ALBANY, NEW YORK

May 20, 1996

3:04 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. I ask the members to find their places, staff their places.

I would ask everybody in the chamber to rise, including those in the galleries, to say the Pledge of Allegiance to the Flag with me and also remain standing for the invocation.

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

We're very pleased to have the Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing here to deliver the invocation.

Father Young.

THE REVEREND PETER G. YOUNG: Thank you, Senator.

Let us pray. May we pray for all of our New York State people, that their wealth and their power might become a source for peace rather than conflict, a source of hope rather than discontent, an agent of friendship rather than enmity.

May the actions of this Senate body be that example. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Sunday May 19th. The Senate met pursuant to adjournment. The Journal of Saturday, May 18th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I'm going to offer a lot of amendments here to the following Third Reading

Calendar bills:

By Senator Holland, on pages 20, 27, and 57, Calendar Numbers 651, 769 and 1040, Senate Prints 5789A, 6242 and 6927A;

On behalf of Senator Sears, on page 27 and page 64, Calendar Numbers 758 and 1090, Senate Print 7193 and Senate Print 1396A;

On behalf of Senator Spano, on page 41, Calendar 908, Senate Print 4005C;

And on behalf of Senator Hoblock, on page 22, Calendar Number 697, Senate Print 6257;

On behalf of Senator Goodman, on page 71, Calendar 1150, 5838A Senate Print;

Senator Marchi, on page 75, Calendar 1187, 6801;

On behalf of Senator Larkin, page 65, Calendar 1104, Senate Print 6564;

Senator Libous, who I'm doing a motion for here, page 73, Calendar 1171, Senate Print 6990;

And on behalf of Senator Wright, on page 11, Calendar Number 410, Senate Print 6300.

I offer amendments to these bills and

I ask that they retain their place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: All the amendments are received and adopted. The bills will retain their place on the Third Reading Calendar.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: He wants his motion back.

On behalf of Senator Maltese, please remove the sponsor's star from Calendar Number 694.

ACTING PRESIDENT KUHL: At the request of the sponsor, Senator Maltese, the star will be removed on Calendar Number 694.

SENATOR FARLEY: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: As Senator Farley ran out of gas, I'll do this myself.

Mr. President, on page 14, the following amendments to Calendar 496, my bill 2978, I ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 496 received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. I wish to call up my bill, Print Number 5949 recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: By Senator Seward, Senate Print 5949, an act to amend the Abandoned Property Law.

ACTING PRESIDENT KUHL: Senator Seward.

SENATOR SEWARD: Yes. I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: Senator Seward.

SENATOR SEWARD: Yes. I now offer the following amendments to that bill.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, as we move forward with our calendar in addressing the resolutions, I would like to acknowledge a very important event that's taking place here in New York State and that is the birthday of Senator David Paterson, the Deputy Minority Leader, and that as we move forward with the session this day, it would represent a celebration of our great colleague, Senator Paterson.

On behalf of your colleagues, we wish you a very happy birthday.

(Applause.)

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

SENATOR PATERSON: Mr. President, I know the Majority Leader would not want to be remiss and not forget that it is also the birthday of the Senate's longest serving member, Senator Marchi, and I think we also need to include Senator Marchi in the celebration.

(Applause.)

SENATOR BRUNO: Thank you, Senator Paterson. He is wherever, saving me and correcting me, Mr. President. I did not know that. So, thank you very, very much. We wish you both a very, very happy day.

I think you're about the same age, so -- I guess that's not true.

Mr. President, I believe that there is a privileged resolution at the desk by Senator Holland. I would ask that it be read in its entirety and that we move for its immediate adoption.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution by Senator

Holland in its entirety.

THE SECRETARY: By Senator Holland, legislative resolution memorializing Governor George E. Pataki to proclaim May 20th through the 24th, 1996 as Bone Marrow Donor Awareness Week in New York State.

Whereas, this legislative body is justly proud to memorialize Governor George E. Pataki to proclaim May 20th through the 24th, 1996 as Bone Marrow Donor Awareness Week;

Bone marrow transplants now give people dying of blood-related diseases, such as leukemia and aplastic anemia a chance to be cured if a donor can be found whose bone marrow matches their own;

An individual has only a 30 percent chance of finding a donor among his or her only family members. Once family members have been tested and a match is not found, an individual is faced with only about one in 20,000 unrelated people who match closely enough to allow the opportunity for a bone marrow donation;

Although the national donor registry

was begun in 1987 to assist finding suitable donors from a pool of typed, readily available volunteers, it is estimated that at least 1 million potential donors worldwide must be listed on the registry if the majority of 9,000 afflicted individuals presently waiting for matches in the United States are to be saved;

Many people in the United States have died because their desperate searches have not produced a matching donor in time. It is vital, therefore, that every effort be made to assure that the donor pool is as large and as diverse as possible;

Marrow transplants require matching tissue types which are characterized by complex genetic traits often unique to a particular race, and currently 92 percent of the volunteer donors are Caucasian;

It is of critical importance that African-Americans, Hispanics, Asians and Native Americans who are presently under-represented on the registry become volunteers so that the same hope can be offered to all Americans in need;

In memory of the late Senator Eugene Levy, it is the intent of this legislative body to designate May 20th through the 24th, 1996 as Bone Marrow Donor Awareness Week in New York State, recognizing and honoring all those who have selflessly donated marrow or have been tested as a potential donor and to enhance public awareness of the desperate need for bone marrow donors, particularly minority donors;

During Bone Marrow Donor Awareness Week, the Bone Marrow Resource Foundation will distribute educational material and conduct a donor drive to test individuals as potential donors on the Third Floor Terrace of the Legislative Office Building. Donors will be registered with the National Marrow Donor Program through a local donor center at the American Red Cross in Albany;

Funds to test individuals as potential donors during Bone Marrow Donor Awareness Week are to be raised through a Legislative Bowl-a-Thon on May 7th, 1996;

An individual tested and added to the

registry as a result of funds raised through the Legislative Bowl-a-Thon has actually been matched with a patient in need and donated their marrow to save a life;

Everyone has the ability to give the gift of life by donating bone marrow to someone who faces imminent death through a blood related disease;

Through its commitment to the preservation and enhancement of human life, Bone Marrow Donor Awareness Week so clearly advances that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience; now, therefore, be it

RESOLVED, That this legislative body pause in its deliberations to memorialize Governor George E. Pataki to proclaim May 20th through the 24th, 1996 as Bone Marrow Donor Awareness Week in New York State; and be it further

RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Bone Marrow Resource Foundation, the

National Marrow Donor Program and the New York State American Red Cross of Albany in recognition of their efforts in educating the public and assisting those in need of a bone marrow donation.

ACTING PRESIDENT KUHL: Senator Bruno, on the resolution.

SENATOR BRUNO: Mr. President, I would really like to just add a word that relates to Senator Holland and the good work that he has done. He makes us proud as a colleague that he has spent so much time, so much effort in such a worthwhile cause helping so many people out there that so desperately need help raising increasing amounts of money, as we heard related, adding something like 1,100 new donors to the national registry; and his work was recognized by the Congressional delegation and that I believe that he received a national award for the work that he has done in this area.

So, Senator Holland, your colleagues are proud and thank you for all the good things

that you're doing for so many people out there.

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

SENATOR HOLLAND: Senator Bruno, thank you very much, but it certainly wasn't me, it was the people in this chamber, the lobbyists, LeeAnn Sweet, Barbara Marsh, upstairs, Kristen Sinclair, everybody else who has done all the work. But, I would like to thank all of you, I would like to thank all of the people who donated money, all of the people who bowled, and the Senators who bowled were Senators DeFrancisco, Kuhl, Maltese, Maziarz, Skelos, Spano, Abate and Santiago, and particularly John DeFrancisco. Do you want to stand up, John? John had the high game of 236; it was way over his head.

This is the fifth year of the bowl-a-thon. You people have raised over $70,000, you have typed bone marrow typing over 1,400 individuals. We had the opportunity to bowl with a gentleman, an African-American young man who works for the Tax Department who only

six or eight months ago was blood typed and they called upon him and said, "We need you to save a life," and he donated his bone marrow and saved the life of a 14-year-old girl.

This is what you have done with your money. This is what you can do in the next two days by going downstairs, if you're under age 55, and on the third floor, from 11:30 to 5:30, you can have your blood typed for bone marrow.

In a family situation, only 30 percent match, very difficult to find a match. If you don't find it in that 30 percent in your family, it's only one in 20,000, so we need more people in the national registry.

Ninety-two percent of the volunteers are Caucasian, so we need blacks, Asians, everybody else in the registry, as well. But, really, the message is, you have saved some lives, you've raised a lot of money. I thank you and congratulate all of you. Thank you.

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

Senator Stafford.

SENATOR STAFFORD: Mr. President, very briefly. I can add nothing to what our leader has said and what Senator Holland said, but this is something I know a little something about, and no one can really know how much you're all doing unless you see the results of what this treatment has provided so many people.

So I compliment Senator Holland; and I believe Senator Levy was very involved in this program, Senator Holland's predecessor; and in this day and age when we're talking about adding years onto life, you people are.

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

(There was no response.)

Hearing none, the question is on the resolution. All those in favor, signify by saying aye.

(Response of aye.)

Opposed, nay.

(There was no response.)

The resolution is adopted.

SENATOR GOODMAN: Mr. President.

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

SENATOR GOODMAN: Mr. President, I rise for a most auspicious comment on a matter that has just been brought to the attention of this house but not adequately covered, I believe. It turns out that our very dear friend and long-time colleague, Senator Marchi, is not merely celebrating a birthday today, but he is celebrating the diamond jubilee of his birth 75 years ago, and with that being the case, I feel very much called upon to say what a special privilege and pleasure it is to serve in this body with one as learned, as warm in personality and as dedicated to the common interests of the people of the State of New York as is our dear friend, John Marchi.

I've had the pleasure of working with him in this chamber and of knowing him for nearly a third of a century, and, Mr. President, I can only say that he graces us every time he takes to the floor with comments on matters of

current concern.

But, even more important, John Marchi represents the decency, the civility, and the highest standards of ethical behavior which we all aspire to in our daily public lives.

John, I would just like to say to you that you're really an inspiration to many of us. You've been a friend and mentor; and as you celebrate this very big birthday, we wish you the best of health for many more years to come, and I hope that I'll be here to celebrate your 100th. A million congratulations to you and all of the best on this very auspicious occasion.

SENATOR ONORATO: Mr. President.

ACTING SPEAKER KUHL: Senator Onorato, why do you rise?

SENATOR ONORATO: Mr. President, I would like to second the congratulatory messages extended to Senator Marchi.

I would also like to amend the congratulatory message to include Senator Paterson who has been gracing our chambers for the longest period of time doing a yeoman's job

in that capacity.

ACTING PRESIDENT KUHL: Senator Skelos, that brings us to the Calendar.

Excuse me, we have a couple substitutions, first.

Senator DiCarlo, why do you rise?

SENATOR DiCARLO: Mr. President, on that note of Senator Marchi's birthday, I would be remiss if I didn't stand as the junior Senator from Staten Island and just say congratulations to the senior Senator from Staten Island.

I have been very lucky to know Senator Marchi for many, many years when my father was his campaign manager when he ran for mayor, and I've grown up knowing Senator Marchi, and it's an honor and privilege to serve with the Senator in the Senate of New York and representing the great county of Richmond, and it's an honor, again, to serve with you, Senator Marchi, and happy birthday.

ACTING SPEAKER KUHL: Senator Marchi, to respond.

The last four speakers have been totally out of order, but it was such a gracious occasion, Senator Marchi, I'm overlooking all of that.

SENATOR MARCHI: These events don't take place but once every century.

ACTING PRESIDENT KUHL: That's one of the reasons we're going through this.

SENATOR MARCHI: I just want to profess the joy that I've experienced in all of the 40 years that I've passed as a member of the Senate, and before that, I spent some time as counsel; and certainly it's been a good experience altogether. I've never had a moment where there was any disagreeable encounter with any member. I mean, it's always been wonderful.

I'm very, very grateful and I'm very, very pleased that Senator Paterson -- maybe I'll go another 25 years, but beyond that, I'm pleased that someone of his vigor and vitality is right on there to carry on the spirit of May 20th, and I wish him all the best. Thank you.

ACTING PRESIDENT KUHL: Thank you,

Senator Marchi, and let the Chair express its wonderful wishes on behalf of your birthday and Senator Paterson's; but also Senator Marchi, I know that Senator Paterson has leftover cake from his occasion and he would be happy to bring it to your office, along with some punch to celebrate your birthday at the conclusion of session, if we ever get to the Calendar and get that out of the way, but Senator Stafford, why do you rise?

SENATOR STAFFORD: To be out of order, Mr. President.

ACTING SPEAKER KUHL: You're in order, then.

SENATOR STAFFORD: I just wanted to point out that Senator Paterson's birthday, and also Giovanni Marchi, and he often quotes here when he talks about, "Omnia gallia est divisum tres partem." All gall is divided into three parts. I would say that it would be, "Giovanni Marchi haec non gallium," he has no gall.

ACTING PRESIDENT KUHL: Senator Skelos, that's brings us to the Calendar.

Substitutions first. Secretary will read the substitutions.

THE SECRETARY: Senator Cook moves to discharge from the Committee on Rules Assembly Bill Number 9815 and substitute it for the identical Senate Bill 7202.

Senator Libous moves to discharge from the Committee on Rules Assembly Bill 8454C and substitute it for the identical Senate Bill 5724C.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Senator Skelos.

SENATOR STAFFORD: Mr. President, may we please announce a Finance meeting in room 332. Thank you.

ACTING PRESIDENT KUHL: There will be an immediate Senate Finance meeting in the Majority Conference Room, Room 332. Immediate Senate Finance Committee meeting, Majority Conference Room, Room 332.

Senator Skelos.

SENATOR SKELOS: Mr. President, at

this time, if we could take up the non controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the non-controversial calendar.

THE SECRETARY: On page 11, Calendar Number 412, by Senator Cook, Senate Print 3159A, an act to amend the General City Law, the Town Law and the Village Law, in relation to the enforcement of land use laws.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 425, by member of the Assembly Colman, Assembly Bill 1865C, an act to authorize and direct the Commissioner of the Office of General Services to study energy purchasing programs.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 498, by Member of the Assembly Tokasz, Assembly Print 4512A, an act to amend the Election Law, in relation to processing applications.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 516,

by Senator Saland, Senate Print 3474A, an act to amend the Social Services Law, the Domestic Relations Law, in relation to venue and termination of parental rights.

ACTING SPEAKER KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 546, by Senator Volker, Senate Print 6001, an act to amend the Real Property Actions and Proceedings Law, in relation to foreclosure of a mortgage.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 548, by Senator Lack, Senate Print 6464, an act to amend the Family Court Act, in relation to filing objections to determinations of hearing examiners.

ACTING SPEAKER KUHL: Secretary will Read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 560, by Senator Oppenheimer, Senate Print 1338B, an act to amend the Vehicle and Traffic Law, in relation to issuance of distinctive plates for occupational therapists.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 562, by Senator Goodman, Senate Print 3466B, an act to amend the Transportation Law, in relation to disclosure by common carriers of liability.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 47, nays 1, Senator Kuhl recorded in the negative.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 691, by Senator Padavan, Senate Print 4216A, an act to amend the Penal Law, in relation to auto stripping.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 761, by Senator Seward, Senate Print 6143, an act to amend the Public Service Law, in relation to cellular telephone services.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 783, by Senator Goodman, Senate Print 6566, an act to amend the Tax Law, the Administrative Code of the City of New York, and Chapter 2 of the Laws of 1995.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 797, by Senator Alesi, Senate Print 7308, an act to amend the Insurance Law, in relation to making technical corrections in provisions relating to risk-based capital.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 16. This act shall take effect immediately.

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

The SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING SPEAKER KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 807, by Member of the Assembly Vitaliano, Assembly Bill 9403, an act to amend the Retirement and Social Security Law, in relation to reporting of public employment by retired members.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 819,

by Senator Levy, Senate Print 6493, an act to amend the Vehicle and Traffic Law, in relation to disposition of fine money imposed for certain offenses.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

The SECRETARY: Ayes 48.

ACTING SPEAKER KUHL: The bill is passed.

THE SECRETARY: Calendar Number 824, by Senator DiCarlo, Senate Print 7362, an act to amend the Executive Law, in relation to performing the long-term care ombudsman program.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 826, by Senator Maltese, Senate Print 5274, an act to amend the Vehicle and Traffic Law, in relation to providing the owner of a vehicle with a second notice of parking violation.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 897, by Senator Hoblock, Senate Print 6255A, an act

to amend the Environmental Conservation Law, in relation to the membership of the Albany Pine Bush Preserve Commission.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect in 90 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

The SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1001, by Senator Saland, Senate Print 2039A, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1029, by Senator Spano, Senate Print 4287, an act to amend the Local Finance Law, in relation

to bonds issued by an act of the Westchester County Board of Legislators.

ACTING SPEAKER KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1038, by Member of the Assembly Eve, Assembly Print 9627, an act to amend the Local Finance Law, in relation to the sale of municipal obligations by the county of Erie.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

The SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: That bill is passed.

THE SECRETARY: Calendar 1045, by Senator Hannon, Senate Print 7359, an act in relation to the number of village justices and acting village justices in the incorporated village of Hempstead.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1050, by Senator Hannon, Senate Print 7416A, an

act in relation to permitting the Judea United Baptist Church, Inc. to file an application for real property tax exemption.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1054, by Senator DiCarlo, Senate Print 3962, an act to amend the Real Property Law, in relation to occupation of premises for unlawful purposes.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1085, by Senator Volker, Senate Print 7452, an act to amend the Tax Law and the State Finance Law, in relation to permitting revenue funds raised by the imposition of a special mortgage recording tax in Erie County.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1099, by Senator Maltese, Senate Print 5302, an act to amend the Criminal Procedure Law, in relation to

jury consideration of lesser included offenses.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Mr. President. I ask permission to place a star on Calendar Number 1176, Bill S. 7482A

ACTING PRESIDENT KUHL: Calendar Number 1176 will be starred at the request of the sponsor.

Senator Larkin, why do you rise?

SENATOR LARKIN: Mr. Speaker, I would like to be recorded no on Calendar Number 562, Senate Bill 3466B.

ACTING SPEAKER KUHL: Without

objection, Hearing no objection, Senator Larkin will be recorded in the negative on Calendar Number 562.

Senator Skelos, that completes the non-controversial calendar.

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

ACTING PRESIDENT KUHL: Yes. Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 761, by Senator Seward, Senate Print 6143, an act to amend the Public Service Law, in relation to cellular telephone services.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 761 has been asked for by the Acting Minority Leader, Senator Paterson, our birthday boy.

SENATOR SEWARD: Yes, Mr. President.

This bill suspends the application of the Public Service Law to cellular telephone operations but it provides very clearly that the

tax status of these corporations shall remain the same as they have existed on the day prior to the suspension of the provisions of law.

The Public Service Commission, under the bill, is authorized to reassert its authority over these operations after a one year period -- at any time after a one-year period, upon the normal hearing and notice provisions, if the PSC determines that such action is necessary to protect the interests of the public.

The 1993 federal amendments provided that the PSC no longer exercises the entry and rate jurisdiction over cellular telephone corporations; so, since that time, they've simply been dealing with having authority over the terms and conditions of service, and because of the very minuscule number of complaints that come in to the PSC and the fact that a great deal of competition exists in this area that seems to be dealing very adequately with servicing the public in a very good way, it seems to make sense that we totally suspend

regulation in this area leaving, however, the option open to coming back in if conditions warrant.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Seward would yield for a question.

ACTING SPEAKER KUHL: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING SPEAKER KUHL: The Senator yields.

SENATOR PATERSON: Thank you, Mr. President.

My question is, I can understand a feeling that there is not a need to regulate necessarily, in this particular area, but I guess my question is, what is the advantage of deregulating? Deregulation has not always worked in the past; and although I understand basically the scope of where the bill is going, what I'd like to hear, what would make me more

comfortable would be to hear a reason why this would be in the public interest to deregulate at this particular time, especially in light of the fact that previous efforts in this direction did not prove fruitful.

SENATOR SEWARD: Well, Mr. President, I'm not sure what previous efforts you're referring to. This bill, of course, is limited only, of course, to cellular telephone service, but the advantage of removing the regulation that currently exists in terms of the cellular telephone operations, the advantage to the telephone customer in this case is simply through a streamlined operation of the cellular telephone operations, that the customer ultimately will derive some small savings from that because of the fact that it's simply cutting down on red tape, which can be costly to the operation, passed on to the customer. That's where the advantage comes in, fully recognizing as we do under this bill that if the PSC gets a number of complaints, for example, then they can move into a situation where they

are providing much more oversight.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, and thank Senator Seward for his answers, and I think that they are really satisfactory. I don't see any need to oppose the bill, but I just would like to assert that we have had problems with airplane safety after deregulation, cable rates have gone up, other telephone services, deregulation has caused a problem. We have had problems with deregulation in the area of banks, but I can't demonstrate any definite reason why this would necessarily be a problem. I just didn't understand the necessity for it, but the explanation is satisfactory.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, Secretary will read the last section.

THE SECRETARY: Section 2. This act

shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

The SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 783, by Senator Goodman, Senate Print 6566, an act to amend the Tax Law, the Administrative Code of the City of New York and Chapter 2 of the Laws of 1995, amending the Tax Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation of Calendar Number 783 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR GOODMAN: Yes. Senator Paterson, as a birthday gift to you, I'll keep this brief.

Mr. President, this bill would allow the Tax Department to eliminate a great deal of needless paperwork and it follows the existing

federal model.

Currently the Tax Department must go through the extensive regulation process every time a tax withholding table is changed or promulgated. There has been no substantive comment on any change that has been made of this type in the last 20 years.

The legislation would allow the Tax Department to adopt withholding tables without going through the cumbersome and costly regulation promulgation process.

My legislation would eliminate over 70 pages in a rules and regulation manual and save a great deal of time and expense for the Tax Department, the Secretary of State's office and the Governor's Office of Regulatory Reform. This is just one way that the government can be made more efficient without jeopardizing service.

In response to a query which I think may be of general interest, the question arises with respect to whether the public would be shut out of the opportunity to comment. The fact is

that the public has sought no such opportunity in 20 years and, therefore, we are not at all concerned that this will create a problem.

I trust that responds to your concerns.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Goodman would yield.

ACTING SPEAKER KUHL: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Goodman, ironically, uniquely, profoundly and coincidentally, I would want to ask you the same question that I asked Senator Seward which is just basically can you illustrate any savings that would be derived from this source or any budgetary impact that would enure to our benefit through the opening of standards in this area?

SENATOR GOODMAN: Knowing of the

thoroughness with which you protect the public, Senator, I've tried to obtain information to respond to that question, and the answer is this: According to Deputy Commissioner Tittlebaum, several thousands of dollars would be saved, but it is not possible for them to quantify this precisely.

When issued in the regulation, the tables would have to be drafted in proper form, the Commissioner would have to publish a schedule, the proposed regulation would have to be published in the register first as a proposal and then again when adopted and they must then be reviewed by the Governor's Office of Regulatory Reform and finally, must be published in the New York Code Rules and Regulations and all of this must be done each and every year, as the tables change annually. So, as you can see, we'll be saving printing costs, handling costs and bureaucratic costs, and I think an estimate of several thousand dollars sounds quite reasonable.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Thank you, Senator, and if you would be kind enough to yield for one more question?

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator, would it be possible under the relaxed standards for, let's say, an executive of any party -- this isn't a criticism of anyone in particular -- in a difficult budget year to perhaps backload revenues into the budget process to provide for more money in the beginning of the year than may be possible at the end of the year by rearranging the tables such that under the procedure we have now, there would be a 30-day review process, public hearings, public comment? In other words, would this open the door to perhaps executives and those who have the decision-making capacity to, in a sense, take advantage of the standards?

SENATOR GOODMAN: Senator, your

ingenuity in asking the question is profound and the answer is that, in my opinion, this is not a tool that could be used. We have many tools at our disposal which the Legislature has unfortunately resorted to over many years. As you know, smoke and mirrors are not uncommon in the budget process, but it's my opinion, for what it's worth, that this more streamlined approach to the promulgation of tax withholding tables would not be so manipulatable as to be a threat under the scope of your question.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I feel properly enlightened, absorbed, just satisfied.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Prior to taking up Senator Saland's bill, I believe if we could return to reports of standing committees, I believe there is a report of the Finance Committee at the desk, I ask that it be read.

ACTING PRESIDENT KUHL: You're correct, Senator Skelos. I'll ask the Secretary to read to report.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bills directly for third reading:

Senate 7566, by the Committee on Rules, an act making appropriations for the support of government;

7554, by the Committee on Rules, an act to amend the Tax Law and the Administrative Code of the City of New York, in relation to extending the sunset provisions relating to real estate investment trusts;

7569, by Senator Levy, an act authorizing the union free school district to finance deficits by issuance of serial bonds.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are reported directly to third reading.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar 1001, by Senator Saland, Senate Print 2039A, an act to amend the Criminal Procedure Law, the Family Court Act, the Penal Law and the Public Health Law, in relation to the testing of certain criminal defendants.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator

Saland, an explanation of Calendar Number 1001 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a bill which builds upon our previously enacted legislation in 1995. That bill created a mechanism whereby a court, by way of order, could direct testing upon conviction, on the application of a victim where there was reasonable cause to believe that there was the presence of HIV or that the victim may have, by reason of a sex offense that was committed by the perpetrator, might have contracted HIV.

What this bill does, in effect, is to expand in differing ways that concept. On the one hand, what it does is, it says that this will now apply to any number of transmittable diseases, not limiting its scope to HIV. Secondly, it says that where there is reasonable or probable cause, a court may direct that such testing be performed prior to conviction, unlike

the 1995 bill.

The standards which are used are contained in the bill, either upon a conviction of a qualifying offense or where a defendant stands charged by information or indictment of such qualifying offenses. Thirdly, it provides the ability for a victim, through a separate procedure, to be voluntarily tested at state expense.

This bill is a bill which certainly I believe is consistent with the efforts that we in this chamber have been endeavoring to accomplish over the course of the past four or five years. Last year I believe was certainly a step in the right direction. Thankfully, Governor Pataki, unlike his predecessor, saw fit to make this part of his budget presentation, or submission.

I believe we can do better. I believe we must go further; and I would also submit that this is consistent with what had been submitted by way of the task force created by former Governor Cuomo in 1990 which task

force also came out in support of preconviction testing. Thank you, Mr. President.

ACTING SPEAKER KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Saland would be so kind as to yield for a few questions.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, you just said that the task force in 1990 came out with preconviction testing, and I appreciate that, but you would concede that in 1990, the effectiveness of the test, particularly in terms of the time in which the test could trace the virus, was different than it is now, is that not correct?

SENATOR SALAND: I would not profess to perhaps have the degree of knowledge that you have with regard to testing. I think this is

sort of deja vu. I think we went through a very similar debate in 1995 regarding the testing, and perhaps we are just coming at this from different perspectives. I see this as a victims' rights bill, pure and simple. I believe the fact that it's been expanded to include testing for more than the presence of HIV certainly reaffirms that.

I believe that what we have endeavored to do here is to craft something that certainly meets any constitutional test and something which I firmly believe for a victim at the time of his or her great emotional anguish, travails, turmoil, however you would like to put it, someone who has been, in all likelihood, violated, there's been an exchange of body fluids, I believe that person should be entitled to the ability to access as quickly as possible, and this bill provides for that testing mechanism.

And again, I would add, and I believe we probably went through something similar to this when we debated this bill last year,

certainly this bill indicates that there are limitations to what information shall be available by way of testing, that is in the existing law as we enacted it in 1995, and this bill, in some respects, merely amplifies the provisions of that law, emphasizing the importance of counseling, emphasizing that there be the ability to determine the reliability of testing. There's a host of things.

The section escapes me right now, but I'll be very happy to provide it to you.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator, and if you would to continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Maybe what would enable me to consider voting for the bill this

year, Senator, because, as you know, I voted against it last year, is perhaps I had a better understanding of what type of test would we be using. Would we be using a PCR test or would we be using a test that traces the virus within a couple of weeks? In other words, I'm just trying to get an idea of what the scope of the test actually is because all I was suggesting in my previous question was that perhaps the bill itself would have served us and would have served victims very well in 1990 but that it might not now because of the modern technology that has enabled us to test more quickly.

So, in other words, to explain it further, if the alleged perpetrator was to be tested, we might be able to determine something that exists in the alleged perpetrator that does not show up in a test of the victim, that's how I could distinguish that this would be a very effective tool for the victim, that the victim would now know if the alleged perpetrator was testing positive for the HIV virus.

But, if the time between the test has

been narrowed to the degree of many tests that we're using now, you wouldn't need to test the perpetrator, all you would need to do is to test the victim.

And so, going back to what you were just saying in your answer to my first question, and I think it's a very good point, that we want to try to provide what would be the safest environment and also an environment that is most comfortable to an individual who has already been the victim of a very serious crime.

I appreciate that and I appreciate the sentiment which was the catalyst for you writing the bill, but what I'm saying is, do we actually have something that is serving the victim well, or are we engaging in a procedure for which testing the victim will provide us with the same result, and the way -- and my question is, if you could give me an idea of what type of test we're using, then we could make that determination.

SENATOR SALAND: Let me suggest to you, Senator Paterson, number one, there is no

limitation on the type of testing, and I refer to you section 1 (a) of the bill which states that, "Upon request, the official shall authorize the victim or petitioner to undergo prompt, readily accessible and scientifically recognized laboratory testing, including, where appropriate, the PCR or other advanced testing technologies for the diagnosis of transmissible diseases, at state expense."

What we're doing here is providing the ability to a victim, someone who has already been victimized, someone whose assailant has either been convicted or with respect to whom probable cause has been established because they have been either indicted or an information has been brought forward in the superior court.

Now, what we're saying to that victim, that man or woman, "These are your options. You have the ability to make application for these tests. If you want to self-test, you can self-test," that's here.

I don't think we should be imposing on the victim yet an additional mandate that

requires him or her to be subjected to just one course of action. I think this bill is broad enough to enable that victim to do whatever she or he thinks is appropriate when they've been counselled, when they're aware of the nature of the technology, when they're aware of what it is that the test can prove or will not prove, and that is a determination that that victim should have the right to make, instead of stripping her or him of that right.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If the Senator would continue to yield.

SENATOR SALAND: Yes, Senator Paterson; yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: So, Senator, what you're saying, and for purposes of understanding this is, you don't think that the victim should be forced to be tested herself or himself if the

victim desires the option of having the alleged perpetrator tested?

SENATOR SALAND: I think it's probably highly unlikely that a victim would not want to be tested. Whether that victim would want his or her assailant to be tested, that is something that the victim should have the option to do. Certainly wisdom, current state of the art medical counseling would strongly recommend that that victim be tested.

But, I can fathom no reason whatsoever why that victim should not have the ability to make application for her or his assailant to be tested and if a court finds that there is reasonable or probable cause that that person be tested, given the confidentiality that surrounds the provisions of this proposal.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. We're actually getting somewhere and if you would continue to yield?

ACTING PRESIDENT KUHL: Senator

Saland, do you continue to yield?

SENATOR SALAND: Mr. President, yes, sir.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator Saland, the fact that probable cause has been established and, in a sense, what your bill says to me is that we want to err on the side of caution and we want to give an individual who is only drawn into this proceeding by their victimization, they didn't do anything to bring them to this situation other than be unfortunate, I understand the legislation up to that point.

What you have to persuade me now is that the results of this test would be helpful to the victim. In other words, there are a lot of options I think we should give victims, but I would not want to in any way suggest through legislation that this is as valid an option or that this is something that could be relied upon.

And, what I don't understand is how the nature of the test to an alleged perpetrator is going to provide the victim with some information. That's why I started the questioning by telling you that five or six years ago, when the only tests that were available were accurate only within six months, it would have been very valid, but right now, because of the types of tests that we're using now -- and you went on to elaborate on the point and said that we want to be offering the best possible test to victims, since we've arrived at that point, it would seem to me that it would be almost misleading to grant the victim that option when the information is not going to be helpful.

SENATOR SALAND: I'm assuming that's a question that requires a response and let me see if I can give it to you.

I would call your attention to the section in the bill, which unfortunately I'm working off a computer print-out and not the bill print. I have it as -- I believe it's

section 4 (d), which, again, takes us through the process which I've tried to describe before which -- in which -- "In all such applications for testing filed pursuant to this section, the applicant must also state that the applicant was offered counseling by a public health officer, been advised of, one, the limitation of the information to be obtained through a blood test on the proposed subject; two, current scientific assessments of the risk of transmission of a disease from the exposure he or she may have experienced; and three, the need for the applicant to undergo testing to definitively determine his or her status with regard to any disease; and four, where the request is for a transmissible disease test of the defendant, the availability of prompt, readily accessible and scientifically recognized laboratory testing of the applicant, including, where appropriate, polymerase --" if I'm pronouncing it correctly, "chain reaction, PCR, or other advanced testing technologies for the diagnosis of transmissible diseases at state

expense pursuant to subdivision 1 (a) of this section."

And if I might, let me just read to you from a release put out by the Federation of New York State Judges, and I'm quoting here, Francis T. Murphy, Presiding Justice of the Appellate Division, First Department, and President of the Federation of State of New York Judges, and he says as follows: "It is scandalous that rape victims and others must often remain in complete ignorance about the health status of accused assailants. The fear of disease constitutes a repeated assault upon these victims, which often rivals and exceeds the first aggressive act. Immediate testing cannot, of course, firmly establish the HIV status of the accused assailant, nor can it substitute for repeated testing of the crime victim where the agony of months of waiting for the victim's blood test results can be substantially mitigated in many cases by an early report of a blood test upon the alleged assailant."

He goes on to say, "The victim has a right to that information and to the peace of mind which it might bring, provided that a bill can be devised which assures sufficient constitutional protections for the accused. We strongly endorse the concept."

Again, Senator Paterson, we're talking victims' rights. I think this house has endeavored to distinguish itself dealing with the rights of crime victims and domestic violence victims over the course of the past several years, and I certainly think that this piece would be one more that would permit us to not only appear responsive but, in this particular case, to adopt a leadership position.

SENATOR PATERSON: Thank you, Senator Saland.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I think that there were a lot of provisos that were offered and a lot of advice that's offered in that

document that you just previously referred to, Senator Saland, that were not included in the actual bill, but what I think I would do just to summarize is to tell you that I understand what you're saying about the almost repeated assault on a victim by the fear that they might acquire a virus, but I'm just telling you that if a victim opted not to take the test, which I think is something that would, in spite of what might be -- what would be a more advised decision, it's a human fear that an individual that's already been victimized is now being counseled and maybe feeling pressured to take a test. And so we tell the victim, "You don't have to take the test, you have the option of having the alleged perpetrator take the test."

So, the alleged perpetrator takes the test and the alleged perpetrator tests positive for the HIV virus. Now, they engage in a violent crime against the victim of the sort that is described in your bill where the likelihood of transmission of the virus is so nil that it's almost impossible, and what

happens is that this victim is now tormented by the fact that they now know that the alleged perpetrator tested positive for the HIV virus, they never get the virus, but they are provoked over a long period of time unnecessarily because of a standard that we have set up in this legislation.

So, I applaud the effort for victims' rights, but all I'm saying is that I think we have to make a determination of who is providing for the climate in which the test should actually be conducted, and where we say there's a chance, the chance may be so speculative and so remote to the proceedings that we're actually creating a furor in a particular situation where the actual intent is to help the victim but there is such a stigma about the possibility of transmission that we have a situation where a poor individual who has already been harmed by a violent crime is now antagonized by a procedure that we've set up that was supposed to protect them.

And, I would recommend that we look

at this legislation and look at what others have offered and perhaps pass something that would be a little more responsive to the problems that victims really are having.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, if Senator Saland would be so good to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Mr. President, I just wanted to continue along the line that Senator Paterson did. I have no question of your commitment to victim rights, which is no greater, no less than anybody else in this chamber. I think we all share our concerns for victims and wanting to help victims.

What I'm trying to understand in listening to the debate between you and Senator Paterson, I thought I heard you say something

which made it difficult for me to comprehend the rationale for this bill. Did I hear you say that in all instances covered in your bill, that you would recommend to the victim and that it is certainly proper public health policy that the victim be tested himself or herself?

SENATOR SALAND: I would certainly identify with that as being wise health policy.

SENATOR LEICHTER: Right. And I think that considering the AIDS disease and what we know about it, which unfortunately isn't as much as all of us wish we did as a society, it's particularly true, because of the incubation period, the nature of the test, the trans mission, and so on, that it would almost -- it would be almost malpractice if a doctor under these circumstances, based solely on the test of the perpetrator, the alleged criminal, failed to recommend to the victim that he or she be tested, isn't that right?

SENATOR SALAND: I'm sorry, Senator. I was reading my bill as you were speaking, so I -

SENATOR LEICHTER: Well, it's -- I would recommend it. I would be happy to wait until you finish reading your bill.

Senator, my question was that particularly considering AIDS and all the uncertainty around AIDS and the transmission, incubation, the period of testing, whether you're testing for the antibodies, whether you're testing for the actual virus, it would, I would say, amount to medical malpractice if a doctor failed to recommend to a victim that he or she be tested in circumstances where there was transmission of those bodily fluids, semen or blood, that are known to transmit AIDS and that there had been a test of the defendant and the defendant's test was negative, but still, would it not be, under those instances, wrong and even amount to medical malpractice for the doctor to say, "Oh, you can rely on that test, you don't need to be -- you, the victim, do not need to be tested?"

SENATOR SALAND: Let me suggest to you, Senator Leichter, that I believe you're

narrowing the focus of this bill far too much. This bill does not deal merely with AIDS testing -- or HIV testing, excuse me. I don't profess to be a medical malpractice attorney, I have absolutely no idea whether this would be tantamount to malpractice, I'm not a judge; while I have practiced, I certainly couldn't even hazard a guess as to whether it would be malpractice, I'll leave that to you.

SENATOR LEICHTER: Okay.

SENATOR SALAND: What I do know is that what we have done in this bill is basically worked within the existing law, basically worked within the provisos that are contained in the bill that basically enumerate what is almost tantamount, I would guess, and this is speaking as a layman, not an expert, to something in the nature of a protocol. You should be tested. You should have a risk assessment, that's in the existing law, and we're merely expanding it somewhat by reason of the change in the language to include all transmissible diseases and specifying that the test should be made

available much more quickly and should be by a scientific, in effect, state of the art type test and making specific referral, although not necessarily limiting it to this so-called PCR test.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING SPEAKER KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, while it's perfectly true that this bill covers more than AIDS, covers other sexually transmitted diseases, the fact of the matter is that those other diseases have been with us for decades and decades, and it was AIDS that was the stimulus for this bill. So, we're certainly -- it's certainly not improper or unfair to focus on AIDS as maybe the primary reason that this bill is before us and to look at that disease and for me to ask you questions based on that disease,

which is what I'm doing.

Senator, I can appreciate that you don't want to pass judgment whether or not it would be malpractice for a doctor to fail to recommend testing to a victim in those situations where she was subject to having the AIDS virus transmitted to her, even though the defendant tested negative, but would you, at least, based on your knowledge, say that the victim in that situation, I'm talking now about AIDS, should be tested?

SENATOR SALAND: The bill already recognizes that.

SENATOR LEICHTER: So the answer is yes.

SENATOR SALAND: But what you seem to be ignoring is what precedes all of our getting to that point. I mean, what we're talking about is somebody who has been the victim of some type of violent sexual assault. We're talking about somebody who has been exposed to bodily fluid as a proximal result of the commission of that sexual assault or any

other assault.

What we're talking here is no more than a victims' rights bill, pure and simple; and the mere fact that within the context of this victims' rights bill, we tread upon the area of HIV infection, doesn't mean that somehow or other we should ignore the rights of victims. I have maintained that all along and don't feel that somehow or other there should be an exemption because we're talking about HIV.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: With all due respect to you, Senator, every time the question is a little difficult for you to answer, you shout, "It's a victims' rights bill," and then all of us should sit down and vote yes. I'm not sure it's a victims' rights bill, Senator. If

you can convince us it's a victims' rights bill and not a politicians' benefit bill, then that's fine. I'm trying to see -

SENATOR SALAND: Senator Leichter, I suspect in your case that would be physically, humanly and intellectually possible because you come to this issue with such a predisposition that if God came down with tablets -- not Moses, God -- you wouldn't budge.

SENATOR LEICHTER: Well, Senator, in the absence of God, I'll ask you.

SENATOR SALAND: I don't profess to be that omnipotent.

ACTING PRESIDENT KUHL: Are you asking Senator Saland, Senator Leichter, to yield?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Saland.

SENATOR LEICHTER: In the absence of the Almighty, I'll ask Senator Saland, please.

Senator, I don't have a predispo sition any more than I think you have a

predisposition, so I'll tell you what, I'll say that you don't have a predisposition if you'll acknowledge that I don't have a predispo sition. Let's see if you and I can find one instance, one way, even an iota, an iota that a victim has benefitted.

Now, you say it's a victims' benefit bill. Give me one example where a victim would be benefitted, give me an actual example.

SENATOR SALAND: Let me just suggest to you, I will not be embarrassed by my predisposition. My predisposition is on behalf of victims. I will fall on the side of victims in each and every instance; and when you've taken, perhaps you have, as much testimony as I have, all the hearings I've been at, all the victims I've spoken to, all the women who have talked to me privately about their victimization, when you realize the anguish, when you realize the agony, when you realize the inability to be made whole, in many instances, when they want the ability to access information, and I'm talking primarily women the

vast, vast majority of the time, but not always, if this, as the judge in his quoted comments, Judge Murphy, mentioned is going to provide them with that access to information, then it seems to me incredibly brutish and insensitive to deny it.

SENATOR LEICHTER: Senator Saland, I can't get you to answer the question. You keep on pounding your chest and saying how wonderful you are on victim rights. Let me tell you, Senator, I'll get up and I'll say to everybody, I think Senator Saland on victim rights is extremely sensitive, caring, you're wonderful. Good, let's put that aside. Let's see whether, in fact, you're helping victims.

As much as you may be predisposed to help victims, Senator, maybe in this instance with the best of intentions, and I say, knowing you, that you only proceed from the best of intentions, that you may not be helping victims.

And, I would like one example where, by virtue of the fact that the defendant is tested and it shows whatever it shows, that the

victim can breathe a deep sigh of relief and say, "Whew, thank God, I was traumatized, I was terribly treated, but at least I know now that I don't have a sexually transmitted disease - and I'm sorry, let me just limit it at this moment to AIDS because I think that's basically what we're talking about -- "I know that I don't have the HIV virus," give me one example.

SENATOR SALAND: I would think it would be so readily apparent that were that test to come back positive, the victim would certainly know that he or she would have to continue through a series of tests in order to try and monitor his or her health.

Now, we're talking about things that are not readily definable. I mean, it's not like if you're cut, you bleed, if you're beaten, you contuse or abrade, what we're talking about here is within the realm of things emotional, the kinds of scaring that are extraordinarily different, not as physical, perhaps, aside from physical injuries associated with the violation.

What we're talking about is the

desire, again, to put one's life back together. You haven't been there, I don't believe, in this context, nor have I, but as a victim, you want that option; I don't know why you should be denied it, particularly when you have a probable cause mechanism, a reasonable medical procedure and confidentiality, who gets hurt other than the victim in this procedure? I would ask you if you would yield. Who gets hurt, other than the victim?

ACTING PRESIDENT KUHL: Senator Leichter, are you asking Senator Saland to continue to yield?

SENATOR LEICHTER: Yes. In answering the question -- in asking a question, I'll also answer yours. Senator, as you've stated it, who gets hurt, other than the victim, in this procedure, that's exactly my concern. You're hurting the victim, you're hurting the victim because you're hurting the victim by giving the victim either the impression or the feeling that somehow that test will avoid him or her needing to be tested or will give him or her

some definitive medical information and, as a matter of fact, and I think you've conceded it, the victim has to be tested.

SENATOR SALAND: Senator Leichter, have you read the bill?

SENATOR LEICHTER: Yes.

SENATOR SALAND: Have you read the bill? Again, I'll call your attention to that subsection (d) which is the existing law. That bill lays out what a victim has to go through.

Do we not believe that people have been blessed with a certain amount of intelli gence and intellect? When somebody has gone through that process and gets to the bottom line, they have been counselled, they have a choice to make. If they choose not to because they feel the way you do, they don't have to. If, however, they feel that they should, in fact, or want, in fact, to have their assailant, again with a probable cause standard, to be tested, they have that option. Why strip that option away from the victim?

SENATOR LEICHTER: Senator, I take

it as a question and I'll yield to it. The reason you strip the option from the victim, Senator, is because it doesn't tell you anything that the victim can rely on, and the last thing in the world that you would want to do as a victim rights person, is to, in any respect, mislead the victim. The last thing you'd want to do is to say to the victim, "Okay, your alleged assailant tested negative," and the victim says, "Good, now I don't have to be tested."

You're right, Senator Saland, the law now provides a mechanism for testing of the victim, that's fine, we ought to do that, we need to counsel victims that they must be tested; but the difficulty I have, and I must say you've been unable to come up with one example where the test -- the tests by -- the tests of the defendant negates having to test the victim.

SENATOR SALAND: Permit me to suggest that I don't either speak clearly enough -

ACTING PRESIDENT KUHL: Senator Saland, this is just not a debate situation we have here. We go through the Chair, you know the rules -

SENATOR SALAND: My apologies to the Chair.

ACTING SPEAKER KUHL: -- as most of us have been. Are you asking Senator Leichter to yield to a question?

SENATOR SALAND: Would the Senator yield?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SALAND: I'm assuming that your hearing is fine, and it may well be that I just don't speak loudly enough or that somehow or other, I don't have a great enough control of the language, but I would suggest to you that - or perhaps I could ask this of you: Are you, then, subscribing to the theory that ignorance is bliss, that if we don't tell people or we don't give them that option, they will

blissfully go off and feel that somehow or other they've been made whole without having this testing?

SENATOR LEICHTER: Senator, I'm saying that the victim needs to be tested, that the victim needs to be tested irrespective of what the test of the defendant shows. If it shows positive, you still have to obviously test the victim; if it shows negative, you still obviously have to test the victim. And, therefore, I want to know what benefit is there to the victim to have the defendant tested when, irrespective, you must test the defendant -- I mean, you must the test the victim.

SENATOR SALAND: That's a question I think I've answered several times. First, if, in fact, the assailant tests positive, it certainly gives the victim a course to follow for however long he or she would propose to follow it. It's certainly, at the very least, a red flag as to not be lulled into a false sense of security by one or two negative tests. And secondly, the all important thing which you give

no credence to and somehow or other make the shortest of shrift of is the fact that emotionally, this is something that is part of helping a victim, in some instances, put his or her life back together.

This is an invaluable means, a tool, if not a tool, then an opportunity for someone to begin to put their life back together, and if that's what they want, you deny it to them. I won't.

SENATOR LEICHTER: Senator Saland, I thank you. I think we're boring our colleagues and maybe we're talking past each other.

Thank you.

It seems evident to me that if the purpose is to try to deal with a physical problem or risk that the victim has as a result of the crime that was committed that this bill does absolutely nothing, and I think Senator Saland admitted it, because, again, in every instance, you must have the victim tested, and the victim ought to be counseled, be tested, and

that is true whether the perpetrator tests affirmative or tests negative. If he tests affirmative, as Senator Paterson pointed out, there's still the chances of the disease having been transmitted is probably less than one in a hundred, so you might actually be needlessly scaring the victim, and so on. Certainly our concern here is the welfare of the victim, and the welfare of the victim requires that he or she be tested.

Now, what do you gain by testing the defendant? That is the question I keep on asking; and, finally, Senator Saland asks and said, "Well, this is part of putting her life back together." I don't understand this. Where does that come from, Senator Saland, a study that you've made of victims, and so on? Is there some study that shows that even though this does absolutely no good in guiding the victim as to what actions she has to take to protect his or her own health -- because we've already established he or she has to be tested -- nevertheless, this is psychologically good

for him or her, and so on? That's really what it comes down to.

What are we given that shows that that's the case? And even if it were the case, would we do it? Could we do it constitutionally when we're dealing with somebody who has not been convicted of the crime?

Yes, I am concerned about the constitutional aspects of this. But I think if there were a direct nexus between testing somebody that was charged with this crime and having established due cause, having established some of the recommendations of Governor Pataki's task force, where they spell out protection, and they say if it's -- if it is medically beneficial to the victim, not psychologically beneficial based on something, Senator Saland, as you have surmised, but medically beneficial, in those cases I could see it even if you're testing somebody who hasn't been convicted but stands only charged with the crime, but that's not your bill.

Your bill permits these applica

tions to be made to the court in instances where there's absolutely no benefit to the victim; and just to get up here and to say, "I am for victims' rights," well, does this bill further victims' rights? I submit to you that it doesn't. If anything, it is misleading. So why are we doing it?

There are a lot of things, Senator Saland, that can be done for victims. Some of them you have tried to do. There are others we ought to try to do. This one is of no aid and help to victims whatsoever. It may have popular appeal because there is a failure to understand the nature of the AIDS disease and what is required in the nature of testing.

So if you get up to me and say, "But, Leichter, this is politically good," I can understand that argument, but that is not what you're saying and I believe you are good intentioned with it, but I ask you again to look at it and to find one instance where there is a medical benefit and reason that you're going to get from testing the defendant so that the

victim, based on the defendant's test can say, either, "I don't have to be tested; I'm okay," or "Gee, I've got a real problem," and that just doesn't happen given the nature of the AIDS disease.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Would Senator Saland yield to a number of questions?

ACTING PRESIDENT KUHL: Senator Saland, do yield to Senator Abate?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: Yes, Senator Saland, I think everyone in this chamber respects you for your work with crime victims. There are many of us who feel that we have been, for years, crime victim advocates and you talk about there's universal support among the victims community for this bill.

SENATOR SALAND: If I may

interrupt as a point of information. I never said that.

SENATOR ABATE: You call it a "victims bill".

SENATOR SALAND: Correct.

SENATOR ABATE: And yet, are you aware that there are a number of very prestigious victims groups that have a number of serious concerns about this bill? These are, in fact, victims groups that their entire mission is to help victims of crime.

SENATOR SALAND: I am aware that there are some groups. I am aware of the poli tics of this bill. I'm aware -- particularly getting involved in an area involved with HIV testing, I'm full well aware of the knee jerk reaction that it brings everywhere, both on the right and on the left. That is not the intention of this bill, and I'm sure that there are a number of victims' rights organizations that have great sensitivity to those who advocate on behalf of the AIDS community, and I'm sure that there is a certain amount of

political brokering that's going on with some of these positions being stated by some of those groups. There certainly are memos from domestic violence organizations in support of this bill.

SENATOR ABATE: Are you aware - I know when I was the chair of the New York State Crime Victims Board in the '80s that we had extensive hearings on this issue. The Governor at the time had a Task Force Against Sexual Assault, and I was present during a number of these meetings and hearings with victims groups and only victims groups, and at that time -- and they continue to be very concerned about the issue as it relates to the benefits of the victims.

Are you aware that the Coalition Against Sexual Assault and Victims Services - Victims Services is opposed to the bill, and the Coalition Against Sexual Assault has raised a number of issues that have not been resolved by the bill.

SENATOR SALAND: I'm not aware specifically of those organizations. I am aware

of your involvement. I am aware that you were part of the Governor's 1990 Task Force. I am aware that the 1990 Task Force issued a report in favor of preconviction testing. I'm not aware of any dissent or minority opinion that was provided with respect to that preconviction testing.

SENATOR ABATE: No, it's my understanding there was a conclusion reached on post-conviction but there was no consensus reached on preconviction testing.

SENATOR SALAND: Oh, it states right in the report that they endorsed -- they said it was a difficult question, but they endorsed preconviction testing. I may have it in this file. If I do, I will read it to you.

SENATOR ABATE: And were there - my recollection -- I have notes of the meeting -- that there were certain things that needed to be present in order for any kind of testing to occur preconviction. In fact, the same kind of guidelines discussed in the task force are the same guidelines discussed by the AIDS

Advisory Council discussion of medical benefit to the victim.

SENATOR SALAND: The substantial medical benefits test that was alluded to earlier by Senator Leichter, in effect, taking Senator Leichter's logic to its conclusion means that nobody -- because Senator Leichter says there is never any substantial medical benefit -- nobody would ever be able to avail themselves of the test.

So to me, that, in part, is a smoke screen that doesn't recognize, again, the anguish that victims go through nor does it recognize the fact that once probable cause has been shown to exist in the commission of the crime and the exchange of body fluid, why could you reasonably deny a victim who wanted that the opportunity to have that test? All you are doing is giving somebody the ability to have a choice. It's no more than a choice issue. A victim can make up his or her mind as to whether or not they want to do this, intelligently arrived at after being counselled. They may

choose not to do it. But for those that do, whether they are a minority or a majority, why not permit them to avail themselves of the test?

SENATOR ABATE: And you -

ACTING PRESIDENT KUHL: Senator Abate, are you asking Senator Saland to continue to yield?

SENATOR ABATE: Yes, if Senator Saland will continue to yield.

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

SENATOR SALAND: Yes. I believe I have the language here if you'd like, Senator.

SENATOR ABATE: I have the notes from the meeting. I'm not sure how they were transcribed, but there were about 15 meetings.

ACTING PRESIDENT KUHL: Senator Abate, if I might, this really -- the forum that we have here doesn't provide for the opportunity for a dialogue between the two of you. You have an opportunity to make a statement or ask an individual or the sponsor of the bill a

question, and he, in turn, can ask you to yield to a question.

I would like you to kind of continue to come through the Chair so that we can maintain some decorum and some order in this chamber.

So are you asking Senator Saland to yield?

SENATOR ABATE: Yes, Senator. Let me ask you another. Question?

ACTING PRESIDENT KUHL: Thank you. Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

SENATOR ABATE: Senator Saland, are you -

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: -- aware that the AIDS Advisory Council has made certain recommendations? And have you followed their recommendations?

SENATOR SALAND: I'm aware that

the AIDS Advisory Council is suggesting use of a substantial medical benefit test. I'm aware of that, and I have not built that into this bill.

SENATOR ABATE: And, am I correct in saying that the AIDS Advisory Council are made up of people appointed by the Governor who have substantial medical background in the diagnosis and treatment of AIDS, provision of services for that population?

SENATOR SALAND: I am aware that the appointees are appointees of the Governor. I'm told that the majority of those appointees are appointees by Governor Pataki, and I have been led to believe, although I can't say this with absolute certainty, that a substantial number of them if not the majority of them do have medical background.

SENATOR ABATE: Don't you think, Senator -

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

SENATOR SALAND: Yes, Mr. President.

SENATOR ABATE: Don't you think -

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: -- Senator, that in fact we are not medical doctors. There's an AIDS Advisory Council which reached a conclusion that said testing may be appropriate in certain cases.

It did not say that it was not appropriate in every case, but it said that this bill was basically too broad. How do you think we in the Legislature -- because we do not have medical backgrounds, aren't we remiss in not taking a serious look at these recommendations and maybe amending your bill to reflect their suggestions?

SENATOR SALAND: I'm not aware that they took a position on this bill. I'm not aware that they attempted to specifically deal with this bill. I am aware, again, that they felt that whatever was done should be done within the contest of applying a substantial

medical benefits test.

SENATOR ABATE: It's my understanding -- do you have a copy of their recommendation before you?

SENATOR SALAND: I have them somewhere, yes.

SENATOR ABATE: Am I correct in saying that if you look at their AIDS Advisory Council recommendation, it goes through point by point what they think needs to be done in order to provide the victim with useful information.

And it's my understanding - again, correct me -- that these are recommendations that they believe should be part and parcel of any bill that requires testing of defendants. Do you in any way take into consideration their issues around describing what a significant risk is in terms of bodily fluid?

SENATOR SALAND: I think that a court has the ability to make that determination. Again, we're talking probable cause. The language in the bill specifically

talks about -- it defines a victim as a person -- "means a person with whom the defendant engaged in an act of sexual intercourse or deviate sexual intercourse as defined in Section 130 of the Penal Law." It goes on to say that the petition means a person who alleges he or she was exposed to bodily fluid of the defendant during or as the proximate result of the commission of the same offense, and then goes on in another section to describe the circumstances under which this would be applicable. One is on conviction. One I believe is on indictment, and the other one stands charged by an information.

Now, there is a long line of cases which I'm sure you are familiar with, both Appellate and Supreme Court cases, that, in effect, say that indictment and an information are probable cause -- not beyond a reasonable doubt, but probable cause. So we are -

SENATOR ABATE: That's not my question.

SENATOR SALAND: We are giving - well, I think it's a response. I'm not sure

what your question is, then. Because what you are saying is, if, in fact, there is a recommen dation by an advisory group, must we as this legislative body endorse that recommendation? I am telling you that, from my advantage point, I am choosing not to deal or advance that particular proposal. I don't believe it fits.

SENATOR ABATE: My question -

SENATOR SALAND: I don't believe -- that's not the way that I would -

SENATOR ABATE: How can we afford not -- to ignore their proposal. Do you believe judges who do not have medical background are going to be able to examine the behavior of the defendant and determine whether the circum stances would contribute to a significant risk of transmitting or actually infecting someone with the HIV infection?

SENATOR SALAND: That's not the standard.

SENATOR ABATE: How can doctors have that within their purview?

SENATOR SALAND: That's not the

standards. And judges, by the way, have to deal -- who are not psychologists or psychiatrists have to deal with insanity as part and parcel of proceedings. They have to deal with the most complex of medical questions in medical malpractice cases. They have to deal with a host of things that you and I don't generally have to deal with nor do the men and women on the street have to deal with. But there's expert opinion that's provided to them in the course of the proceedings that helps them and the jury get to what we assume is the right decision.

SENATOR ABATE: Would Senator Saland yield to another question?

ACTING PRESIDENT KUHL: Senator Saland, do you yield to another question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: He yields.

SENATOR ABATE: You are absolutely right that there are judges who are

very intelligent and can interpret other disciplines, but that's in a case where there is a hearing and expert testimony has been rendered. Where in this legislation is there the establishment of either due process or a full hearing where medical testimony can be rendered so that a judge can, in fact, make the decision what it means on "may", "something may have been transmitted." Doesn't the judge need to hear from medical experts so he or she can make a fully informed decision?

This bill, am I correct, does not provide for any hearing?

SENATOR SALAND: This bill basically creates a mechanism which says if there is probable cause you may have the test, after you've been through the counseling and determined that you want the test. In effect, the victim is being empowered to make decisions for himself or herself based upon expert information, expert opinion, counseling, that's provided to that person.

That person may decide after they

have gone through that process that they don't want it, but that should be that victim's decision. They should be empowered with the ability to make that decision; and if there has been this act, this violent act, and if a court feels that there is probable cause, if that person has been convicted, if they've been indicted, if they are in on a superior court information, that probable cause has been established; and if you can show the victimization and you can show the probability of the exchange of body fluids, then the victim is empowered to make a decision. Does she or doesn't she want, or he want to have the test? If, in fact, they don't that's their decision. But why deny them the ability to make that decision?

That's what -- really that is all this argument boils down to.

SENATOR ABATE: Senator, would you yield to another question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: The AIDS Advisory Council in -- I believe in -- raised these guidelines because of concern that there may not be any useful information given to the victim. Does this bill cover a situation where there is an assault that occurred and the defendant is arrested a year later and the victim says, "I want the defendant tested"? But, clearly, within the course of that year that defendant may have contracted AIDS after the alleged crime. What medical benefit, what useful information, then, under those circumstances are we giving to the victim; and how does your legislation cure that situation?

SENATOR SALAND: That victim would have the ability under this bill to self test. That victim would have the ability to go through the counseling proceeding; and if that victim determined that with the lapse of one

year and the possibility or likelihood that that assailant who has finally been apprehended was not infected with HIV a year previously but in the interim had become, then that person has a choice. A choice. A basic choice: "I'm wasting my time. I don't want to be bothered. I will continue to self-test." It boggles my mind to think that people would want to deny victims that choice.

SENATOR ABATE: Let me proceed and ask another question.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: I guess it boggles my mind that we in the Legislature can't refine our bills so that we can take into consideration cases and not waste dollars and protect the victim. I don't understand why you haven't narrowed the bill so that in the case

that I've talked about, which there could never be any useful information given the victim, you could carve out a better bill. What prevents you, going back to your bill, taking a look at the AIDS Advisory Council recommendation and producing a better bill that helps victims?

SENATOR SALAND: Senator Abate, there's nothing in this bill that is in derogation of the rights of a victim or the ability of a victim to gain access to information.

The fact that you may prefer to do it differently is certainly well within your option, and I cause you no disrespect by telling you that. We've had one Governor's task force, of which you were a member, clearly -- and I just call your attention to recommendation 16 in that report -- you may want to take a look at it -- pages 95 and 96, went on to say there should be a civil procedure for a victim to be able to access the information.

This particular task force or advisory council is saying -- and, by the way,

when we debated a predecessor of this bill over some three or four years -- I think we debated a bill I introduced dealing with the subjects three times. There was little or no regard given to the task force recommendations. I was told, in effect, that they were of no consequence.

So I have no idea why the task force recommendations by those who opposed this originally and told me they were of no consequence should somehow or other choose, because they are more favorably disposed to another panel which also is comprised of a cross-section of people, including medical authority, to identify with that one. We're picking and choosing.

SENATOR ABATE: Well, I can't comment on who picked and choosed before. I can only comment on my assessment.

I have one last question.

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

SENATOR SALAND: Yes, Mr.

President.

SENATOR ABATE: Senator -

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: -- the victims community has raised some concerns about the bill.

One is the issue of confidentiality as relates to victims, and that what penalties are in this bill if information is shared with third parties is one of the issues.

And one of the other issues is, is there pretesting counseling in the bill for victims?

And then the third question is, is this a cost-free bill for the victim? Who will be paying for the counseling, the testing and the AZT if it's required? Do they have to make a claim before the Crime Victims Board and show that alternative reimbursement could apply, or is this a cost-free measure to victims?

Those three questions again: Are

there penalties for disclosure? Is it cost-free to the victims? Is AZT available? Is pretesting counseling available?

SENATOR SALAND: We have done nothing in this bill that changes the current law with respect to confidentiality. We added nobody other than the petitioner who brings a proceeding separately because he or she wants to self-test. There is no additional breach of confidentiality that is not currently contained in law.

SENATOR ABATE: So there is no penalty attached.

SENATOR SALAND: No, I'm saying there is nothing -- the existing law, whatever that existing law is, is what controls, whether it's a civil fine, whether it's a misdemeanor. Off the top of my head, I can't tell you what it is. I believe there is a misdemeanor penalty that generally is associated with most unauthorized disclosures, but I can't tell you that with certainty.

SENATOR ABATE: Are you aware

that many in the victims' community are very concerned about the confidentiality, that this information will be shared with other parties, and they wanted additional penalties for breach of confidentiality?

SENATOR SALAND: Again, we have done nothing. We have not expanded one iota or diminished one iota from the existing law with respect to penalties for an unauthorized confidentiality.

Your second question? I'm sorry.

SENATOR ABATE: And my second question was dealing with pretesting counseling. Will that counseling pretest, so that when the victim is -- particularly when they are undergoing an enormous amount of shock and trauma, that's the time when they need some counseling. Is that available prior to the test?

SENATOR SALAND: Pretest is covered. The voluntary test, where you make your voluntary application, is covered. I do not believe that an application by -

SENATOR ABATE: Is that covered by applying to the Crime Victims Board or is that a cost-free service?

SENATOR SALAND: It's a state charge, and I would have to, again, go through the language and determine whether there's a Crime Victims Board application here.

SENATOR ABATE: Because you know as one applies to the Crime Victims Board not everyone is eligible for compensation.

SENATOR SALAND: No, it is not. It's a direct charge. It's a direct charge to the state. It is not a Crime Victims Board expense.

SENATOR ABATE: And then the third question, will the victim receive compensation for AZT?

SENATOR SALAND: No.

SENATOR ABATE: Thank you, Senator.

SENATOR SALAND: You're welcome.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator

Abate on the bill.

SENATOR ABATE: This is another example where I believe many people in the chamber could support some kind of testing if it were rational, if there were some nexus between the testing and useful information to the victim.

I think it's pandering to the victims to say we're going to do something good for them, when, in fact, many of them, whether it's the Coalition Against Sexual Assault or the Victims Services Agency, which is probably the largest victims agency in the world, says that this is not a victims' bill as written and that it could be greatly be improved.

I don't know why we always have to rush. Why can't we improve a bill that takes into consideration what the judges say. The judges have in their resolution called for a number of suggestions for improvement. The victims community talks about the need to ensure that good information is available to the victim, that the confidentiality is not

breached.

And why are we ignoring the recommendations of the AIDS Advisory Council. They are the very people who were put in charge of these very complex and difficult issues because they've worked, many of them decades, in the field. They understand the complexity of the disease. And they have come out with recommendations that say, yes, there are certain circumstances where testing of the accused may be appropriate but not the way this bill is drafted.

They recommend that there be an establishment of medical benefit. There would be a showing of significant risk, bodily substances being utilized in the crime, and there must be circumstances which constitute a significant risk of transmitting the disease. So what that means is, it's not all situations should a test be allowed by the Court. They believe that there should be a hearing. There should be a due process hearing and that, when necessary, medical experts can be called in.

There's the very example that I gave where a year or six months before there was an assault and yet the defendant was not arrested until much later. There is not a compelling reason for that test in that situation, and how are we doing a medical benefit for that victim other than giving that victim very bad information. So they address those issues.

In a section that says "circumstances that involve significant risk shall not include" and they give three or four conditions when there is not significant risk. This bill does not take their advice and, somehow, we seem to know better than the experts in the field.

They also talk about their concern that false assurances or unnecessary alarm can be given to the victim because bad information will be given. It is my understanding that the old immunity test, the antibody test, could also be utilized under this bill. It's much less expensive. I think that

would be the frequently used test. And if it is, if a defendant tests negative, it does not mean that he or she does not have AIDS, because if you're testing for antibodies it sometimes takes up to six months for those antibodies to be present and for the person to test positive. On the other side of the coin, if someone tests positive it does not mean that the victim has contracted AIDS.

So it's been said over and over again. We need to do everything we can. We need to construct a bill that we can guarantee gives good information to the victim so that the victim doesn't walk away and say, if the defendant is negatively tested, I don't need to test myself or if incorrectly the defendant is tested positive, there is an enormous amount of alarm and additional pain we are giving to the victim because it's bad information. She or he may not, in fact, have contracted AIDS.

So we don't want -- we can walk away and say it's a victims' bill, but we have to take responsibility if, in fact, we draft a

bill so broad that we are giving information that can create even greater trauma to the victim.

Also the victims' community have raised a number of issues around confidentiality they are concerned about. Why are we always at a rush? Why can't we construct a better bill? I can not vote for this bill today because it does not take into consideration the advice of the medical and scientific evidence that's available today. I think we should look to the AIDS Advisory Council recommendations that come forward with some very rational guidelines. They provide a nexus between the test and good information to the victim. I think the one part of the bill that's excellent, I think we should pass that part, and let's debate and improve upon the second part, the part that gives - ensures confidentiality and time testing and counseling cost-free to the victim. It is imperative. It should have passed last year. We should pass that immediately.

But let's do something that's

right, that's going to help victims. Let's take a look at the second part and craft something that's really meaningful, and we can all stand up and say actually that this is a victims' bill. This as it stands now is not a victims' bill.

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

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT KUHL: Are there five members in the chamber requesting a slow roll call?

Senator Hoffmann, are you on your feet requesting a slow roll call?

SENATOR HOFFMANN: Yes.

ACTING PRESIDENT KUHL: There are five members in the chamber requesting a slow roll call.

Secretary will read the slow roll call.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

(There was no response.)

Senator Dollinger.

(There was no response.)
Senator Espada.
SENATOR ESPADA: No.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Hoblock.
SENATOR HOBLOCK: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: Yes.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

(There was no response.)

Senator Lack excused.

Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President. Stating, even as frequently as Senator Saland said, "This is a victims' rights bill," doesn't make it a victim benefit bill. I would submit that it's more appropriate to characterize it as a misleading bill, misleading to victims. I think as we pointed out, victims

should be tested and we support provisions that provide for the consultation, testing, payment by the state for testing.

But the other part as far as testing the defendant, the person charged with the crime, that actually could mislead the victim. It could cause anguish to the victim. It could cause the victim to make the wrong choice. It does absolutely -- gives no benefit but it may give some harm to the victim. This may be popular, and so on, Senator Saland, but I was pleased to hear from Senator Abate that victims' rights organizations understand this. They understand that this bill is not in their benefit. You could make it such but it might not have the same political value.

Mr. President, for I think what has been amply demonstrated are flaws in this bill, I'm going to vote in the negative.

ACTING PRESIDENT KUHL: Senator Leichter will be recorded in the negative.

Continue to call the roll slowly.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Yes.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery excused.
Senator Nanula.
SENATOR NANULA: No.
THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Aye.
THE SECRETARY: Senator Padavan excused.
Senator Paterson.
SENATOR PATERSON: No.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Aye.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky excused.
Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(There was no response.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: Call the absentees.
THE SECRETARY: Senator Babbush excused.
Senator DiCarlo.
SENATOR DiCARLO: Aye.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: Yes.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez excused.
Senator Goodman.
SENATOR GOODMAN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Lachman.

(There was no response.)

Senator Waldon.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 39, nays 12.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President. At this time, may we please take up Calendar Number 1219, which was just reported from the Finance Committee.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1219.

THE SECRETARY: Calendar Number 1219, by the Committee on Rules, Senate Print 7566, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Senator

Maziarz.

SENATOR MAZIARZ: Mr. President, is there a message of appropriation at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR MAZIARZ: I move to accept the message of appropriation.

ACTING PRESIDENT KUHL: The motion is to accept the message of appropriation on Calendar 1219.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Santiago, why do you rise?

SENATOR SANTIAGO: Mr. President, legislative business kept me out of the chamber when the Senate voted on Senate Bill 6621. I wish to announce for the record that had I been present, I would have voted no on this legislation.

ACTING PRESIDENT KUHL: Senator Santiago, this is on a prior day's session?

SENATOR SANTIAGO: Yes.

ACTING PRESIDENT KUHL: That was Senate Bill 6621?

SENATOR SANTIAGO: Yes.

ACTING PRESIDENT KUHL: The record will reflect that had Senator Santiago been in the chamber when the vote was taken on Senate Bill 6621 that she would have voted in the negative.

ACTING PRESIDENT KUHL: Senator

Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, at this time, may we please take up Calendar Number 1220.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1220, by the Committee on Rules, Senate Print 7554, an act to amend the Tax Law and the Administrative Code of the City of New York, in relation to extending the sunset provisions relating to real estate investment trusts.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, at this time, may we please take up Calendar Number 1221.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1221, by Senator Levy, Senate Print 7569, an act to authorize the Roosevelt Union Free School District to finance deficits by the issuance of serial bonds.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Chair recognizes Senator Waldon.

SENATOR WALDON: Thank you very much. Mr. President, my colleagues. I respectfully request unanimous consent to be recorded in the yes, the yea, on Calendar 1001. I was out of the chamber at that time.

ACTING PRESIDENT KUHL: Senator Waldon, the roll call is closed on that bill, but the record will reflect that had you been in the chamber and cast a vote on Senate Bill 2039A, Calendar Number 1001, you would have voted for the bill.

SENATOR WALDON: Mr. President, i thank you very much for your consideration.

ACTING PRESIDENT KUHL: Senator Nanula.

SENATOR NANULA: Mr. President. Thank you. I would like to request unanimous consent to be recorded in the negative on Calendar Number 1220.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Nanula will be recorded in the negative on Calendar Number 1220.

ACTING PRESIDENT KUHL: Senator Maziarz, we have some housekeeping. Can we return to motions and resolutions?

SENATOR MAZIARZ: Yes, at this time, Mr. President.

ACTING PRESIDENT KUHL: We return to motions and resolutions.

The chair recognizes Senator Maziarz -- Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. We do look so much alike.

Mr. President, on page number 61, I offer the following amendments to Calendar Number 1073, Senate Print Number 4604B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar 1073 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 32, on behalf of

Senator Maziarz, I offer the following amendments to Calendar Number 833, Senate Print Number 6440, and ask the bill -- said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 833 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Maziarz, that completes the housekeeping at the desk.

SENATOR MAZIARZ: Thank you, Mr. President.

There being no further business, I move that we adjourn until Tuesday, May 21, at 3:00 p.m.

Mr. President, at this time I'd like that we adjourn in memory of Robert Palmieri, a longstanding staff member of the New York State Senate.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, May 21st at 3:00 p.m.

(Whereupon, at 5:10 p.m., the

Senate adjourned.)