ALBANY, NEW YORK

April 8, 1997

11:05 a.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join 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, April 7th. The Senate met pursuant to adjournment. The Journal of Friday, April 4, was read and approved. On motion Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Motions and resolutions.

Oh, the Secretary will read a

substitution.

THE SECRETARY: On page 25, Senator Leibell moves to discharge from the Committee on Housing Assembly Bill Number 2931 and substitute it for the identical Third Reading Calendar 504.

THE PRESIDENT: Substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time may we please adopt the Resolution Calendar except Resolution Number 907.

THE PRESIDENT: There is a privileged resolution -- 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 except for 907.

There is a privileged resolution at the desk. The Secretary -

SENATOR SKELOS: Madam President, if we could have the title read of Senator

Marcellino's privileged resolution, and then I move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution honoring "1 in 9:" The Long Island Breast Cancer Coalition upon the occasion of sponsoring their Annual Walk-A-Thon to be held April 13, 1997.

THE PRESIDENT: The question is on the adoption of the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk, by Senator Gentile. I ask the title be read and move its immediate adoption.

THE SECRETARY: By Senator Gentile, Legislative Resolution honoring Joseph Lew of Intermediate School 239, The Mark Twain School, upon his designation as New York State's Third Place Winner in the U.S. Savings Bonds

1997 National Student Poster Contest.

THE PRESIDENT: All those in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

Opposed?

SENATOR SKELOS: I believe there is another privileged resolution -

THE PRESIDENT: We haven't finished this one yet. Any ayes?

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Yes, I believe there's another privileged resolution at the desk, by Senator Marcellino. I ask the title be read and move its immediate adoption.

THE PRESIDENT: Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution honoring James C. DeBois upon the occasion of his designation as recipient of the Promise of Youth Award by the Suffolk County Girl Scout Council,

Incorporated.

THE PRESIDENT: All those in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Is there any other -- is there any other housekeeping at the desk at this point?

THE PRESIDENT: Not at this point.

SENATOR SKELOS: Then I ask that we have the reading of the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 266, by Senator Leibell, Senate Print 2226, an act to amend the General Municipal Law, in relation to urban development action area projects.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

Lay it aside, please.

THE SECRETARY: Calendar Number 298, by Senator Padavan, Senate Print 3069, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR SMITH: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 309, by Senator Holland, Senate Print 231, an act to amend the Social Services Law and the Workers' Compensation Law.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 372, by Senator Levy, Senate Print Number 598, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalties for aggravated unlicensed operation.

THE PRESIDENT: Read the last

section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator Levy, Senate Print 923, an act in relation to authorizing the Commissioner of Transportation and others to develop and implement.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 406, by Senator Lack, Senate Print 3001,

concurrent resolution of the Senate and Assembly proposing an amendment to Article VI of the Constitution.

SENATOR PATERSON: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 410, by Senator Cook, Senate Print 2733, an act to amend the Soil and Water Conservation Districts Law, in relation to the establishment of recreational use programs.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect June 1st.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator LaValle, Senate Print 3139, an act to amend the Town Law, in relation to notice of an organization meeting to be given to fire district officers.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 440, by Senator Saland, Senate Print 1143, an act to amend the Penal Law, in relation to including the intentional preventing of hospital emergency department personnel.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

441, by Senator Volker, Senate Print 1467-A, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law, in relation to crimes involving firearms.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 13. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill's passed.

THE SECRETARY: Calendar Number 443, by Senator Johnson, Senate Print 1593, an act to amend the Penal Law, in relation to including court officer and senior court officer within the scope of aggravated harassment.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 458, by Senator Lack, Senate Print 3511, an act authorizing the State University of New York to lease and contract for the design and construction.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 480, by Senator Velella, Senate Print 1981, an act to amend Chapter 465 of the Laws of 1994 amending Chapter 285 of the Laws of 1891.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Kuhl, Senate Print 2654.

SENATOR GOLD: Lay it aside.

THE PRESIDENT: Lay it aside, please.

That completes the non-controversial calendar.

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

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 266, by Senator Leibell, Senate Print 2226, an act to amend the General Municipal Law.

SENATOR SKELOS: Last section.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 298, by Senator Padavan, Senate Print 3069, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

At the outset, I'd like to share with you that this bill that is now before us that has on a number of other occasions passed this house, is supported by the New York State Law Enforcement Council which, as you know, is comprised of the district attorneys of the state. It is supported by our Attorney General, and it is supported by his predecessor, Bob Abrams. It's supported by the New York State Association of Chiefs of Police, the New York State Sheriffs Association, the Criminal Justice Board of the city of New York and the Citizens Crime Commission.

The bill deals with a very, very

difficult area in our law, one that relates to a number of aspects of mental incapacitation identified as being present during the act of committing a crime. There's a long history to it, dates back to England at the Patton case in the 1800s, late 1800s, and has been the basis for legislative enactment in a number of states and as a matter of fact 19 states currently have the statute on their books. The first state to have adopted it was Michigan in 1975. There are now 19 states, including Pennsylvania, California, Illinois, Michigan, Vermont and many others, and most of those states if not all of them have had this statute on their books for well over a decade.

What we provide for in the law is an opportunity for an individual who has committed an act of violence, a crime, to first be identified as having some degree of mental illness and then to be given the opportunity to enter a plea of guilty but mentally ill.

Now, if convicted, that person would -

THE PRESIDENT: Could we have it quiet, please, so Senator Padavan can be heard.

SENATOR PADAVAN: If convicted, that person would end up in one of our state prisons, but he would be mandatorily required that he or she receive psychiatric care. In addition, should that person be paroled, follow up psychiatric care would be required as well.

Now, juries are frequently torn in many cases. They recognize there's some degree of mental instability as a contributing factor, but they also realize that that individual who pulled the trigger that took the life, killed or maimed or whatever, knew that the act itself would result in the injury or death. The most recent case that we all know, brought up by the media, occurred in the state of Pennsylvania, the duPont heir killed someone. He was found guilty but mentally ill. He is now in state prison in that state receiving mental health care, but also serving a sentence. Justice did prevail, and I think we should have this opportunity in New York State.

Now, let me close by saying what this bill does not do. It does not eliminate those statutes that relate to acquittal by reason of insanity, nor does it eliminate a

person's ability to plead incompetent to stand trial, but it does provide an alternative so juries could have one should they want to use it in these cases.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

THE PRESIDENT: Oh, I'm sorry, Senator Paterson. Would you like to yield to Senator Paterson just for a minute.

SENATOR WALDON: Thank you, protocol in the Democratic Conference, it would be my honor and privilege to yield to the village of Harlem's most distinguished citizen, Senator Paterson, Paterson with one "t".

SENATOR PATERSON: Actually, Madam President, I was going to yield to Senator Waldon, but after that build-up, it would be so anti-climatic that I guess I'll just ask my couple of questions and go on to Senator Waldon, if Senator Padavan would yield for a question.

THE PRESIDENT: Senator Padavan, would you yield for a question?

SENATOR PADAVAN: Sure.

SENATOR PATERSON: Senator, there

were a number of cases where individuals were either found not guilty by reason of insanity or as is the case in New York not responsible by reason of mental disease or defect, and in these types of cases, the defendant was then civilly committed. At a certain period of time after the civil commitment, the -- the defendant's history was not always known to the psychiatrist and at least in some cases back historically there's a feeling that the defendants will now be the individuals who slip through the cracks and actually wind up back out in the public. Would it be fair to say that this is one of the issues that the legislation that you're proposing addresses?

SENATOR PADAVAN: To the extent, we have examples of many individuals who have, as you put it, slipped through the cracks. Just the most recent one was a 1985 one, an individual beat his mother to death, ended up in a psychiatric center, and a matter of weeks thereafter after getting grounds privileges, he was gone. I don't know if he's been found yet.

The question here of -- is that -

SENATOR PATERSON: Is that the Rosa case and it happened in Queens, didn't it?

SENATOR PADAVAN: Yes.

SENATOR PATERSON: O.K.

SENATOR PADAVAN: But there are many other examples of that in different parts of the state where in the view of many prosecutors, Attorney General, other people I mentioned earlier, justice was not served nor was society, given the level of protection against certain individuals who, as you put it, slipped through the cracks.

SENATOR PATERSON: Thank you, Madam President.

It was the issue of Alvaro Rosa, who killed his mother with hedge clippers, I believe, in 1983 and was found not responsible by -- not responsible by reason of mental disease or defect in 1985, and then a few weeks later wound up actually leaving the facility because the individual that was supposed to be watching him didn't know that this was a civil commitment due to a finding in a criminal court matter, and this can be a very serious issue after a Supreme Court case Jackson v. Indiana

which was passed about 15 years ago which allowed for this particular civil commitment.

The reason that I asked the original question was to ask this question, Senator Padavan, if you'd continue to yield.

SENATOR PADAVAN: Yes.

SENATOR PATERSON: And the question simply is, since in New York State we don't really speak to the guilt or innocence of the defendant, as had been the case in these other states, and that we used the finding of not responsible, do you think that this legislation is actually necessary or would it really be that we've got to change our policies and procedures with respect to the housing of what we would understand to be dangerous people, whether or not they would be culpable under the MacNaughton rule or under any other kind of finding relating to their psychiatric problem?

SENATOR PADAVAN: I think -

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: I think we must do both, Senator. The fact still remains under a civil commitment, as you know, no matter what the acts may have been, that if that individual

is deemed cured, no longer mentally incompetent, and we've had some cases -- we had one of a police officer who killed a young man, was found mentally incompetent, ended up being in a civil commitment at a hospital, happened to be in my District, Montefiore. Seven months later he was cured, according to the psychiatrist, and he was out. So I don't believe that that's appropriate, nor do I believe it's justice.

So I think changing the law as 19 other states have done to the extent of providing this alternative does not undermine all of the other options that currently exist. We acknowledge that there are individuals who are truly incompetent and should not stand trial on that basis. They're individuals whose mental level of incapacitation or level of retardation is such that they truly don't know the conse quences of their act.

I guess the most famous example in literature was Lenny in "Of Mice and Men". Certainly didn't know when he was squeezing that young lady that he was killing her. But the fact remains that we have too many cases, not great in number, but too many in terms of impact

where this option would serve us well, and I repeat what I said earlier, it has done so in 19 other states.

I think the conclusion of the most recent case in Pennsylvania that had a lot of notoriety associated with it, was an example in point, and I think we in New York State should have that same -- same option.

THE PRESIDENT: Senator Paterson.

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

Senator, I think that you raise an interesting issue by offering us this piece of legislation, and that is specifically what we've been talking about, the fact that we're now leaving to the determination of psychia trists and diagnoses that they make through their psychiatric manual, what may be inevitably a public safety risk of allowing for the civil commitments under the Jackson type of situation, certainly where a person is found not respons ible in New York State, and I wanted to let you know that we don't take that -- that we take

what you're saying very seriously because of incidents such as the Torsman case which occurred on Thanksgiving Day of 1977 where a police officer killed a ten-year-old -- a seven-year-old named Randolph Evans and was found not responsible by reason of mental disease or defect under an element of psychiatric diagnosis that was actually rejected at that trial by the American Psychiatric Association, and the argument that this psychiatric problem that the officer suffered from had never existed before and evidenced itself only at this moment, and so clearly it wasn't going to be a long period of time before the officer who was tried in that particular case would be found to be able to conduct his life, and in a sense almost lends itself to the opportunity for defendants to almost make a mockery not only of the criminal justice system but of the psychiatric diagnoses by employing these types of defenses.

My final question, Senator Padavan, just simply is that if you're going to do it your way and we're now going to establish that there is guilt, then how do we exact a

sentence on an individual whose guilt is determined more by their psychiatric condition and less by their knowledge of their own action? In other words, we get into the whole issue of how do we exact punishment? What would actually be the sentence we would give to someone because if, in the event they realistically were recovered from their psychiatric problem, they still have to serve the sentence for a crime that they may not even remember committing?

If you can answer that question, it would make it a little easier for me to understand why the bill should pass.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: I'm not sure if I fully understand your question, but let me reach for what I think it may be.

Your question is, guilty but mentally ill is the verdict and now the judge must issue a sentence. How does the mental illness aspect of that individual's make-up affect that sentence? Is that what you're saying to me, just so I can answer it properly?

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I'm listening, Senator. The mental illness may actually be the overarching catalyst for what the crime was. So I'm saying, if we were to remove the mental illness down the road, in other words if it's found at some point that the person has recovered or now my question is they committed the crime, that's never been in question, how do we exact a sentence for a crime where it is very possible that the perpetrator may not even be aware that they committed?

In other words, for instance, our idea of punishment, it's in a sense the lesson that the perpetrator learns having committed the crime, but what is the -- what is served by exacting a criminal sentence to an individual who honestly, when they're in their right mind, would never commit the crime? That's what I mean.

SENATOR PADAVAN: Well, Senator, first, if someone truly, by your definition, had no knowledge, had no idea that he or she was committing a crime, then I don't believe a plea of guilty but mentally ill would probably be raised, but that's the issue here is, on

sentencing certainly within all of our sentencing procedures, mitigation and the judge's latitude would prevail, and if psychiatric information had been provided to the case as would obviously be so because as you've already said at the outset, there obviously would be a pre-trial evaluation relative to psychiatric impairment.

If that was determined, certainly in a sentencing that fact would not be ignored. But, secondly, I also indicated to you that when this person is no longer psychiatrically impaired and may well be subject to parole, the bill we propose, the law that would be created, would require follow-up psychiatric evaluation and care, so in that respect we protect not only society but also the individual who might end up committing another crime as a result of a psychiatric relapse.

This is not a perfect science. Now, psychologists are more than likely to tell you it's more an art than a science. We're dealing with a very difficult area, we acknowledge that, but the bottom line is, number one, we place the individual in a prison as a

result of a committed crime, where the consequences of the act were known by the individual.

Number two, we mandate psychiatric care in that prison and follow-up psychiatric care upon release to parole for whatever reason or the sentence having been completed. So I think under those circumstances we serve the people well and we do the right thing, including the individual who committed the act.

THE PRESIDENT: Thank you, Senator Padavan.

Senator Paterson.

SENATOR PATERSON: If the Senator would yield just one more time.

SENATOR PADAVAN: Yes.

SENATOR PATERSON: Senator, I actually appreciate that part of the legislation that you've introduced because the whole psychiatric condition, as I see it, and the criminal justice intervention are on separate axes, so you have a situation where a person may have actually served the sentence for the crime but for the same reasons that I stated earlier

in the example, since the possible recidivism of their psychiatric condition is -- since there is that possibility without the follow-up care that you are suggesting, it is very possible that the defendant will -- the perpetrator may wind up in the exact same situation at some point in the future because now they are again suffering from this illness, and if we just treat it as simply a crime and ignore the psychiatric problem, they could serve the sentence but be no better served by the -- by the incarceration than if we had done nothing during that whole period of time. So I certainly like that.

But to get back to my example. If there were a situation such as the one I was describing, what would be your recommendation for a situation where the defendant is found by the psychiatrist to have been unaware that - and also in the literary example that you gave that they actually committed the crime. If that doesn't fit under this bill, what would be your recommendation?

SENATOR PADAVAN: My recommendation is irrelevant. Madam President, my recommendation is irrelevant. It would be

what the defense attorney would decide based on information he has as to what plea he would enter, and I'm certainly not in a position to make that judgment in any hypothetical case. He may, under the circumstance you just described, seek acquittal by reason of insanity, a psychiatric defect that, to use your words, put that person in a position of not knowing that he did what he did.

That's an extreme situation, and that's a judgment that would have to be made between the client, his attorney and perhaps with the victim, in court.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, through you, Senator Padavan, you feel your recommendation would be irrelevant?

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: My recommendation?

SENATOR PATERSON: You feel your recommendation would be irrelevant?

SENATOR PADAVAN: Well, I'm not an attorney, Senator, as you know, and I defer

to those who are in terms of level of their expertise, so for both reasons I think it would be irrelevant.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I didn't know the Senator would be willing to admit that, but I just think that right now -- on the bill, Madam President.

Right now, I would suggest that one of the reasons that we have this type of determination in a criminal justice proceeding is that we constitutionally feel that just to go to trial, that the defendant has to be able to recognize that they're in this type of court proceedings and that they would have to be able to assist their attorney in their own defense.

After we've established that fitness to proceed, we then have to establish whether or not the defendant knows the difference between right and wrong and whether or not the defendant knew the difference between right and wrong at the time that the crime was actually committed. If the defendant does not know this difference, we recommend as part of

our state law that the defendant be found not responsible by reason of mental disease or defect, and that is to say that there is no speaking to whether or not the crime was actually committed. There is more an understanding that this individual is not in possession of their faculties that would have allowed them to know exactly whether or not they were committing a crime or acting in some other way.

The legislation that's set forth, I think, is in many ways quite proper, but what I still would need to understand further is how this is really an issue of law and not really an issue of management as many procedures have been changed in terms of orders of retention and certain legal issues that we have to control defendants after a finding that they may be not responsible for the crime but are still very dangerous people that have to be removed from society.

I can't really decide whether or not Senator Padavan's bill should become law. What I think I will do is defer at this point to the more capable Senator Waldon and his

questioning which hopefully will lead me to a conclusion.

THE PRESIDENT: Thank you, Senator Paterson.

Senator Waldon.

SENATOR WALDON: Madam President, this is a banner day for me when Senator Paterson has said such nice things. I find it very difficult to even respond by approaching Senator Padavan with some questions, but I will try. So would you ask the learned gentleman from Queens County if he would help me along in understanding what he's doing by answering a question or two?

THE PRESIDENT: Yes. Just a moment, Senator Waldon. I'd also like to recognize Senator Skelos for a moment.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Local Governments Committee in Room 332 of the Capitol.

THE PRESIDENT: There will be an immediate meeting of the Local Governments Committee in Room 332. Senator Padavan, would you please -

SENATOR PADAVAN: Yes.

THE PRESIDENT: -- yield to Senator Waldon for a question?

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

Senator, many times when we are considering measures on the floor, there is a rationale, a reason. There was a motivation to submit the particular bill in question for our consideration. For example, a bill of this nature might have been brought to your attention by the Office of Mental Health. Is that the case? Did Mental Health suggest to you that this would be something worthy of our consideration?

SENATOR PADAVAN: Senator, first of all, my involvement goes back over a decade. I chaired the Mental Health Committee for ten years between 1976 and '86, and we had a great deal of dialogue with mental health professionals, both within state government and without. For instance, we had extensive meetings with the psychiatric -- psychiatrists that dealt with the famous "Son of Sam" case and

so we collected a great deal of information on that issue. It led us to this bill which has passed this house on five previous occasions.

More recently, however, we had direct input from the Attorney Generals of the state of New York, Bob Abrams previously and the Attorney General now in that office, as well as the district attorneys through their association, so that has added certainly a dimension to our efforts.

Does that answer your question?

SENATOR WALDON: Yes it did, Senator.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President, may I continue the questioning through you, if the Senator would be so kind?

THE PRESIDENT: Senator Padavan.

SENATOR WALDON: Senator Padavan, has the Office of Mental Health taken a position on this measure?

SENATOR PADAVAN: The state Office of Mental Health?

SENATOR WALDON: New York State.

SENATOR PADAVAN: I don't know.

SENATOR WALDON: If I may ask another question, Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Senator Padavan, has the Department of Correctional Services taken a position in support of what you are submitting for our consideration?

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: We don't have any memos from them either in support or in opposition.

SENATOR WALDON: Senator, would you be aware of the number -- if I may continue, Madam President.

THE PRESIDENT: Yes, Senator Waldon.

SENATOR WALDON: Senator, would you be aware of the number of insanity dispositions which were rendered in the state of New York, for example, over the last three years?

SENATOR PADAVAN: No, but I would concede -

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: -- that in

terms of numbers, compared with the total volume of cases, they're not that many.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: If I may continue, Madam President. Thank you very much.

For the record, in 1994 we had felony dispositions in the state which totaled 68,222; 50 of them were insanity dispositions. In 1995, we had 66,151 such felony dispositions; 45 were insanity dispositions, and in 1996, we had 62,499 total felony dispositions; 38 were insanity dispositions.

If I may, Madam President, on the bill. Thank you very much, Senator Padavan.

This is interesting. We're going to have a decision which will say someone is guilty but mentally ill and then we would subject someone who should be in a mental health facility to the cold stark reality of the Department of Correctional Services, not that the Department of Correctional Services isn't professional. They are very professional, but they are not equipped to deal with the problems surrounding someone who brings the baggage of

mental illness to them, and so we are doing a disservice to our correctional officers. We are doing a disservice to the person who happens to be mentally ill and improperly incarcerated and we are doing a disservice to society-at-large because if this person ever is released, he or she, they will not be prepared to cope at all with the outside world. Too many of them, even though they exit from mental health facilities, are not prepared.

We are overburdening ourselves by using this approach. This is a redundancy. This is a redundancy. How can you be both mentally ill and understand what you have done when, by virtue of the definition, we require that people know the act that they did when they did it in order to have culpability for the act?

And so I think, for whatever reason, Senator Padavan has submitted this for our consideration at this time. It is ill-founded, and I would recommend to my colleagues that we not accept this proposal but we reject it because it will overburden the Department of Correctional Services. It will

take away the agency control of the rightful agency, the Office of Mental Health, and it does a disservice to the people who will be so found guilty but mentally ill under his proposal in our courts.

I thank you very much, Madam President. I thank you, Senator Padavan.

THE PRESIDENT: Does anyone else -- Oh, yes. Senator Marchi.

SENATOR MARCHI: I say this with the greatest respect to Senator Padavan because I know that he's trying to obtain justice and at the same time alleviate some of that sting, but you simply cannot speak in terms of guilt. Guilt means a knowing departure from what an individual knows to be wrong.

Culpability means different from responsibility. We speak of a nation being responsible for crimes that were committed during the course of a war, but in effect the people of that nation may not be responsible - they may be responsible because it happened while they were aware things were happening, but culpability is something else.

Culpability means that there is a

fault, a moral fault. Do you really have a crime? I don't believe you have a crime if somebody comes up to me with a gun and shoots and kills me. Has that person committed a crime? No. If that person's judgment is so impaired that they're incapable of formulating on evidence, scienter, intent to take my life. You just don't have a crime. You have a violent episode. You have an event that could have happened if a brick fell off the top of a building and hit me and dispatched me forever, but you don't have a crime, and I simply -- I cannot get the two together, and should that person then even under those circumstances be labored with the label of having committed a crime? You can't. You cannot commit a crime unless you intend to commit a crime, and it's - it's a difficult issue, and I admire Senator Padavan for struggling with it to at least produce some justice and at the same time take some of that sting out.

But I don't think we have that option, Madam President. A crime has not been committed if this individual suffers or labors under the disabilities that are mentioned. You

just have one of those unhappy episodes. If I bump into somebody and that individual falls in -- before a subway train and is killed, I have no moral fault, but if I do it on purpose, then there is scienter. A crime has been committed.

So the nature of an act, whether it's moral or immoral -- don't forget every act involving behavior requires scienter before it becomes a crime. There is -- all those crimes that require scienter are crimes of violence. You just can't reconcile two concepts that are mutually exclusive, Madam President, and there may be other answers here, but I -- and I hope -- I hope it's located, but I don't think we can find it in this formulation, and I will oppose it for that reason.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Madam President, thank you.

Senator Marchi, I acknowledge your discomfort as you just explained it to us. However, I would draw your attention to the bill itself, if you would be so kind to read it with me, and if you see on the first page beginning of line 13, there is a specific requirement in

the application of this plea that says that the defendant was suffering from mental illness or defect, but not -- but not to an extent that he lacked the necessary capacity to know or appreciate either the nature of his conduct or that his conduct was wrong at the time of the commission of that crime; but that was the example you gave.

We address that indirectly. If an individual fell into your definition, then this bill would not be applicable. I think it's important for you to understand that. I respect, and I would yield to you and your legal expertise in this or any other area, but it's important to understand that in drafting this bill. We acknowledged exactly what you said and we put it in there specifically so the crime must have been committed, but that individual had to know he committed a crime. If he did not, by definition then, it's not applicable and we're concerned with certainly can that be justified.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Yes, Madam President.

I rise in support of Senator Padavan's bill, and I salute him for his leadership on this issue. In fact, I was proud to join him as a co-sponsor of this measure since 1994, when a murder case in the rural part of Chenango County in my district really brought to my attention the huge gap that I feel exists in our laws as they exist today.

In that case, a teen-age girl stabbed her boyfriend 22 times before school one day, in a murder that was planned in advance. It was contrived. She contrived the opportunity. She tried to cover it up. In fact, she went on to school after -- after the incident, and the family was left to grieve a young boy, the death of their son and brother, and he was killed for what amounted to a jealousy about a wilting teen-age romance; but what happened after that unfortunate tragedy was a tragedy in itself that brought more pain and anguish to that family, but because of our current laws, the verdict in this case was not responsible by reason of mental disease or defect, and I think that verdict was unthinkable, in that the trial judge did impose

the strictest sentence that he could under the current laws and that was in this case five years of out-patient mental health therapy. Five years of out-patient mental health therapy after someone's been stabbed 22 times.

So I think that we do need to address this in the laws of the state of New York. A jury like the one in my district cannot be blamed or the verdict cannot be blamed on the jury. It cannot be blamed on anything else than our defective insanity defense in the law. The jury was faced with an all or nothing situation, either to say that that person was guilty beyond a reasonable doubt or not responsible by reason of mental disease and defect.

Senator Padavan's bill very correctly would give a jury in this case and others another option. It would say, yes, the killer was suffering from a mental disorder at the time of the crime, but it was not to such a degree that the defendant is totally excused from accountability and responsibility for very serious crimes against an individual or against society as a whole.

So I support Senator Padavan's

bill. I think it does give a jury this additional option when someone is to be declared guilty but mentally ill. Let them get the help that they obviously need but also let them accept some responsibility and be accountable for their action.

THE PRESIDENT: Thank you, Senator Seward.

Does anyone else care to speak on the bill?

Senator Paterson.

SENATOR PATERSON: Madam President, the more I hear about this legislation, and it's certainly not Senator Padavan's fault but the less I'm understanding it. The issue regarding the ability of the defendant to deceive the court is one that we're not going to solve in this kind of legislative proceeding.

Senator Seward describes a very tragic situation where I guess the defendant confused the issue and made the jury believe that she had a psychiatric condition, but in the actual case, I don't know that a finding of guilty but mentally ill would really be the -

would really be the formula for how to treat that. The actual finding should have been just plain guilty. The psychiatric illness, even if the defendant had it, didn't have anything to do with the knowledge of right and wrong in that particular case.

There's an even more famous case than that, the case of the Hillside Strangler, who, when he was finally caught, actually read all the psychiatric books and acted out the parts to cause the jury to feel that he was not responsible. What inevitably happened to the Hillside Strangler is that, when the psychiatrist realized that this defendant was actually intelligent enough to learn the procedures and to learn how to be that deceptive, they wrote a fictitious book and described some psychiatric illnesses that the Hillside Strangler then acted out, and that was when they were able to prove that this person was totally competent and just was a brilliant individual who had, in many respects, outsmarted the authorities on that point.

But related to what Senator Padavan is trying to accomplish, if the

defendant lacks scienter, as Senator Marchi so eloquently stated, Senator Padavan acknowledges that this legislation is probably not applicable. If the person knows the difference between right and wrong, then they should probably be found guilty. If there is an additional psychiatric problem, that would be for the Department of Mental Health and for the Department of Corrections to actually address.

So all I'm saying is now I'm starting to lose sight of which are the cases that would fall within the ambit that this legislation would actually affect because in the types of cases where individuals are actually committing crimes and are probably assuaged in that direction by the mental illness, it is not clear to me how a finding of guilt, as Senator Waldon stated, is really going to help us as a society contain a dangerous person.

THE PRESIDENT: Thank you, Senator Paterson.

Does anyone else intend to speak on the bill?

(There was no response.)

Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Have we recorded all the votes in the negative?

THE SECRETARY: Those recorded in the negative on Calendar Number 298 are Senators Abate, Connor, DeFrancisco, Dollinger, Gold, Lachman, Leichter, Marchi, Paterson, Sampson, Seabrook, Smith, Waldon. Ayes 45, nays 13.

THE PRESIDENT: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. In the way of announcements, we'd like to call an immediate meeting of the Transportation Committee, immediate meeting of the Senate Transportation Committee in the Majority Conference Room, Room 332.

THE PRESIDENT: There is an immediate meeting of the Senate Transportation Committee in Room 332.

Secretary will read.

THE SECRETARY: Calendar Number

309, by Senator Holland, Senate Print 231, an act to amend the Social Services Law and the Workers' Compensation Law, in relation to liens for public assistance.

SENATOR STACHOWSKI: Explanation.

THE PRESIDENT: Senator Holland.

SENATOR HOLLAND: Madam President, Senator Stachowski, I'm sure you know this bill very well, but basically it says that if a worker is injured and files a Workers' Compensation claim and while that claim -- he is awaiting the results of that claim through the judicial system, he needs assistance, he or she needs assistance, and he goes to welfare, we help them. They need assistance and we help them. That's what welfare is for, but when the court decides or decides in the claimant's favor and they are awarded a cash grant, then that individual should repay the grant from welfare, the loan from welfare, just as any other individual would have to do who is not on welfare, an individual -- low income individual who has the same problem and may have to borrow money or build up bills and just still has to pay that loan back when the claimant is given

the grant by the court system, and that's all we're trying to do here.

We're trying to even it up, not take care of people who need assistance but when the grant comes that the welfare system should be repaid the loan.

SENATOR STACHOWSKI: Madam President, would the Senator yield for a couple of questions?

THE PRESIDENT: Senator Holland?

SENATOR HOLLAND: Yes, ma'am.

SENATOR STACHOWSKI: Senator, you, in your explanation, you say that when the worker is injured and for whatever reason he is now, after an amount of time, forced to go on public assistance, something that I'm sure as a working individual he'd prefer not doing, so he goes on public assistance in order to pay bills and feed his family and clothe his children, and you refer to that as a loan, where if somebody is just plain poor and they're on public assistance that's a benefit.

Now, how does this worker that's injured get a loan where everyone else that goes to social services gets a benefit? Can you

explain that to me?

SENATOR HOLLAND: Yeah, my opinion.

THE PRESIDENT: Senator Holland.

SENATOR HOLLAND: I'm ready.

In my opinion, Senator, this is double dipping. Everyone doesn't have that opportunity. This individual who is getting compensation, getting welfare, is paid twice and that's the thing that we're trying to correct here, not that people shouldn't be taken care of.

THE PRESIDENT: Senator.

SENATOR STACHOWSKI: If the Senator would continue to yield.

SENATOR HOLLAND: Yes, sir.

SENATOR STACHOWSKI: At the time that this person is awaiting possibly winning their case, they haven't won yet because obviously they're being forced to go on public service -- social service because they don't have any money. They haven't won, so I still don't understand how it's double dipping or how that's a loan rather than a benefit as it is to anyone else that happens to be on social

services.

SENATOR HOLLAND: Well, anyone who is on social services and doesn't get a pay back from any organization, an insurance company, Workers' Compensation, whatever, we don't ask them to pay that back. That's fine. This is a different situation where they are getting the Workers' Compensation money and the welfare money, and it seems to me if you don't want to call it a loan, it acts the same as a loan to get them over the hump until the courts resolve the case.

SENATOR STACHOWSKI: In this same bill, if you continue to yield.

SENATOR HOLLAND: Yes, sir.

SENATOR STACHOWSKI: Volunteer firefighters and ambulance workers are exempt from this lien, and so that's not a loan for them either. Why is that different for them rather than for injured workers?

SENATOR HOLLAND: We took them as a different category. They were volunteering for the community and not getting paid in the individual jobs they're doing there, so that we separated them out.

THE PRESIDENT: Senator.

SENATOR STACHOWSKI: If you would continue to yield.

SENATOR HOLLAND: Yes.

THE PRESIDENT: Senator Holland.

SENATOR STACHOWSKI: But yet if they still get a settlement from an insurance company, what -- why wouldn't they have to pay this back as opposed to the injured worker, the poor steel worker, the iron worker, the woman working at a sewing machine in the garment industry? Why? I mean I understand it's the volunteer gets hurt while volunteering but if they, in fact, get the same insurance -- kind of insurance settlement, why would they not have to pay it back and it wouldn't be a loan for them but it would be for the injured worker?

THE PRESIDENT: Senator.

SENATOR HOLLAND: Senator, I think it's a different situation because of volunteers, but I do take your point and if this bill passes the Senate and, as is normal, is not even considered by the Assembly, I will next year include volunteers as well.

SENATOR STACHOWSKI: Well, on the

bill.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Senator, I like the idea that you don't have volunteer firefighters or ambulance people in it, and for that matter, I don't think anybody should be in it.

The fact is that that section of the law was written to recognize the fact that when people get hurt, that the process often times, because the insurance company doesn't want to pay, is delayed. Part of the tactic is to force that person into a situation they don't want to be in, namely going on public assistance which many working people find demeaning; they don't want to be there. They don't enjoy being there. The fact that they're hurt, they never get back their full capability of earning power. They never get back the full capability of quality of life, and to tell those people that are hurt that earned the right to go on Workers' Compensation because they worked and paid all their lives into the system, that in your case unlike somebody that maybe never

worked, that's a benefit for them, but for you it's only a loan because you're an injured worker. All you did is work all your life and pay for the system, pay taxes, pay salaries, taxes. They take money out of your checks, and the fact is you're not entitled to get these benefits because for you, because you're hurt and because the insurance company is squeezin' you or the process just doesn't work because it's still too slow, in your case you're going to have to pay this back even though for the rest of your life you're never going to have the same earning ability, you're never going to have the same quality of life because whatever injury you have is certainly going to affect the nature and the life style you have because of the fact that you can't even work, so if you're somebody like Senator Holland or Senator Skelos and you enjoy golf, you probably won't be able to play golf any more, but that doesn't matter, it's only a part of your quality of life.

But the fact is that you are really not giving them a double dip. You're giving them the benefit that they earn. They don't have any income. They have to go on it

for a short period of time and that's a benefit that they get in the settlement that never makes up entirely for what they lost in the quality of life and the loss of future money that they might earn, and I don't think that our Workers' Compensation benefits are that great. As a matter of fact, they're in the middle of the field, actually in the lower part of the field and the fact is the only thing that grew in New York State in Workers' Comp. was the premiums that businesses paid to give those people that measly amount of money that they get in benefit levels, and to say to those people that don't ever get that money back and never live the same kind of life style because you were hurt and for a short time in your life, even though you didn't want to go there, you had to accept public assistance, in your case you have to pay it back, I think it's mean-spirited. I think it's a terrible way to be doing a budget balancer.

At this point in time, I don't even know why we're doing this bill. It's not double dipping. We have a surplus, thanks to Wall Street, and to tell people that at this

time in the history of the state of New York that once again we're going to move this bill that mistreats injured workers, I just think is a terrible precedent, and I would hope that everybody in the chamber would vote against it.

THE PRESIDENT: Would anyone else -- oh, Senator Paterson.

SENATOR PATERSON: Madam President, I agree wholeheartedly with Senator Stachowski. This legislation has in it a provision that I think explains why the whole piece of legislation shouldn't exist in the first place.

The benefit that's given to volunteer firefighters is one, I guess, presumably because since they were volunteering and they were giving a service to our society that we would allow them to collect both benefits. Well, that's actually the reason that everyone should be included in the bill.

We actually cap the Workers' Compensation award at two-thirds of the salary as long as the salary is under $600 a week. That means that, if you made $1200 a week, you wouldn't get more than $400 back. The reason

that we can't reward a hundred percent of someone's salary as we wish we could, is because as a government we just don't have the re sources, but we certainly, by the fact that we have Workers' Compensation, do understand that collectively, as a society, we would try to help those individuals who, by reason of injury are unable to work and fully enjoy their lives, fully to take care of their families, and this is something that we undertake.

In these rare situations where they may have collected a -- some other benefit and are now adding to it with Workers' Compensation, in most of the cases they don't come in any way close to their full salary. It really is just a pittance. It's just a minor amount of money that they get in addition to what they would have gotten. To try to take it away from them, as Senator Stachowski very eloquently stated, really at this point in our society is -- is just unnecessary, and I beg to differ with Senator Holland. I think that this would really hurt the workers of New York State if this legislation ever became law.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Several people want to be recorded in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 309 are Senators Breslin, Connor, DeFrancisco, Gentile, Gold, Kruger, Leichter, Markowitz, Montgomery, Onorato, Paterson, Santiago, Seabrook, Stachowski, Stavisky and Waldon. Ayes 42, nays 16.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 406, by Senator Lack, Senate Print 3001, concurrent resolution of the Senate and Assembly proposing an amendment to Article VI of the Constitution.

SENATOR GOLD: Explanation.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Madam President,

this is a Constitutional Amendment which would increase the civil jurisdictional limits of the Civil Court of the city of New York from 25,000 to 50,000, and the District Courts from 15,000 to 50,000, second passage.

SENATOR GOLD: Madam President.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Would our very distinguished chairman of Judiciary yield to a question?

THE PRESIDENT: Senator Lack?

SENATOR LACK: Certainly.

SENATOR GOLD: Senator, the - I've read the memos and the reports and the arguments on this issue, and assuming for the sake of argument that there is some logic to the position, the last I heard and I know you believe this, we work for the people, and wasn't this submitted to the people and didn't the people tell us they didn't want it? That's my question.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Yes, Senator Gold. This passed unanimously in both houses and was rejected after a vote. It's been

resubmitted at the request of the judiciary. This would be the fourth time -- you voted for it last year as well as everybody else.

It was felt at the time when it went to the voters two years ago that, because of the monetary amounts that were contained in the bill, someone thought this would cost money. It does not. We've also had requests from editorial boards of newspapers and others who have been involved in it that there would be different media attention if it went to the voters this year in 1997, and a greater understanding, this now being the fourth time it's passed the Legislature, that this is something that needs to be done. There would be a greater understanding. It was just a mis understanding the last time.

SENATOR GOLD: Thank you.

THE PRESIDENT: Senator.

SENATOR GOLD: Madam President, good morning. Madam President, on the bill.

Senator Lack, first of all, I think you're incorrect on one thing. I think I did vote against this last year, but that's not really the point.

Another point I'd like to make is I had a conversation with a reporter for a major metropolitan newspaper, was not Clark Kent, who said to me earlier today that when I responded to him in a certain way about the editorial page of his paper, he said, Well, who reads that? I thought that was interesting coming from a reporter.

But, Senator Lack, I think it's interesting that we make an argument and we say that, if other people don't buy our argument, it's only because they misunderstood it. I believe, Senator Lack, that you believe in this issue, and I congratulate you for carrying the program for the Court Administration office, but I'm going to vote against it because very simply the people said they don't want it.

We have a court structure now and I know that our chief judge, Judith Kaye, wants to change that structure, and I admire her as a chief judge, and I don't agree with her necessarily on where she comes out on different issues, but I admire her and what she's trying to do.

But, Senator, we work for the

people and the people say they want a court structure that's different and they didn't want this, and I think the concept that we're going to keep throwing it at them and throwing it at them until, quotes, they learn what we know, so demeaning an argument to the people, and it's an argument that I really don't want to be a party to.

I think there are some issues that come before us which are issues of conscience. I think there are some issues that come before us where intelligent people can disagree as to approaches, and I don't think this is a matter of conscience at all. I think it's a matter of approach. The people who we work for told us they like the court system the way it is, and they do not believe these changes should be made, and I for one am going to follow their direction and vote to maintain the system.

THE PRESIDENT: Thank you, Senator Gold.

Senator Lack.

SENATOR LACK: Thank you, Madam President.

Just a minor comment. Obviously Senator Gold well knows as a fellow attorney, it costs a lot less to commence and carry on an action in the lower court in the city of New York and the lower courts of Nassau and Suffolk Counties, which are what the civil courts and the district courts are.

In the 20 years since the courts were consolidated under OCA, from 1977 to 1997 obviously there's been inflation and a $15,000 action on long island 20 years ago and a $25,000 action commenced in the city of New York 20 years ago are not worth the same amount now. To require those actions to be commenced in Supreme Court of the state of New York and to maintain those proceedings at the Supreme Court level in this day and age is not only ridiculous, it requires much more expensive legal time and the work of attorneys rather than maintaining those actions in lower courts.

That's the reason, Madam President, beginning in 1992, the judiciary, with the support of then Governor Cuomo and the judiciary, now with the support of Governor Pataki, has been advancing the increase in the

monetary jurisdictions of the District Court and the New York City Civil Court, and while the chief judge indeed is suggesting court restructuring, this particular constitutional amendment pre-dates any of those suggestions and has nothing whatsoever to do with the restructuring proposal by the chief judge.

THE PRESIDENT: Thank you. Senator Gold.

SENATOR GOLD: Madam President, would the distinguished gentleman yield to a question, please?

THE PRESIDENT: Senator?

SENATOR LACK: Senator?

SENATOR GOLD: Senator Lack, if we were, in fact, to merge these courts as has been proposed, do you know what the proposal would do with filing fees? Would the filing fees for all matters now be the same Supreme Court filing fee?

THE PRESIDENT: Senator Lack.

SENATOR LACK: If you're referring to the restructuring proposal that's been advanced by the chief judge, the District Court in Nassau and Suffolk County and New York

City Civil Court would be merged into one court statewide called the District Court which would be an inferior court to what is now called the Supreme Court. These actions, in effect, that we're talking about here would, in effect, stay at the inferior court level and more than likely, unless by statute we set some other filing fees, the filing fees would remain where they are now, Senator.

SENATOR GOLD: Thank you.

THE PRESIDENT: On the resolution. Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Several Senators wish to be recorded in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 406 are Senators Connor, Gold, Montgomery, Paterson, Santiago and Waldon. Ayes 52, nays 6.

THE PRESIDENT: The resolution is adopted.

Senator Bruno, that completes the controversial -- oh, I'm so sorry. The Secretary will read.

THE SECRETARY: Calendar Number

481, by Senator Kuhl, Senate Print 2654, an act to amend the Public Authorities Law, in relation to authorizing and establishing.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Madam President, this is a very single purpose bill. This bill has been requested by the board members of the Genesee Valley Regional Market Authority asking that they be allowed statutorily to be paid a $150 per each session that they meet at board meetings.

This is a public authorities creation back in the chapter laws of 1951. It's an authority that was created for the purpose of helping out the sales, the buying and selling of agricultural products. In its 46 years now of existence, it has proved to be quite helpful and certainly very productive. There has been, in the course of these 40-some-odd years several loans coming from the state of New York that were given to the Authority to get its feet on the ground, so to speak, which have all been repaid as of last year, about $4 million worth of loans. They've all been repaid.

The Authority is making money.

However, they're having a problem getting attendance. It's much like keeping all of our members in the chamber this afternoon. I suppose, if we have paid them a per diem that would require their attendance here, that they'd be more likely to sit in and listen to these debates. But in any case it's a 15-member board and they are predominantly farmers. They are people who are involved in the agricultural production.

At this point and for 46 years all they've ever been paid is the mileage to and from. There are several communities that are represented on this board, and Senator Dollinger has an interest in this bill as does Senator Alesi and myself, and Senator Volker and many other members. As I say, there are a minimum of four board meetings a year, and it's thought that to try to encourage attendance from these people who are very busy, at very busy times of the year, it's only fair that they, being that this Authority is making significant sums of money and in helping the agricultural community, that these people actually be reimbursed for their time.

So there is a request for an appropriation of $150 for their salary, if you will, or a fee to be paid for their attendance at these meetings, each and every one of the meetings from here on forward.

THE PRESIDENT: Thank you, Senator Kuhl.

Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could return -- return to reports of standing committees. I believe there's two committee reports at the desk. I ask that they be read.

THE PRESIDENT: Reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Wright,

from the Committee on Alcoholism and Drug Abuse, reports the following bills:

Senate Print 41, by Senator Levy, an act to amend the Vehicle and Traffic Law;

51, by Senator Levy, an act to amend the Vehicle and Traffic Law;

75, by Senator Levy, an act to amend the Public Authorities Law and the Railroad Law;

100, by Senator Levy, an act to amend Chapter 312 of the Laws of 1994;

2285, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law;

3812, by Senator Wright, an act to amend the Alcoholic Beverage Control Law and the Mental Hygiene Law;

3817, by Senator Wright, an act to amend the Mental Hygiene Law, and

3989, by Senator Alesi, an act to amend the Vehicle and Traffic Law.

Senator Lack, from the Committee on Judiciary, reports:

Senate Print 1541-A, by Senator DeFrancisco, an act to amend the Surrogate's Court Procedure Act;

2789, by Senator Volker, an act to amend the Real Property Actions and Proceedings Law;

2971, by Senator DeFrancisco, an act to amend the General Obligations Law;

3453, by Senator Lack, an act to amend the Judiciary Law;

3527, by Senator Lack, an act to amend the Surrogate's Court Procedure Act;

3544, by Senator Goodman, an act to amend the Real Property Law;

3581, by Senator Lack, an act to amend the Surrogate's Court Procedure Act;

3608, by Senator Lack, an act to amend the Judiciary Law, and

3791, with amendments by Senator Saland, an act to amend the Surrogate's Court Procedure Act.

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

Senate Print 2368, by Senator Larkin, an act to authorize the town of Newburgh;

2894, by Senator Volker, an act to amend the Local Finance Law;

3135, by Senator LaValle, an act to amend the General Municipal Law;

3138, by Senator LaValle, an act to amend the Town Law;

3314, by Senator LaValle, an act to amend the Town Law and others;

3611, by Senator Rath, an act to amend the Real Property Tax Law;

3640, by Senator Rath, an act to amend the General Municipal Law;

3661, by Senator Rath, an act to amend the Real Property Tax Law and the Real Property Law;

3670, by Senator Rath, an act to amend the General Municipal Law, and

4054, by Senator Rath, an act to amend the Village Law.

All bills ordered direct for third reading.

THE PRESIDENT: All bills direct to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe the Transportation Committee meeting is going on right now. Following that we will

notify the membership the Commerce Committee will meet, and if, at this time, we could move on to motions to discharge, I believe there's several on the -- that the Senate has been notified of.

Just want to point out there are a number of them by Senator Leichter that were noticed for April 1st. I won't comment on the date they were noticed for, but as a courtesy to Senator Leichter, we will allow them to be heard today even though they were scheduled for April 1st and April 2nd.

THE PRESIDENT: Motions to discharge.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Would you please call up the motion that is offered by Senator Stachowski, who is joining us in the chamber right now.

THE PRESIDENT: Senator Stachowski.

THE SECRETARY: Senate Print 3934, by Senator Breslin, an act in relation to affecting the health insurance benefits and

contributions of certain retired public employees.

SENATOR BRESLIN: Madam President.

SENATOR SKELOS: Madam President, could I just say the -- this side of the aisle will more or less decide the order of taking up the motions. If members -- the Minority has notified us, given us notice the order they would like us to take up the motions. If we could go in that order, we would appreciate it also; so I believe Senator Stachowski is first.

SENATOR PATERSON: Mr. President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: It's the same piece of legislation, but I'd just like the Chair to be aware that my counsel was given Senator Stachowski's name, and it doesn't matter whose name actually appears on it, but the reason that I asked, Madam President, to call up that motion is that's the information that we were given, and with that being said we'll try to observe an order and a decorum here, but we certainly do not mean to mislead the Chair in offering that motion.

THE PRESIDENT: We're talking about the same bill.

SENATOR STACHOWSKI: Yeah, yeah.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Just for a point of clarification.

THE PRESIDENT: Yeah.

SENATOR STACHOWSKI: And I don't mean to be ungrateful for the courtesy given to us by the Majority, but I would like to point out that it is the same piece of legislation and I -- my name happens to be on it first, but I would like to yield to Senator Breslin.

SENATOR BRESLIN: Madam President.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: This is a bill which would prohibit state and local government from reducing health care benefits to its retirees and reducing employer contributions for its retirees. It has a history here in the Legislature. In 1996 it passed the Assembly with one negative vote.

It is critically important for

our retired people, and also in Albany County having the largest number of state retired people to have this law passed. Our retirees do not have the benefit of collective bargaining. Our retirees are on fixed incomes. Our retirees are concerned on a daily basis about their health care coverage. To align them with existing state employees, that these benefits could not be taken away unless similar reductions were made to state employees is a positive step that this Legislature can take for all of the retired public employees who are now put in peril without this law.

Thank you.

THE PRESIDENT: Does anyone else wish to speak on the motion?

The Secretary will call the roll.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE SECRETARY: Ayes 23, nays 35, party vote.

THE PRESIDENT: The motion is

defeated.

Senator Paterson.

SENATOR PATERSON: Madam President, at this time would we please call up the long awaited and much appreciated and much ballyhooed motions to discharge offered by Senator Leichter.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Madam President. Thank you, Senator Paterson. Thank you, Senator Skelos. I was hoping to do these motions on April 1st but, as you know, there was a storm. Actually, I went down to the train station and found out trains were delayed by five hours. I was hoping to do it the next day which would have been Wednesday, April 2nd. I got on the train. I got as far as Poughkeepsie and, because the signals were out, I had to turn around. So I appreciate having a chance to do it now.

Let me -- there's a number of motions, and I don't want to take much time on it, but they're terribly important and let me just make a brief comment about the area that

I'm addressing, which is campaign financing because we really have a system in this state which is a non-system.

What's really shocking is not what's illegal, what's shocking is what's legal, and let me say that I'm not -- I mean it's a partisan issue in one sense, but it really isn't. There's no -- there are no saints on either side, so either -- from either party on this issue of campaign financing. There's a lot of sinners, and I think that as a legislative body of people who are concerned, I think, with public policy, with how government functions, we really ought to change the system, because what we have now I mean is a cancer in the political system. It's awful, and I don't think there's a member here who doesn't feel it's awful, the way that we have to go out, raise money, the people that we have to go for, always more and more money, the expense of campaigning.

Some of these things are out of our control. Some of them are dictated by Supreme Court decisions, but what my motion is dealing with are some very evident, very glaring, very blatant loopholes and if we close

those, we will make this a fairer and a better system for every one of us and for the public at large and that's what my motions address, and let me just say I know there's a lot of talk about, well, we've never passed motions to discharge and motions to discharge are offensive to the integrity of our system here, and so on. Nonsense! I don't know, maybe I have missed something. Maybe they changed the "good book" or changed the -

SENATOR SKELOS: Madam President, could I interrupt?

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: We're certainly enjoying your presentation.

SENATOR LEICHTER: I'm glad you are.

SENATOR SKELOS: But I think at this time it would be appropriate to call up one of the motions.

SENATOR LEICHTER: I thought they were.

SENATOR SKELOS: The member has to make the motion.

SENATOR LEICHTER: All right.

Then call up S. 3346, please. Thank you. Can I call -

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate 3346, by Senator Leichter, an act to amend the Election Law, in relation to intermediaries.

SENATOR LEICHTER: O.K.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: I think -- I think this is a fair and proper way, a motion to discharge, to bring issues before this body that ought to be addressed. I hope that we're going to have -- our Election Law Committee was to bring some of these bills out, but I, very frankly, don't have much hope and that's the reason that I've made these motions.

So let me just briefly explain. The first one, this bill, S. 3346 requires the disclosure of the name, address and the amount of money raised and from whom raised of any intermediary or bundler of campaign contributions.

Would you call a vote on that,

Madam President?

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: Results.

THE SECRETARY: Ayes 24, nays 35.

THE PRESIDENT: The motion is defeated.

Senator Leichter?

SENATOR LEICHTER: Yeah, I have a few more. Would you call up S. 3347.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Print 3347, by Senator Leichter, an act to amend the Election Law, in relation to limiting contributions.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: O.K. Madam President, this is one that tries to deal with what is, I think, the grossest abuse that now

exists, both on the national level and the state level in campaign financing, and that is soft money. Every -- no day goes by when the press doesn't report on some campaign finance abuse involving soft money.

Much of the focus has been national and should be, but right here in New York State we have the same problem. The Republican State Committee raised over $3 million in soft money contributions from 1887 entities and soft money is under no limitations whatsoever. Philip Morris gave 156,000 to the Republican State Committee. There's no reason to have the soft money -- in this state it's called housekeeping -- without limitations as to the amounts that can be given. This bill provides for limitation of $1,000.

Madam President, if you'd call the roll on that, please.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Call the roll on the motion.

THE PRESIDENT: Is there anyone else who intends to speak on the motion? Call the roll on the motion. All in favor signify by

saying aye.

(Response of "Aye.")

Opposed nay.

(Response of "Nay.")

The motion is defeated.

Senator?

SENATOR LACHMAN: Madam Chair, I was attending a meeting of the Transportation Committee when there was discussion on Calendar Number 309. Had I been in the chamber, I would be recorded in the negative, and now -

THE PRESIDENT: Without objection.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Commerce Committee in Room 332 of the Capitol.

THE PRESIDENT: There will be an immediate meeting of the Commerce Committee in Room 332.

Senator Abate.

SENATOR ABATE: Yes. I would like unanimous consent to have my vote recorded in the negative on Calendar Number 309.

THE PRESIDENT: Without

objection.

Senator?

SENATOR SMITH: Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 309.

THE PRESIDENT: Without objection.

Senator Leichter.

SENATOR LEICHTER: Yes. Would you call up Senate 3650.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senate Print 3650, by Senator Leichter, an act to amend the Election Law, in relation to eliminating the transfer of certain funds.

SENATOR LEICHTER: One of the loopholes in our Election Law is that legislative committees and other political action committees set up by a party could make transfers without any limitations whatsoever. Transfers are treated other than contributions. As a result, the legislative committees, Republican Senate Legislative Committee, the Democratic Assembly Committee raised enormous

sums of money which they can contribute to one or two candidates without any limitation whatsoever. The result is that you have funding of campaigns in certain contestant races, people that are considered marginal where really all the money is raised by the legislative committees.

The local people really are almost disenfranchised as to whether the Majority Leader in the Senate or the Speaker in the Assembly raised these enormous sums of money and these committees are not subject to the same limitations.

So if somebody wanted to give, let's say $50,000 to me in a campaign, they can't do it. The most you can give a Senate campaign is roughly $7,000. They can go -- they can give $50,000 to the Senate Democratic Committee and that Senate Democratic Committee can give the full amount of $50,000 to me. That's obviously absurd. That's a loophole and it's led to, I think, a great abuse.

So let's close that. Let's say, as this bill does, that transfers will be treated like any other contribution. What is

the rationale for saying, we're going to have contribution limitations but transfers, oh, no, transfers are totally unlimited and this has, I think, also led to -- unfortunately, money plays a bigger and bigger and bigger role in deciding which bills come to the floor, whether in the Assembly or in the Senate. We ought to eliminate that.

THE PRESIDENT: On the motion, all in favor signify by saying aye.

(Response of "Aye".)

Those opposed by saying nay.

(Response of "Nay".)

The motion is defeated.

Senator.

SENATOR LACHMAN: Madam Chair, I rise again. I would like to be recorded -- ask unanimous consent to be recorded in the negative and to be allowed to vote no on Calendar Item 309.

THE PRESIDENT: Without objection.

SENATOR LACHMAN: Thank you.

THE PRESIDENT: Senator Leichter -- Senator Mendez.

SENATOR MENDEZ: Thank you, Senator Leichter.

I do request unanimous consent to be recorded in the negative on Calendar Number 298 and 309.

THE PRESIDENT: Without objection.

SENATOR MENDEZ: Thank you.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Madam President, if you would bring up Senate 3563.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Print 3563, by Senator Leichter, an act to amend the Election Law, in relation to the treatment of corporate subsidiaries.

THE PRESIDENT: Senator.

SENATOR LEICHTER: Madam President, my colleagues, this deals with the loophole that, while corporations are limited to giving $5,000, there's no limitation of how much they can give through subsidiaries.

Now, if our intent was, as it's stated in the law, to limit corporations to

$5,000, you shouldn't allow a corporation to use its subsidiaries to give way beyond that $5,000 limitation.

There are a number of instances and reports that I have issued where corpora tions, by using subsidiaries, have given 20-, 30-, 40-, $50,000, clearly against the spirit of the law. This bill would require that corporations list who their subsidiaries are and that the total amount that can be given by the entire corporate family is the $5,000 limitation that we state in the law, but it's stated so inartfully that you can easily get around it through the use of subsidiaries. This bill would eliminate that loophole.

THE PRESIDENT: On the motion, all in favor signify -- are you standing, Senator Volker, because you wish to speak? All in favor signify by saying aye.

(Response of "Aye".)

Those opposed, nay.

(Response of "Nay".)

The motion is defeated.

SENATOR LEICHTER: Madam President, if you would -

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If you would call up Senate 3306.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Print 3306, by Senator Leichter, an act to amend the Public Officers Law, in relation to the regulation of gifts.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Madam President, this deals with a related issue. The problem that we have where we have seen the chief executives of this state, Governor Cuomo and now Governor Pataki going out, giving speeches at high honorariums, I think that's improper, leads to a conflict, shouldn't have been done by Governor Cuomo -- and I admit we weren't critical of it at that time. We should have been. I think it's wrong being done now by Governor Pataki. It's wrong if it were done by the Comptroller. I think we ought to ask our public statewide elected officials -- they're full-time employees of the people of the state of New York. They should not be earning outside

income, whether by giving speeches or practicing law or selling insurance or selling real estate or in any other way.

This bill would make it clear that as elected officials, their sole and exclusive compensation is from the people of the state of New York by serving the people.

THE PRESIDENT: On the motion, all in favor signify by saying aye.

(Response of "Aye".)

Those opposed, nay.

(Response of "Nay".)

The motion is defeated.

Yes, Senator Sampson.

SENATOR SAMPSON: Madam President, I would like to be recorded in the negative on Bill 309.

Thank you.

THE PRESIDENT: Without objection.

Senator Leichter.

SENATOR LEICHTER: Yes. Would you call up, please, Senate 3490-A.

THE PRESIDENT: Senator Leichter, could you please repeat that number.

SENATOR LEICHTER: The number I have is 3490-A.

THE PRESIDENT: In the meantime, Senator Oppenheimer.

SENATOR OPPENHEIMER: Madam President, I would like unanimous consent to be recorded in the negative on 309.

THE PRESIDENT: Without objection.

Senator Sampson.

SENATOR SAMPSON: Yes, Madam President. I would like to be recorded in the negative on Bill 406.

THE PRESIDENT: Without objection.

The Secretary will read.

THE SECRETARY: Senate Print 3490-A, by Senator Leichter, an act to amend the Election Law and the County Law, in relation to state takeover of responsibilities and duties.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Yes. Madam President, the purpose of this bill is really to modernize our election system throughout the whole state. Elections in this state are

chaotic. They certainly are particularly in my city.

You remember last year the state board -- not the state board, I'm sorry -- the city Board of Elections of the Brooklyn office failed to have election machines in a number of election districts. It's appalling. If some of the things that happen in our elections occurred in underdeveloped countries, it would be universally condemned and the United Nations or somebody would send observers there to see that the election was carried out in a fairer and more democratic manner.

The problem is the political Boards of Elections that we have, this bill would make Boards of Elections under state supervision a general governmental function no longer controlled by the political parties by having the political parties appoint the commissioners of elections. It would also make the state Board of Election more effective. Right now, that state Board of Election is highly ineffective, again because it's controlled by the two political parties. It would provide for the appointment of

commissioners by the Governor for particular terms subject to confirmation by the state Senate.

There's no reason to have our election machinery run essentially by the political parties. It deserves to be a governmental function, as it is in most states, under the control of the government and free from the sort of influence that now exists and, as I pointed out, the result has been really that our elections in this state have been not only poorly run but it's been difficult for candidates to get on the ballot. It's been questionable whether campaign finance laws have been enforced as they should have been enforced. The whole machinery really doesn't work, and this bill charts a new course, and I think a proper course, that will give us a fairer, more honest and more efficient elections system.

Thank you.

THE PRESIDENT: Thank you, Senator Leichter.

On the motion, all in favor please signify by saying aye.

(Response of "Aye".)
Those opposed, nay.
(Response of "Nay".)
The motion is defeated.
Senator Farley.
SENATOR FARLEY: No. I'm just - I have nothing to say.
THE PRESIDENT: Okay. Sorry.
SENATOR LEICHTER: Madam President.
THE PRESIDENT: Senator Leichter.
SENATOR LEICHTER: Would you call up Senate 2994.
THE PRESIDENT: The Secretary will read.
THE SECRETARY: Senate Print 2994, by Senator Leichter, an act to amend the State Finance Law, in relation to requiring that budget bills making appropriations or reparations.
THE PRESIDENT: Senator Leichter.
SENATOR LEICHTER: Yeah, Madam President. I've saved the best for last. This is the one that provides for the itemized Legislative Budget. I think you've all heard

the argument. I think you know how compelling the arguments are for it but the Legislature, like every other branch of government, ought to have an itemized budget.

THE PRESIDENT: On the motion, all in favor signify by saying aye.

(Response of "Aye".)

Those opposed, nay.

(Response of "Nay".)

The motion is defeated.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 24, nays 35.

THE PRESIDENT: The motion is defeated.

Senator Skelos.

SENATOR SKELOS: Yes, Madam President. If we could return to motions and resolutions and take up Resolution 907 by Senator Farley.

THE PRESIDENT: Yes.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

Would you please read the resolution in its entirety.

THE PRESIDENT: The Secretary will read the resolution -

SENATOR FARLEY: And then I would like to speak to it.

THE PRESIDENT: -- in its entirety.

THE SECRETARY: Legislative Resolution, by Senators Farley, Bruno and others, 907, honoring Richard J. Sauers upon his outstanding career as coach of the University at Albany Great Danes Men's Basketball Team.

WHEREAS, the state of New York takes great pride in acknowledging those individuals whose life work testifies to extraordinary commitment to their profession and to their community; and

WHEREAS, Richard J. "Doc" Sauers will be retiring this year after having served as coach of the men's basketball team at the State University of New York at Albany for a

period spanning 42 years; and

WHEREAS, greatly admired by his colleagues, peers and players, "Doc" Sauers has earned a reputation as one of the most respected coaches in the country. His successful career with the University at Albany Great Danes is a tribute to his love for and commitment to the sport of basketball.

Richard Sauers received his Bachelor's of Science degree in physical education from Slippery Rock State College. He went on to earn a Master's degree in education and a doctorate in physical education from Pennsylvania State University.

This talented individual began his long and distinguished career as head coach at the University at Albany in 1955 when the school was known as the New York State College for Teachers at Albany. "Doc" Sauers went on to coach the Great Danes for 41 seasons, of which 40 were winning seasons; and

WHEREAS, among his many accomplishments during his notable tenure at the University at Albany, in 1997,"Doc" Sauers became one of only 11 coaches in the history of

the National Collegiate Athletic Association to reach 700 victories, finishing out his career with a record of 702 against 330. In 1996, he earned the distinction of becoming only the 15th person to coach 1,000 games at the collegiate level.

Coach Sauers brought the Great Danes to the Division III tournament nine times. He is also credited with preparing the team for the transition to becoming a successful Division II team. In the 1996-97 season, the team's second year in Division II, he skillfully led the Great Danes to a 17-10 finish.

"Doc" Sauers is well known and admired among his peers for his game preparation and for his ability to adapt his methods in accordance with changing times. Under his capable leadership, the Great Danes made it to nine NCAA tournaments since 1975 and to four National Association of Intercollegiate Athletics tournaments prior to that. The team also qualified for the Eastern College Athletic Conference playoffs seven times, winning the championship in 1978 and 1989. In 1993-94, the team set a school record for victories when they

finished the season 25 and 3; and

WHEREAS, in recognition of his notable contributions to collegiate basketball, Coach Sauers has been the recipient of numerous awards. In 1985, he was named the NCAA Division III Coach of the Year. He was also chosen as the East Region and New York State Coach of the Year three times. In 1992, this exceptional individual was honored for his lifetime contributions when he was inducted into the New York State Basketball Hall of Fame.

In addition to his passion for basketball, Coach Sauers is a dedicated family man. His devoted wife of 32 years, Elaine, has been a tremendous support to him throughout his career. The couples' two loving children, Cheryl and Stephen, along with their mother, remain amongst his biggest fans. Stephen, who played for his father in college and is currently an assistant coach at Marist College, is carrying on his father's tradition of excellence. Upon his retirement, "Doc" Sauers looks forwards to spending him with them and his grandson Jordan; and

WHEREAS, through his long and

sustained commitment to excellence in scholastic coaching, Coach Sauers has so unselfishly advanced that spirit of united purpose, fairness and sportsmanship toward which we all aspire. He has served as a positive role model for his players over the years, many of whom have gone on to emulate his methods of coaching in positions of their own; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to commend Richard "Doc" Sauers, coach of the University at Albany Men's Basketball Team, upon the occasion of his retirement after 42 years of outstanding service to collegiate basketball; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to Richard J. Sauers and to Karen Hitchcock, President of the University at Albany.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you very much, Madam President.

42 years as a coach, 41 winning seasons, 702-330. Only 11 coaches in the history of the nation of NCAA basketball have

won 700 games. Dick Sauers and his lovely wife who is in the gallery, Elaine, and his daughter Cheryl and her husband and, of course, Dick, you have been intimidated by a lot of foes but never so much as having so many administrators and the president in back of you, and so forth. The gallery is just full of VIPs from my alma mater and my university. Our dynamic new president, Karen Hitchcock, is up there and probably the most enthusiastic supporter of Great Dane basketball, four vice-presidents, senior administration staff and I understand -- I think there's a couple players up there also, Tom Goldrick and Rich Dormer, but let me just say this. I've taught many of Dick Sauers' players. He was concerned about their academics. He was also concerned about their entire being.

He has a lovely family and his wife Elaine -- and I'm sure that like the spouse of a politician, you have to be very patient and somewhat have your own life because it's tough. He spends a lot of time on the court and his two children, Cheryl and Stephen, Stephen following in his father's footsteps as an assistant coach

of Marist and, of course, his grandson Jordan who has not been mentioned but, you know, of all his players that I have known, they are like him. They have an affection for him. He has an affection for his players and, believe me, he's a tough task master. You know, he's also a superb athlete, an outstanding handball player and a great avid golfer. I'm sure he's going to be doing more of that.

You know, yesterday the University Senate at Albany, of which I was once a member prior to this Senate, voted 30 to 10 to go to Division I basketball. "Doc" Sauers led that transition by going to Division II, having last year gone successfully in a winning season in his second year.

You know, this Senate has many members who are Albany grad's and I know how proud they are of "Doc" Sauers. He's a standard of excellence in basketball coaches. He's a standard of excellence as an educator and he's a standard of excellence as a human being.

Congratulations, Dick. We're very proud of you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

I am pleased to just rise and follow Senator Farley and add my comments about an individual who really personifies what all of us would aspire to in terms of seeking perfection -- perfection as relates to his own life in the way he leads it and has led it, as relates to his family, as to the academic community and most certainly in the competitive and yet sportsmanlike way he has coached and by his own example led, and the bottom line is that he is a winner and has won more than any other coach here in this state in his career.

Now, that's something all of us would like to at some time in our lives be able to establish as a record that we have truly excelled in our lives, in our chosen field and in our work.

So I congratulate "Doc" Sauers for his great achievements. They don't come easily. It takes a lot to really be a winner and keep winning, and he's done that.

So we're proud of him in this community, proud that we have been able to share

part of your experiences with you and we are totally confident that you will go on in your outstanding ways and continue to be the winner and the shining example for all of us that we can follow.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Bruno.

Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I am delighted to follow Senator Farley and Senator Bruno in echoing their comments about "Doc" Sauers.

It's a real honor for me to be here to look up to a man who, over 35 years ago, I played in a summer league with on the same team and now to be looking up at him and thinking of people like Red Auerbach and John Wooden and Vince Lombardi as legends and I know a legend sitting right up there, a man who's brought great dignity to our Albany community as a coach, as a father, as a husband and as a wonderful human being.

So it's my personal delight,

"Doc", to be here to see you honored, richly honored.

Thank you.

THE PRESIDENT: Is there anyone else who would like to speak on the motion -- on the resolution? Excuse me.

(There was no response.)

On the resolution, all those in favor please signify by saying aye.

(Response of "Aye".)

Opposed, nay.

Senator Farley.

SENATOR FARLEY: I would like to open up the resolution to anybody that would like to co-sponsor it. As far as I'm concerned -

SENATOR BRUNO: All on it other than those by exception.

SENATOR FARLEY: The entire Senate will sponsor it unless there's an exception.

THE PRESIDENT: Thank you. The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Thank you, Madam

President.

(Applause)

THE PRESIDENT: The Senate welcomes "Doc" Sauers and his family and President Hitchcock and all our SUNY guests.

Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Education Committee in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Education Committee in Room 332.

Senator Hoffmann.

SENATOR HOFFMANN: Madam President, I was out of the chamber at the time the vote was called on Calendar 309 and Calendar 406. I would request unanimous consent to be recorded in the negative on those two issues.

THE PRESIDENT: Without objection.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I was also

out of the chamber when a vote was taken on Calendar Number 309. I would ask unanimous consent to be recorded in the negative on that bill.

THE PRESIDENT: Without objection.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Yes, Senator.

SENATOR NANULA: Madam President, I too was out of the chamber for Calendar 309, and I would like to express unanimous consent to be recorded in the negative on that.

THE PRESIDENT: Yes. Without objection.

SENATOR ROSADO: I would like to -- on Bill 309, I would like to be recorded in the negative.

THE PRESIDENT: Thank you, Senator Rosado. Without objection.

Senator Abate.

SENATOR ABATE: Yes. I would ask that the reading of my motion to discharge, Senate 2887, be waived and I'd like the opportunity to speak on the motion.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Senate Print 2887, by Senator Abate, an act to amend the Insurance Law, in relation to health insurance coverage.

SENATOR ABATE: Yes. I would like the opportunity now to talk about why it is so important for us as a chamber to move forward on this motion to discharge on the Patients Fair Appeals Act. Right now we have bipartisan support in concept at least on this issue.

This is an issue that many of you are aware of that the Lieutenant Governor has crafted this legislation. I assisted her office in the crafting of this legislation. We also have a bill that's sponsored by Senator Stafford who addresses some of these very important issues.

I would like to applaud the leadership of both the Lieutenant Governor and Senator Stafford. If we follow their wisdom, we have an opportunity today not just to debate this very important issue but to move this issue to the floor of the Senate for further discussion and hopefully passage.

This bill is critical. If you came to many of the meetings that I have had and press conferences with people who are suffering from terminal illness, whether it be cancer or multiple sclerosis or AIDS, people being faced with life-threatening diseases, they are asking for our help today and what this bill seeks to do in two-fold is, one, to set uniform statewide standards to help the Insurance Department, the health management organizations, the HMOs, in trying to set up these standards that are based on quality, based on medical decisions on when these medical and clinical trials, devices and programs should be reimbursed.

This bill doesn't say that quackery or something that does not need to be reimbursed should be reimbursed. It doesn't say that, if there is an acceptable and better, non-investigative or non-experimental trial program, it doesn't say to bypass those programs and fund clinical trials. What it does is set some standards so we can save more lives.

And the second part of it, which is a critical part, talks about a fair right of appeal. Let's set up a situation. You or a

loved one is dying of cancer and you go to your doctor and your doctor says if you enter into this clinical trial and get this drug or treatment, not only will the last two or three years of your life be spent in less pain, not only will you have a better quality of life so you can share your last couple of years with your family but maybe -- maybe this drug will prolong your life or even save your life." Now, should we allow the Insurance Department to unilaterally be judge and jury and say to that doctor, No, because of expense, this trial will not be reimbursed?

What this bill does is set up an independent review. It says in a situation where a doctor recommends that a treatment be provided to a patient, that an independent panel of doctors, doctors who are selected by the Insurance Department in consultation with the Health Department, review the decision made by the Insurance Department or the HMO. What's irrational about that? That makes a lot of sense because what we're saying is the bottom line -- cost bottom line should not rule the day if there is a possibility that someone's life

could be saved and that there should be another pressure look on that decision. If you were in that situation personally or your loved one were in that situation, you would want that opportunity to have that independent review if it meant the difference between life and death for either you or your loved one.

Now, many people would argue, this is too costly. While we don't have data within New York State, we certainly have data from other states that have tried these kinds of programs.

Let me refer to some of the data. Data taken by the leading member of the President's National Health Care Panel, a decision in Seattle, Washington found that the costs would not increase more than one-half of one percent and there is also a recent study by the Memorial Sloan-Kettering Hospital which looked at five types of cancers, pancreatic, lung, breast, colon and ovarian cancer and for patients with the same types of cancer in each instance, these patients participating in clinical trials had fewer readmissions, spent less time in hospitals and the hospitals reduced

the total costs incurred for each patient in the trial.

So the reverse is, in fact, true, that once we have clinical trials, this is a form of prevention. It may mean not only prolonging life but it may also mean reducing a costly emergency and prolonged hospitalization.

So this makes sense in terms of good, sound health care policy and it makes sense in terms of dollars, in terms of the whole health care system.

Why, we may ask, is there such support, not only among consumers but the medical profession? They recognize that if we're going to advance our medical profession, to be able to test these clinical trials, they need to be reimbursed by the Insurance Department. What they're saying is today's experiment becomes tomorrow's cure. If we're ever going to find a cure for cancer and other deadly diseases, if we don't pass sensible legislation such as this, it will mean more and more people will die when they don't need to die in the future.

So, again, many of the doctors

that have come forward have begged this chamber to support this legislation if we are going to see advances in the medical research over the long haul.

So this is imminently, I think, a bill that we can put our partisanship behind us. We can say that we need to advance the medical profession, increase health care, provide some kind of fair right of appeal so a patient who, in the midst of their last days and years, won't be denied critical health care because an insurance company wants to override the wisdom of a doctor. This is what this bill is about.

It has received support from labor groups, advocacy groups, including the International Brotherhood of Teamsters, the AFL-CIO, New York Labor/Religion Coalition, the National Alliance of Breast Cancer Organizations, the New York State Statewide Senior Action Council, the Multiple Sclerosis Society, the Association of the New York State AIDS Community Service Programs, the United Cerebral Palsy of New York State, Cancer Care, the Capital District Coalition Support, Citizen

Action, the Community Health Center Association, Housing Works, the National Organization of Women and the Women's Bar Association.

Finally, if we do pass this legislation and discharge it out of committee, what we are saying to our constituents is that they should not be left with two choices, the choice to dissipate all their income, their family resources so they could have this appropriate treatment, or the even worse choice of foregoing this treatment because there is no reimbursement and they face an early death.

Let's do the responsible thing today. Let's protect and advance health care in this state. This is not about money. Let's put aside our differences and I urge everyone, and particularly I look forward to working with Senator Stafford, as well as the Lieutenant Governor to see this bill, the concept of this bill become the law, and I hope for the day when we can celebrate the passage of legislation that will protect patients throughout the state.

THE PRESIDENT: Thank you, Senator Abate.

Senator Gold.

SENATOR GOLD: Thank you, Madam President.

Madam President, this is one of those times when I think of the expression we hear so often in this chamber and we hear it in other circumstances also. If we could save one life. I think of the television cameras around the hole with the child in the hole and how no expense is too much, too great to save the child as long as the television cameras are rolling, and I think to myself, once we take away the television cameras and one we get rid of the press, isn't it a shame that we as lawmakers can't just look at paper intellectually and understand that those papers that are put in our hands, if they become a law, can save not only the one life but many, many lives.

In reflecting on the various things we do as legislators, all of it is important and we've had legislation. We had a bill by Senator Kuhl today which helped a particular group with its meetings and it is not the -- perhaps the biggest bill we'll deal with this session but it's important and Senator Kuhl carried it, and I respect him for that.

Everything we do is not of equal level.

New York, I'm proud to say, took the leadership a number years ago and ordered that pills and capsules be coated and labeled. The pharmaceutical industry gave in to us. It became national. It became international and, as a result of what we did in this chamber a few years ago, we have saved probably thousands of people's lives. No television cameras, no excitement.

There was a time in the legislative history of New York when a very, very brave, wonderful person by the name of Guy Brewer stood up in the Assembly chamber to debate a bill dealing with experimental treatment and Guy was dying at the time, knew he was dying and the argument that he made was, he personally might not want to use the experimental treatment but being there, knowing his life was slipping away, he could not vote to stop other people from having that opportunity and that choice. I think that Guy Brewer on that day was one of the most courageous people I've seen in action.

I also think that we have a lady

in this chamber -- two ladies in this chamber who are very courageous on this issue. One you've heard from, Senator Abate, and the other one under our rules can't debate. That's our Lieutenant Governor, who has put this issue beyond politics and who has said that "I am the Lieutenant Governor. I have a mind. I have a voice. I have ideas and they're going to be heard," and if the Republican Party is -- can't take an intelligent woman in its midst, well, the public at-large can and this issue is now out there, and what are we saying? We're saying that doctors have rights. We're saying patients have even more rights and while insurance companies have rights and money, we have to do the balancing act here.

Everything we do here that is a balancing act with money has an effect. In our budget negotiations, we are talking about taking people on welfare and cutting benefits and telling them to work and some of us say that sounds great except where are the jobs, and can we afford this and we heard earlier today Senator Holland telling us that we should be taking some money away from working people. We

can't afford it.

What we're talking about now is a situation where this bill deals not only with human life but it deals with a humane answer to a human problem and it says that people in pain, families in pain should have a choice to do something about that pain.

Now, the choice may not work. It may be that the selection they make does not save their life. It may be that the selection they make does not increase their days but there isn't one person in this room who doesn't know in their heart and believe that serious illness affects not only the individual but the entire family and hope is something which eases pain and hope is something which allows human beings to cope with the problems that human beings face on a day-to-day basis.

This bill is an extraordinary step in that direction, and I tell you very sincerely that, if this bill were coming out of committee and on the floor of this house and the lead name on it was Senator Stafford, I would be extraordinarily proud of that bill and I would be extraordinarily proud as I am in many cases

with Senator Stafford for taking leadership and we can vote for it and we can do it, but I say to my colleagues, that the methodology of bring ing this issue to the floor is unimportant. The sponsorship is unimportant. I cannot believe that any man or woman in this chamber doesn't feel in their heart that one of the reasons that they give up so much time and energy for public service is to alleviate human pain and human suffering.

We have an opportunity to do it today, thanks to Senator Abate and thanks to our Lieutenant Governor, our President, and we would be foolish not to take the opportunity to do it. We could never look people in the eye who were in pain, families who are in pain, and tell any one of them that they could not ease the pain because the issue is brought up by a motion, or the issue is brought up by a Democrat. They would look you in the eye and say "You are nuts. You got to be crazy." You refuse to alleviate human pain and suffering because of Senate rules, Senate procedure, Senate history.

I don't believe, as I look upon

the Republican side of this aisle, that there is evil in any heart or that there is a lack of compassion, but the bottom line is that if you get on a road, don't be surprised if that road takes you to where it's going and if the road that you are going to get on is a road which says that no motions pass in this house, even if it means human suffering, then, in fact, you are guilty, each and every one of you who votes against this motion, for the pain that is suffered by people as a result of the motion not passing.

I sincerely hope that we get past all of that, that we get past all of that and that this motion is given an approval and that this issue has the light of day and more importantly becomes law.

Thank you.

THE PRESIDENT: Thank you, Senator Gold.

Senator Nanula.

SENATOR NANULA: Madam President, thank you. On the motion.

I'm standing in support of this motion and I'm not going to address the very

eloquent statements of Senator Gold in regards to the partisan nature, so to speak, of this motion relative to the fact that it is coming from this side of the aisle and it is a motion as opposed to a piece of legislation coming to the floor out of committee from the other side of the aisle.

One thing in particular I do want to point to and reinforce, which I as the ranking Democrat on the Insurance Committee feel is a significant step forward, is the impartial nature of the review process and more fundamentally, that a review process is being put in place.

There have been significant concerns expressed primarily by the medical society and physicians in general in regards to there not being a formal review process for a number of conditions denied to patients by HMOs.

Certainly, in regards to medical conditions that are life threatening, without there being an appeal process, at least in my opinion, I believe that is unconscionable and I also believe in regards to this appeal process

structurally and the concept of the Department of Insurance, a public sector entity selecting the physicians as opposed to the HMO industry or, quite frankly, even the physicians selecting a physician is a good approach. It's an approach that, again, reinforces impartiality which, again, I believe is very important.

I also believe in regards to this issue specifically, this could be a great first step, a needed first step for those among us facing critical, life-threatening illness to bring forward a larger debate on the issue of fair and unbiased review.

Again, it has been expressed by the Medical Society. It has been expressed by HMO patients and customers and expressed by physicians. I think that certainly this aspect of the legislation, the proposed legislation, is a great step forward in terms of that broader issue.

For those reasons and for many others, I want to commend you, Lieutenant Governor, and you, Senator Abate, for bringing this issue, at least in this format to the floor, and I urge my colleagues' support.

Thank you.

THE PRESIDENT: Thank you.

Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I would like to echo the comments made by my colleague, Senator Gold, my colleague, Senator Abate and praising you, the President and the Governor, for your courageousness along with Senator Abate in bringing this to the floor.

In my several months here, I have had the opportunity to vote on various measures dealing with changes in the Vehicle and Traffic Law, some agricultural problems and now I have a chance to save lives.

So I urge all of you to join with me. What more noble reason could we be here than to save at least one life, but it isn't one life. It's many lives and, as Senator Gold said, much pain.

So I urge you to not make it partisan but think about the ramifications of this legislation.

Thank you.

THE PRESIDENT: Thank you, Senator Breslin.

Is there anyone else who would like to speak -- oh, I'm sorry. Senator Dollinger, I didn't see you.

SENATOR DOLLINGER: Thank you, Madam President.

I rise too in support of this motion to discharge, although I have to admit, I wish this debate was going to be seen by more people in this state. There might have been a possibility of that if Inside Albany had been allowed to come up and put its cameras up on the west side of the chamber, although I understand from information through counsel, that we don't have the staff available today to allow them to go up there.

I find it amazing that yesterday when we did a motion to discharge, we somehow found the funds available to put, I believe there were nine members of the State Police in that very gallery to watch, oh, 80 to 100 tenants who had come down for a motion to discharge, all of whom had been through metal detectors. So we had lots of resources

yesterday. We don't have resources today and as a consequence, the people of this state don't get to hear Senator Abate, don't get to hear Senator Gold who talked about the compassion that is a part of this, Senator Nanula to talk about the fairness that is imbedded in this proposal and Senator Breslin right here in Albany to talk about many of those same concepts.

I want to address one issue that is in part of this bill. I think Senator Gold's eloquent comments about human suffering are right on the nose.

I'll give you a personal example, Senator. I represented two families in New York State who were families of children with epilepsy. They were suffering from about three episodes -- excuse me -- about two episodes a day of epileptic seizures.

SENATOR SKELOS: Madam President, if I could just interrupt Senator Dollinger in case he wants to wait a minute. Inside Albany is now here. So if you want to save your comments for Inside Albany -- I know you don't care about the media or press or anything like

that, but I just wanted to alert -

SENATOR DOLLINGER: Madam President, I had the floor. I don't know whether Senator Skelos, with all due respect, is in order.

THE PRESIDENT: That's right. Thank you, Senator Dollinger. Please continue.

SENATOR DOLLINGER: Anyway, as I was speaking, Senator Gold, I represented a family that had about two seizures per day. They had to go to Minnesota in order to have a specialized surgery to allow them to reduce the incidents of epileptic seizure. As a consequence of that -- as a consequence of that surgery, they went from a couple seizures a day to a couple seizures a month. The insurance company wouldn't pay for it because it was considered experimental therapy, considered a clinical trial. We went to litigation with that insurance company and were able to finally get them to agree to cover about 80 percent of the costs, but the difference in quality of life for those children to go from a couple episodes a day to a couple episodes a month was just unbelievable. That alone, that one episode in

my past would make this bill worth passing.

Let me give you another reason why this bill ought to be on the floor today and it's because it's in New York State's best interest and its economy's best interest that this bill become a part of our law.

The science and technology that's a part of experimental therapy is what we want in this state. We want people to be experimenting with therapies. We want them to bring high technology, drug therapy to this state. We want to be able to bring those businesses -- I'll give you one good example. Praxis Biological. A physician at the University of Rochester a decade ago created a new vaccine for whooping cough, a fabulously successful vaccine. The plant is now in North Carolina. If we pass this legislation to allow the clinical trials and to allow the payment for experimentation with that vaccine, we could bring them back here. We would give an incentive to bring those jobs back here. These are the kinds of high technology new jobs that we want in New York State. Let's pass this bill and give an incentive for the scientific process

to work.

And I would point out that experimental therapy doesn't mean that if the experiment fails, that we fail when we pay for it. I'm always reminded of that little example I learned in high school about someone who is trying to come up with a solution to something and was growing, found out that he kept growing and spinning -- cutting the mold off of the top of his experiment and throwing it away. The mold wasn't any good until he figured out that the mold was the basis for penicillin discovered almost through accident. We learn something from experimental therapy, whether it succeeds or whether it fails. It's the part of our scientific process.

It seems to me if we want to bring the science and technology of medicine and health care to New York State, to give them a receptive place, to create an incentive for it to occur here and not somewhere else, to bring businesses back to New York State, I've heard that rhetoric from the other side of the aisle until I'm blue in the face but yet now we have a chance to do something about it. We can pass

this bill. Make experimental therapy, clinical trials, let them be paid through this kind of legislation.

This is the right thing to do. It's the right thing to do for our economy. It will create jobs. Put the bill on the floor. Vote in favor of this motion to discharge. Let's drop the political gobbledygook that confuses our citizens but we all understand.

Here's your chance. Pass the bill now. We can get it through the other house. The Lieutenant Governor, Senator Abate and Senator Stafford can carry it down to the Governor's desk. I'm sure he'll sign it because he understands the importance of creating these jobs. We'll have a law. We'll have it in place and then we can give kudos to those who have been responsible.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Dollinger.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be a immediate meeting of the Children and Families Committee in Room 332 of

the Capitol.

THE PRESIDENT: There will be an immediate meeting of the Children and Families Committee in Room 332.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I'm practically a co-sponsor with you and Senator Abate on this bill and everybody seems to be talking a specific aspect of this and while I certainly support what Senator Dollinger said about the potential for economic development and job creation through such a bill and surely in my county that is an area that we have been pursuing with great interest, which is the biotechnical research, but I want to look at another aspect and Senator Dollinger said talking personally, and I would like to say that talking personally, there are several of us in this chamber who have benefited from medical research and are here because of that research. I think that there is no advance in scientific knowledge unless we have this kind of experimental research going on.

Senator Gold talked about the human suffering. I would like to talk about the

broader picture of how we advance medical knowledge and the only way to advance medical knowledge is through such research. I think most fundamental is that without research, we have no advance in our medical treatments and we are so much so now in the forefront of medical research and it is a place that has put us in advance of almost any other nation in the world. So I think both from the economic point of view, yes, from the human suffering point of view and for the general advancement of medical knowledge, we really must pursue this.

The other point I would like to make is that we have been talking over and over again about insurance companies rather than the doctors who are making the medical decisions and the right of appeal to a group that is both judge and jury really does not give you a fair hearing.

So for both aspects of this bill, I applaud you and I'm happy to co-sponsor it and I hope there will be a time, perhaps in the immediate future, when the other side of the aisle will accept this bill also as their bill.

THE PRESIDENT: Thank you,

Senator Oppenheimer.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

A number of individuals have worked on this piece of legislation -- not this particular piece of legislation but this issue which is manifested by this piece of legislation. Certainly we've congratulated Senator Stafford, the Lieutenant Governor, Betsy McCaughey.

THE PRESIDENT: Excuse me, Senator Paterson.

Could we have it a little quieter, please, so we can all hear Senator Paterson?

SENATOR PATERSON: Yeah. I was saying Lieutenant Governor Betsy McCaughey and the other individuals who have worked so hard on this piece of legislation, particularly Senator Abate, and I was wondering if Senator Abate would yield for a question.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: I would be pleased to yield to Senator Paterson's question

or questions.

SENATOR PATERSON: Senator Abate, this is a motion to discharge and, as I see it, this -- and as the Senate rules state, this is not a procedure. I keep hearing people talking about a procedure. This is a motion that is a motion in the sense that any piece of legislation is moved, but what it does is it discharges this bill from committee. It passes through the Senate and is then sent to the Assembly. It does three things and, therefore, since I see this as action on legislation and so do the Senate rules, I thought it would only be appropriate that we discuss it as a bill and that those who have, for their own reasons, decided to look at it a different way, be represented in this conversation that I have taken it upon myself to represent them and my question is, there are a lot of insurance companies. There are a lot of HMOs. There are a lot of people who are concerned that the alternative treatments that are suggested by this possible legislation would do two things:

One would be to increase premiums. It would make it costly on the part

of those who are seeking insurance and secondly, that many of the medicines and the medications that would be prescribed would, in many senses, raise false hope. They would get people to think that there is a cure when, in fact, there may not be a reasonable degree of medical certainty that the legis... that the medicine is going to be effective, and I was wondering if you would clear the air on those issues and respond to those possibilities.

SENATOR ABATE: I would be pleased to respond. As I had said before, if we look at what has occurred around the country through their existing studies and practices, that costs do not rise with patient participation and clinical trials. In fact, if you look at the Sloan-Kettering study, if you look at the studies in Rhode Island and Washington State, they found the reverse. In fact, it became a prevention and allowed people to stay in their homes longer. It avoided costly and prolonged hospitalization. There were built-in savings, not the reverse. So everyone's feel is it will not, in fact, become the reality.

If you look at the study done again by the President's national health care panel -- and this is a physician out of Seattle, Washington -- again they found that the costs would not increase more than one-half of one percent.

Now, when we passed legislation recently -- and it was wonderful legislation - that said there should be coverage for mammograms and breast cancer diagnosis, we didn't ask, Well, will this cost a little bit more money? We appropriately responded and said there's certain things we need to do is put life over money and when the arguments here are it won't cost that much more money, then the arguments are that much more compelling for us to move this forward.

So the cost factor has been considered. There's experience and documentation around the country. Of course, we have to be concerned with dollars. I mean, that's why we're moving into managed care but there's nothing irresponsible in terms of cost about this bill.

In terms of quackery, what this

bill does instead is sets statewide standards around what should be reimbursed so that things that are not approved by medical associations do not become reimbursable.

Right in the bill it talks about which devices and treatments and drugs should be reimbursed. It's when a drug or device has been recognized for treatment of a specific disease or condition in the American Medical Association drug evaluation, the American Hospital Formulary Service Drug Information or the United States pharmaceutical drug information or is it one that's covered by the ADAP program, or is it one where it's a drug or device which is recommended for such use by an article or editorial comment, in a peer reviewed medical or scientific journal, or is the device an ongoing clinical trial approved by the Food and Drug Administration?

So we're not talking about quackery. We're not talking about spending unnecessarily needed resources to save and help to prolong people's lives. This is cost-effective. It is sound health care policy. This is about putting patients first.

And let me just remind everyone that this is a fair right of appeal. What we are saying is that the insurance companies should not have the final word, particularly in situations where doctors are recommending based on sound medical decisions that someone should receive a clinical trial.

What this bill is saying, there needs to be an independent review so that we - patients will be in a position to live a few more years in quality or maybe see their lives saved all together.

I hope that responded to your question.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Very well, indeed.

Madam President, Senator Abate should know that when I was a teenager, I fell on the school playground and they -- the school authorities took me to the hospital and they took an X-ray and they called up my parents and they said X-rays of David Paterson's head showed nothing, but while I was being examined, the doctor told me that the X-ray was actually

invented in a butcher shop when someone turned an infrared light -- or an ultraviolet light on the meat and it was actually the vision of the individual that made them realize what the value of this accident had actually produced, and that's what they call in medicine serendipity and Senator Dollinger referred to it earlier in terms of the discovery of penicillin and Dr. Jonas Salk used it in the invention of the Salk vaccine. Actually, one of Dr. Salk's students sued him, claiming that he had actually discovered the Salk vaccine but it was revealed in the court case that there had actually been over 100 students that were testing different types of solutions and this was just the one that produced the vaccine. It was actually the doctor who supervised the examination that produced the vaccine. So what we find as the colloquialism tells us that necessity is the mother of invention.

What often happens in our society -- and it's no one's fault. It's not the fault of any HMO. It's not the fault of any insurance company and it's not the fault of any agency that involves health care, but we

institutionalize our processes. We become used to certain methods in which we try to fight diseases and viruses, and we've done that particularly with cancer and the HIV virus but to such an extent and we become so heavily dependent on these institutions that often we lose sight of the fact that we haven't found a cure for these maladies that are killing so many people far before the time that they should have lived.

And so by passing this piece of legislation, we would actually be opening the door to allowing our best and our brightest to go after these viruses and to go after these diseases and to give them the greatest chance to cure the necessity that we seek through invention.

Unfortunately, it is historical that societies have never really stood behind those who went where others had not gone to actually try to alleviate some of the maladies of their time.

Thousands of years ago somebody invented fire and, although I think they were probably burned at the stake that they taught

their brothers and sisters to light, they offered the world a gift and forever lifted darkness from the face of the earth, but if you examine history throughout the centuries, there have been men and women who took steps down new roads armed with nothing but their own vision.

The great inventors, the thinkers, the artists, the scientists stood alone against the societies of their time. Every new thought was opposed. Every new invention was denounced but these people who had an unbarred vision went ahead. They fought, they suffered and they paid but they won and what they won are all of the inventions and all of the man and woman made cure to maladies of our time and of times before that make it possible for us to stand here today and what Senator Abate is offering is an opportunity for us to discharge this legislation and to give those who are able to find remedies to these unfortunate situations, these diseases and maladies that are so crippling our society, to give them a chance and to give the families of the suffering an alternative when the insurance company or when some body feels that it isn't

cost-effective to go forward with another treatment. It gives them hope. That's what this legislation does and I beg, Madam President, that it passes.

THE PRESIDENT: Thank you, Senator Paterson.

Senator Skelos.

SENATOR SKELOS: Yes, Madam President. Are there any other speakers?

THE PRESIDENT: Would anyone else like to speak on the motion to discharge?

(There was no response.)

SENATOR SKELOS: I understand, Madam President, that the Minority will be calling for a slow roll call. So prior to the vote, I just want to clarify a couple of things.

Senator Gold mentioned that the Republican Party is not prepared to take the ideas of bright women. Let me say, I'm willing to take the ideas of our bright Senator Rath any time who has a wonderful future in our party and I also want to clarify the fact that Senator Paterson, my good friend, indicated that it's not procedural but a motion is merely to bring

the bill to the floor for consideration by bypassing the committee process. A vote on the motion is not a vote on the merits of the bill. A vote on the motion is merely a vote on whether the normal procedure under the rules should be suspended or not.

One of the things about our Majority is that we are result-oriented. We've ended drive-through mastectomies. We're paying now for reconstructive breast surgery, for mastectomies, pesticide registry bill, 48-hour maternity, baby AIDS bill and let me just say this. As far as I'm concerned, I am going to vote against this motion to discharge because I would prefer to work with Senator Stafford on this legislation as so many other people because of his sensitivity and his personal knowledge in this area, and I am confident that in the near future there will be a bill as those that I have enumerated that this Majority will be voting for on the merits rather than a procedural vote which is merely political pandering.

So I would urge the members of the majority to defeat this motion.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I think that those who are benefiting from the passage of this legislation would never remember or care whose name is on it. I don't think it makes any difference whose name is on it.

The vote we're going to take right now is because Senator Abate has moved to discharge this legislation because this is an issue that's affecting people right now. Anybody else that has a bill, anyone else that has a suggestion, anyone else that has an answer could have brought it to the floor today. The fastest way to get relief from this particular problem, with all due respect to those who have worked on it -- and I thought that many members from this side of the aisle pointed out the extraordinary work that Senator Stafford has performed and the very adroit proposal that the Lieutenant Governor has made and what we're saying is that this legislation is here and now. We are result-oriented, and if this motion for discharge is sustained by an affirmative vote, then this bill can go to the Assembly this

afternoon and the results will inure to the benefit of people and will inure before the sun falls from the sky today.

SENATOR SKELOS: Will Senator Paterson yield?

THE PRESIDENT: Senator Paterson.

SENATOR SKELOS: Senator Paterson, if there was a -- if the motion to discharge passed, are you saying that the bill would automatically go to the Assembly?

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Well, that's my reading of the rules, Senator.

SENATOR SKELOS: It's my understanding that -

THE PRESIDENT: Senator Skelos, please direct your question to the Chair.

SENATOR SKELOS: Madam President, it's my understanding that the bill, if the motion did pass, would be placed on the calendar but there would be no requirement under our rules to take up the bill at that time.

All a motion to discharge is is a process by which you prematurely want to discharge a committee and a committee chair from

their responsibility in eventually reporting or not reporting a bill to the floor.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I'm very glad that Senator Skelos asked that question because it gives us a chance to clear that up. There's been some, I guess, dispute among people who have a good reading of legislation. I've let you know what I think it does. I think that it will pass the legislation and it will go to the Assembly.

Senator Skelos very eloquently stated that he thinks it will just bring the legislation to the floor. Right after this motion to discharge passes, maybe we'll get up and we'll have another discussion as to what we should do then.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah. Would the distinguished Deputy Majority Leader yield to one question, please?

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Yes, Senator Gold.

SENATOR GOLD: Senator Skelos, I don't care about the technicality of the rule. I want to ask you a question.

Are you saying to the public and to this chamber that if 31 or more members of this chamber voted to discharge a bill from committee, that the Majority Leader would then say "Yeah, yeah," to all of you and not bring it up for a vote, that the Majority Leader would say in spite of the fact that we have now broken some precedent and brought it out and it's there ready for action, I'm not going to pass it because it didn't come through my committee? Are you saying that?

SENATOR SKELOS: I'm not saying that.

SENATOR GOLD: Then what's the difference?

SENATOR SKELOS: I'm saying that there is a committee process that exists in the Senate and when the committee makes its decision as to whether a bill should come to the floor or not, then there would be a vote on the merits. This is merely a procedural charade on the part of the Minority.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yes. We don't have to go back and forth, Senator. We both understand this situation.

The fact remains that if 31 people today voted to put this bill out of committee, then the Majority Leader, on his birthday, I think would respect the fact that we wanted that to be a law and that we would all vote it and it would be out of here, and whether you do it in one vote or whether you do it in two votes is irrelevant. The fact of the matter is that we could be saving pain. We could be saving lives. We could be doing something significant.

We have that opportunity, whether it's one vote or two and, Senator Skelos, if you want me to vote once on the motion and you want me to vote once on the bill or you want me to vote four times on the bill, it doesn't mean a damn because I'm ready to do it and there are other people who are here ready to do it also. Just let us get to 31 and we'll make it a law.

THE PRESIDENT: Is there anyone else who cares to speak on the motion?

Senator Abate.

SENATOR ABATE: I feel compelled to rise again. Today is another rude reminder of why we need to change the way we do business. I am very proud to say that I look forward in the future to work with my Republican colleague to make sure we produce change that affects positively the lives of people in this state.

If we get to the point where Republicans can only work with Republicans, which was suggested today and Democrats with Democrats and don't in issues where we need to put our politics aside, we will not be fulfilling our responsibilities for whom those people have elected us.

So I look forward to the day where we can change the way we do business. When we agree about an issue, whether we're Republican and we think a Democratic idea is good, we stand up and have the courage to say let's do that because it's good for the people of the state of New York, or if I'm a Democrat and I want to applaud an appointment by the Governor or applaud a piece of legislation

that's sponsored by a Republican, I have the courage to do the same. When we all do that and we change the way we do business, we will not only be serving ourselves better in continuing the integrity of this body but also be fulfilling our responsibilities to the state, and all I can say is but for the grace of God, some day either we ourselves or a loved one will desperately need the passage of this bill and the protection this bill affords.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, under our state Constitution, under Article IV, Section 2, the Governor is vested a number of broad supervisory powers and in emergencies, we suspend a lot of rules because we don't have time to go through our normal processes and we take the highest ranking state official and invest a lot of trust in that individual who is elected because we understand that there is a need for immediate action.

What we're saying through the offer of Senator Abate's proposal is that this is an emergency for a cancer patient. Every day of delay is tantamount to another denial and to

a shortened life and what we're saying to people who are experiencing the peril right now is that we don't have time to wait for debate of what really to them must be some really pedantic procedures. We have to act now.

That's why Senator Abate brought this motion to discharge here today. That's why I don't think we should talk about it any longer. We would like to vote. We would like there to be a slow roll call. We urge that this pass.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I know there's been a slow roll call requested. Prior to the beginning of the roll call, there will be an immediate meeting of the EnCon Committee in Room 332 of the Capitol.

THE PRESIDENT: There will be an immediate meeting of the EnCon Committee in Room 332 of the Capitol.

Senator Paterson.

SENATOR PATERSON: Madam President, due to a long session today, both Senator Mendez and Senator Stavisky are going to be forced to leave. May we call their names and

allow them to vote on this roll call?

THE PRESIDENT: Yes. No objection.

SENATOR SKELOS: Perhaps what we can do is call their names and then members of the EnCon Committee who wish to attend that meeting could also be recorded.

SENATOR HOFFMANN: Madam President.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Yes. I'm a member of the EnCon Committee, but I'm also very supportive and interested in the outcome of the slow roll call that will take place on this motion for discharge, and I would just ask that the Senate could stand at ease for a few moments until we complete the EnCon meeting or the EnCon meeting could be postponed until after session.

SENATOR SKELOS: Continue with the slow roll call.

THE PRESIDENT: We'll postpone the EnCon meeting then.

SENATOR HOFFMANN: Thank you.

I'm not clear on what the -- what the Deputy Majority Leader is suggesting.

SENATOR SKELOS: We will start the slow roll call and prior to that, Senator Stavisky has asked to vote, Senator Mendez has asked to vote and then any EnCon Committee member who would like to vote will record their votes and then we'll continue with the slow roll call in normal order.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: I would just like to ask the Deputy Majority Leader, why can't we wait five, ten minutes until the EnCon Committee -- and have the EnCon Committee meet at the end of the slow roll call?

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I had asked out of courtesy to Senator Mendez and to Senator Stavisky who have been waiting patiently that we have their names called. Can we have their names called before -

SENATOR SKELOS: I think what we will do, Madam President, is if there's an

understanding that all of the members on the EnCon Committee, including Senator Stavisky and Mendez wish to vote, we will accommodate that. If not, we can just go by a slow roll call accommodating nobody.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I understand.

THE PRESIDENT: The Secretary will call the roll.

THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: No.

THE SECRETARY: Senator Tully.

SENATOR TULLY: No.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: No.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: I would like to have my name called to explain my vote.

THE PRESIDENT: Yes, Senator Hoffmann.

SENATOR HOFFMANN: Thank you.

I do believe the question that I asked was a very reasonable one and it troubles me that the New York State Senate, which seems to have so much difficulty meeting ordinary timetables such as the April 1st deadline, can't respect the interests of those members of the EnCon Committee who would also like to be present for a slow roll call. It seems to me a reasonable thing to do and in a chamber that is lately preoccupied with procedure to the Nth degree, I take it as a great disappointment and as a slight to those people who are concerned both about procedure, about democracy in its finest sense and about the environment, that we must make a rather unfortunate choice.

I will vote in favor of the motion to discharge. A compliment to Senator Abate and the Lieutenant Governor for having

brought a very important issue forward that unfortunately is not getting the attention that it deserves because the leadership of this house has chosen to relegate it to a position of non-meaning, forcing us to go through what is a parliamentary procedure instead of allowing it to be debated openly and fairly as though it had some merit to everyone in the state.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: No.

THE SECRETARY: Senator Wright.

THE PRESIDENT: Excuse me. Senator Leichter, why do you rise?

SENATOR LEICHTER: Well, I'm a member of the EnCon Committee and I would like to explain my vote before casting my vote.

Madam President, I think to force a meeting of the EnCon Committee at the same time that the roll call is being held shows really the disregard and the callousness that the Majority has to this very important bill and to this very important issue. There is absolutely no reason that the EnCon Committee

could not have waited 15 -

THE PRESIDENT: Senator Leichter, excuse me. I'm very sorry to interrupt you. You will be the next speaker but we had already called Senator Wright's name and he also wants to go.

Would you mind deferring to Senator Wright?

SENATOR LEICHTER: I would be delighted to yield to Senator Wright.

THE PRESIDENT: I'm very sorry.

Senator Wright, would you like to vote and then leave?

SENATOR WRIGHT: Thank you, Madam President.

I vote no.

THE PRESIDENT: Senator Leichter, thank you.

SENATOR LEICHTER: Madam President, you know, we hear a lot about order, and so on. All I see is chaos and disorder. Why schedule a meeting at the very same time that we're having a roll call on a very important issue? The only conclusion to be drawn is that the Republican Majority doesn't

care about this issue.

Let me also say that on a motion to discharge, this idea that they're somehow unimportant and they're just procedural, and so on, I don't know what that means. All I know is that yesterday if four members who claim that they support rent regulations had voted with the -- those of us who supported the motion to discharge, that motion would have passed and the tenants in New York City and the rest of the state who are being threatened by Senator Bruno would have been protected.

So let's be very clear what a motion for discharge means. It means that it enables the majority of Senators to take action and that's what we're trying to do on this important issue that Senator Abate has brought before us.

Madam President, I vote in the affirmative.

THE PRESIDENT: Thank you.

Continue the slow roll call, please.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Breslin.
SENATOR BRESLIN: Yes.
THE PRESIDENT: Yes. Proceed in regular order, please, beginning at the top of the roll call.
THE SECRETARY: Senator Abate.
SENATOR ABATE: Yes.
THE SECRETARY: Senator Alesi.
SENATOR ALESI: No.
THE SECRETARY: Senator Bruno.
SENATOR BRUNO: No.
THE SECRETARY: Senator Connor.
(Affirmative indication)
Senator Cook.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: No.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: Yes.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: No.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Madam President, I would like to explain my vote.

THE PRESIDENT: Yes, Senator Gold.

SENATOR GOLD: I want to clarify because Senator Skelos said some things, and I always listen when he speaks.

THE PRESIDENT: Please be quieter so we can all hear Senator Gold.

SENATOR GOLD: And when he pointed to our distinguished colleague Senator Rath as an intelligent woman who happens to be a Republican -- I happen to agree with you, Senator -- there's another intelligent woman, happened to be a Republican, a member of this chamber, Mary Goodhue, and it's quite obvious from your remarks that the Republican Party can only tolerate one intelligent woman at a time. I think that that's a shame.

If you take a look at our side of the aisle, we have Senator Abate and Senator Smith, Oppenheimer, Montgomery, Mendez, Santiago, Hoffmann, this party really believes that people ought to be judged by their merit

and their worth.

As for political pandering, Senator, when we had to listen to debates brought out by your side of the aisle on partial birth abortion, which was a one-house bill for political pandering, for your tax bills which are one-house bills which are political pandering, et cetera, et cetera, and on the issue of breast cancer, if the attitude of this Legislature is that "X" day is Breast Cancer Day, talk about it that day and don't bother me about it anymore, that's an absurdity.

One of the letters in support of this bill comes from the National Alliance of Breast Cancer Organizations and they refer specifically to this legislation as being legislation which would help women who have that particular problem.

Senator, I think it's absurd to say that you're bringing this up and the day is not Breast Cancer Day, but we were there at Breast Cancer Day with the Governor all getting copies of our pen certificates and, therefore, we don't have to do anything about it. We can do something rich today in terms of bringing

ease and comfort to people who have pain.

I vote yes.

THE PRESIDENT: Thank you, Senator Gold.

Please continue the slow roll call.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hoff... Senator Holland.

SENATOR HOFFMANN: Madam President, since my name was just called -

THE PRESIDENT: Just a moment.

SENATOR SKELOS: Madam President.

SENATOR HOFFMANN: Thank you.

Madam President, in the brief moment it took for me to explain my vote -

SENATOR SKELOS: Madam President.

SENATOR HOFFMANN: -- when the roll call was open -

THE PRESIDENT: Just a moment.

Senator Hoffmann, would you please just wait a moment.

Senator Skelos, are you raising an objection?

SENATOR SKELOS: Has Senator Hoffmann been recorded on this roll call?

THE PRESIDENT: Senator Hoffmann, have you already explained your vote once?

SENATOR SKELOS: Madam President, I asked you. Has Senator Hoffmann been recorded on this roll call?

THE PRESIDENT: Has she? Yes.

SENATOR SKELOS: Then would you please continue the roll call.

THE PRESIDENT: Senator Hoffmann, I believe the rule is that you can only explain your vote once.

THE SECRETARY: Senator Holland.

(There was no response.)

Senator Johnson, voting in negative earlier.

Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: No.

THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: No.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: (Negative indication).
THE SECRETARY: Senator Levy.
SENATOR LEVY: No.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: No.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Nay.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: No.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: Yes.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: No.
THE SECRETARY: Senator Meier.

SENATOR MEIER: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: Yes.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Yes.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: No.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: No.
THE SECRETARY: Senator Paterson.
THE PRESIDENT: Senator Paterson.
SENATOR PATERSON: Madam President, I would explain my vote, which I think I pretty much -- my position is in favor of this motion, but I was very disappointed to see that a committee meeting was actually scheduled at the same time as a slow roll call vote which is an inherent contradiction.

When we have a slow roll call, we turn the bells on. We're alerting everyone to come to the chamber. This is the most sacred of votes that we take. To schedule a committee

meeting simultaneous -- it would have only taken five to ten minutes to have conducted the roll call and Senator Hoffmann got up, explained her vote, which she has a right to do. She wasn't out of order. She explained her vote. By the time she got to the Environmental Conservation Committee, the Committee meeting was over.

So she came back here, really to, I would imagine, implore us that this is a bad procedure and this continues to be, this continuation of holding committee meetings at the same time that we're taking votes. People are coming in here and asking to be recorded unanimously -- for unanimous consent to be recorded. One member today forgot to ask for unanimous consent before voting no. Why would he have to have unanimous consent? He was being sent out of the chamber by the leadership of the chamber to a committee meeting.

I once attended every vote in this chamber in 1995. I never left this floor during the whole year. When I looked up at the names of the people that had perfect attendance, my name wasn't on it. You know why? Because I didn't leave to go to the committee meetings.

This process has got to be changed, Madam President, so that we can preserve even an order -- even a motion for discharge is part of our order. If the Majority doesn't like it, they can vote it down. They can get up as Senator Skelos did and give all the reasons why they think it's not a good thing to do but to take this procedure which is reflective of the character of the Senate going back to when our government first started in this state and to turn it into this kind of an activity that we're seeing today, in my opinion, is really bringing down the name of the New York State Senate and for members to miss committee meetings because they're voting or for members to miss votes because they're in meetings is something that I think is a misuse of taxpayer dollars. We have plenty of time here to address all these issues when we come to Albany.

THE PRESIDENT: Thank you, Senator Paterson.

Continue the slow roll call, please.

SENATOR PATERSON: Madam President, I voted right in the beginning. I

voted in the affirmative.

THE PRESIDENT: That's right.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Rosado.

SENATOR ROSADO: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Spano.

(There was no response.)

Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: No.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Explain my vote.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: I'll be voting in the affirmative but, Madam President, I would respectfully ask, even though we had a colloquy momentarily a few moments ago, to relinquish my time to the learned Senator from the Syracuse area, Senator Hoffmann.

THE PRESIDENT: I would be actually recognizing Senator Hoffmann immediately following the vote because I know she has something very important to say on this issue.

In case, Senator Waldon, would you like to comment on your own vote, explain your own vote first?

SENATOR WALDON: Most graciously, Madam President, I accept your decision to recognize the learned Senator.

My vote is yes.

SENATOR KUHL: Madam President.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: I can't hear Senator Waldon, and I know that a number of my colleagues would like to know how he's going to vote on this issue.

THE PRESIDENT: He is going to explain that right now.

SENATOR KUHL: Thank you.

Could we have a little order in the chamber, Madam President?

THE PRESIDENT: Senator Waldon, would you care to continue?

SENATOR WALDON: Thank you very much, Madam President.

I am so happy that I am recognized so many times to say yes.

Thank you very much.

THE PRESIDENT: Absentees, please.

THE SECRETARY: Senator Cook.

SENATOR COOK: No.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: No.

THE SECRETARY: Senator Spano.

(There was no response.)

THE SECRETARY: Ayes 25, nays 34.

THE PRESIDENT: The motion to discharge is defeated.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I think it's very important for the record to show there was a tremendous affront committed today for no apparent reason.

SENATOR KUHL: Madam President, point of order.

SENATOR HOFFMANN: After having been asked to leave the chamber -

SENATOR LACK: Point of order.

THE PRESIDENT: Excuse me, Senator Hoffmann.

A point of order is being made.

Go ahead, Senator Kuhl.

SENATOR KUHL: Yes. I thought we were on the order of motions to discharge and the roll call has been concluded.

THE PRESIDENT: And the results have been announced.

SENATOR KUHL: That's correct. And for any member to be recognized to make a statement requires unanimous consent of the members of this body. That is in the rules, and so I'm raising the objection at this time, a point of order, Madam President, that for a member -- Senator Hoffmann or for any other member to speak to any issue that's not in the regular order of business requires unanimous consent of this body and that has not been asked for at this point, and so the speaker who is - you have recognized at this point is inappropriately addressing this body.

THE PRESIDENT: Senator Hoffmann, would you care for me to request the unanimous consent of the body in order for you to speak?

SENATOR HOFFMANN: We can try that.

Thank you, Madam President. We'll try that first.

SENATOR KUHL: Madam President, if I might be heard for one more sentence.

THE PRESIDENT: Go ahead, Senator

Kuhl.

SENATOR KUHL: That recognition can only occur under the rules of this body at the completion of the order of business of the day. So any address by any member at this point is totally inappropriate and beyond the rules of this house and that's the reason for which I make the point of order.

THE PRESIDENT: Senator Hoffmann, would you care for me to request the unanimous consent of this body -- just a moment, please - at the close of business according to the Senate rule?

SENATOR HOFFMANN: Yes, I would appreciate that.

THE PRESIDENT: I will do so.

Thank you.

The Secretary will read.

SENATOR PATERSON: Madam President, if I understand correctly -- because I stated in the explanation of my vote what Senator Hoffmann may be getting at -- Senator Hoffmann is really raising a point of high - extremely high personal privilege which, in my opinion -- and I'll stand by the Chair's reading

-- doesn't require unanimous consent of this body, least of all -- but that's my understanding of what she's stating.

SENATOR KUHL: Madam President, if there's already a point of order that's been raised that's on the floor, I think that requires a ruling before you can go to any other kind of a request. Then I would ask that that point of order be ruled on at this point.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, the record will reflect that the point of order instructed Senator Hoffmann that she had to request unanimous consent and when you asked her if she would request it, I don't think that Senator Hoffmann at that point was aware of what her options were. She wasn't making just a statement that was an addendum to any other conversation. She's raising a high personal -- a high point of personal privilege and I want Senator Hoffmann, through you, Madam Chair, to know that she doesn't have to request unanimous consent and she at this point should withdraw the request and then -

THE PRESIDENT: Senator Hoffmann,

I'm looking at the rules right now. I will make a statement on this.

SENATOR PATERSON: Madam President, I would just suggest that Senator Hoffmann -- she take the course that will win.

THE PRESIDENT: Senator Hoffmann, would you please wait just one moment.

I'm citing Rule IX, Section 4, paragraph (b), which reads that "after the completion of the order of business for the day and with unanimous consent of the Senate, a Senator may make a statement not exceeding 15 minutes in length concerning a subject or matter not pending before the Senate for consideration."

SENATOR HOFFMANN: In that case, Madam President, I would very much like to request unanimous consent, as has been suggested by the Acting Majority Leader, so that I may make a brief statement.

THE PRESIDENT: Thank you.

Before the close of business of the day, I will make that request for unanimous consent.

SENATOR HOFFMANN: In the event

the request for unanimous consent is, for any reason, not permitted, then I would, of course, request a point of personal privilege to make a brief statement.

THE PRESIDENT: Thank you.

Senator Kuhl.

SENATOR KUHL: May we continue with the order of the day. I believe there's another motion to discharge at the desk.

THE PRESIDENT: That's right, and we're waiting to hear from Senator Paterson.

Senator Paterson.

SENATOR PATERSON: Thank you.

We have another motion to discharge, Madam President, that has been proposed by Senator Abate. I would wish that we would read that motion and Senator -- and recognize Senator Abate to explain it at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Print 2025, by Senator Abate, an act to amend the Criminal Procedure Law, the Penal Law and the Civil Rights Law, in relation to strengthening

civil rights protections.

THE PRESIDENT: Senator Paterson, is Senator Abate -- oh, there you are.

Senator Abate.

SENATOR ABATE: Madam President, I ask to waive the reading of a motion to discharge on Senate Number 2025. I don't know whether that had been done, and I would like the opportunity to speak before this chamber. I know it's many hours of talking but this is a very important bill, many -- and this is the bias-related violence or intimidation act, and many may say, well, why are we doing this? The time is certainly right for us to do something.

This is not a new issue. When I was the executive deputy commissioner of the state Division of Human Rights, we did a report -- and this was in 1987 and 1988. There were hearings held statewide. The Governor's Task Force on Bias-related Violence, made up of people from all religions, ethnic and religious and racial groups around the state, came forward with a number of recommendations. This is a book full of recommendations.

One of the very important

recommendations was that we need to look to strengthen existing laws, protect victims of bias-related violence and what was on the books then and continues to be does not provide adequate punishment or deterrence for those individuals who wish to engage in this heinous activity.

So what this bill does is recognizes the fact that bias and hate violence is not going away. We see reports about how crime is going down, but we're not seeing the same reports that hate crime and violence is also decreasing.

So if we're going to send a message -- and we always talk about being tough on crime and protecting our citizens, talking about common sense approaches to enhance public safety -- we need to discharge this out of committee, have a full debate and make sure we end violence against individuals based on race, creed, sex, age, religion and sexual orientation.

This bill creates a new crime of violent -- excuse me -- a new crime of bias-related violence or intimidation in the

second degree, which is punishable as a D felony and also the first degree which is punishable as a C felony.

Within the bill there are safeguards so that it requires a district attorney to file a special information. It allows the court to dismiss in the interest of justice if they feel the prosecutor has not followed the legislative intent of this bill. It provides for consecutive sentences but also in the interest of justice, the court can provide concurrent sentences. So built into this are safeguards, but we need a law that punishes severely these crimes which affect individuals and the families and the communities which these individuals identify with.

This bill is not about prosecuting any case in which there's a victim of violent crime simply because a member -- the victim is a member of any particular group. This is not about prosecuting crimes because the victim and defendant are of different races or religious or ethnic backgrounds. This is a bill to punish severely those crimes committed against individuals because of pure hatred and

pure violence.

I know from the days when we had these statewide hearings, I know from the days when I was chair of the state Crime Victims Board, I've seen the pain and suffering of individuals and their families when a neighbor has endured a crime against them because they are African-American, because they are Latino, because they are Jewish, because they are gay and lesbian. These are crimes that cause whole communities to suffer. These are crimes that cause individuals and their families to leave a neighborhood because they no longer feel safe. These are crimes when one individual of that group is victimized but it has enduring and lasting pain and suffering that affects an entire community.

So let's do what I believe is what -- we're consistent in this body. We care about crime. We care about crime victims. We want to be tough. We want to be responsible. Let's move this bill, discharge it so we can have a full debate. Why are we waiting any longer?

We have two governors that have

supported this bill. We've had Governor Cuomo and now Governor Pataki. We have had the Assembly pass this bill since 1987. We've had bipartisan support, Jewish support and Catholic support and much other support around this bill. The time is overdue. The time is now to move this out of committee, to discharge this vote and debate this issue today.

THE PRESIDENT: Thank you, Senator Abate.

Senator Lachman.

SENATOR LACHMAN: Thank you, Madam Chair.

Ladies and gentlemen, recently Governor Pataki, the Assembly leadership and individual Senators have spoken out on the need for a hate crimes bill. The Abate bill is one of these attempts to respond to a serious problem not only in New York State but throughout American society. This legislation makes bias-related violence or intimidation a criminal offense.

There is currently no law imposing criminal sanctions for acts of bias-related violence. Now, this session, you

and I have recently and correctly passed penalty legislation on juvenile offenders and it is now time to do the same for those who commit violent hate crimes. This is especially necessary now since the New York City Police Department has recently reported a 27 percent increase in bias-related crime while overall general crime has dropped for the fifth consecutive year, in the last year by 15 percent.

In some of the very neighborhoods that I represent, we have seen -- we have witnessed the brutal beating of an African-American youth simply because of the color of his skin. We have witnessed swastikas on private property and we have witnessed the defacing of synagogues and Catholic churches with symbols of hate.

These acts of wanton hatred have recently been condemned by such groups as the ADL, the American Jewish Committee, the American Jewish Congress, the JCRC, the National Association for the Advancement of Colored People, the Catholic Inter-Racial Council, as well as Jewish, Baptist, Catholic churches among others.

Rarely -- rarely in New York City have editorials of the four major dailies, the Times, the News, the Post and Newsday, all responded by saying it is time -- it is time for a bias -- a hate crimes bill to be enacted. We, you and I, have it in our power in this chamber to enact legislation that would severely punish perpetrators of hate crimes, and since I realize that a debate, especially a debate on a procedural issue, does not necessarily create legislation as we have witnessed this afternoon as well as yesterday, I would like now to reach over to the other side of the aisle, but not the way it was done in the House of Commons in London but a few hundred years ago.

Now, I don't know the exact difference in terms of length between where Senator Tully is sitting now -- seated now, and where Senator Kruger is seated now, but if Senator Tully and Senator Kruger had been in the House of Commons a couple of hundred years ago and neither of them are really that old, they would be directly opposite each other and they would be opposite each other facing each other the length of two swords pointed towards each

other, and if you walk into the House of Commons today, and you walk in with two swords, Senator Tully carrying one and Senator Kruger carrying the other, and they lifted their swords up and directed it towards each other, the tips of the two swords would touch, and the reason for it barely touching and not going beyond that was that the two major parties in a blustery debate would not really take their swords out and dash it further than the tip of the other sword into the opponents.

Now, we have gone beyond that in this august chamber known as the Senate of New York State. I would like, at this point, to reach over to Senator Tully and Senator Kuhl's side of the aisle, not with a sword in my hand but with an out stretched hand in a non-partisan spirit, to reach a non-partisan goal.

Ladies and gentlemen, I am wedded to the elimination of hate crimes and not specifically to the specific language of this particular bill or other bills, some of which I might very well change in order to achieve our goal and send a most important message to all the citizens of our state and especially the

young people of our state. Let us together send this message to all. Let us together sit down and negotiate. Let us together say, that hate crimes will no longer be tolerated in New York State. A hate crime in this state and in this nation is entirely unacceptable behavior. It is undemocratic behavior in the United States. It is, my friends, un-American.

THE PRESIDENT: Anyone else care to speak on the motion?

SENATOR DOLLINGER: I believe, Madam President, we've been through this discussion before about hate crimes and it seems to me that there's a very, very simple description of that: A swastika on the wall in the town of Brighton is not defacing a building. It's a crime of height; it's a crime of intimidation to the people that I represent who are Jewish. Similarly words spray painted on the Charlotte bath house in Rochester against African-Americans, that's not defacing a building, that's a word of intimidation and hate.

I stand up here today because I don't want the person who does those kinds of

things to simply be found guilty of defacing a public building. I want them to be held accountable for their acts of hate and violence because only, Madam President, if we pass this bill and send a message about destruction of property and that putting those kinds of racial, hate symbols on buildings is unacceptable, maybe we'll pass even a bigger message that perpetrating violence against those groups is detestable, against the law and something that doesn't belong in America.

We start with simple things like defacing buildings. If you look at the history of oppression on this planet, you will find that the epitaphs first appeared on buildings and secondly, they took people away. The place to stop is by sending a message that it starts right by putting things on buildings and it leads -- and that we're not going to let it lead to violence against individuals. That's what hate crimes are all about.

It's time we put an end to them. It's time we followed the federal lead. There's a federal civil rights statute. It's against the law to do it in the federal government. It

ought to be against the law to do it here in New York State. Let's have it. We've got a chance to do it. This Attorney General supports this. This Governor supports this. We can have a bill; we can have a law. We haven't done anything this year. Let's do something now.

THE PRESIDENT: I'm sorry. Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President. Thank you very much, Senator Montgomery.

Eddying below society's surface or maybe I should say eddying below the surface of our society are the hate crimes and when they manifest themselves openly an atmosphere is created which allows a young boy trying to get on a ride in Brooklyn to be beaten with baseball bats and metal bars just last week, simply because he was black. He had no confrontation with the people at the bazaar other than he was black. The kids who were creating the problem were all behind him, but he was the one who was victimized and is now critically ill in a hospital simply because he was black.

A young man with a machete in his

hand running away from the police just this past week was killed, I believe, simply because he was black, and I think that America in general but New York in particular has to look into the mirror of life and recognize that the hate that is internal and eddying below the surface is manifesting itself in wanton acts of criminality even by our police, and so it's a good thing that we're doing here. Hopefully it will have a salutary effect not only on hate crimes per se, but on our behavior in general and specifically in terms of the violence which happens to certain people.

I use as an example the death of one young man and the severe injury of another who happen to be black, but no line is drawn in regard to these hate crimes. My Jewish brothers and sisters suffer, my Asian brothers and sisters suffer. All people suffer when this kind of insidious virulent behavior is allowed to exist in our society.

I would implore you to decide on the side of righteousness and to do as best as you can to eliminate totally hate crimes and hatred in our society and the violence which

follows.

Thank you very much, Madam President.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President.

I rise to support this motion, and I want to thank my colleague, Senator Abate, and also Senator Lachman, for bringing this motion or attempting to bring this motion to the floor and have it actually passed because we know that it's the kind of hate that has resulted in the burning of churches, black churches in the south, and we know that it was simply vicious hatred that has resulted in the deaths of so many young people as Senator Waldon has pointed out, including Yusef Hawkins in Bensonhurst, and a young man in Long Island who was badly beaten simply because he happened to be part of, I believe, an inter-racial couple.

We know that people who are gay and lesbian individuals are viciously beaten and often killed simply because of this hate, and we also understand that in the state of New York we

have the largest number of hate groups of any state in the nation including Mississippi, Alabama, and other places of that sort.

So that this is really, this motion is an attempt for us in this Legislature to make a statement, I believe, to our citizens in New York State as well as to become a symbol for other states and other legislatures throughout this country that it is our role and responsibility to speak on this -- to this problem. We have -- we accept the fact that it exists and that as legislators, as law makers and as people who represent the highest level of authority in relationship to government in our state, send our specific signal that we oppose and abhor this kind of crime and that is that we should enact our bigotry and our racism and our vicious dislike of people simply because they are different from ourselves in some way, in one way or another.

So I would hope that we could consider this motion as a very high order, as a very important step in New York State to speak to this most heinous kind of crime and to send a message that we do not in any way support this

kind of behavior as citizens in our state.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Montgomery.

Does anybody else care to speak. Ah, Senator Oppenheimer.

SENATOR OPPENHEIMER: Thanks.

The Governor came to Westchester County a couple of months ago to announce this program bill and he came to Westchester because unfortunately we've had almost weekly incidents of graffiti, hate graffiti, and unfortunately in these instances in my own community where swastikas have appeared on many homes. Indeed the police patrols are much higher this week in Westchester County in anticipation of further hate crimes because it appears that they often occur around the Jewish holidays. So this is not a happy environment in which we are living.

One might say, why increase the penalty for a hate crime? A crime is a crime. A hate crime really isn't against just an individual or a individual's home. A hate crime really involves the entire community that believes or looks or acts like that person

that's experiencing the graffiti or the hate. It is a whole entire community that feels threatened, that feels frightened, and that feels pain and that is why the penalty has to be more for this kind of a crime.

One of my colleagues said that this is just a precursor to more violence. I am married to a man who came out of Germany because there was writing on the walls of his home and he is alive today in America because of what his family read into that writing.

We want to stand in this country against hate crimes, for the blessings of democracy and for the belief that all people are created equal, deserve the protection of the law, and I would hope that in this particular instance since it is so supported by the Governor that the other side of the aisle would give their vast support for this bill also.

THE PRESIDENT: Thank you, Senator Oppenheimer.

Is anyone else planning to speak on this motion for discharge?

(There was no response.)

On the motion, all in favor

signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR KUHL: Party vote in the negative.

THE PRESIDENT: Have the roll call, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 25, nays 35.

THE PRESIDENT: The motion is defeated.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we return to the order of reports of standing committees. I believe there are four reports at the desk. Like to have them read and directed to third reading.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Senator Levy, from the Committee on Transportation, reports the following bills:

Senate Print 102, by Senator Levy, an act in relation to requiring the

Commissioners;

604, by Senator Levy, an act to amend the Vehicle and Traffic Law;

610, by Senator Levy, an act to amend the Vehicle and Traffic Law;

784, by Senator Cook, an act to amend the Highway Law;

920, by Senator Levy, an act to amend the Transportation Law;

922, by Senator Levy, an act in relation to authorizing the Commissioner of Transportation;

995, by Senator Levy, an act to amend the Vehicle and Traffic Law and the Public Health Law;

1891, by Senator Present, an act to amend the Highway Law;

2043, by Senator Maltese, an act to amend the Vehicle and Traffic Law and others;

2373, by Senator Lack, an act to amend the Public Authorities Law;

2375, by Senator Lack, an act to amend the Railroad Law and the Criminal Procedure Law;

3671, by Senator Rath, an act to

amend the Vehicle and Traffic Law;

3727, by Senator Levy, an act to amend the Vehicle and Traffic Law;

3915, by Senator Levy, an act to amend the Vehicle and Traffic Law;

30389, by Senator DeFrancisco, an act to amend the Public Authorities Law.

Senator Present, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 764, by Senator Present, an act to amend the State Administrative Procedure Act;

1660, by Senator Wright, an act to amend the State Administrative Procedure Act;

3685, by Senator LaValle, an act to amend the Public Authorities Law.

Senator Cook, from the Committee on Education, reports:

Senate Print 369, by Senator Cook, an act to amend the Education Law;

955, by Senator Cook, an act to amend the Education Law and the Family Court Act;

2884, by Senator Johnson, an act

to amend the Education Law;

3054, by Senator Wright, an act to legalize, certify and confirm the acts of the Central Square School District;

3164, by Senator Stafford, an act to amend the Education Law and Chapter 698 of the Laws of 1996;

3209, by Senator Skelos, an act to amend the Education Law;

3473, by Senator Marchi, an act to amend the Education Law;

3996, by Senator Volker, an act to amend Chapter 198 of the Laws of 1978.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 2246, by Senator Marcellino, an act to amend the Environmental Conservation Law;

3560, by Senator Wright, an act to amend the Environmental Conservation Law; and

4130, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered direct for

third reading.

THE PRESIDENT: All bills direct to third reading.

SENATOR KUHL: Madam President, is there any other housekeeping at the desk to take care of at this time? Does that take care of all the reports of standing committees?

THE PRESIDENT: Yes. We don't have any other reports, do we? We have a committee report.

SENATOR KUHL: There's one more committee report. O.K. Let's do it. It's the order of the day except for that, and I think we'll wait for that a few minutes.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Would it be in order for me to request unanimous consent at this time -

THE PRESIDENT: I think we're ready for one more committee report and then, of course, I will be recognizing you to make that request.

SENATOR KUHL: Madam President, we have no objection to her making -- Senator

Hoffmann making that request at this time.

THE PRESIDENT: Excellent.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I'm pleased to be able to take the floor to further clarify my vote as I had hoped to do somewhat earlier. I think it's very important that several things be placed on the record this afternoon in light of the afternoon's events.

On the issue of discharge motions, I developed a fair sense of familiarity having first started doing motions to discharge some seven, I believe, years ago myself. I observed an interesting phenomenon take place. The very first year that I brought forth several motions to discharge in an attempt to make some significant reforms to our legislative process, I witnessed a change in the Senate rules. It was a very remarkable reaction. There was a statewide recognition that there was something very strange about the way the New York State Senate operated when something as basic as a discussion of open meetings, a line item budget,

the late night sessions, the filing of campaign contributions in a single location, when issues of this sort could only come to the floor under this arcane parliamentary procedure known as a motion to discharge. There was a sense of outrage around the state. Many people who had never before paid any attention to the way we conduct our business, took a good look at the way the Senate operated and very autocratic way in which the leadership at that time forced a Minority member of this house into an insignificant role, denied all Minority members the opportunity to have their bills heard in committee, denied them the opportunity to have their bills voted on the floor and then when forcing them into this arcane parliamentary procedure called a motion to discharge would further insult them by suggesting that they weren't real issues being brought up. They weren't real motions. They were motions to discharge. They were not bills coming to the floor. Therefore, they didn't count.

After doing that for a couple of years, I witnessed the change in the Senate rules which further constricted my already

limited ability and the ability of any other Minority member in this house to be heard and the rules were changed so that no longer could I introduce a motion to discharge at my own choice of time, but it was only at the direction of the Majority on a specified date or one of the series of specified dates on which I could choose and only at the end of session, no longer at the beginning of session.

It's not surprising to me that now as I'm attempting to explain the vote that I took some time earlier today there are only, I think, five, six members of the Republican Majority remaining in the chamber. That indicates to me the level of interest for not just my comments on this matter as I was instructed earlier by the acting Majority Leader, I would have to speak at the end of the day's business. There is no desire to hear what I have to say on the part of the Majority. It is clearly regarded as an intrusion into the orderly way of doing business established by Senator Bruno in this house.

But what troubles me even more is the way are in which several of my other

colleagues have been treated in their attempts to bring up motions to discharge today and, in particular, the very important issue dealing with something that many of us take seriously and feel very pained over, the issue of breast cancer.

We're suddenly put in a situation where I, along with the other members of the EnCon Committee were told, not offered the choice, we were told that we would have to vote now and leave to go to the EnCon Committee or presumably not be allowed to vote at all on Senator Abate's motion to discharge a very important bill -- a very unfair, very Hobson's choice.

Having been given that choice, I dutifully left my vote in the Senate chamber, left to go to the appointed committee room only to discover upon my arrival at the committee that the meeting had already been concluded. The chairman was apparently unwilling to wait until the members arrived, even though we were instructed to leave the chamber after we voted.

Now, if this is the way the New York State Senate is going to conduct its

business, I suggest that it's probably time to have a total revision of our rules and instead of having 61 members traipsing into Albany every week at considerable taxpayer expense, I think the taxpayers of this state would probably be better served if we would phone in our votes. We could have two designated voters here. We could have the Majority and the Minority Leader and the rest of us could stay home, but that is not the way that the Constitution of this state is crafted. It is not what the rules of this Senate state.

We are expected to be here earnestly and sincerely debating on the issues of this state. We're also expected to be here putting a budget together, and we have not done that either. In fact, we've committed one of the greatest of all affronts and passed a six-week extender, announced that we weren't even going to be here for two of those six weeks and presumably have no more interest in the budget than we do many of the other pressing issues of the state because there are not any kind of budget discussions taking place, at least not any that anyone could observe or find

any input in, and speaking at least as a member of the Finance Committee I find that very objectionable.

I had hoped this year to bring out my motions to discharge reform bills. There are six bills in a package and after having been told what date was available, I had selected today as the date on which I would do those discharge motions. I had a pretty good idea going into today, going into this week, going into this whole session, that they would probably not pass, but I decided yesterday that I would not put everybody through this ordeal again because it was quite apparent from the experience we had yesterday that not only would they not pass but other motions to discharge would not pass, even when members on the other side of the aisle had committed to supporting the issues. On a so-called procedural matter, they backtracked.

So I think it's very important that people around this state realize that members of this Senate who are elected to represent 300,000 people in the 61 districts of the state do not all have the same opportunity

to be heard, do not have the same opportunity to introduce legislation and today, do not even have the same opportunity to speak on the floor of the Senate or to vote in the committee meetings to which they are assigned a voting responsibility.

It is because the leadership of this house has chosen to abrogate the power of individual members that I take the floor right now to register my utter distaste and indicate that it is clearly time for the Majority of this house to consider the effect that this type of behavior has upon all of the taxpayers of this state and to ask if the Majority would like to reconsider the way that motions to discharge are being handled. Allow these issues to be heard in the committee meetings. Allow the committee chairmen, all of us intelligent men and women in this house, allow them the opportunity to give these issues a fair and earnest airing. Do not force any member into the absurd position of going through the motions to discharge and then further insult not only our intelligence but the intelligence of the people of this state by saying it's purely procedural, and it has no

meaning and then turn your back on us and leave the chamber as well.

I think the time has really come for a change of heart and a change of rules in this chamber.

I thank the President for allowing me the opportunity to be heard.

THE PRESIDENT: Thank you, Senator Hoffmann.

SENATOR KUHL: Madam President, have the reports of the two missing committees arrived at the desk?

THE PRESIDENT: Yes.

SENATOR KUHL: Then may we return to the order of reports of standing committees and I'll ask the Secretary to read those reports.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Spano, from the Committee on Labor, reports the following bills:

Senate Print 1689, by Senator Farley, an act to amend the Workers' Compensation Law;

2842, by Senator Wright, an act to amend the Workers' Compensation Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 1786, by Senator Saland, an act to amend the Family Court Act;

3612, by Senator Saland, an act to amend the Executive Law and the Family Court Act; and

3618, by Senator Saland, an act to amend the Social Services Law and the Family Court Act.

All bills ordered direct for third reading.

ACTING PRESIDENT MARCELLINO: All bills direct to third reading.

SENATOR KUHL: Is there any other housekeeping?

ACTING PRESIDENT MARCELLINO: We're clean, sir.

SENATOR KUHL: There being no further business then, Mr. President, I move that the Senate stand adjourned until tomorrow, Wednesday, and note the time change, Wednesday, April 9th, at 10:00 a.m., 10:00 a.m.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned until tomorrow, Wednesday, April 9th, at 10:00 a.m.

(Whereupon at 3:02 p.m., the Senate adjourned.)