ALBANY, NEW YORK

February 4, 1997

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, February 3rd. The Senate met pursuant to adjournment. The Journal of Sunday, February 2nd, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, offers up the following nominations: As judge of the New York State Court of Claims, S. Michael Nadel of New York City.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of S. Michael Nadel of New York City as a judge of the New York State Court of Claims.

Mr. Nadel has appeared before the Committee this morning, was unanimously confirmed by the Committee, and sent to the floor of the Senate.

He's had a long and distinguished record of public employment, including that of being a judge of the New York City Criminal Court.

Senator Leichter, who is not in the chamber, wanted to second the nomination, but I see that Senator Abate is here and, Madam President, I will yield to her for purposes of seconding the nomination of S. Michael Nadel.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: I'm very pleased

to follow the recommendation of Senator Lack and Senator Leichter.

I've had the great privilege of knowing Mike Nadel when he was beginning his legal career as I was beginning my legal career in the 1970s, and if you look at his resume, his extraordinary resume, he has done -- held some very responsible positions. He has done them extremely well, but what's not within the resume and what I got to know from him by trying cases with him is that he's a very decent person. He has the capacity to listen to people, even though he may not agree with them. He's extremely fair-minded, and I believe he has all the attributes to serve on the judiciary in an exemplary manner.

So I wholeheartedly recommend him to all of you, and I hope it will be a unanimous vote in his favor, and I look forward to hearing about the enormous accomplishments he will make over the coming years.

THE PRESIDENT: Does anyone else wish to speak on the nomination of Michael Nadel?

(There was no response.)

The question is on the confirmation of S. Michael Nadel as judge of the New York State Court of Appeals -- Court of Claims. I'm sorry. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

S. Michael Nadel is hereby confirmed as judge of the Court of Claims.

The Secretary will read.

THE SECRETARY: As judge to the New York State Court of Claims, Thomas J. Carroll of New York City.

THE PRESIDENT: Senator?

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Thomas J. Carroll as a judge to the Court of Claims.

Again, Mr. Carroll appeared before the Committee this morning. He was received warmly by the Committee and was unanimously endorsed and sent to the floor of the Senate.

Mr. Carroll has had a long and distinguished career. He made a mistake and left the state and went to Georgetown to its law school, but he corrected that by coming back to New York and teaching at my alma mater, the Fordham University School of Law, from 1982 to the president -- to the present. He has been associated with the firm of Dewey, Ballantine from 1970 to 1973. He was then an assistant district attorney in the county of the Bronx until 1980, at which time he joined the New York State Commission on Investigation, was an assistant counsel for that commission and was the chief investigator in the collapse of the Thruway Authority bridge on Schoharie Creek. He then moved to Washington where he served as general attorney of the United States Department of Housing and Urban Development until the present time, where he appeared before the Governor's screening committee and was referred to the Senate.

Madam President, it's with extreme pleasure that I rise to move Mr. Carroll's nomination and, Madam President, Mr. Carroll, as well as the rest of our nominees,

including S. Michael Nadel, are sitting in our gallery. If you would please recognize them upon confirmation.

Thank you.

THE PRESIDENT: Thank you, Senator Lack.

Does anyone else wish to speak on the nomination?

(There was no response.)

The question is on the confirmation of Thomas J. Carroll as a judge of the New York State Court of Claims. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

Thomas J. Carroll is hereby confirmed as a judge of the Court of Claims, and we would like to welcome the families of both judges.

(Applause)

Thank you.

The Secretary will read.

THE SECRETARY: As judge to the Supreme Court for the 8th Judicial District,

Eugene F. Pigott, Jr. of Buffalo.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Eugene F. Pigott, Jr. of Buffalo for the interim appointment for nomination to the Supreme Court for the 8th Judicial District.

Mr. Pigott appeared before the Governor's screening committee, was referred to the Senate by the Governor. He was interviewed today by the Senate Judiciary Committee, was found satisfactory in all respects, unanimously moved to the floor and it's with pleasure, Madam President, that I yield to Senator Volker for purposes of seconding the nomination.

THE PRESIDENT: Thank you, Senator Lack.

Senator Volker.

SENATOR VOLKER: Thank you, Senator.

Madam President, the nomination of Gene Pigott is something that has been anticipated for quite a while in Buffalo, and Gene will probably laugh at that because it was

initially thought to happen some time earlier, and during the hearing on -- the Judiciary hearing, it kind of made us laugh a little bit about the fact that there was some talk about screening because Gene has gone through an immense amount of screening in many ways in Buffalo from -- virtually every prominent lawyer has been asking him what, frankly, has been going on.

Gene is clearly one of the most well respected lawyers in the Buffalo area, a former Erie County attorney. As I pointed out during the Judiciary Committee meeting, I like to come up with some little known facts about people, and Gene was an interpreter, a Vietnamese interpreter during the Vietnam War and there aren't too many people, I think, that could say that who later become judges, but he's a fine gentleman, a good friend, and I can tell you that the people who know him in Western New York have an immense amount of respect for him and feel, as I do, that he certainly will be one of the top judges in the state of New York, and I commend the Judge for his nom... -- or the Governor for his

nomination.

THE PRESIDENT: Thank you, Senator Volker.

Senator Rath.

SENATOR RATH: Thank you, Madam President.

Judge Nadel, congratulations; Judge Carroll, congratulations, almost-Judge Pigott, Peggy, David, Martha.

When you know someone really well, I think it gets more and more difficult to say something because you have a hard time capturing the essence that you know of the person.

I've heard many people on the floor attempt to do that, and I find myself in that position right now.

Dale Volker -- Senator Volker's comments about Gene's high regard and respect by the bench and the bar in Erie County, I would second everything Senator Volker said.

I would call attention to the fact that Gene went to law school at SUNY Buffalo Law School. So contrary to some others who weren't quite as enlightened at an early

age, some others who didn't quite see SUNY the way we all have seen it, we're glad that you're one of our SUNY graduates, Gene, and I noted on your resume, however, there was one place that you had missed.

You talked about, obviously, your private practice, your public service as our county attorney, and obviously your military career. I noted that you did not put down the first place we served together, in the Erie County Legislature. We'll have to talk about that privately some time. I'm afraid it was because you didn't want me to talk about it, and I won't.

It was a wonderful time of growing up, learning about government and politics. Gene taught a lot of us what we know and what we still try to practice, the blend of government and politics in those early days, and I think the thing about Gene that I would add to -- beyond Senator Volker's words and his outstanding resume, is that Gene has an understanding of people. He is clearly a people person, always has been, always recognizes and respects the other person's

opinion, always listens, can always find something to put them at ease.

I said to Gene's wife the other day as I was trying to gather some thoughts, "What can you say about someone when everything you remember almost ends up with a smile or a little bit of a laugh?" but I thought that's the thing to say because that's what Gene does and has done for all of us through so many difficult times and through good times too.

So, Gene, on perspective and balance, I don't think there's anyone that can match you and I wish you good luck, and I know you will take to the court what you have brought to all the other dealings and personal activities that we've all enjoyed with you for so many years.

We look forward to your service on the court, and congratulations.

THE PRESIDENT: Thank you, Senator Rath.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I want to join my colleagues, Senators Volker and Rath, and just to congratulate a very good friend from Erie County, Gene Pigott. Although Gene forgot his years in the Erie County Legislature, I know that they were great years and he did a lot of great things for the people of Erie County and also for the legal profession in his work with the New York State Trial Lawyers Association and, Gene, I know you're going to do a great job on the bench, and I just want to extend my personal congratulations.

Thank you, Madam President.

THE PRESIDENT: Thank you.

Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I too would like to rise to second the nomination of Gene Pigott.

As most of us non-lawyers would say, Gene's too nice of a guy to be an attorney, so it's probably good that he's becoming a judge, but Gene's a really nice guy and I too worked at the County Legislature and I can understand why he didn't list it. Just kidding.

I promised my brother that since he's his law school classmate, that I would get up and at least say a few nice words about Gene for him but also for myself because I find Gene to be one of my good friends also, even though he's caused and been in more fights with various parts of the Republican Party than I ever could be.

So, Gene, congratulations.

THE PRESIDENT: Does anyone else wish to speak on the nomination of Eugene Pigott?

(There was no response.)

The question is on the confirmation of Eugene F. Pigott, Jr., as a justice of the Supreme Court for the 8th Judicial District. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

Eugene F. Pigott, Jr. is hereby confirmed as justice of the Supreme Court for the 8th Judicial District. Congratulations.

(Applause.)

The Secretary will read.

THE SECRETARY: As judge to the Sullivan County Court, Burton Ledina of Monticello.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Yes. Thank you, Madam President.

I do want to take the occasion first to thank the Governor for this excellent list of appointees to the various courts that are here today and, again, to mention, Madam President, that we have in our gallery, of course, Judge Nadel, now confirmed Judge Carroll with his wife Peggy and his son Brendon, and now confirmed Judge Pigott with his wife Peggy and his son David and his daughter Martha, and now the subject of our last nominee today, the Governor's nomination to the Sullivan County Court.

This is, Madam President, just a little bit bittersweet. Judge Ledina appeared before us last year, was unanimously confirmed by the Senate to a then vacancy in the Sullivan County Court. Unfortunately, he lost in the election. This is a newly created County Court

seat in Sullivan County.

The Governor -- and the Governor's screening committee have reinterviewed Judge Ledina -- has sent the name to the Senate. He was unanimously voted upon by the Senate Judiciary Committee this morning and has been referred to this body for our action this afternoon, and I would yield to Senator Cook and, once again, Madam President, ask you to recognize Judge Ledina and his wife Harriet, who are in our gallery.

THE PRESIDENT: Senator Cook.

SENATOR COOK: Madam President, thank you.

Burt, the vacation is over. Harriet, you're going to have to start putting up with him again on a regular basis.

Madam President, I'm not going to say a lot about Judge Ledina today because when he was before us six months ago or so, I talked about his high personal qualifications, his great expertise as an attorney and the great respect in which he is held in the community and said at that time that we were very fortunate to have someone of Judge

Ledina's capabilities available to us to be the county judge and that the Governor, in fact, had recognized those capabilities and offered his name to us.

I only would add to that, at this point, that everything that Burt Ledina did as county judge merely enhanced the good things that I said about him earlier.

His conduct has been exemplary. He has only grown in stature and the esteem with the people in the county who have seen him function, as we knew he would, with great judicial competence, and I am just very pleased that we now have Judge Ledina again, who is going to be sitting on the bench and doing what he does so well, serving the people of Sullivan County as their County Court judge, and I do move the confirmation.

ACTING PRESIDENT MAZIARZ: Do any other Senators wish to speak?

(There was no response.)

The question is on the confirmation of Burton Ledina as judge of the Sullivan County Court. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

Burton Ledina is hereby confirmed as judge of the Sullivan County Court.

Judge, congratulations and best of luck to you.

(Applause)

Reports of select committees - I'm sorry. Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Nozzolio. I'd ask that you recognize him at this time.

ACTING PRESIDENT MAZIARZ: Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Mr. President. I ask that the resolution be read in its entirety, and then I wish to speak on its behalf.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: By Senators Nozzolio and Volker, Legislative Resolution

commending Paul Lewis Shechtman for his distinguished contributions as Commissioner and Director of the New York State Division of Criminal Justice Services.

WHEREAS, it is the sense of this legislative body to take note of and publicly acknowledge the many contributions of Paul Lewis Shechtman to the safety and welfare of the citizens of this noble state during his tenure as Commissioner and Director of the New York State Division of Criminal Justice Services, 1995 through 1997.

Born in Philadelphia, Pennsylvania on June 27th, 1946, Paul Shechtman earned a Bachelor of Arts degree in economics, with high honors, from Swarthmore College in 1969. In 1973, he completed a Master's degree in economics at Oxford University and, in 1978, he received his law degree from Harvard Law School, magna cum laude.

Paul Shechtman was also the recipient of a National Collegiate Athletic Association Basketball Fellowship, a Rhodes Scholarship and a Thomas J. Watson Traveling Fellowship.

In 1978, Paul Shechtman began his professional career as law clerk to the Honorable Louis H. Pollak, United States District Court, Eastern District of Pennsylvania and, in 1979, to the Honorable Warren E. Burger, Chief Justice of the United States Supreme Court.

From 1981 through 1985, Paul Shechtman served as Chief Appellate Attorney, and Chief, General Crimes Unit, United States Attorney's office, Southern District of New York. He then spent a year as Associate Independent Counsel on a special investigation and, in 1987, he was named Counsel to the District Attorney, New York County District Attorney's office, a position he held until 1994 when he became Chief of the Criminal Division, United States Attorney's Office, Southern District of New York.

Knowing well the importance of an education and quality professional training, Paul Shechtman has, in conjunction with his many demanding responsibilities, been an assistant professor at the University of Pennsylvania Law School, 1985 through 1987, and

professor at Columbia Law School, earning awards for outstanding teaching in 1987, 1990 and in 1992.

Recognizing his vast expertise and experience, in 1995, Governor George E. Pataki named Paul Shechtman Commissioner and Director of the New York State Division of Criminal Justice Services.

During Paul Shechtman's tenure, working with the Governor, members of the Legislature, police, judges and crime victims, many new criminal justice policies have been introduced and new programs developed. These include the creation of the Willard Drug Treatment Campus, reinstatement of the death penalty, elimination of work release for violent felons, and enactment of Megan's Law and the Sex Offender Reform Act. These have already resulted in an overall reduction of violent and several other types of crime in New York State.

Today, New York leads the nation in reducing violent crime, down 23 percent across the state; assaults have been reduced by 22 percent, robberies by 24 percent and murders

by almost one-third as a result of legislation and procedures implemented under the direction of Governor George Pataki and Commissioner Paul Shechtman.

Highly praised and justly recognized for his unwavering determination, integrity, selfless commitment and preeminent skills, Paul Shechtman has distinguished himself by his achievements and distinguished performance on behalf of the people of this state and nation.

As Paul Shechtman completes his term as Commissioner and Director of the New York State Division of Criminal Justice Services and returns to the private practice of law and to spend time with his wife and two children, it is the sense of this legislative body to recognize, with admiration and grateful tribute, his accomplishments and commitment to excellence; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to praise Paul Lewis Shechtman for his distinguished service as Commissioner and Director of the New York State Division of Criminal Justice Services and

to wish him well in his future endeavors; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Mr. Paul Lewis Shechtman.

ACTING PRESIDENT MAZIARZ: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, thank you.

On the resolution, on behalf of Senator Volker, Senator Bruno, all members of the Senate, we today have joined Governor Pataki and members of both sides of the aisles in both houses in joining in unanimous praise for the distinguished service given to the state of New York by our now retiring Commissioner of -- head of Criminal Justice Services, the Honorable Paul Shechtman.

Paul is with us in the chamber today as he's been many times throughout his tenure, brief as it is, but nonetheless, extremely successful.

Throughout these last two years, Paul Shechtman has been a beacon of wisdom and common sense in helping us push forward

Governor Pataki's criminal justice reform agenda. The resolution speaks very loudly for what that agenda has been all about but, simply stated, Paul Shechtman has been the right person in the right job at the right time, and I, for one, counted on him, along with Senator Volker.

We have been very privileged to work in very close conjunction with Paul in pushing Governor Pataki's very important criminal justice reforms, for which I believe very sincerely, without Paul, the road would have been much rockier in achieving those objectives.

Commissioner, it is with a great deal of, I guess, mixed emotion that we say adieu, but certainly we are extremely grateful for everything you've done on behalf of the taxpayers of this state.

Thank you very much.

ACTING PRESIDENT MAZIARZ: Thank you.

Senator Volker.

SENATOR VOLKER: Mr. President, just let me say briefly -- and I have been here

now -- as I told Paul earlier, that today is the anniversary of the beginning of my 23rd year in the Senate, because I was elected February 3rd of 199... or '75 and sworn in the next day.

In all the years that I have been here, I have dealt with an awful lot of people in criminal justice and a lot of bright people and a lot of very competent people and a lot of people who did a lot of things in a fairly short period of time, but nobody in the years that I have been here has done as much and impacted on the criminal justice system in as positive a way as Paul Shechtman has.

As Michael said, he's obviously extremely bright, extremely personable and also extremely determined, and those qualities, I think, have driven criminal justice policy in this state and have made even, possibly, its detractors to possibly understand that here's a man who understands the world the way it is and deals with it in a manner that a gentleman like himself can deal with it.

We will certainly miss you, Paul. You have done wonders over the last

several years, and I know that wherever you go you will do extremely well and that you will carry with you the fact that you had a major impact on many of us here who operate in Albany and everybody in the state of New York, because I think the one thing we sometimes forget is we tend to link everything here with Albany, but this is a major state and when you have a major impact on the criminal justice system of this state, you have a major impact on the criminal justice system of the entire country, and you understand that because of where you have come from, because of your background, and I think you understand a little bit of that.

My tribute to you is thank you for what you have done for this state and for the criminal justice system. On behalf of myself personally, thank you for being a friend and for being so helpful to me, and I wish you the very best, to you and your family, and Godspeed.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, at the bill-signing of Megan's Law, I think one

of my comments was that probably the finest appointment that the Governor made at that time was Paul Shechtman. My opinion at this date has not changed.

One of the reasons why that law is on the books now, not only for drafting purposes but passage in both houses was Paul Shechtman, a consummate professional, a person who represented the Governor well but also understood the legislative process and the needs of both Republicans and Democrats and finally coming together in passing legislation in both houses.

Paul, I know I'm personally going to miss you up here. Tracy Lloyd in my office is going to miss you. The state of New York is going to miss you for what you've done in a positive way for our criminal justice system.

Thank you, Paul.

ACTING PRESIDENT MAZIARZ: Senator Bruno.

SENATOR BRUNO: Mr. President, a lot has been said about Paul Shechtman, and I can only add my comments and approval to all

that has been said, but I wanted to say a special word just personally to Paul, to thank him for the time, the energy, the dedication, the public service and your legacy, as you go on to another life, will really be the good things that you did on behalf of the people of this state and the fact that you have as a support, Governor Pataki, advanced his principles and his ideals of reforming the criminal justice system as recently as a few hours ago with the juvenile justice reform program bill that I know you've helped develop, and you have done it in a way that is very becoming, in the background, helping get the job done.

The result is that everyone in New York State is safer, safer for your time, for your energy, for your commitment and the result that is demonstrated by the statistics throughout this state where we have now taken the lead in criminal justice reform.

So you are a credit to public service and to this Governor for his good judgment in having appointed you and drawn you into public service.

We just wish you well as you go on to your other life, and we know that you will stay in touch and continue to be a resource to all of us.

Thank you, Paul.

ACTING PRESIDENT MAZIARZ: Thank you, Senator.

Senator Abate.

SENATOR ABATE: I remember as though it's two or three days ago when we stood here and you were nominated and confirmed for your position and then, as now, I was delighted to see you serve in that position.

I will miss you because I'm going to be missing a great sparring partner. We've agreed on many issues and some issues we've not agreed on but some things were always constant. I respected your intellect. You always were accessible to people on both sides of the aisle. When something couldn't be done or it just didn't make sense, you were very straight in your response, and I thought you brought a great sense of movement, fair-mindedness, intellect to the process of criminal justice system policy-making. We will

miss you.

It's ironic that as I left the budget hearings, some members of the Assembly said to me, "What will we do without Paul? Who will come next? We really needed that continuity." I think everyone, even the people that argue with you the most, will also miss you.

So I think you've left a lasting legacy. I think you're a terrific person. I have enjoyed the laughs we've shared together and I'm looking forward to having you as an active constituent in my district and, hopefully, I'll see you in my community and you will go on to continue doing great things.

Congratulations, Paul.

ACTING PRESIDENT MAZIARZ: Are there any other Senators who wish to speak on the resolution?

(There was no response.)

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Congratulations, former commissioner now.

(Applause)

Senator Holland.

SENATOR HOLLAND: Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clauses. They are my bills, S... Senate 885 and S.1696.

ACTING PRESIDENT MAZIARZ: The bills are recommitted. The enacting clauses are stricken.

Senator Skelos.

SENATOR SKELOS: Mr. President, I'd ask that we adopt the Resolution Calendar at this time in its entirety, and I would request of Senator Paterson, if members, as they wish, could go on Resolution Number 201. I move we adopt the Resolution Calendar.

ACTING PRESIDENT MAZIARZ: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: On Resolution Number 201, everybody can go on the resolution. If they wish not to, they should notify the desk.

At this time, Mr. President, if we could take up the non-controversial calendar.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Johnson, Senate Print 243, an act to amend the Education Law, in relation to requiring that the State University graduation ceremonies include the Pledge of Allegiance.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MAZIARZ: The bill is laid aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 34, by Senator LaValle, Senate Print 249, an act to amend the Education Law, in relation to enacting the Higher Education Community Service Act.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 35, by Senator LaValle, Senate Print 303, an act to amend the Education Law.

SENATOR STAVISKY: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Stavisky.

THE SECRETARY: Calendar Number 41, by Senator Maziarz, Senate Print 406-A, an

act to amend the Criminal Procedure Law and the Penal Law, in relation to felony sex offenses.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the first day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 42, by Senator Goodman, Senate Print 414, an act to amend the Penal Law, in relation to computer networks.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 47, by Senator DeFrancisco, Senate Print 487, an act to amend the Criminal Procedure Law, in relation to access to sealed records.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 50, by Senator Volker, Senate Print 522, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 54, by Senator Levy, Senate Print 602, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties for leaving the scene of an accident.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 56, by Senator Tully, Senate Print 192, an act

to authorize the county of Nassau, town of North Hempstead, village of Westbury and Westbury Central School District to refund certain taxes.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 60, by Senator Larkin, Senate Print 461, an act to amend the Real Property Tax Law, in relation to school districts.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator Present, Senate Print 527, an act to amend the General Municipal Law, in relation to authorizing the designation of rural economic development zones.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Leichter.

THE SECRETARY: Calendar Number 66, by Senator Stafford, Senate Print 124, an act to amend the Environmental Conservation Law, in relation to increasing the criminal penalties for illegally taking big game.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 67, by Senator Marcellino, Senate Print 1391, an act to amend the Environmental Conservation Law, in relation to the drawing off of water from storage reservoirs.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58, nays 1, Senator Cook recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

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

SENATOR SKELOS: Mr. President, may we now have a reading of the controversial

calendar.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Johnson, Senate Print 243, an act to amend the Education Law, in relation to requiring that the State University graduation ceremonies include the Pledge of Allegiance and National Anthem.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Johnson, an explanation has been requested of Calendar Number 33 from Senator Paterson.

SENATOR JOHNSON: Lay it aside.

ACTING PRESIDENT MAZIARZ: The bill is going to be laid aside at the request of the sponsor.

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Johnson wishes, we could call that bill up and Senator Leichter and I will just make statements on it. We understand the legislation.

ACTING PRESIDENT MAZIARZ: The

Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Johnson, Senate Print 243, an act to amend the Education Law, in relation to requiring that the State University graduation ceremonies include the Pledge of Allegiance and National Anthem.

ACTING PRESIDENT MAZIARZ: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President. Thank you.

On Senator Johnson's bill, he's explained it a number of years going, and I must say it hasn't convinced us. I don't believe there's anything more that could be said about the bill and, frankly, we've debated it at length and I'm not going to take much time on it.

This is the bill where the Legislature feels that its duty, its obligation -- it's got nothing better to do in regard to higher education than to tell the State University how it should conduct its graduation ceremonies.

Senator Johnson, you might just

as well tell them what the order of the ceremonial marching is, who should go first, who should go last, how they should wear their tassel.

I just don't think it's the business of the Legislature to involve itself in this minutia of how State University campuses will conduct their graduation ceremonies, but let me tell you something, Senator Johnson, that I think we do have an obligation and, sadly, I don't see any bill or any initiative coming forth from the Majority, and that is the great need that this university has, for support, for resources.

This is a university system that is, frankly, being dismantled. It's going to become a second-rate university and it's occurring because we have underfunded it. Something that started under Governor Cuomo has been accelerated and exacerbated under Governor Pataki.

This year we see that tuition is going to go up another $400. Resources, support from the state of New York are being withdrawn, and the consequences are that you've

got, for instance, a State University campus of 70,000 students right here in Albany that isn't going to have a German department. Nobody can take German. What sort of a university is that? And if you take a look at applications to the State University system, they're declining. They're declining because we've made the system too expensive. They're declining because students feel they're not going to get a first-rate education. That's what we ought to be addressing, instead of telling the State University how to conduct their graduation ceremony.

I must say, the contrast between what we're doing by this bill and what is needed for the State University system couldn't be greater, couldn't be more glaring. Our neglect couldn't be more evident, that we take the time to pass a bill dealing with this minutia, interference into the affairs of the State University but failing to do anything, silent, neglectful of the main needs of that State University system.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

This is a bill that I also have spoken on before. This is one of those mandates that we seem to pass even though we pass every year Senator Saland's bill that says we'll never mandate anything to anyone again. We swear off mandates. We're no longer addicted to mandates, but then, sure enough, all of these mandates keep coming to the surface because these are good mandates. Nonetheless, understand that that's exactly what this is. We're going to tell somebody at another level of government that's fully capable of deciding what they want to do at graduation, we're going to tell them what to do.

I hope that when we have the debate about the mandate relief bill, we'll perhaps think about this time when we passed this mandate.

I agree with Senator Leichter. I'm concerned not so much about what they recite at graduation or about what they play at graduation. I want to know how many people are

in the graduation pool, and Senator Leichter is absolutely correct that as we de-fund the SUNY system, there are going to be fewer and fewer people out there with caps and mortarboards on, and that's what we really ought to be concerned with, instead of telling them they got to recite the Pledge of Allegiance and sing the National Anthem -- or perform the National Anthem, which is what the bill says.

I actually was somewhat quizzical about that because I can't decide whether this means instrumental versions or choral versions, or maybe we can even do that Jimmy Hendrix version that was very popular 20 years ago and just have Jimmy Hendrix play his electric guitar. I'm not so sure that that's the patriotic thrill that the bill intends.

I also am very concerned about what's the penalty going to be? What are we going to do if the SUNY trustees or some campus says, You know, we've decided we're going to do America the Beautiful rather than the National Anthem? Are we suddenly going to invalidate all degrees we grant because they're not doing what we told them to do?

There's an old line about patriotism being the last refuge of the scoundrels. Sometimes I think it's the last refuge of all of us who are publicity-seeking politicians, but remember one thing about patriotism, that which is freely chosen is far more valuable than that that is forcefully imposed.

I'm one of those publicity seeking politicians. I've voted for this bill in the past. I understand the flag is waving in the background, the National Anthem is playing, and to vote against this bill would be interpreted to do something different.

Frankly, I think we ought to turn our attention to what's really important, making sure that we fund this university so that there are more people in the audience to listen to the National Anthem and recite the Pledge of Allegiance. That's where our attention should be focused.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Mr. President, in 1987, I believe we adopted that

ceremony in this chamber and every day we say the Pledge of Allegiance before the session, and I think all of us enjoy doing it, and I think that ceremony, in many senses, restores the sense of importance to the proceedings and would provide that to the graduations.

The reason that I am voting against this bill is that too often there is a collective sense of responsibility that ignores individualism and individual rights.

Too often, if one chose not to say the Pledge of Allegiance -- which is a right upheld by the Supreme Court in 1943 in the case of Barnett versus West Virginia, Minersville, brought to my attention very graciously by Senator Lachman -- the reality is that many times, in an excessive use of patriotism, that right is denied individuals.

What I am not objecting to is the process. I think the process is fine. If we'd like to establish this at our state institutions, I would support it, but what I'm objecting to is that it is not clearly delineated in this bill, that that right that an individual has exists, and I think that it

has to be stated and restated so we understand what patriotism is all about.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOLLAND: Senator Abate to explain her vote.

SENATOR ABATE: While I share the sentiment expressed by Senator Paterson and Senator Leichter, Senator Dollinger, I read this bill as saying -- because I think we have so many more important issues that need to be addressed, but I read this bill as saying that this will be part of the ceremony but that no individual student will be required to recite the Pledge of Allegiance, and interpreting it that way -- because then it would be an unconstitutional piece of legislation. So interpreting it that way, that it will be part of the ceremony with no punitive action taken against any individual student for whatever

religious or other reason who does not wish to recite that pledge, there is no action or no requirement that's stated in this bill.

With that interpretation of the bill, I vote yes.

ACTING PRESIDENT HOLLAND: Senator Lachman to explain his vote.

SENATOR LACHMAN: I would like to ask Senator Johnson if that is his interpretation of the bill, if I may.

SENATOR SKELOS: Mr. President, we're on a roll call.

ACTING PRESIDENT HOLLAND: We're on a roll call, Senator.

SENATOR LACHMAN: Oh, okay.

THE SECRETARY: Those recorded in the negative on Calendar Number 33, Senator Gold, Lachman, Leichter, Markowitz, Montgomery, Paterson and Waldon.

Ayes 54, nays 7.

ACTING PRESIDENT HOLLAND: The bill is passed.

The Secretary will read Calendar 35.

THE SECRETARY: Calendar Number

35, by Senator LaValle, Senate Print 303, an act to amend the Education Law, in relation to the Board of Regents of the University of the state of New York.

ACTING PRESIDENT HOLLAND: Senator Stavisky.

SENATOR STAVISKY: I should like to ask the sponsor of this legislation whether the method of electing Regents has been altered? What happens if there is no concurrent resolution in the two houses? What happens with the present system of having a joint session of the Legislature, the Senate and the Assembly? Has that been changed?

ACTING PRESIDENT HOLLAND: Are you asking Senator LaValle?

SENATOR STAVISKY: I'm asking Senator LaValle to yield to a question.

ACTING PRESIDENT HOLLAND: Senator LaValle, do you yield to a question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT HOLLAND: The Senator yields.

SENATOR LAVALLE: I'm going to look for the answer. The new language is

really changing, Senator. The time period from the first Tuesday in March to the third Tuesday in May -

SENATOR STAVISKY: That was not my question.

SENATOR LAVALLE: I know, and then the language is maintained into law -- the language -- as you see, Senator, the bracketed language takes out "by concurrent resolution in the preceding March on or before the first Tuesday of the month. If, however, the Legislature fails to agree on such concurrent resolution...." So it takes out that entire - that entire language.

SENATOR STAVISKY: The joint legislative session.

SENATOR LAVALLE: That is correct; however -- let me lay this bill aside for one day.

SENATOR STAVISKY: I'll have -

SENATOR LAVALLE: I'm pretty sure that I put that back in, but I just want to -

SENATOR STAVISKY: I'll have the

same question tomorrow.

SENATOR LAVALLE: I'll have the answer for you.

SENATOR STAVISKY: Okay. Thank you.

ACTING PRESIDENT HOLLAND: The bill is laid aside.

The Secretary will read Calendar 62.

THE SECRETARY: Calendar Number 62, by Senator Present, Senate Print 527, an act to amend the General Municipal Law, in relation to authorizing the designation of rural economic development zones.

SENATOR LEICHTER: Mr. President, if Senator -

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: -- Senator Present would yield, please.

ACTING PRESIDENT HOLLAND: Senator Present, do you yield to a question?

SENATOR PRESENT: Yes, certainly.

ACTING PRESIDENT HOLLAND: The

Senator yields.

SENATOR LEICHTER: Senator, I have no problem in setting up economic development zones in rural areas, and I think they ought to be available throughout the state but, correct me if I'm wrong, I think there's a limited amount of such economic development zones that we can set up. Either there's a limitation by virtue of law -- that may not be the case but, in any event, there's a limitation by virtue of the resources that we have available. I mean, we can't make the whole state an economic development zone. Isn't that correct?

SENATOR PRESENT: That's pretty accurate, yes.

SENATOR LEICHTER: Now, does your bill allow an unlimited number of these rural economic development zones -- or, at least, doesn't set a numerical limit as long as they meet certain qualifications, is that correct?

SENATOR PRESENT: That's correct.

SENATOR LEICHTER: Senator, if

that happens and we get 100 or 120 of these rural economic development zones, what's going to happen to the economic development zones for the rest of the state?

SENATOR PRESENT: I don't think we would, and if we saw that happen, we would put a cap on it.

SENATOR LEICHTER: Well, Senator, isn't it fair to say that in the first instance that we should put a cap on it to see that we don't find ourselves in the situation where all of the economic development zones are going to end up in rural areas or that rural areas will say, "Well, we have a right to have an economic development zone"? Then we come and tell them, "Sorry, the door is shut. You can't get in."

SENATOR PRESENT: Was that a question or a statement?

SENATOR LEICHTER: No, it's a question. The question is, how do we deal with that sort of a situation?

SENATOR PRESENT: I don't foresee that problem arising.

SENATOR LEICHTER: Well,

Senator, I mean, you can stand here and you can assure us -- can you tell us how many rural economic development zones there are going to be?

SENATOR PRESENT: No, I cannot.

SENATOR LEICHTER: Well, what do you base your belief on that there's not going to be a problem?

SENATOR PRESENT: Just my observations across the state relative to rural areas.

SENATOR LEICHTER: Senator, how many -- again, that gets, really, back to the first question I had. How many economic development zones are we able to have in this state? How many do we have now and how many until we run into a cap?

SENATOR PRESENT: I think the cap is 40.

SENATOR LEICHTER: 40? And how many do we have now?

SENATOR PRESENT: I don't know.

SENATOR LEICHTER: I know there's some in New York City, I know there's some in Buffalo, and so on. So we must have at

least 25 or -- and I assume there's parts of the state, rural -- not just rural areas but urban/suburban areas where applications are pending for economic development zones. Isn't that a fair assumption?

SENATOR PRESENT: I think there probably are some.

SENATOR LEICHTER: Well, I have a difficulty then, Senator, in your bill providing what seems to me to be an unlimited number of these rural economic development zones when we don't have enough economic development zones to give them.

SENATOR PRESENT: You have that concern?

SENATOR LEICHTER: Well, wouldn't it seem -- wouldn't it seem a pretty reasonable concern? Shouldn't it be a concern that you have, as sponsor of the legislation?

SENATOR PRESENT: Well, I don't have that concern.

SENATOR LEICHTER: Well, Senator, let me ask you this, if I may. At the present time, absent your legislation, are rural areas eligible at all for economic

development zones?

SENATOR PRESENT: Small rural areas with a combined village or two villages are not able to put together all necessary information, file their application and put it together. They're not able to.

SENATOR LEICHTER: I'm sorry, Mr. President. Could you repeat that because I didn't hear you.

SENATOR PRESENT: A small rural area, one village or two villages combined, are not able to meet all their criteria, put together all the information required in an application.

SENATOR LEICHTER: And why is that, Senator?

SENATOR PRESENT: Much of it is based upon the last census and the data that is combined and taken primarily in urban areas, it's not available to them to begin with.

SENATOR LEICHTER: Am I correct in understanding that rural zones are presently permitted under the law but there's a difficulty in the rural areas putting together the information to submit to -- I guess it goes

to the Department of Economic Development -- to qualify or to convince the Department that they qualify for an economic development zone?

SENATOR PRESENT: That's pretty accurate. You've got it right.

SENATOR LEICHTER: And the purpose of your bill is to make it easier for the rural areas and the rural areas would still have to apply to the Economic Development Department. The Economic Development Department would say, Well, sorry, guys, we've reached a cap. That's how it would work, right?

SENATOR PRESENT: If they got that far, yes, under existing law.

SENATOR LEICHTER: So really, as I understand your bill, all you're trying to do is to make it easier for rural areas to be able to qualify as an economic development zone.

SENATOR PRESENT: Exactly.

SENATOR LEICHTER: All right. I have no problem with the bill.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Tully.

SENATOR TULLY: To explain my vote. I was really confused on this bill but because of Senator Leichter's lucid explanation, I'm prepared to vote for it.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of January.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 61.

ACTING PRESIDENT HOLLAND: The bill is passed.

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

SENATOR MARCELLINO: Mr. President, can we return to reports of standing committees, please.

ACTING PRESIDENT HOLLAND: We'll return to the reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Volker,

from the Committee on Codes, offers up the following bills: Senate Print 87-A, by Senator Volker, an act to amend the Penal Law, in relation to criminal possession of marijuana;

244, by Senator Johnson, an act to amend the Penal Law, in relation to establishing a presumption that a child has been permanently removed;

333, by Senator Skelos, an act to amend the Penal Law, in relation to increasing the penalties for custodial interference;

402, by Senator Maziarz, an act to amend the Criminal Procedure Law, in relation to plea bargains and felony sex offenses;

488, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

538, by Senator Present, an act to amend the Penal Law, in relation to lawful possession;

539, by Senator Present, an act to amend the Criminal Procedure Law, in relation to eligibility for youthful offender status;

673, by Senator Saland, an act to amend the Criminal Procedure Law and the Family Court Act;

808, by Senator Volker, an act to amend the Criminal Procedure Law, in relation to peace officers;

816, by Senator Saland, an act to amend the Penal Law, in relation to authorizing restitution;

882, by Senator Spano, an act to amend the Penal Law, in relation to the crime of criminal employment;

887, by Senator Volker, an act to amend the Criminal Procedure Law;

888, by Senator Volker, an act to amend the Penal Law, in relation to resisting arrest;

889, by Senator Volker, an act to amend the Criminal Procedure Law, the Public Health Law and the Public Family Court Act;

1101, by Senator Lack, an act to amend the Civil Rights Law, in relation to prohibiting the state from imposing certain fees.

Senator Rath, from the Committee

on Local Government, offers up the following bills: Senate Print 526, by Senator Present, an act to amend the General Municipal Law, in relation to economic development zones;

647, by Senator Holland, an act to amend the General Municipal Law, in relation to indexing the interest rates;

683, by Senator Saland, an act to amend the County Law, in relation to exempting public safety agencies;

780, by Senator Cook, an act to amend the General Municipal Law;

781, by Senator Cook, an act to amend the Town Law and the Village Law; and

1128, by Senator Seward, an act to amend the County Law, in relation to establishing county communication systems.

Senator Present, from the Committee on Commerce, Economic Development and Small Businesses, offers up the following bills: 653, by Senator Johnson, an act to amend the State Administrative Procedure Act;

765, by Senator Present, an act to amend the State Administrative Procedure

Act, in relation to compliance requirements.

Senator Saland, from the Committee on Children and Families, offers up the following bills: Senate Print 98, by Senator Volker, an act to amend the Domestic Relations Law and the Family Court Act;

233, by Senator Holland, an act to amend the Domestic Relations Law, in relation to notification;

332, by Senator Skelos, an act to amend the Social Service Law, in relation to access to certain conviction records;

489, by Senator Saland, an act to amend the Family Court Act, in relation to evidence of child neglect;

491, by Senator Saland, an act to amend the Family Court Act, in relation to placement of children;

817, by Senator Saland, an act to amend the Family Court Act, in relation to extensions;

1483, by Senator Spano, an act to amend the Social Service Law, in relation to requiring investigation.

Senator DeFrancisco, from the

Committee on Tourism, Recreation and Sports Development, offers up the following bill:

1664, by Senator Goodman, an act to amend Chapter 912 of the Laws of 1920, relating to allowing and regulating boxing, sparring and wrestling matches.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, offers up the following bills: Senate Print 535, by Senator Present, an act authorizing the Commissioner of General Services to transfer and convey certain state lands; and

810, by Senator Goodman, an act to amend the Arts and Cultural Affairs Law, in relation to financing work in capital loans.

All bills directly for third reading.

ACTING PRESIDENT HOLLAND: Continue the order of business.

Reports of select committees.

Communications and reports from state officers -- oh, I'm sorry. Without objection, the response from the committees direct to Third Reading Calendar. No

objections, so ordered.

Continue with the order of business.

Reports of select committees.

Communications and reports from state officers.

Senator Marcellino, that completes the order of business.

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

ACTING PRESIDENT HOLLAND: No housekeeping.

SENATOR MARCELLINO: There being no further business, I move we adjourn until Wednesday, February 5th, at 11:00 a.m.

ACTING PRESIDENT HOLLAND: Upon motion, the Senate stands adjourned until Wednesday, February 5th, at 11:00 a.m.

(Whereupon, at 4:07 p.m., the Senate adjourned.)