore, I would urge that, unless Senator Maltese can present a factual basis or some evidence for this, that this bill deserves to be defeated.

ACTING PRESIDENT HOLLAND: Senator Skelos.

SENATOR SKELOS: Mr. President, with the consent of Senator Paterson, we're just going to lay this bill aside for a moment, call up Calendar Number 1105 for the purposes of

Senator Cook voting, who has a board meeting with the Board of Regents.

ACTING PRESIDENT HOLLAND: Lay 804 aside momentarily and the Secretary will read 1105.

THE SECRETARY: Calendar Number 1105, by Senator Saland, Senate Print 6621, an act to enact the Domestic Violence and Public Safety Act of 1996.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Senator Cook, how do you vote?

SENATOR COOK: Yes.

ACTING PRESIDENT HOLLAND: Senator Cook votes yes. Withdraw the roll call.

SENATOR GOODMAN: I wish to be recorded in the affirmative also.

ACTING PRESIDENT HOLLAND: Senator Goodman in the affirmative.

SENATOR SKELOS: Withdraw the roll call and call up 804 again.

ACTING PRESIDENT HOLLAND: Yes, the roll call is withdrawn and we're on 804 again.

Senator Gold.

SENATOR GOLD: Mr. President, I'm just surprised at Senator Leichter and the naivete that he's shown again this morning. I want to remind Senator Leichter that the Governor submitted a budget and for months now, the Republicans have been trying to save him from his budget. There is major party loyalty among Republicans.

Now, you know and I know that Senator Maltese and his party try very hard to maintain the integrity of the Republican mayor in the city of New York, and they know that Mayor Giuliani has had budget problems, and I can't believe that they would put this bill out if it didn't have the blessing of the mayor and it wasn't something that the City could very well afford.

Matter of fact, I see the memo by Robert Harding, whom I respect very much, and I got to believe that this is kind of cover for the mayor a little bit, but I just can't believe that there would be a Maltese-Seminerio bill in that would put Rudy Giuliani in fiscal trouble, put him in a situation where our distinguished Comptroller and others would criticize the City's fiscal capacity.

So I think you got to look through some of this, Senator. On the face of it, Senator Leichter, if we were all back in law school, I don't think anybody could disagree with you. Your intellect is right on target and certainly, when you look at all of the facts as they are on paper, you would have to be, Senator Leichter, one hundred percent right.

So I have to figure out that there's really something going on behind the scenes because I cannot believe that the Senator whose district abuts mine would jeopardize us with police protection or with any of those things in the face of Sen... of Mayor Giuliani

filing a new budget just days ago where he had to abandon helping children with clothing and do all of those things that he wanted to do. I can't believe Senator Maltese would want to increase the budget.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Would Senator Gold yield for a question?

SENATOR GOLD: Yes, sir.

SENATOR LEICHTER: Senator, are you suggesting that possibly there's a little charade going on here, that maybe this bill will be passed and then there'll be a hue and cry in the City and Mayor Giuliani will plead with the Governor, Please veto this bill and there'll be editorials in the Times, the Legislature acted irresponsibly and then Governor Pataki, with that great sense of responsibility that he has towards our city, will veto the bill and everybody will be happy? Senator Maltese and Assemblyman Seminerio have done their thing for

the correction workers; the mayor has succeeded in getting the Governor to veto the bill. The Governor has vetoed the bill and will be acclaimed for this and everybody's happy, but I can't believe that, although we've seen this before, but that must have been, you know, just happenstance. I can't believe people would be doing that.

ACTING PRESIDENT HOLLAND: Senator Gold, do you want to answer that question?

SENATOR LEICHTER: Are you suggesting, Senator, this may be in the -- this may be happening?

SENATOR GOLD: Mr. President, I'm shocked at my colleague. Senator Leichter, just because this has happened time and time again, I don't know why you would suggest that something like that could possibly happen with regard to this bill, but I know that, from my point of view, the memo certainly makes an awful lot of sense; but I look at my colleague, Senator Maltese, who I know is very friendly with both

Democrats and Republicans in Queens and is a guy out there with everybody in the community, and he wouldn't want to hurt his district or my district and certainly wouldn't want to affect the police and sanitation, and I can only imagine that, after consulting with his Republican colleague, Mayor Giuliani, there's just got to be money for this that they've figured in. So I'm going to support it.

ACTING PRESIDENT HOLLAND: Senator Marchi.

SENATOR MARCHI: I'm a little perplexed because I don't think that the arguments that have been raised by Senator Leichter, I think there's some merit to it because there is a change of position in the City once the terminal date has been reached. But I'm a little perplexed.

Just earlier this year, and I was reminded of that when I saw that the UFB finally, finally was able to effect an arrange ment which was sundered by action taken by the city of New York to increase salaries across the

board of the members of the City Council to $70,000 a member without counting perq's. That's the base salary.

Not only was it done immediately, it was made retroactive to January, and the mayor at that time stated that he thought they deserved it.

I have to assume that -- I have to assume that it's a measure of equitable relief. The only thing is, I am impressed by the argument that perhaps there is a change of position when there is a terminal date. Otherwise they should be left out completely on all future contracts. It's subject to an arrangement that gives it the force that would have -- it would have had, had they taken advantage.

So I will vote no on that, but I am very perplexed because it's an act of -- it's not a profession of faith in the City Council of the city of New York, and the mayor really has great confidence and faith in them by the action that he took earlier this year.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 804 are Senators Goodman, Leichter, Marchi and Montgomery. Ayes 52, nays 4.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 950, by Senator Larkin, Senate Print 6150, an act to amend the Election Law, in relation to the hours for voting.

ACTING PRESIDENT HOLLAND: Senator Larkin, an explanation has been requested.

SENATOR LARKIN: Yes. Mr. President, this bill allows for just one county in my district to change the hours during which

voting booths will be open for primary elections only, from noon to 6:00 p.m.

We had a similar bill last year that encompassed two counties that was objected to. We reduced it to Ulster County. We have a home rule message. We have a legislative resolution. The county's experiencing a very low voter turn-out over a number of years.

Of the 62 counties, there's 55 that have a voting primary day from noon rather than 6:00 a.m. In addition, last year Mr. Paterson asked the question of cost. The county of Ulster estimates that changing this voting pattern will result in a saving of approximately $19,200.

We think this is the right thing to do. We've looked at the voting patterns last year and some of the comments made by Senator Connor about the people commuting to New York City. Very limited number go to New York City from Ulster county.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT HOLLAND:

Senator Gold.

SENATOR GOLD: If the Senator will yield to just one question.

SENATOR LARKIN: Yes, Senator Gold.

SENATOR GOLD: Senator, when these issues came up in the Elections Committee I just asked one question. Why don't we, for one year, pass something that requires each of the election boards to, at a certain hour be it 12:00 noon or something, to write down at that time the number of people who have voted and then at the end of the day, we'll see who's voted and then if it, in fact, turns out that we are wasting time with those hours, we can make those adjustments; but the problem is we're really guessing. I mean some of the argument we've heard in the committee is that we've been told by inspectors of the board that nobody is really there. We've been told and told.

It really would be very easy. I don't think this side of the aisle which obviously is very concerned about people voting,

and I hope you are too, wants to do something that's fiscally irresponsible. On the other hand, in one election we could get all the answers. That's all. You have a piece of paper and all of the voting places and at 12:00 noon or if we're talking about a general election where there's talk about moving it from 6:00 to 9:00 or whatever, at that particular hour each election district they write down the number of people who have voted thus far and, at the end of the day, they put down a total count and it seems to me we won't be guessing any more and if this kind of legislation is appropriate, we can do it.

SENATOR LARKIN: Well, Senator Gold, while you make some merit on it I think if we looked and see that the counties that have the voting from 6:00 o'clock in the morning, we look at the size of the counties, Nassau, Suffolk, New York City, Westchester, Rockland and Erie, and when you look at our rural areas there isn't that much.

The primary for the Conservative

Party a year ago in four towns totaled a total of five people voting.

SENATOR GOLD: Senator, will you yield to a question?

SENATOR LARKIN: Yes, sir.

SENATOR GOLD: Senator, all I'm saying is it might be that you shouldn't be open that many hours, but maybe you should be open from 6:00 to 11:00 in the morning. All I'm saying is that I want the greatest opportunity and you do too, for the people in your county to vote, and we may be changing the hours in the wrong direction. I'm only suggesting that we find out what the actual voting pattern is and then I think I'd be glad to help you work things out.

SENATOR LARKIN: I -- while it has merit, I think maybe we ought to do that in a separate bill, but here we have a request from the County Legislature, it's costing them $19,000, and it's a small county of 155,000 people and they do not feel, based on their evaluation of it, their recommendations from

inspectors and the recommendations from both specific -- both parties have supported this.

ACTING PRESIDENT HOLLAND: Senator Paterson.

SENATOR PATERSON: Mr. President.

SENATOR LARKIN: He said he was my friend.

SENATOR PATERSON: And I am Senator Larkin's friend but, Mr. President, last night while on the great stage of life, the drama of human conflicts was being played out manifested by the power that read the features of Knick fans all over the state, the individual triumph as Dwight Gooden pitched a no-hitter after being banned from baseball for over two years now, I was oblivious to these great events in the human conflict because I was rereading the transcript of June 1995, and this actual debate which was then Calendar Number 601. There were 13 individuals who voted against Senator Larkin's bill that day, and their names are Senators Abate, Connor, Dollinger,

Markowitz, Mendez, Kruger, Nanula, Oppenheimer, Onorato, Paterson, Smith and Stachowski and, as a result of that stirring conversation I have noticed that Orange County has not been included in the legislation that is being proposed on Calendar Number 950 which comes before us today. It is not being included with Ulster County perhaps because some of the points that were made in that discussion, that being that it is not the number of people who are voting in the counties, it's the percentage of people who are eligible to vote who are coming to the polls as was eloquently pointed out by Senator Gold, another champion of human conflict, who spoke just a few moments ago talking about that very subject, that this is an American process. This is something that is unique in the world. We are the leaders of democracy throughout the world, and it is demonstrated by the way in which we have elections on primary day and election day so that even if the polls are standing without great utilization, the fact that they are there is what sets our democracy

apart from others; and so with that, if Senator Larkin would yield to a question?

SENATOR LARKIN: Two things, Mr. -- Senator Paterson. Orange County was deleted because the basic facts are Democratic leadership in Orange County went to the Assembly and the Assembly said, At your request, we won't consider the bill.

Wait a minute. I'm just being honest with my great Acting Minority Leader. I want to be very honest with him, and in Ulster County both parties consider that this is essential and that they agree with it and I'm confident that had the leadership in the other house got the message, they'd do the same thing and we're not trying to deny anybody any opportunity to vote, but we recognize the issue when you look at the counties that are voting noon: Sullivan County, Putnam County, Dutchess County, Columbia County, Greene County, Steuben, Genesee, you name it, from here to the Canadian border we're an upstate rural county. We want the same privileges that we think are essential

for the people. Period.

Thank you, David. Be nice now.

ACTING PRESIDENT HOLLAND: Senator Paterson.

SENATOR PATERSON: Mr. President, I am very impressed with the information that has just been provided me, but Senator Larkin never advised the chamber as to whether or not he would yield for a question. In fact, he assumed questions not in evidence and then went ahead and answered them.

My question was, what was he doing for dinner? That was the question? And I'm still trying to determine whether or not he will yield for a question.

ACTING PRESIDENT HOLLAND: Senator Larkin, will you yield?

SENATOR LARKIN: I'll be glad to.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR PATERSON: Oh, well, thank you, Senator.

What about the residents of

Ulster county who perhaps have employment in New York City? Therefore, they're taking trains down to the City and returning and would need that time in the morning to vote before they leave.

SENATOR LARKIN: Well, we have had this bill out here for a couple of years. We passed the information around to various clubs. We've made it known; we've had it available. We've asked for any input and we haven't received any input that said you should not change the voting pattern.

I have personally been at train stations and bus stops and I've asked over the past couple of years, Do you have a problem if we change this to noon? They said, No. Period. They're open until 9:00 o'clock at night. Our people get home from the City around 6:00, 6:30. We feel very confident that we are providing adequate time for those who would really want to vote in a primary. Period.

SENATOR PATERSON: Thank you very much, Mr. President, and thank Senator Larkin

for his very kind answers, and also the Secretary and the stenographer should thank him for the punctuation as well.

On the bill, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Paterson.

SENATOR PATERSON: I think that Senator Larkin makes a very good point. I think he's responding to his constituency. Obviously there is some extra money and some extra resources that are dedicated to keeping the polls open from 6:00 a.m. to noon, and if the other states -- if the other state's counties that have adopted the noon primary are doing so I don't think we should have a real problem with allowing Ulster County or even Orange County to do so as well.

The reason that I voted against the bill last year and will vote against it again is that I think there is a higher value that we need to consider all over this state, and that is the fact that it is very rare that we have these types of plebiscites to determine

however the public feels about particular situations, and we need the polls open as long as possible, and I think that 6:00 a.m. to 9:00 p.m. which is the standard polling time in presidential races, is probably the one we need to keep all the time.

It must be somewhat frustrating to Senator Larkin and myself when we go to the polls to welcome voters and to drop in to say hello to the inspectors and don't see anyone at the polls. They are under-utilized. They sit more as eyesores in the early morning or early afternoon hours, and yet I think that's good because the fiscal impact is nominal, but the opportunity for democracy is far reaching.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Senator Dollinger

to explain his vote.

SENATOR DOLLINGER: Mr. President, I voted against this bill before for many of the reasons outlined by Senator Paterson. I've spoken about declining voter involvement and about reducing the number of polls.

I am struck by one thing in the sponsor's memorandum which I think perhaps tells a little tale about what we're all about in New York. Voter tendencies indicated extremely low turn-out rates in primary elections. The reason for that, as I'm sure most of us know, the primaries in this state including things like presidential primaries, tend to have relatively low turn-outs because there aren't any candidates on the ballot because, as we all know, we have these arcane rules that mean you have to get -- virtually sign your life away and spend millions of dollars just to get on the primary ballot.

Frankly, it was irreprehensible when Democrats did it for many years. I think

it was ir... similarly condemned or should have been condemned when it was used by Republicans to keep them off the primary ballots. No wonder our turn-outs are so abysmally low in primaries when we won't even let people get onto the ballot. We can't generate enthusiasm for primaries because of all of these crazy 19th Century Tammany Hall rules that you have that you must meet before you can actually get on the ballot.

It seems to me if we have such difficulty getting candidates on the ballots in primaries, the thing we ought to do is at least keep the polls open to allow everybody to vote.

THE SECRETARY: How do you vote?

SENATOR DOLLINGER: No.

ACTING PRESIDENT HOLLAND: Senator Dollinger recorded in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 950 are Senators Abate, Connor, Dollinger, Gold, Lachman, Leichter, Markowitz, Onorato and Stachowski. Ayes 46, nays 10.

ACTING PRESIDENT HOLLAND: The bill is passed.

Secretary will continue to read, please.

THE SECRETARY: Calendar Number 1105, by Senator Saland, Senate Print Number 6621, an act to enact the Domestic Violence and Public Safety Act of 1996.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOLLAND: An explanation has been requested, Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

This is a Governor's program bill entitled the Domestic Violence and Public Safety Act of 1996, and responds in part to a number of well publicized incidents which occurred earlier this year emanating from decisions by courts with respect to bail or sentencing, particularly in the city of New York whereby defendants either received minimal or seemingly inapprop riate sentences or were released with little or no bail, only to cause severe serious injury, in

at least one case death, to a woman who had previously received an order of protection.

Generally, this bill reforms three areas of existing law. First it expands the scope of conduct which can be punished as criminal contempt in the domestic violence setting. In doing so, it builds on the landmark legislation that we passed here in this house and was signed into law in 1994, the Family Protection and Domestic Violence and Intervention Act of 1994.

Secondly, it gives the prosecutor the ability to have unduly low bail reviewed both by a court of coordinate jurisdiction or a superior court; and, thirdly, it gives the prosecutor the right to appeal from what he or she believes to be an unduly lenient sentence.

Currently in domestic violence cases or when orders of protection are violated prosecutors can lodge felony complaints alleging felony contempt of court charges only when the defendant violates that order and in so doing causes physical injury to the victim or causes

damages to the victim's property exceeding $250 or has been convicted of criminal contempt for violating an order of protection within the preceding five years.

This bill would change that to the extent of punishing defendants as an "E" felony. If they violate an order of protection and essentially commit either menacing in the second agree or aggravated harassment in the second degree which, in effect, means that if a defendant violates an order of protection, in so doing brandishes a weapon, threatens, stalks, menaces or harasses a person for whom the order of protection was issued, that penalty would be applicable.

In addition, it punishes a defendant at the "D" felony grade if he or she violates the order of protection and inten tionally or recklessly causes physical or serious physical injury to the victim.

With respect to both the bail and the sentencing provision, this is an effort by the Governor by way of his program bill to try

and balance the idea that there are decisions in which inappropriate levels of bail are required by the court setting bail, and there is no mechanism for the -- the prosecutor to challenge that.

The bill attempts to -- to establish that mechanism and similarly with respect to so-called unduly lenient sentences, it attempts again to level the playing field to permit the prosecutor to have access to a means of appeal similarly to that provided currently to defendants where defendants claim that they have received an unduly harsh sentence.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Waldon.

SENATOR WALDON: Would the Senator yield to a question?

ACTING PRESIDENT HOLLAND: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND:

Senator yields.

SENATOR WALDON: Senator Saland, isn't there a mechanism in place now whereby district attorneys can appeal situations similar to the ones addressed by this bill?

SENATOR SALAND: I think you'd have to be more specific, Senator Waldon.

SENATOR WALDON: With specificity, isn't there a mechanism in place now where a district attorney can appeal what, in his opinion or her opinion, may be the wrong decision by the court in terms of bail or other actions of that nature?

SENATOR SALAND: Currently the bail decisions in lower courts, in courts such as town courts, there is, as far as I am aware, I'm not aware of a codified provision.

SENATOR WALDON: Let me provide that access, if I may, Senator, so we'll both be on the same page. What I'm talking about is the illegally low situations perceived -

SENATOR SALAND: I'm sorry. Would you speak up?

SENATOR WALDON: Illegally low bails or sentencing provisions.

SENATOR SALAND: What I think you're talking about is sentencing; that is illegally low where a sentence is imposed that is less than the minimum pro- or prescribed by the law. That, in effect, is jurisdictional.

This -- what is proposed here is where there is a sentence which is considered under the facts and circumstances of the case by the prosecution to be, quote, "unduly lenient", unquote, as distinguished from not meeting the statutorily required minimum. This would afford the ability parallel to that of a defendant to appeal from an unduly harsh or severe sentence to a prosecutor where a sentence is unduly lenient.

SENATOR WALDON: I thank you for your explanation.

If the gentleman would continue to yield.

ACTING PRESIDENT HOLLAND: Senator, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR WALDON: To your knowledge -- thank you, Mr. President.

To your knowledge, Senator Saland, is the genesis of this portion of the proposal taken from what the federal government, meaning the federal court system, is allowed to do, federal prosecutors are allowed to do, federal defense counsel are allowed to do?

SENATOR SALAND: My understanding, and that is not based upon any discussions I've had with the Governor or any members of his staff, but based upon my review of the supporting memorandum that's been provid ed by the Governor, is that this particular authority or right exists in the federal system. Whether this parallels the federal system, I could not tell you, Senator Waldon.

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

ACTING PRESIDENT HOLLAND: Do you continue to yield, Senator Saland?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR WALDON: As I understand the federal provisos, both sides, defense side and prosecutor's side, are allowed to appeal situations similar to this where they are not happy, if you will, with the result. However, it's a long established process and procedure and it is not parallel to what's being proposed here in the state.

Let me ask a question that has perhaps more cogency at the moment. When the prosecutor appeals, what happens to the defendant? Where is the defendant during this appeals process?

SENATOR SALAND: Are we talking -- which portion of this bill are you asking me the question of?

SENATOR WALDON: Is it -- let me

ask it -

SENATOR SALAND: Are we talking about -

SENATOR WALDON: Let me ask it, is it possible that a defendant can be held up to three days while appeal is being considered and we're talking about the unduly lenient portion of this process?

SENATOR SALAND: Where are you, Senator Waldon, in the bill?

SENATOR WALDON: In regard to bail decisions, where is the defendant?

SENATOR SALAND: Can I -- I'm having a difficult time hearing, and it may well be a sign of my age and not your ability to resonate, but if you would please -

SENATOR WALDON: O.K. I apologize. It's probably caused by me, Senator.

What happens to the defendant while the prosecutor appeals the bail decision, to be more precise?

SENATOR SALAND: He -

SENATOR WALDON: Where is the defendant?

SENATOR SALAND: Well, I'm looking at page 2 of the bill, Senator Waldon, and starting at line 4, the bill reads as follows: The filing of such notice shall stay the effect of the order releasing the defendant on his own recognizance or fixing bail in a lesser amount or a less burdensome manner. Stay pursuant to this subdivision shall remain in effect for a period of 72 hours unless extended or vacated by a judge of the superior court.

SENATOR WALDON: If I may continue, Mr. President.

ACTING PRESIDENT HOLLAND: Yes.

SENATOR WALDON: I guess one might be able to assume that this process, because of that procedure you just spoke to, and others, might create a backlog. Is there any proviso in the bill for funding in regard to any backlog which will be created by this, if it were to become law?

SENATOR SALAND: I'm not aware of

any funding stream. I think the -- the position is that this bill is a revenue neutral, that there is no adverse fiscal impact by the provisions of this bill.

SENATOR WALDON: If I may continue, Mr. President.

Senator, I am told and maybe you can correct me if the information I have received is incorrect, that currently because of the dual jurisdiction of Family Court and the criminal courts on matters of domestic violence there's already a burgeoning backlog.

In your opinion, would this process exacerbate that backlog?

SENATOR SALAND: The -- I don't believe it's the issue of the dual jurisdiction that's concerned. We're talking about concurrent jurisdiction and certainly within the past several weeks, I have been advised by some that this has created some difficulty for local law enforcement, and it is certainly something that we will be attempting to take a look at over the remaining weeks of this situation.

Whether we will have enough time to deal with the problem or even define the magnitude of the problem remains to be seen or if it, in fact, is the burden that some claim it to be.

Now, everything we've received, and it's only been of rather recent vintage, is anecdotal.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Saland, you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

Senator, are you saying that if your own research or your looking into the matter over the next few days discovers that there is a backlog exacerbated by this proposal should it become law, that you will then move to have funds appropriated to deal with that backlog? Is that what you're saying?

SENATOR SALAND: No, Senator Waldon. What I'm telling you and telling the members of this body that we unanimously, with every member of the house being part and parcel of this measure by co-sponsoring it, passed the act to which I referred earlier, the Family Protection and Domestic Violence Intervention Act of 1994. There was a very strong statement of policy by this house, an expression of concern about the enormity of domestic violence and the importance of having a mandatory arrest component.

We, at that time, certainly had no reason to believe that there would be any problems by way of enforcement or by way of - of adhering with this particular then bill, now law. I still do not believe that to be the case. I -- it remains for me to have adequate data, certainly nothing anecdotal and no effort really to try and shirk off what would otherwise be the appropriate responsibility of law enforcement and local corrections to deal with the issues. That is something that I don't

think we will arrive at in a willy-nilly post haste fashion. We will certainly endeavor to try and get to the bottom of it and determine if it is, in fact, the real problem and I do not think we can do that in a matter of a few weeks.

We certainly will be open to suggestion and endeavor to deal with the problem if, in fact, it is a problem.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR WALDON: I thank you very much, Senator Saland, for letting us know that you will continue to research the matter, you will not in any frivolous or capricious fashion move on it, and it's amazing that this bill was brought to us this late in the session without careful preparation in terms of the possibility

of a backlog and resources being appropriated or at least looked at the possibility of appropri ation to deal with the backlog.

But let me take a different tack if I may. Mr. President, my colleagues, Senator Saland, is this bill -

SENATOR SALAND: May I suggest to you that the bill that we enacted had a sunset provision of -- I believe that sunset provision was approximately four years and this year, the -- we have proposed to extend it by one more year.

One of the things that we endeavored to do was to have in effect a long-term data-rich study that would enable us to determine the effectiveness of this bill, whether we had to make any types of adjustments in the bill and whether, in fact, we would be required to find additional monies to effectuate what certainly everybody agreed, again unanimously, was the extraordinarily important policy purposes for passing this bill.

SENATOR WALDON: Thank you very

much, Senator Saland.

Now, let me get to the point that I wanted to get to. I appreciate very much what you just shared with us.

Is this limited only to appeals for domestic violence situations or could someone charged with burglary -- could the prosecutor then appeal in that situation? Is there license for the prosecutor to do whatever he or she wishes to do regarding any criminal action which comes before them?

SENATOR SALAND: Well, I wouldn't be so cavalier, Senator Waldon, to say license to a prosecutor to do anything that he or she wishes to do, but what I would say to you that there is nothing in this bill which amends the CPL which limits with respect to these cases the right of a prosecutor to only domestic violence matters.

So to the extent that there has been a -- a crime committed or allegedly a crime committed, the law enforcement mechanism is now fully under way. There is a bail hearing of

some kind, whether it's a burglary, whether it's a rape, whether it's a homicide, whether it's an assault. There will be the ability under this -- these proposals for appeal with respect to a bail decision for, again, the unduly lenient sentencing provision.

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

ACTING PRESIDENT HOLLAND: You continue to yield, Senator Saland?

SENATOR SALAND: Yes, Mr. President, I will.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

Senator Saland, would I be wrong with my thought process -

SENATOR SALAND: If you were, I'd be reluctant to tell you, sir.

SENATOR WALDON: I'm sure you would in an open chamber, but in private I'm sure you would come to me and counsel me, and I

appreciate that.

SENATOR SALAND: Thank you.

SENATOR WALDON: My question is would I be wrong, my preamble in the question is, would I be wrong in saying that this bill should not have been named a "domestic violence" bill but, in fact, a prosecutors' bill because what you've just said to me means that the prosecutor has a broad brush to make appeals and not necessarily limited to that very finite area of domestic violence.

Therefore, this is not about spousal abuse and what transcends post-spousal abuse or which may happen after spousal abuse, but it's really about giving the prosecutor license to do whatever he or she may feel necessary to do in regard to appeals, is that correct?

SENATOR SALAND: Senator Waldon, it grievously pains me to tell you that you're wrong. Truly, it grievously pains me to tell you that you're wrong. This bill is not about arbitrarily permitting prosecutors to, in

effect, have a field day with the criminal justice system. This bill is about an endeavor to try and balance the equities, so to speak, to try and create parallel ability in a prosecutor that currently exists for a defense attorney so that, whereas a defendant through his defense attorney can claim that a sentence has been either unduly harsh or unduly severe, we are saying that a prosecutor who believes and certainly I would have to assume that the court would have the ability to make a determination on the record, that there has been an unduly lenient sentence, that prosecutor should have that corresponding right and, as you mentioned earlier, while I can't attest to the mechanism by which this is done in the federal system, there -- this is not unprecedented. It does exist in the federal system.

SENATOR WALDON: May I continue, Mr. President?

ACTING PRESIDENT HOLLAND: You want to go through the whole thing again?

SENATOR WALDON: Okay. Thank

you, Mr. President.

Senator Saland, it unduly pains me to respectfully disagree with your position. I think those of us who are really sensitive to what is on paper here recognize that the words say that the prosecutor has license. We've mislabeled. This is a misnomer. This is not really about domestic violence. This is about giving prosecutors broad latitude. Incidentally, it may help in a domestic violence, but I question that.

And if I may, Mr. President, I will thank the Senator, and I will now speak on the bill.

ACTING PRESIDENT HOLLAND: Senator Waldon, on the bill.

SENATOR WALDON: What this bill does is give the prosecutor broad latitude to do what he or she may wish to do. What it also does is it forces someone who has been abused into a compromising situation.

If you don't go in and testify, you are subject to a higher penalty under this

particular proposal. I think it doesn't accomplish what we want to accomplish in regard to domestic violence.

I think under current law, the prosecutors have the right to appeal; and to be very specific, let me just read what I have, "have the right to appeal sentences that are illegally low in violation of the state's mandatory sentencing laws." That's in place now. So I really don't understand this. I don't understand why now at this part of the session, when we don't have the time or even perhaps the will to appropriate funds for the backlog which will be created.

So I encourage my colleagues to recognize this for what it is. It is not what it is entitled. It is really a bill to help the prosecutors do their thing. I encourage all of us to vote against it.

Thank you, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Abate.

SENATOR ABATE: Yes. Will

Senator Saland yield to just two or three questions?

ACTING PRESIDENT HOLLAND: Senator Saland, will you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR ABATE: Yes, Senator, there is one section of the bill which talks about the importance of grand juries in investigating crimes and would subject those individuals who unlawfully refuse to appear or testify before a grand jury -- make them subject to prosecution for the Class D felony of criminal contempt in the first degree.

Now, would this apply to a victim? And let me give you an example of a victim: A woman who has been assaulted by her husband or live-in partner and is reluctant to come forward and testify because she fears for her life and even though she reports the crime to the police and gets as far as the D.A.'s

office, as she is about to walk into the grand jury to testify against her husband, she's afraid of her life and is reluctant to testify and walks out the door.

Does that mean -- in these situations, will victims of domestic violence now be subject to prosecution of a "D" felony for criminal contempt?

SENATOR SALAND: My understanding is that currently under the existing law that would already be a crime or subject - subject -

SENATOR ABATE: We're elevating it.

SENATOR SALAND: Without our doing anything, if we did absolutely nothing, if we did not change the law, there could be an "E" felony prosecution under the existing law. Certainly I don't believe it was the Governor's intent to jeopardize a victim, but that again is the existing law, and the penalty is being kicked up.

It is not done with any intent to

try and somehow or other make the life of the victim subject to greater agony or greater victimization; and if, in fact, it's capable of being read that way, then certainly, if we have the opportunity to negotiate this with the Assembly, I'm sure the Governor would be more than happy to take a look at it.

But please keep in mind that we're not creating a new penalty.

SENATOR ABATE: No.

SENATOR SALAND: It already exists.

SENATOR ABATE: You're just elevating. Right.

Senator, I'm well aware of that. My concern is -- it's just ironic to me that this is considered a Domestic Violence Protection Act, and yet, within this very act, there's enhancement of penalties for contempt.

In most of the cases where domestic violence is going to be charged or proved against an assailant, it is necessary to have the testimony of the victim herself or in

some cases himself.

So it's just ironic that in this bill that alleges that we're going to do better for domestic violence victims we have this section, which could do irreparable harm to the victim themselves.

SENATOR SALAND: With your permission, if I might, Mr. President, would you yield to a question?

SENATOR ABATE: Yes.

SENATOR HOLLAND: Senator Abate yields.

SENATOR SALAND: Are you aware of any prosecutions of any victim under the existing law for failure to cooperate with a prosecutor or any indictments having been brought in?

SENATOR ABATE: I'm aware of situations where a victim who has refused to cooperate during a trial has been held in contempt. I don't know the actual allegations in those cases but, yes, the district attorney has used his or her authority to hold victims

who at the last minute become recalcitrant and refused to testify for whatever reason. They want to move forward with their case. They see a crime has occurred and, oftentimes, the victims are held in contempt or often held in jail during the process and so they can testify.

SENATOR SALAND: Those are in domestic violence cases?

SENATOR ABATE: That I cannot say. I'm aware of a general policy that the tool is used. My concern is since the thrust and the motivation -- and I listened to the questioning before. The thrust and the motivation of this legislation is to provide greater protection to domestic violence victims, it seems to me we should scrutinize each of these sections to see what impact this legislation would have on these victims, and my concern is, in good faith, we may be doing more harm to the victim than you intend to do in the first place.

But let me just go on and ask another question. My concern is one that I have

articulated now for months that we seem to pass a lot of criminal justice policy because we're reacting, and this is a very dramatic change in criminal justice policy which would allow the prosecutor to appeal bail they think is too low or allow the prosecutor to appeal sentences they think are too lenient.

Have we held any public hearings where prosecutors testify, where judges testify, where the defense bar testifies, where the local jails testify, where OCA has been part of these discussions?

SENATOR SALAND: I am not aware of whatever may have preceded the Governor's presenting this bill as a program bill in terms of who he may have polled, who he may have dealt with, he or his office. I would suspect that the enormous weight of public opinion certainly would say that there is nothing inappropriate about the manner in which the Governor and this house will endeavor to try, as I said earlier, to level the playing field.

This is nothing unprecedented.

Certainly, it exists at the federal level, and I would assume, although I could not tell you with certainty, that there are a number of other states that probably provide a similar ability, and I have to assume, even further, that given the absence of horror stories either at the federal level or within the ranks of other states that this is something that is not readily abused.

It's not like there will be an absence of due process in this procedure. It merely will afford the ability in those cases, and I'm sure the cases in question will be far more the exception than the rule, where there is a sense that a judge has abused his or her discretion to a point at which, whether it's in terms of bail or sentencing, that which the Court is directing does not comport with standards of reasonableness, that the prosecution will have the ability to appeal.

I don't find that to be unreasonable, and I would like to think that most people wouldn't find it to be

unreasonable. This will not be done in a vacuum. It will not be done in a vacuum. There are, as you know -- well know -- guarantees afforded not only by our federal Constitution but our state Constitution and, yes, our Court of Appeals, that certainly comes to a level that exceeds that found in any other state.

SENATOR ABATE: Would the Senator yield to another question?

ACTING PRESIDENT HOLLAND: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT HOLLAND: Senator continues to yield.

SENATOR ABATE: You may be right that a public opinion may support this. It may work other places in other jurisdictions, but don't we have a responsibility in this Legislature to call together, have a public debate, and involve the experts, so we understand what the impact these changes would have on the uniqueness of our criminal justice

system?

It is not enough or I don't find it enough to say it works some place else without understanding the impact right here in New York State.

To your knowledge, do you know what OCA's position is on this bill?

SENATOR SALAND: I must confess I'm not aware of OCA's position.

SENATOR ABATE: And have we asked OCA what they think the impact would be on court congestion, the impact on the number of negotiated pleas? Will that increase or decrease? The impact on local detention facilities -- because, as a result of the bill, people will be detained up to 72 hours while the bail is being appealed. Have we asked what the impact would be in the cost to localities on numbers of defendants being held that much longer?

SENATOR SALAND: I'm not aware of those inquiries being made. But let me suggest to you, if I might, that it's inconceivable to

me that we're talking a majority of cases. I think you and I can probably agree that we're talking a minority of all the criminal cases that come through our various courts from one end of the state to another and, if anything, what this measure would do would, I think, cause judges to reflect a little more deliberatively being full well aware of the fact that a prosecutor will now have a new tool available to him or her where they feel that that judge's discretion has been abused. Certainly, the vast majority of cases, these questions never arise and in that small minority of cases where they occur, I just am not troubled that the prosecutor who, in effect, represents the people of the State of New York and speaks for the people of the State of New York in those cases should not have at his or her fingertips the comparable ability to challenge those decisions that a defendant can otherwise challenge.

SENATOR ABATE: On the bill. Thank you, Senator.

ACTING PRESIDENT HOLLAND:

Senator Abate, on the bill.

SENATOR ABATE: I think we need to put this in context that, unfortunately, we as a society have been faced with a number of tragedies around domestic violence, but I don't think this chamber should be reacting to these tragedies and then react with such a dramatic change in criminal justice administration.

Last year, we passed a law and we thought we had the acceptance of the prosecutors. It was based on Willard. We thought Willard was a terrific program, but because of our failure to hold public hearings, we didn't understand that maybe the prosecutors weren't going to consent to release of defendants to Willard. Because we did not have public hearings and we didn't hear from the prosecutors about whether they would consent or not, Willard doesn't have a sufficient number of people in that facility.

If we had reached out to the experts and heard what the impacts of the proposed legislation would have been, we could

have amended the law. We could have understood how the program had to be modified, and we would have produced a more effective piece of legislation last year.

Again, we're reacting to headlines. I say this over and over again and maybe it's boring, but I believe it, is that our criminal justice policy formulation should not be partisan. It should be bipartisan. It should involve the experts in the field so that our policy isn't reactive, but it is effective, it is strong, and we have to have a tough criminal justice system.

But we in the Legislature, when we pass legislation like this without hearing from the judges, without hearing from the D.A.s -- I want to hear from them how many cases would be appealed in terms of bail or in terms of the sentences. We would ask them to take last year's history of cases and tell us how many times would you have made appeals either in terms of bail or light sentences so we get a sense of what the impact on the system would be.

I would like to hear from the judges. I have heard judges say, "We're on the bench." Of course, there are some judges who make some stupid decisions and should be criticized, but for the most part in that courtroom, the judges in that courtroom have 20, 30 years of experience, life experience as well as legal experience, and sometimes the A.D.A.s are just out of law school; and shouldn't there be a balance? If we're going to have an independent judiciary, shouldn't they have authority to make decisions based on individual cases before them?

One thing we should keep in mind. There are guidelines that are set out in terms of setting bail. A judge can't, just on a whim, either deny bail or set someone free on their own recognizance. The Court must take into consideration the following factors: One, the principal's -- the defendant's character, reputation, habits, mental condition, his or her employment and financial resources, family ties, length of residence in the community, criminal

record, record of previous adjudication as a juvenile defendant, previous record, if any, in responding to the court, whether they have violated prior court orders, whether they have failed to return to court, any warrants outstanding, the weight against the defendant, and the sentence that could be imposed if the defendant was convicted.

Maybe we have to look at better solutions in making judges accountable. Instead of giving prosecutors appeal, maybe we have to go back and say to judges when the prosecutor challenges the bail set, the judge has to put on the record why they are setting such a low bail so there's some justification and there is a record and there is an opportunity to challenge the judge's decision. There seems to be maybe other alternatives to hold judges accountable and protect the public.

But this tips the scales of balance in a direction that I believe will create havoc in the criminal justice system. It will mean that we're going to a system of

preventive detention, because any time a district attorney says, "The bail is too low," that means the case has to be appealed and the defendant -- and we'll put aside the weight of the evidence. We'll put aside the presumption of innocence. That defendant will be held up to 72 hours.

If this chamber wants to pass a preventive detention bill, fine, but this has nothing to do with domestic violence. This bill has nothing to do with domestic violence. We can't pass it unless we know the impact. It will mean fewer negotiated pleas, I believe, or not only negotiated pleas will be affected. I believe bail, then, will become negotiated unless the D.A. consents to the level of bail. Unless the defendant understands the A.D.A. will not appeal a sentence, all things will grind to a halt. We need to understand the impact of those decisions.

So I'm disappointed. Everyone in this chamber cares about domestic violence. We want to be tough. We want to make sure

sentences and violations of orders of protection are taken very seriously by the courts. I think the first section of the bill is quite good. That calls for greater penalties for violations of order of protection, but if this chamber wants to be serious about domestic violence, there is a whole package of get tough on domestic violence offenders that has been put forward by legislators over the last five years.

We should look -- and many of those legislators happen to be in the Assembly who are sponsoring and have introduced these bills. So I call upon this chamber to look at these pieces of legislation. One is a stalking bill, enhances penalties. Another takes guns away from people who are charged and convicted of domestic violence. It talks about violence hot lines and safe havens and more time for offenders. This is a get tough package on domestic violence.

This bill I'm not sure what it does. It is too great a dramatic change in our

criminal justice process without having a full debate and public hearing. I think we will neglect our duties. We won't be responsible because we do not have sufficient information before us to pass this piece of legislation today.

I ask the Senator if he would consider laying this aside so we could have public hearings involving the judges, the district attorneys, the correction departments throughout the state, to understand what the real impact this law would have on the system of criminal justice, and include the victims. I think we need to hear from the victims. There are portions of this bill that will impact on them. Let's hear from them whether this is the way to go or whether we have better options in terms of protecting the public.

I will be voting no on this piece of legislation.

ACTING PRESIDENT HOLLAND: Senator Volker.

SENATOR VOLKER: Mr. President, I

wasn't going to comment, but I feel kind of constrained because some of the things that were said here and, Senator Abate, I think you made some very good points and, as usual, you were very articulate. As far as prosecutor appeals, and I just asked my colleague right next to me, I was trying to think of how many people -- I have been Chairman of Codes since 1987. I have been on Codes forever.

There have been prosecutor appeals bills. I think Marty Knorr may have sponsored the first one -- Senator Knorr - about 15, 20 years ago. Senator Padavan passed his five times. I believe we had hearings two or three times as part of other -- not just specifically on that issue, but on other issues way, way back, probably in the '80s '70s, so forth.

The point I'm trying to make is this is not a new proposal at all. It's been around for years.

Judges? Well, some of the judges from certain counties will say, Geez, it's a

terrible idea because it will create crowding, and so forth. If we have public hearings, I will tell you exactly who is going to come out, who is going to say what, and so forth. I mean that's fine.

Last year, we passed a sentencing bill. People said we ought to have public hearings on it. Yes, we only had them in 1977 on definite sentencing. We had them in '83 on criminal sentencing. We had them again I think in the early '90s. The point is, frankly, you can drive these things to death.

We did it last year because we had the opportunity. The Assembly was willing to deal with us. And, by the way, on Willard, we asked the D.A.s. We didn't not consult with them. We consulted with everybody on that. I was one of the people directly involved in negotiating. The trouble was -- and I was worried about this. Even though most of the D.A.s were saying, "Well, yeah, we will do it," when it came right down to doing it, they were very reluctant to do it. On that, you're right,

but public hearings wouldn't have brought that out because I don't believe that they really would have admitted that they were not willing to do it.

I've got to tell you, the heads of the association were telling us they were willing to do it, and you're right that's a problem. We're trying to deal with it and, hopefully, we will be able to deal with it.

The only reason I'm mentioning this is -- I realize this is a Governor's program bill, as was the bill that I sponsored yesterday, and I read the New York Times today, and I understand -- I think it's unfortunate from the Assembly standpoint that they took as definitive a stand as they have. I have been trying all year long to keep that from happening.

Now, that package of bills that you talked about in the Assembly, some of them are fairly interesting bills and Senator Saland, I'm sure, is going to take a look at it. There is one bill in there, sponsored by an

Assemblywoman who I know very well, that talks about upgrading penalties for stalking. Get that bill passed, because we've been trying to do that for years. That bill has passed this Senate for years or a similar bill.

In fact, the trouble with stalking is -- in fact, I think that was Senator Tully. The Assembly came out strongly in favor of doing something about stalking. It was a big issue for women, and then when we tried to do it, we found out that they were kind of ambivalent about it because of the penalties. They didn't want to deal with the penalties.

The only reason I mention this is that I realize that this is a tough issue and I realize that these are difficult, difficult issues. Senator, there is a saying in criminal justice, "There's hardly nothing new under the sun these days."

Very little in this bill is new. Preventive detention -- Senator Cook, who is here, his bill is the most historic bill in my committee. I think he started passing it

somewhere around 1975 or '6. We've done it just about every year. In fact, I believe it's either on the calendar or we have already done it.

The only reason I mention it is that although certainly it's arguable that you should look at these things and you should study them, there has been an awful lot of study done in this whole area, and I just want to point that out.

ACTING PRESIDENT HOLLAND: Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. May we suspend this debate for a moment so we can recognize some Senators who have pressing business and would like to cast their ballots now.

ACTING PRESIDENT HOLLAND: Could you read the last section, please.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

Senator Smith.

SENATOR SMITH: No.

ACTING PRESIDENT HOLLAND:

Senator Abate.

SENATOR ABATE: No.

ACTING PRESIDENT HOLLAND:

Senator Lachman.

SENATOR LACHMAN: No.

ACTING PRESIDENT HOLLAND:

Senator Skelos.

SENATOR SKELOS: Aye.

ACTING PRESIDENT HOLLAND:

Senator Trunzo.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT HOLLAND:

Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT HOLLAND:

Senator Lack.

SENATOR LACK: Aye.

ACTING PRESIDENT HOLLAND:

Senator Montgomery.

SENATOR MONTGOMERY: No.

ACTING PRESIDENT HOLLAND: Withdraw the roll call and return to the debate.

Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President. I listened very carefully to my colleagues, and I think that when Senator Abate talks about this being a major change, I believe it is a major change; and even though, as Senator Volker rightfully said, we discussed the issue before, the fact that we discussed it doesn't make it the law and the fact that we discussed it doesn't mean it's not a major change. It's a tough issue.

What bothers me -- and I hate to keep coming back to it every day, because I have been up here so long I should have known this, and the fact that Senator Farley said it so vividly to me should not have been a shock: The concept that we don't debate laws; we debate issues.

But this "issue," I say to

myself, "Every day we have judges making decisions." Some of those decisions may be a bad decision, and through the grace of the Almighty nothing happens and that's okay.

Some of the decisions are good decisions but because of things that are not in court, uncontrollable, a bad thing could happen even though a judge made a good decision.

I doubt whether there are many people in this room who know, for example, that today as you're sitting here right now -- or apparently not sitting here -- in the Family Court in the state of New York, New York County, they are appointing guardians for children in cases, and I know of at least one situation where there is a group being appointed as guardian where the guardians never even meet the child, and yet the guardians come to court based upon hearsay from other people who get sent out and make recommendations to judges, and that is a process going on today in the Family Court. Now, I know about it in one particular situation, and there has been no harm to the

child. But I will tell you something, now that you all know about the situation that I have told you about. When that case comes into view and the no-nothing who writes editorials for the Daily News decides to wrote one of his junk justice pieces, and people say, "Oh, my God! You appoint guardians and the guardian never met the people; what kind of process?" then they are going to find out that this has been going on for years.

There was a time a few years ago when the people of this state cheered when Isadore Zimmerman was convicted of murder and sentenced to the electric chair. The crime was terrible, and people were glad that justice was served. Some 20 years later, when his conviction was thrown out after, thank God, his death sentence was commuted and this Legislature passed a law to reward -- terrible way to say that -- but to pay Mr. Zimmerman for the time of his life we took away, everybody cheered and said we have taken care of this victim. And what that basically says to me is that we live

in a world where we cheer hindsight and Monday morning quarterbacking, and we get very un realistic in the way that we deal with human life on a day-to-day basis.

The case that is cited in the memo and the case we've heard so much about that came out of Brooklyn with Judge Duckman is a tragic case. As I read that, some of what I have read about it, the district attorney has supported some young assistants in the court room, and I admire him for sticking up for his staff. But why don't you take a look at what really happens in a courtroom.

You have young people out of law school who are assistants starting their career, and they are very sincere, good people. Nothing bad to say. And we're suggesting today that if they, in fact, don't agree with someone who has been elected or appointed to the bench who has had to practice law for at least ten years and whatever, we now want to get into a process that says they should be able to appeal, and maybe that's a change in the law, Senator, that we

haven't done before. Maybe it's time to do that. I don't know whether it's destroying the federal system.

But I know that one thing I haven't seen in the papers in the situation of Judge Duckman, for example. It would be interesting to know about the other thousand cases he handled that week, because that's what he did. I haven't seen his schedule, but knowing what the Brooklyn Criminal Court is, I have to assume that there were probably something between maybe 600 and 800 or 1,000 cases that came before him that week, and nobody is prepared to say that, you know, it's amazing that judges get so much right so much of the time, and we don't hold ourselves, believe me, to the standard that we are trying to hold judges to in the debates that we've had so far this year, and I think it's unfair. I think it's unfair.

Domestic violence is horrifying and, you know, when you take a look at the criminal justice system, it's easy to talk about

somebody who steals money, steals cars, holds up a store and kills. These people are looking - there is a profit motive. You can put them in jail or maybe you can rehabilitate somebody in some way.

But as my distinguished colleague to my left points out, a lot of the times when you get into sexual crimes, putting somebody in jail apparently hasn't helped too much. There has got to be treatment. There's got to be other things, and some people don't even think treatment helps. It's a different kind of crime. You issue an order of protection in a domestic violence case and you hold somebody in jail for a week, for two weeks, for 45 days, and for some reason the people come out and killing doesn't bother them because their life means nothing. They've seen their life destroyed in their minds. We've seen people kill their families and shoot themselves. The capital punishment laws in this state haven't saved any of those people.

So I'm concerned about this

particular bill. I tell you, Senator Saland, as it's drafted, if we wanted to do that, I'm not crazy offended. I know that some people have raised the issue as to whether or not this is constitutional or that, and we should listen to that one. I think Senator Farley is right. We're just going to have to deal with an issue here as to whether or not we think that after all of these years in the state of New York this is the place where we are going to get that crack in the dam, and we'll either say prosecutors should be able to appeal or they shouldn't be able to appeal in these limited cases.

But you and I know, Senator Saland, that the next step will be why should this kind of idea not apply to organized crime? We have a guy who's a gangster, and we know he's a gangster and the bail is too low, why let him on the street? Why shouldn't this apply to drug dealers? And these kinds of bills are always a problem for me when we start to separate victims and kinds of situations because that's the

hype -- that's the hype in the media today.

We had bills which said if you commit a crime against a senior, it's more than if you don't, and we pointed out at that time, we're trying to protect seniors, but if you have a senior walking with their pregnant daughter, they are not going to be so happy that their pregnant daughter gets belted around because it's less of a crime. So we make these distinctions which we then wonder, have we made a proper distinction or not.

I am very sensitive in domestic violence cases and I think that if you listen to a Catherine Abate, who votes against this bill, I don't think there is anybody in the world who's going to say, "There's a lady who doesn't understand domestic violence, there's a lady who doesn't understand women's issues." It just isn't so.

The people on this side who are voting no obviously are very, very much concerned and aware of the problems with domestic violence.

Closing -- and I know there are some people again who want to vote -- I just want to say that on the bill the thing that bothers me the most is the underlying debate which somehow has pervaded this chamber into thinking that it's good politics in 1996 to bash judges, and the one person who that does not apply to is Senator Saland. I'm not suggesting that, Senator. You know I hold you in the utmost esteem.

But the problem is that most of what we are doing this year in criminal justice is going to be interpreted as that, that we in some way have to just -- to keep up with the trend of our newspapers, have to bash judges on a day-to-day basis. I think there are plenty of things wrong. One of them I gave you today, Senator Saland, and maybe you'll want to go down to that courthouse in lower Manhattan and find out why they appoint people to be guardians who never meet their wards.

Maybe there's some other things I can tell you about which I think would be

helpful in the situation. I'm not really sure this does it. I do think that when we open up a door to a major change in the criminal justice system, we have to take a real close look as to where that's leaving us in the next day.

ACTING PRESIDENT DiCARLO: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we suspend the debate for a second and read the last section for purposes of letting Senator LaValle cast his vote. Senator Padavan, as well.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

Senator LaValle.

SENATOR LAVALLE: Aye.

ACTING PRESIDENT DiCARLO: Senator Padavan.

SENATOR PADAVAN: Aye.

ACTING PRESIDENT DiCARLO: Senator Gold.

SENATOR GOLD: In the negative.

ACTING PRESIDENT DiCARLO: Senator Seward.

SENATOR SEWARD: I vote aye.

ACTING PRESIDENT DiCARLO: Close the roll call. The roll call is withdrawn.

Senator Paterson.

(There was no response.)

Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DiCARLO: Senate will stand at ease for one moment.

SENATOR MARCELLINO: Senator Paterson will be back in a second. He would like to speak.

ACTING PRESIDENT DiCARLO: Roll

call is withdrawn.

SENATOR MARCELLINO: Mr. President, we would be glad to have you do the substitutions.

ACTING PRESIDENT DiCARLO: Secretary will read.

THE SECRETARY: On page 59, Senator Volker moves to discharge from the Committee on Rules Assembly Bill Number 9627 and substitute it for the identical Third Reading Calendar 1038.

On page 72, Senator DeFrancisco moves to discharge from the Committee on Rules Assembly Bill Number 5979 and substitute it for the identical Third Reading Calendar 1133.

ACTING PRESIDENT DiCARLO: Substitutions are ordered.

Senator Paterson, welcome. Do you wish to speak on the bill?

SENATOR PATERSON: Thank you.

ACTING PRESIDENT DiCARLO: Senator Paterson.

SENATOR PATERSON: Mr. President,

if Senator Saland will yield for a brief question.

ACTING PRESIDENT DiCARLO: Senator, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT DiCARLO: Senator yields.

SENATOR PATERSON: Senator, the 72 hours that would be added on during the resolution of whether or not the prosecutor might appeal bail, in other words, the detention of the defendant for an additional 72 hours, do you see any way that this would influence the bail negotiation?

SENATOR SALAND: Perhaps I'm being a little dense. Maybe you could rephrase the question, Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator Saland, maybe to amplify. I used to conduct bail hearings at a point when I was in the Queens District

Attorney's Office, so in this case I was the prosecutor, and what is classically the case is the prosecutor picks a higher bail than the defense attorney and then the judge sets bail. Because I now as the prosecutor -- and we'll assume you are assisting me. As prosecutors, we have the option now of appealing the bail. So we can actually detain the defendant another 72 hours because if we don't like the inevitable decision then we can remand the defendant for an additional three days, and that's 72 hours assuming that the judge can make a decision. If the judge can't, then the time seems to be in definite from your bill.

So I'm just saying that doesn't that give us the option of either increasing the amount of bail until we agree to let the defendant go or just taking a blanket position that we're delaying the proceedings?

Doesn't that give us, in a sense, an unfair tool in the negotiation?

SENATOR SALAND: Thank you for providing the additional particulars.

SENATOR PATERSON: I won't even term it unfair. Let's just say an additional or an excessive tool in the negotiations.

SENATOR SALAND: I do not believe in the vast, vast majority of cases that it will have one iota of impact. I think there will be a small number of cases in which there is the reasonable belief, or at least to a district attorney the reasonable belief, that the bail as set by the Court is so low as to be beyond the pale of anything that would be considered reasonable that the district attorney would resort to the use of appeal.

I don't think they are going to arbitrarily use -- I don't think they would use this as a tool to arbitrarily appeal cases. Certainly, there are practical reasons, if for none other than practical reasons that they wouldn't. They simply would not have the personnel if you are implying they would threaten or even endeavor to appeal each and every time that there is a bail decision made by a court.

SENATOR PATERSON: Thank you, Senator Saland.

Mr. President, as for the impact, I don't know that it would be -- I agree with Senator Saland. I don't know that it would be a great number of cases that this would necessarily affect, but it probably wasn't an overload of cases that was the catalyst for writing this bill. It was probably some situations that seem to be abhorrent because in a particular situation an individual was released and there was a perception that this individual might not be available for trial.

Actually, there are a lot of cases where that actually occurs, and bench warrants have to be achieved at that particular point, but what I'm asking, Senator Saland, is not the impact but just specifically what the bill provides; that, in other words, even in these individual cases where they are high profile, unless the district attorney elicits a bail of a million dollars or something that's dramatic, there is a tremendous amount of

pressure on the prosecutors, and that's why I wish we had gotten their commentary on this specific bill.

I understand what Senator Volker is saying, but I wish we had the prosecutors tell us about this particular bill, because, in a lot of cases, it would then be the prosecutor who was under public scrutiny if the prosecutor does not appeal the particular bail because the bail might be perceived to be too low.

I think it is fair to say, Senator Saland, that there's not a significant understanding around this state of what bail really is. Bail is not something that reflects the crime, and bail is not something that reflects whether or not in the overwhelming cases there is a danger to society of the defendant being released. Bail is the measure of whether or not we think the defendant will be available for trial.

But what seems to be the case if you watch the evening news is that, if you have a celebrated case, there is an assumption that

there should be a very strong bail or remand of the defendant, and what I'm offering in this discussion is the possibility that the political situation starts to creep into what is really the professional analysis of what the situation is in a particular criminal justice case, where the prosecutor would be forced to appeal the bail hearing result because otherwise the prosecutor, not the judge, is going to be placed under tremendous public scrutiny as to what he or she is doing with this particular case.

So since that made sense, I will just go on and -- on the bill, Mr. President - advise that what's very troubling is that the felony criminal content upgrade as we see in this particular bill is really laudable. I think if that bill was separate, it would pass this house 61 to nothing. We are all in favor of that.

If there's something wrong with this bill, i wouldn't even go into the details to point out what it is. There's nothing in the bill that is as abhorrent as what should have

been in the bill and isn't. I think that we should examine, as Senator Volker talked about, the issue of stalking, penalties for stalking, also other issues that relate to domestic violence situations, the confidentiality of the victim, certainly the removal of guns even though they are licensed by individuals who have been convicted of domestic violence, other things that I think would provide a better quality of life in this area.

But the other public safety protections that this bill is offering, I think actually border on a sense of constitutionality.

And for that reason, I can't support the bill.

ACTING PRESIDENT DiCARLO: Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT DiCARLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 1105 are Senators Abate, Connor, Gold, Lachman, Leichter, Markowitz, Mendez, Montgomery, Paterson, Seabrook, Smith, and Waldon. Aye 44, nays 12.

ACTING PRESIDENT DiCARLO: The bill is passed.

Senator Marcellino, that completes the controversial reading of the calendar.

SENATOR MARCELLINO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT DiCARLO: Yes, I believe there is.

SENATOR MARCELLINO: I have the housekeeping.

On behalf of Senator Hoblock, Mr. President, please place a sponsor's star on Calendar Number 1111.

ACTING PRESIDENT DiCARLO: So ordered.

SENATOR MARCELLINO: There being no further business, I move we adjourn until

Monday, May 20, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT DiCARLO: On the motion, the Senate stands adjourned until Monday, May 20, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 1:41 p.m., the Senate adjourned.)