ALBANY, NEW YORK

April 16, 1997

11:02 a.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order. Ask everyone present if you will please rise and repeat with me the Pledge of Allegiance.

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

In the absence of clergy, may we have a moment of silence, please.

(A moment of silence was observed.)

Have the reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 15th. The Senate met pursuant to adjournment. The Journal of Monday, April 14th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr. President. On behalf of Senator Lack, please place a sponsor's star on Calendar Number 516.

ACTING PRESIDENT MARCELLINO: A sponsor's star will be placed on Calendar Number 516.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there is a privileged resolution by Senator DeFrancisco. I would ask that the title be read and that we move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 1051, honoring the students of the International Relations Club and 2-D Art Classes at Corcoran High School, Syracuse, for their participation in the 49th Senate District Good News! Good Kids! Youth Responsibility Program.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm pleased to have the students from the Corcoran High School present here today to honor them by the Senate passing this resolution.

As many of you know, we have a program in Onondaga County called the Good News! Good Kids! program. Unfortunately, nowadays we oftentimes only hear about the negative things that students do. Well, this program recognizes good works of students in our community and, in this case, the Corcoran High School has participated for several years in a program that recognizes and tries to help people in an international setting. They raise money and in the course of raising money, they provide good works throughout the world actually, and in this case, this year they raised $10,000 to fund a medicinal herbal garden for the people of Mali, which is a task that is sort of interesting to think that high school students would be in that situation to think about foreign students - foreigners in this type of fashion, raising money and also participating in activities such

as this.

They have done other projects in the past as well, and I just want to be here to recognize each and every one of them and to let people in our community know that we do have good students and good people doing the right things, and they should be recognized, and I salute all of you for your fine work.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

We have a vote on the resolution. All in favor of the resolution signify by saying aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The ayes have it and the resolution is passed.

Senator Bruno, with your permission, we have the chaplain from the United States Military Academy who will share the invocation with us.

SENATOR BRUNO: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO:

Thank you.

CHAPLAIN FRITTS: Would you please join me in prayer.

Our Heavenly Father, as we gather today to recognize the United States Military Academy, we first of all recognize You as the source of all good things. Praise God from Whom all blessings flow. Our Father, thank You for our great nation, for our freedom and prosperity. Thank You, Lord, for all who lead our nation and for all who serve as leaders of this great state. Thank You for our Military Academy. May we all continue to prove ourselves true to our mission and faithful in our calling. By Your grace enable us to show ourselves worthy of whatever honors we receive and, in Your great goodness, bless us and make us a blessing. We pray all this in Your holy name. Amen.

ACTING PRESIDENT MARCELLINO: Thank you very much.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe we have a privileged resolution at the desk. I would like to ask that it be read in

its entirety, and call on Senator Larkin.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Secretary will read Privileged Resolution 1049, by Senator Larkin.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 1049, memorializing Governor George E. Pataki to proclaim April 16, 1997 as West Point Day in New York State.

WHEREAS, this legislative body is justly proud to celebrate the establishment of the United States Military Academy at West Point and to call upon Governor George E. Pataki to proclaim April 16, 1997 as West Point Day in New York State, and

WHEREAS, by an act of Congress on March 16, 1802, the United States Military Academy was established within the borders of New York State on the banks of the Hudson River; and

WHEREAS, the Academy and its graduates are an integral part of the proud history of this state and nation; and

WHEREAS, the leadership and

sacrifices of the members of the Long Grey Line have helped this country withstand countless threats to our cherished democratic way of life;

Alumni have excelled not only on the battlefield but in many fields of endeavor;

The Academy continues to provide our country with able and dedicated future leaders;

Its scenic campus is a mecca each year for thousands of visitors from across the state, continent and other countries;

The United States Military Academy is in the forefront of our state's outstanding institutions of higher learning; and

WHEREAS, 46 years ago the late James T. McNamara, then a member of the New York State Assembly and a member of the Academy's class of 1939, was the author of the state Legislature's first West Point Day Resolution, and

WHEREAS, for decades our nation has enjoyed the legacy of freedom and the United States Military Academy at West Point has played a vitally significant role in the maintenance of

peace and freedom, and

WHEREAS, the members of this legislative body are equally as proud to commemorate this event marking April 16th, 1997 as West Point Day in New York State,

NOW, THEREFORE, BE IT RESOLVED, that this legislative body pause in its deliberations to celebrate the establishment of the United States Military Academy at West Point and to memorialize Governor George E. Pataki to proclaim April 16, 1997 as West Point Day in New York State, and

BE IT FURTHER RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Governor George E. Pataki.

ACTING PRESIDENT MARCELLINO: The Chair recognizes Senator Larkin.

SENATOR LARKIN: Joe?

SENATOR BRUNO: Mr. President, Senator Larkin, for the moment, is deferring to me, and I thank you for that.

I want to add just a welcome to General Daniel Christman, who has joined us here with these cadets from West Point. We are privileged, and we are honored to have you

here. General Christman is an example for all the cadets, for all of us, as a person that we can all look to in major accomplishments in his life. Not enough that he gets to be a general in the United States Army out of West Point, he has a Master's in civil engineering, in public affairs, I believe from Princeton, and he has a law degree, George Washington University - academically very impressive. But what is most impressive is that he followed, as many of these cadets will, Generals like Patton, Pershing, MacArthur, Eisenhower, Schwartzkopf, who have distinguished themselves as representatives of the free world throughout the world.

So, General, we are honored to have you here and we respect your leadership on behalf of all the people of New York State and the United States, and the example, the leadership, that you provide to the candidates, the cadets that are with you who will some day, one of which may be addressed as General, has accomplished.

I want to just take this moment to also welcome and congratulate Bryan Campbell, Cadet who is here who is a constituent of mine,

and, General, thank you very much for that, and General Traub is here. And, General, would you stand up? This gentleman is the class of '28.

(Applause).

Looks as if he's jogging about ten miles a day and still lifting about 210.

So we welcome you all here. We truly are honored, and I would like now, Mr. President, to defer to our very distinguished Senator, Colonel Larkin.

ACTING PRESIDENT MARCELLINO: Colonel.

SENATOR LARKIN: Thank you, Mr. President.

It is my honor and privilege to offer before this house the resolution that you heard read recognizing the United States Military Academy at West Point. I am proud to continue in the process that started with a member of the class of 1939 this resolution.

I would like to again extend a personal welcome to General Dan Christman, the class of 1965, and his staff and members, the West Point Society.

You know, 195 years ago, West

Point was chosen to be the home of the Academy. When you think of who's gone there and what they did in their life, Grant, Lee, Eisenhower, Patton, Schwartzkopf, these leaders share in a knowledge that you will, as you go forward not only strengthen the military, but you strengthen the nation and you provide the people of our country with pride and joy because you are the most proud, you are the exceptional, you are screened across the nation and we only accept for service academies the best, the brightest and those who will carry forward.

When General -- at that time, excuse me, Colonel Sylvanus Thayer became superintendent at West Point, he was an engineer officer and, you know, it was funny because for a long time he stressed the fact that engineers should be the only persons chosen to be the superintendent, but his actions were in two phases. He wanted to strengthen the academic and he wanted to strengthen the courage and commitment. He was highly decorated, well respected.

So when you look at today's position, 195 years later, when you think we are

now back to where Sylvanus Thayer was we haven't missed a superintendent, General Christman, who is an engineer officer.

General Christman has served in combat in Vietnam; he's had combat engineers, served as an adviser to two chairmen of the Joint Chiefs of Staff. I think one of the things that we look at today is, we have an Academy here that most of us look at and say, you know, West Point is a beautiful place and many of us visit there. As a matter of fact, General, I've heard that some people want to come out and be environmentalists and check the grass on the new golf course. I don't know about that.

I'd like to have the cadets, as I introduce you, to please stand.

First of all, the distinguished Superintendent of the United States Military Academy, an individual I call a friend, the class of 1965, General Dan Christman.

(Applause)

We're also very fortunate to have here today with us the Brigade First Captain, Deputy -- he won a promotion too quick I see -

Leticia Gasdick from California. (Applause)

Cadet Bryan Campbell, from my home town, Troy, New York. (Applause)

Cadet Kristen Carlson, from Staten Island. (Applause)

Cadet Douglas Chapman, from Great Valley. (Applause)

Cadet Aaron Coombs, from Addison. (Applause)

Cadet Sean Kilbride, from Garden City. (Applause)

Cadet Jeramie D. Fitzgerald, from Amherst. (Applause)

Cadet Kirsten Krucker, from Suffern. (Applause)

Cadet Jaimie Leonard, from Warwick. (Applause)

Cadet James Nati from Pine City. (Applause)

Cadet Stephen Rubright, from New York City. (Applause)

Cadet Allison Saunders, from New York City. (Applause)

Cadet Paul Voelke, from my district, Monroe, New York. (Applause)

Cadet Marie Elizabeth Wolff, from Queens. (Applause)

Cadet Vasiliki Zorbas, from Bay Side.

SENATOR GOLD: That's Queens too.

SENATOR LARKIN: Today's cadets, as you view them, represent the bright young people that will lead our nation. We have with us here today first team as we call them. I don't know how many corps we got here, I don't know, you tell them at lunchtime about it but, Mr. President, we must realize that the challenges faced by today's corps of cadets are vastly different than those encountered by many of their predecessors.

Today's second lieutenants must know how to move troops and equipment in hours not like it used to take many of us leaders, in months. The cadets sitting here today will be asked to serve their nation in Bosnia, Congo, Europe, the Far East.

Today's Army serves not only abroad but here at home, Mr. President. I must report that I'm especially fortunate to

represent the region that bears witness every day to what West Point means, not just in our economics.

Every day you can see something happening at West Point that has to do with the quality of life in the Hudson Valley. West Point is not an island within New York State. The Long Grey Line participates not only in our economy but in the hearts and souls of our community. The corps brings its daily life to our citizens, whether it's in education, scouting, clean-up, religion, education, training kids from inner cities, they're there day in and day out.

Duty, honor -- excuse me, honor, duty and country and a concern for others, Mr. President. It is upon this bedrock of values that each Cadet will build his or her career. It is an unchanging standard that we in New York must strive to embody. It is upon this bedrock that the future leaders of the United States Army will lead soldiers into harm's way if necessary to preserve the freedom on which our nation is founded.

We owe a debt of gratitude to the

United States Military Academy for bestowing on the state of New York all that is good in our nation. We thank General Christman, his faculty and staff and the corps of cadets for continuing to build on the bedrock that was started on these shores of the Hudson almost two centuries ago.

Thank you very much.

ACTING PRESIDENT MARCELLINO: We're on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

All opposed nay.

(There was no response.)

The resolution is passed unanimously, and the Chair would like to take this opportunity to welcome the commander and the cadets of the Academy. We wish you well, wish you long life, good health and Godspeed.

(Applause)

Senator Larkin, would you like to open this resolution up to the entire house?

SENATOR LARKIN: I most certainly will. I think it's a privilege, and I would ask that everyone join with me because in signing

onto this resolution, you're also saying we thank you for being here and for serving our country.

ACTING PRESIDENT MARCELLINO: We will open it up to the entire chamber. Anyone who wishes not to be on it, please notify us. Otherwise everybody will be placed on this resolution.

SENATOR BRUNO: I would at this time ask for a Rules Committee meeting in Room 328.

ACTING PRESIDENT MARCELLINO: There will be an immediate meeting of the Rules Committee in Room 328, an immediate meeting of the Rules Committee in Room 328.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there is another privileged resolution at the desk, by Senator Larkin. I would ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: We will move Resolution 1050, by Senator Larkin. The Secretary will read the title.

THE SECRETARY: By Senator

Larkin, Legislative Resolution Number 1050, honoring Edward D. Miller upon the occasion of his retirement after 38 years of dedicated service to the Chase Manhattan Corporation.

ACTING PRESIDENT MARCELLINO: Question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

All opposed nay.

(There was no response.)

The resolution is passed.

SENATOR BRUNO: Mr. President, I believe there is a resolution at the desk, by Senator Rath. I would ask that its title be read, move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read the resolution by Senator Rath.

THE SECRETARY: By Senator Rath, Legislative Resolution commemorating the 150th Anniversary of Temple Beth El of Greater Buffalo, New York.

ACTING PRESIDENT MARCELLINO: Chair recognizes Senator Rath. Excuse me. If we could please have some order in the chamber. I

thank you.

Senator Rath.

SENATOR RATH: Mr. President, I'd like to move for immediate approval.

ACTING PRESIDENT MARCELLINO: Question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

All opposed nay.

(There was no response.)

The resolution is passed.

SENATOR BRUNO: Mr. President, I believe there is another resolution at the desk by Senator Smith. I would ask its title be read and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read Resolution 1052, by Senator Smith.

THE SECRETARY: By Senator Smith, Legislative Resolution Number 1052 commemorating the 25th Anniversary of the Rockaway Revue, Inc.

ACTING PRESIDENT MARCELLINO: Question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")
All opposed nay.
(There was no response.)
The ayes have it. The resolution is passed.
Senator Bruno, we have a substitution at the desk. Can we take care of that?
SENATOR BRUNO: Yes, please do, Mr. President.
ACTING PRESIDENT MARCELLINO: Secretary will read.
THE SECRETARY: On page 5, Senator Maltese moves to discharge from the Committee on -- excuse me, the Committee on Consumer Protection Assembly Bill Number 3627, and substitute it for the identical Third Reading Calendar 607.
ACTING PRESIDENT MARCELLINO: Substitution is made.
Senator Bruno, we are at the non-controversial calendar.
SENATOR BRUNO: I believe we're ready at this time, Mr. President, for the non controversial calendar.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: On page number 22, Calendar Number 318, by Senator DeFrancisco, Senate Print 1939, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to requiring operators.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48, nays 2, Senators Kuhl and Maltese recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 363, by Senator Cook, Senate Print 722, an act to amend the Executive Law, in relation to reports by registered charitable organizations.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 449, by Senator Volker, Senate Print 3456, an act to enact the Criminal Procedure Law Reform Act of 1997.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 455, by member of the Assembly DiNapoli, Assembly Print 5299, an act to amend the Environmental Conservation Law, in relation to the definition of a public body.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT MARCELLINO: There is a message of necessity at the desk.

SENATOR BRUNO: I ask the message be read at this time.

ACTING PRESIDENT MARCELLINO: Read the message. Move to accept the message. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 468, by Senator Velella, Senate Print 3883, an act to repeal Section 4227 of the Insurance Law, relating to limitations on new business.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 470, by Senator Alesi, Senate Print 4012, an act

to amend the Insurance Law, in relation to making various technical corrections.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 520, by Senator Saland, Senate Print 3791-A.

ACTING PRESIDENT MARCELLINO: Excuse me. Gentlemen, ladies, if we could have some order in the house it would be a big help up here. Thank you. I'm sorry.

Continue, please.

THE SECRETARY: An act to amend the Surrogate's Court Procedure Act, in relation to the advance payment of fees of a guardian ad litem.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 528, by Senator Rath, Senate Print 3641, an act to amend the Real Property Tax Law, and the Real Property Law, in relation to taxation of converted condominium units.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 530, by Senator Rath, Senate Print 4054, an act

to amend the Village Law, in relation to making technical changes.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as such chapter.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator Trunzo, Senate Print 4421-A, an act to provide a retirement incentive for certain public employees.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT MARCELLINO: There is a message of necessity at the desk.

SENATOR BRUNO: Move its acceptance.

ACTING PRESIDENT MARCELLINO: Move the approval of the message of necessity. All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The message is approved. Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Bruno, that completes the controver... the non-controversial calendar.

SENATOR BRUNO: Can we at this time, Mr. President, return to the order of standing committees. I believe there is a report from the Rules Committee at the desk.

ACTING PRESIDENT MARCELLINO: Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 4119-A, by Senator Velella, an act to amend the Insurance Law.

ACTING PRESIDENT MARCELLINO: This bill needs a message. Without objection, we'll move it to the Third Reading Calendar.

SENATOR BRUNO: Lay it aside until the message arrives, Mr. President.

ACTING PRESIDENT MARCELLINO: Lay the bill aside until we get a message.

Senator Meier, why do you rise?

SENATOR MEIER: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar 318.

ACTING PRESIDENT MARCELLINO: Without objection.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. I'd like to place a sponsor's star on Calendar Number 404.

ACTING PRESIDENT MARCELLINO: A sponsor's star will be placed on Calendar Number 404 at the request of Senator Seward.

SENATOR SEWARD: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Bruno, may we take up the controversial calendar, please.

SENATOR BRUNO: Can we at this time, Mr. President, take up the controversial calendar.

ACTING PRESIDENT MARCELLINO: Thank you, sir. Secretary will read Calendar Number 449, Senate Bill Number 3456.

THE SECRETARY: On page 28, Calendar Number 449, by Senator Volker, Senate Print 3456, an act to enact the Criminal Procedure Reform Act of 1997.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Mr. President, this is a bill that passed this house unanimously the last two years and passed also, a piece of this passed as part of the Criminal Justice Omnibus Act of 1996, which did not pass unanimously and was voted on 47 to 12 by this house.

What this bill involves is that -- it's a comparatively small bill; that is, it is only a three-page bill -- but in all honesty it does have some wide repercussions in dealing with, again, a problem that has been occurring, in all honesty, on a regular basis in this state involving the Court of Appeals and the Appellate Division reinterpreting the law in this state and the Constitution, superseding rulings that have been in place for many, many, many years, allowing criminals to go free in cases that can only be termed as hypertechnical rulings that allow, in effect, clearly guilty defendants to go free.

On this floor here earlier this week, we discussed another bill and the saying was that people were frightened that somehow this was going to create some sort of havoc in the criminal justice system. I can assure you that some of the rulings that are being, in effect, changed in this bill involve cases that have created havoc in the criminal justice system, and I suspect very strongly it's partly because the Court of Appeals doesn't completely understand what has been occurring out in the

streets of this state, and to a certain extent throughout this country.

Now, there are a series of changes that are involved here, but let me just quickly get through them because I went through pages of this sort of thing and ironically though they come down to two very specific areas.

One area involves the case called the Ranghele case which is a case that threw out and has thrown out a number of murder cases, frankly, as well as other felony cases, and they relate to the failure to produce pre-trial statements and by no means, by the way, does this bill dramatically change that ruling except what happened here is that the Ranghele case basically said, even if the failure to produce a pre-trial statement as regards a witness did not prejudice the defendant or, in fact, was done inadvertently that after the entire proceeding was done the courts went back and threw the whole proceeding out, the whole trial, because of the fact that the technical rulings of the law were not specifically followed.

In the O'Dougherty case, that

case involves a section of the law that says that within 15 days or 15 days prior to the arraignment, the prosecutor must offer to the defense the -- his intent to offer statements of identification evidence, or confessions by the defendant.

In a number of cases, the prosecutor, in fact, was not even aware of some evidence that later came up either during the trial or afterwards and the prosecutor did inform the defendant -- the defendant, of course, already knew about it because the defendant was involved in the statements and in the identification -- a number of cases were thrown out on that basis.

What this bill would say is that the prosecutor must give the defendant reasonable time to review such confessions or whatever is involved, and if necessary adjourn the case to give the defense their opportunity to make sure that the defendant is given his proper -- proper due.

Another section of the law that has been, I think, probably one of the most abused by the courts, and I hate to say this but

I think it's a fact, was a famous case here in New York which is called People vs. Ricks and Mack, in which prior to the trial and during the process of picking a jury the defendant had been present, but the defense attorney left the defense to the defendant, to leave the room. In fact, a lot of defense attorneys would rather not have the defendants there for the entire process.

In any case, two jurors went before the judge and said that they had read some pre-trial publicity and, therefore, didn't feel that they should be jurors. The two were dismissed as jurors. The defense attorney did not object to the fact that the defendant wasn't there. After the whole trial was over, it was used as a means of overturning the entire decision in the murder case.

What this bill would say is and would allow the right to be present at all stages of the proceeding is absolutely essential and is sacred but that, if the defense attorney himself, his own -- the person who makes the decision doesn't object, doesn't ask that the defendant be there explicitly, doesn't bring up

any kind of objection, and there's no showing of any prejudice -- in this case there was no showing of any prejudice because the jurors were dismissed -- then the trial can obviously proceed and that can't be used as a means of dismissing the case.

Another major piece of this would be in identification testimony, and I think this particularly applies to New York City. There have been a number of cases where there have been line-ups and there have been identifica tions by witnesses. By the time the trial comes up, it's years later, two things could occur. One, the defendant very often looks tremendously different, and one of the reasons he looks tremendously different is by deliberation -- by deliberate -- deliberate attempt to do so.

The second thing is it's so long in the future that the witness may not actually recognize that person from the time that he actually identified -- he or she identified him in the line-up, so the other -- by the way, the other thing is, and this happens in some of the mob trials, there's threats against the witnesses who are now not really willing to

identify the person because they're afraid, by intimidation.

All this would say is that it would allow the introduction of evidence by the law enforcement people that that person did identify the defendant as the perpetrator of the crime during a line-up or in a statement or whatever. Of course, the defendant has the right to make all sorts of objections and bring in any kinds of evidence he can to still object to that identification, but the idea here is that -- is not to set the situation up that is so super-technical that, in effect, the defendant can use some sort of vehicle to get out of a conviction even though he's guilty.

So basically, and there are a couple of other provisions, one relating to preclusion orders. There has been a very technical decision made that says that the prosecutor can appeal a suppression motion but can't appeal a -- an order, a pre-trial order precluding evidence. It's not in the law; it's just that by court decision this kind of situation has occurred and has allowed clearly guilty defendants to be able to escape justice.

So this is a series -- what this sets up is a series of situations where the defendant is not by any means necessarily prejudiced but allows the trial to move ahead without the technical violations that have been created by court statute, and I think levels the playing field in a whole series of these cases.

ACTING PRESIDENT MARCELLINO: Senator Waldon.

SENATOR WALDON: Senator Volker yield to a question?

ACTING PRESIDENT MARCELLINO: Senator Volker, do you yield to Senator Waldon? He yields.

SENATOR WALDON: Thank you very much, Mr. President. Thank you, Senator Volker. Senator, the history of this bill is that it was passed in our house. Is there a history of its passing in the Assembly?

SENATOR VOLKER: No, although pieces of this bill -- the omnibus act of last year which passed this house, pieces of that bill did pass, and in fact in last year's -- a couple of last year's criminal justice bills there was some pieces of the bill that was part

of the Procedure Act of last year, but this bill as such, no, you're right, did not pass the Assembly.

SENATOR WALDON: Would the gentleman yield to another question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MARCELLINO: He yields. Before you do, Senator Waldon, please, can we have some quiet and can we keep the door over there closed so we don't hear the noise from the outside. I appreciate that.

Senator Waldon.

SENATOR WALDON: Senator Volker, it is my understanding that the meaning of the Ranghele decision is that the party who is best able to produce witness statements and to locate and provide evidence regarding the trial is duty bound to do so. Wouldn't this proposal that you are submitting for our consideration remove the burden from the prosecution which could be perhaps characterized as encouraging prosecutorial misconduct?

SENATOR VOLKER: No, I don't think so at all. In fact, I -- I know so. We still -- the Ranghele case, well, I explained it

to reporters and I know you understand it very well. This bill does not take away the obligation of the prosecutor to provide or to produce pre-trial statements of the witnesses.

The problem has been that in a number of cases, the prosecutor was not aware of the pre-trial statements until the trial is in motion or until and, in fact, after the trial is over. Then the question becomes, since it was not through negligence of the prosecutor and in particular, while the trial is in motion, the prosecutor then provides those statements to the defense attorney and gives the defense attorney whatever is necessary for him to be able to prepare his -- to continue to prepare his case, and remember that this would be -- this is the judicial decision would allow the judge to see it. If the judge says, Look, you should have known, and/or it did prejudice the defendant then the case is going to be thrown out.

There's nothing in this bill that would not allow that. It's just that we're changing -- in effect, changing the super technical interpretation that Ranghele -- the Ranghele case has developed over the years that

basically said that any kind of omission by the prosecutor, even if inadvertent and even though he tries to remedy it, as soon as he is aware of it, is grounds for throwing the case out entirely.

SENATOR WALDON: Would the gentleman -- Mr. President, would the gentleman yield again?

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR WALDON: Senator Volker, I'm listening very carefully to what you're saying, and it appears that what you're saying, to my ear, all prosecutors would, under all circumstances, without reservation turn over all evidence to the defense side, but it is my understanding that that has not been the history.

Part of it is that our judicial proceeding is a very adversarial process, and people like to win and when one wants to win, sometimes one takes undue advantage of the other

and, again, it is my understanding that Ranghele makes it a duty of the prosecutor to turn over the evidence, and this would remove that duty.

Am I still unclear following your explanation?

SENATOR VOLKER: The duty to turn over the statements is, in fact, there before Ranghele. Ranghele -- what the Ranghele case stood for is an extension of that duty to the point where any kind of omission or any kind of, for instance, in some cases the pre-trial statements were statements that really had nothing to do with the -- ultimately with the resolution of the case and were so minor that the district attorney was not even aware that they were there.

Now, to answer your question, by the way, would all prosecutors be totally diligent? Probably not. I think that's true, and that's why this would not overrule their duty. They still have the duty to turn over the statement, and they have the duty to do it as soon as they become aware of it and if, after the trial is over, it's found that they should have been aware of it and they weren't, or they

didn't turn over the statements, this -- this provision would not -- would not change the fact that a judge could certainly throw that case out just as it is under Ranghele now.

What we're trying to do is give the option where it was a very honest omission and where there was no really prejudice to the case, the determination of no necessarily lack of prejudice, that case could still go on.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MARCELLINO: The Senator yields, Senator Waldon.

SENATOR WALDON: Senator Volker, earlier when you were explaining the bill, if I recall correctly, you mentioned something about the police officers giving witness identification -

SENATOR VOLKER: Right.

SENATOR WALDON: -- testimony, but under what you're proposing now, wouldn't it change the obligation of the police officer? Wouldn't it allow the police officer greater latitude in presenting evidence on the trial or

at the trial that before this time if this were to become law, would be excluded?

SENATOR VOLKER: Not really. The only thing that it would do is, on the issue, and I know you're aware of it, the technical nature, and we discussed this at the committee just the other day, the technical nature of line-ups and pre-trial identification and all that sort of thing. What this would do is to cause the possibility that, in certain cases, that testimony could be given as to the fact that the witness who may be -- may not want to testify for, maybe because of coercion or because of the years that have gone by since the case -- since the incident happened, may be unable to identify that person because of a change in the person's features, and so forth, but was able to identify that person clearly in line-ups earlier, that the law enforcement officer can testify only that person did identify the defendant, the person in this case as the person who -- who was identified.

Interesting thing about that is it was suggested to me there's a reverse to that. It could also be used, by the way,

against the prosecution because you could potentially have a police officer put on the stand to say that that person's identification at the time was of somebody else in the first instance which I think maybe some people didn't think of, which actually could fall on the defense side because right now that would never happen.

SENATOR WALDON: Would the gentleman yield again, Mr. President?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR WALDON: I appreciate your patience, Senator Volker.

Not related to this proposal but related to this proposal, last year and this year, is it your recollection that the Governor has moved to, with a sharp knife, cut away those monies that traditionally were in the budget for defendants' rights for the legal aid and/or defense counsel for those who are imprisoned or who are arrested and who are indigent to be able to defend themselves while at the same time - while at the very same pregnant moment, putting

extremely large sums of money on the prosecutorial side of the budget.

SENATOR VOLKER: Senator, I must be honest with you. As you know I am, try to be honest. Two years ago I asked the budget director if there was somewhat of a mistake in the budget because all the funds for prosecution and defense had been initially eliminated. Later some of the funds were restored. The answer is that there were cuts in both the prosecution and the defense. In fact, that has occurred this year. This year there hasn't been as much cutting on the prosecution side as on the defense side, that's true, but as you well know, the Legislature restored virtually all the money on the defense side, so I think the answer is, although there were some cuts in the - certainly cuts in the defense, there were also cuts in the prosecution over the last two years also.

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

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR WALDON: Senator Volker, I will trust the advice that I have received. It may not be accurate, and I will share it with you and please correct me if you know better than the advice I have received. It is my understanding from my advisers that the ratio of money that Governor Pataki recommended to us, prosecution side or defense side, previous budget was 60-40. This year it is 80-20, and in previous lines there was greater equity.

Certainly those who are unable to afford defense in the history of this country have been afforded every opportunity to defend themselves. Part of the reason that this nation was created was that people were running from the booted heel of those who were in charge and who were the authority and who, with complete abandon, foisted their will on those who were less able to -- than themselves to assume power, but not going back that far as to when the nation was founded, just talking about the last couple of years.

Is it your understanding that that is the approximate ratio of the money put on the prosecutors' side versus the defenders' side?

SENATOR VOLKER: You're absolutely right, Senator, the 60-40; I don't know about the 80-20 but let me just point out to you something that is not generally known although that 60-40 ratio is the ratio that this Legislature -- Republicans, Democrats, Assembly, Senate -- has generally used as far as direct state money; there is a lot of other money that goes to the defense side, in fact from local governments as well as areas such as IOLA, which is not figured into it, which is a fund that comes from attorney accounts and a lot of that money, most of that money, in fact goes to defense -- defense people. So there is a lot of ways in which -- and that's one of the ways for the establishment of the 60-40, that I often said that there's no -- there's no fund around to support the death penalty but there's big money opposing it and always has been from the private sector and from the local public sector and from all sorts of foundations.

You're right that this year the initial Governor's budget has cut back from the 60-40, I don't know if it's 80-20, you may be accurate. I don't know, but before this session is over, Senator, I would predict that this ratio would end up generally about what it was in the past.

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

ACTING PRESIDENT MARCELLINO: Senator Volker, you continue to yield?

SENATOR VOLKER: Yes.

SENATOR WALDON: Senator Volker, let me thank you for this colloquy. You and I serve on the same committee, you as the chairman. We have much dialogue about these issues. Our dialogue has never been contentious though philosophically sometimes we are far distant, but we've always, in my opinion, I hope that you will feel the same way or do feel the same, we have always dialogued openly, honestly and for the purpose of trying to find the kernel of truth that allows the state to govern itself better than it's governing itself at the moment.

In that regard, are you at all troubled by the overwhelming number of prosecutor-driven proposals which are sent to our committees? By that, I mean we do not often see bills proposed which have as the first consideration the defendants' side, but we see many, many bills originating, perhaps even most of them originating from the Governor's office, with a prosecutorial mentality inherent in the bill. Does that at all trouble you?

SENATOR VOLKER: Let me -- let me just say this that no, I'm really not troubled by it. I -- I think, although I sometimes am concerned by, I think the impression that's being made that somehow some of the court cases are really just balancing the equities. I have to tell you something, that -- and I have never been one -- I don't believe I've ever been one that has been a severe critic of the courts although I have to admit to you that there's been some times in the last few years I mean we have late budgets in part here because of the decision by the Court of Appeals that is not well known, the so-called "bankers decision", that sent the process here into chaos and we got

to pass two budgets every year now which has been a major decision. The press doesn't understand it; in fact, we don't completely understand it. It changed our process here for a century. You look at these cases, and I think that the most -- the biggest problem with these cases lies not in the fact that they fall so strongly on the defense side, but because they don't deal with justice. In other words, a lot of the cases say, Well, it probably didn't prejudice the defendant, but we're going to throw the case out anyway because they didn't follow this hypertechnical rule. It's not that the real -- the rights to that defendant were prejudiced, in fact so much so that one thing about it, if the rights of the defendant were so prejudiced, actually the Court of Appeals could throw the case out entirely and not even allow appeal in certain cases and there's ways it could be done, but the Court of Appeals, I think, realized that in certain of these cases that what they were doing was making a decision that basically said, even though we knew that this person is guilty, even though the evidence was clear, there was a technical rule that

wasn't followed and, therefore, we're going to throw this case out, not thinking of the impact that that case could have on future cases and that's the problem with Ranghele. It has had the impact of allowing hundreds of defendants, because of that super-technical rule to go free.

So my response to that is it doesn't trouble me because what really troubles me is that we have embarked on a situation in this state, I think, where if the law is not being followed as such, but what's happening is that it's being interpreted way beyond what this Legislature intended when we passed a whole series of statutes in dealing with the criminal law.

Beyond that, by the way, I would be very concerned, and if we go too far, then you will -- then you should be the first one to criticize me, and I should be criticized but I do not believe that any of these provisions in here goes beyond the bounds of justice for both the defense and the prosecution.

SENATOR WALDON: Thank you very much, Senator.

If I may, Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Waldon, on the bill, please.

SENATOR WALDON: I respectfully disagree with Senator Volker. I think that if we were to change the guarantees of the Ranghele case that we are creating a serious problem for ourselves. It is very clear now what can and cannot be done in these evidentiary situations. Why make murky waters -

ACTING PRESIDENT MARCELLINO: Senator, excuse me. Ladies and gentlemen, if we could please have some quiet so we can hear the Senator. I thank you.

Senator?

SENATOR WALDON: Why make murky waters of crystal clear judicial streams? I think we ought to leave Ranghele where it is. If a defendant does not make certain protestations during trial, now he can appeal. I believe, under this proposal he loses that right. Again, why muddy the waters which are clear?

But I think the cogent thing that

Senator Volker said which should really cause us to think is that the judges are, and I'm paraphrasing and I apologize if I'm not as accurate as he was in his description, the judges are going beyond the letter of the law in their interpretation, but it is my understanding, my brothers and sisters, in fact, that that is their right, that this nation was founded on separation of powers.

We have the executive branch, the legislative branch and the judicial branch and the balance of peer has to be kept separate and apart and the judiciary, the judicial, the judges, the justices have a right to interpret, I think if you're familiar with that, we're creating problems for ourselves and even though I previously voted for this, I was wrong. I was in error. I did not sufficiently do my home work and read as carefully as I should have what we've been given today to consider. I did not get proper advice before this year. This session I have. I did not read carefully between the lines before. This year I have, and I see a danger in what's being submitted for our consideration, and I see a stop sign on the road

that we're traveling which says, let's reconsider this proposal.

I think it's time for us to take a very strong stand against this and I would encourage anyone within sound of my voice to review before the debate is over, this bill and to consider voting against this bill. Recognize also that Senator Volker did respond when I said what was the action taken in the Assembly and it turned out no action was taken. That should cause us to pause and to think.

This is a one-house bill. It's part of the criminal justice package of the Governor. If I did not know better, I would think that prosecutors were drafting this and submitting it for our consideration. So I encourage all of you to vote no on this proposal.

I thank Senator Volker, and I thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gentile.

SENATOR GENTILE: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO:

Senator Gentile, on the bill.

SENATOR GENTILE: I speak from experience as a prosecutor on this bill and the prosecutors in this state under the decision of the People v. Rosario, still have an obligation to produce statements of witnesses prior to beginning of a trial. That -- that obligation remains. As soon as a witness' statement -

ACTING PRESIDENT MARCELLINO: Senator Gentile. Senator Skelos, why do you rise?

SENATOR SKELOS: If I could just interrupt for a moment to have the last section read for the purposes of Senator Leichter voting.

ACTING PRESIDENT MARCELLINO: Secretary will read.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Leichter, how do you vote?

SENATOR LEICHTER: No.

ACTING PRESIDENT MARCELLINO: Senator Leichter will be recorded in the negative. Withdraw the roll call. Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

As I was saying, under the People v. Rosario, prosecutors still have an obligation to make known and produce statements of witnesses when they become available or known to the prosecutor or should have known -- should have been known to the prosecutor. That requirement still stands. The obligation under United States vs. Brady, the Supreme Court decision requires a prosecutor to produce any exculpatory evidence upon its discovery, immediately upon its discovery. That's still an obligation of a prosecutor.

So the prosecutor is not running wild in a situation like this. Under People v. Ranghele what has happened is that this requirement has been carried to the extent whereby if, for example, a witness were to have an entry in a diary and that diary were not known to a prosecutor and an entry relating to

something in the case, at any time after the trial, if that entry were made known, that would be, under Rangalli, a per se rule. There would be a reversal of a conviction and a new trial ordered even if that entry were duplicative or equivalent of another statement that was turned over to the defense.

The fact is that that is an unrealistic expectation of prosecutors. If someone were to write something on a matchbook cover that related to the case and that match book cover were not known to the prosecutor or could not have been known to the prosecutor until some time after or never known but discovered at some point, the per se rule under Rangalli would require a new trial even if that statement had no effect on the outcome. It would not have an effect on the outcome of the trial.

This rule, this Rangalli rule is a prosecutor's nightmare. It's been something that has affected the cases in New York State for too long. This rule is a bad rule. This bill should be supported.

ACTING PRESIDENT MARCELLINO:

Senator Abate.

SENATOR ABATE: Yes. Would Senator Volker yield to two questions?

ACTING PRESIDENT MARCELLINO: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ABATE: Yes. In terms of just clarification for the record, my colleague, Senator Gentile, talked a little bit about it. You wish under this proposed legislation to overturn the ruling of the Court of Appeals in Ranghele which required a new trial when material was not turned over, any Rosario material was not turned over. Do you interpret the language you're proposing in any way to modify the Brady obligation?

SENATOR VOLKER: No, sir as such, no. Matter of fact, I assume we did send you a memo on that.

SENATOR ABATE: I just want it on the record so that I understand.

SENATOR VOLKER: I understand. No, the answer is no.

SENATOR ABATE: So that any material that's in the possession of the district attorney that tends to exculpate the defendant would still, if it was not disclosed to the defendant, would require a new trial even if this became law?

SENATOR VOLKER: I think that's required by both U.S. and federal constitutional law, and I think to abrogate that would put us in a situation where it would make the statute unconstitutional. So the answer to that is yes.

SENATOR ABATE: The other question is, and it says that I seek advice from you, Senator, to make a change. Right now, the law says that prior identification, whether it be a photo identification or line-up is considered bolstering and is not admissible if the -- whether the victim can make the in-court identification or not.

My concern is that this bill now says even if the witness can identify the defendant in court, will there still be -- will it still become admissible, these prior photo identifications even if an in-court identifi cation has been made because in that situation

you have a bolstering situation? It's not required for the people to make a case.

SENATOR VOLKER: Yeah, it doesn't change the photo identification piece, so we just reported a bill out, I think, as you know which would do that, but this bill does not change that. This relates to the present process and to the fact that under certain circumstances where the line-up, the previous identification is put in, that there could be - there could be a law enforcement officer or whatever to testify as to that identification assuming that that identification was part of a trial in certain cases where the witness was either reluctant or unable to identify years later whatever, at the trial itself.

SENATOR ABATE: So -

SENATOR VOLKER: So it would not change -- Let me just finish. As I understand it, the previous ruling on lack of the photographic evidence was -- is not changed. If that were to be changed, that would be by a separate bill that we just talked about in our committee the other day.

SENATOR ABATE: O.K. So let me

just clarify it again. If the witness can make an in-court identification of the defendant -

SENATOR VOLKER: Yeah.

SENATOR ABATE: -- then it would still be impermissible to introduce at trial a prior identification, whether it be a photo identification or a line-up?

SENATOR VOLKER: That's correct.

SENATOR ABATE: That would be considered bolstering?

SENATOR VOLKER: Yes.

SENATOR ABATE: That would only be admissible if the witness could not make an in-court identification.

SENATOR VOLKER: Yes, that's correct or a misidentification.

SENATOR ABATE: Or a mis identification.

SENATOR VOLKER: And if you remember, on the photo you're entitled to the Wade hearing and all that protection, but that's not in this bill. That change is not in this bill.

SENATOR ABATE: Yes. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Abate, on the bill.

SENATOR ABATE: I will be voting for this bill and the concerns are if we really want to produce reform in the criminal justice system, it has to be comprehensive and it has to look at what results will expedite the cases, and will produce earlier and open discovery.

My concern is we deal with the prosecution side here and we talk about open and early discovery. Why isn't that part of this bill? Victims want open and early discovery. It means that cases can be resolved that much faster. Defendants want open and early discovery, because they need to have enough information to determine and their lawyers need that information to determine if they want to take a plea or go to trial. The courts benefit. The earlier people get this discovery, the better it is and I guess my query is, and if -- my query is, why isn't this part of the bill, open and early discovery?

That would be, along with these reforms, would produce a dramatic change in how the criminal justice system responds to the

rights of defendants and responds to the needs of crime victims.

And I'd also like to see in this bill, and hopefully the good Senator Volker would not only include early discovery reform within this bill because then we would have a balanced approach that Senator Waldon is talking about, but penalties against the district attorney when the district attorney does not disclose Brady material. It should not have to take an appeal to raise that issue. Brady material, as we all know, is fundamentally critical to prepare the defense in that trial.

There should be enough disincentive placed upon the district attorney so that no district attorney, because they are aggressive, they want to assure a conviction, fails in their responsibility to turn over these exculpatory materials. So I am hoping that when this is not a one-house bill but we have a two-house bill that talks about these kinds of issues in this bill or the other issues that I'm raising, there will be a balanced approach. We will get a bipartisan support for this effort, not just the Senate but the Assembly.

So I look forward to working with Senator Volker's office to make these reforms and include them in the bill.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Waldon, to explain his vote.

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

I would like everyone here to understand that this is not the same bill as last year. I think there was an inadvertent slip in Senator Volker's response to my questions, and I'm sure in his explanation of his vote he can correct this if he wishes to, but this is not the same bill as last year. There are differences.

Mr. President, I respectfully ask to be recorded in the negative.

ACTING PRESIDENT MARCELLINO:

Senator Waldon in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 449 are Senators Leichter, Markowitz, Montgomery, Paterson, Rosado, Sampson, Santiago, Smith and Waldon. Ayes 49, nays -

ACTING PRESIDENT MARCELLINO: Senator Connor.

THE SECRETARY: Also Senator Connor. Ayes 48, nays 10.

ACTING PRESIDENT MARCELLINO: The bill is passed. Senator Skelos.

SENATOR SKELOS: Mr. President at this time, if we could take up Calendar 692, Senate Print 4119-A, by Senator Velella.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 692, by Senator Velella, Senate Print 4119-A, an act to amend the Insurance Law, in relation to homeowners insurance.

SENATOR SKELOS: Mr. President, is there a message at the desk?

ACTING PRESIDENT MARCELLINO: Yes, Senator Skelos, the message of necessity is

at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MARCELLINO: On the message, motion to accept has been made. All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted, Senator.

SENATOR SKELOS: Last section, please.

ACTING PRESIDENT MARCELLINO: Read the last section. .

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: An explanation has been requested by Senator Paterson.

SENATOR VELELLA: Yes, Mr. President.

This bill is a continuation of the coastal insurance bill that we passed last year. It's a one-year extender and basically

extends the program that we put in place to try and relieve the pressure that was on the coastal communities of our state as a result of a shortage of availability of homeowner insurance.

It continues on this year which addresses the need for inner city insurance for one year and it creates a temporary panel on catastrophic insurance to come back and review with us the need in this state to establish a cat' fund which other states have.

We have several proposals before the Insurance Committee to look at the possibility of creating a catastrophic funds so that when -- and we know it will hit, we don't know when -- when a major hurricane does hit Long Island or the coastal areas of our state that we will have in place a fund sufficient to insure those people who are the victims of this catastrophe, that the monies will be available, the insurance will be available and that we will be able to deal with that problem when it occurs.

There are several proposals that we are looking at in the Insurance Committee,

how to fund this. We've looked at other states such as Texas, Florida, California. I am not sure yet which direction we should be going in. That's why we ask that this task force be created with appointments by both of the houses, with appointments by the Governor, to take a good hard look at what we'll do with catastrophic insurance.

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

SENATOR PATERSON: Thank you, Mr. President. If Senator Volker would yield for a few questions. I'm sorry, Senator Velella. I always ask Senator Volker so many questions.

ACTING PRESIDENT MARCELLINO: Senator Velella, Senator Velella, will you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MARCELLINO: Senator Velella yields; Senator Volker refuses.

SENATOR PATERSON: Thank you, Mr. President. I'll ask Senator Volker some of questions I have in private.

Senator, I'm just taking a look at this piece of legislation. We just brought it

out of committee today, Senator, and I'm somewhat unfamiliar with it. I do remember we brought this bill before us on March 13th of last year, and you and I discussed it and one of the questions I asked you then was about the rate plans for NYPIUA, and in Section 1 of the bill right here in the first paragraph, if you could explain what the whole rating system will be for the policyholders.

SENATOR VELELLA: Are you serious? Do you want me to explain the entire rate structure and how it's determined and what the factors are?

SENATOR PATERSON: Well, I'd like an abridged explanation of the rate structure.

SENATOR VELELLA: O.K. Well, the way rates are set is we have actuaries that look at the experience and they look at the claims that have been made, the premiums that have been paid, they project out, based -- as actuaries what the risk factors are and fair and reasonable premiums to cover that risk and cover the operation are made by the panel of experts.

How an actuary arrives at the actual numbers is something that I've got to

confess I don't have a sufficient education to really explain to you. We have nine different types of tests that an actuary must pass in this state to be certified. It's like trying to explain to you why a doctor performs a medical procedure. He's educated, he's qualified. We have supposedly the best actuaries available that look at the marketplace, look at the demands, look at the claims and set rates based on that.

NYPIUA was formed because there were a lot of companies that did not want to issue insurance, particularly fire insurance in the inner city. We formed that so that we could have a joint group assume that risk, spread the risk which is the principle of insurance and have actuarially sound premiums put forward for this.

It's a platter of right. Companies that write other business in this state participate into it. It's sort of a forced underwriting procedure that we do so we can provide fire insurance to people who own properties in the inner cities where, if we left the insurance companies on their own, they would

choose not to write this.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Senator Velella's point is well taken.

General questions like the one I asked often earn the direction of over simplification and I suppose that what I should really do is just raise to Senator Volker if we would yield to another question.

ACTING PRESIDENT MARCELLINO: Senator Velella, do you yield to another question?

SENATOR PATERSON: Sorry, to Senator Velella.

SENATOR VELELLA: Yes, I yield.

ACTING PRESIDENT MARCELLINO: Senator Velella yields, sir.

SENATOR PATERSON: My concern is really about the adjustment of rates itself and particularly the increase of rates and how this section of the legislation would affect the prior approval system. I'm just wondering if

any of the members will be able to raise or adjust rates without consulting or coming back to the Insurance Department or whatever the appropriate authority would be.

SENATOR VELELLA: I'm sorry. I was distracted because somebody was trying to give me the information you had sought. Could you just repeat the question.

SENATOR PATERSON: O.K. You should ask Senator Volker; he knows this cold.

SENATOR VELELLA: Well, he's counseled me for numerous hours on this bill.

SENATOR PATERSON: My question was just the effect that the section of the legislation, Section 1, is going to have on the prior approval system, on the adjustment of rates, whether or not there might be increases in rates without approval of the state Insurance Department or -

SENATOR VELELLA: Oh, no. The answer to that is no. The board of actuaries that look at this and make the recommendations based on the availability, based on the experience, based on all the underwriting criteria will make a recommendation to the

Superintendent of Insurance. Then the superintendent approves the rate or does not approve the rate. He may even at some point decide if in his discretion he wants to hold a public hearing on that rate he can always do that. He generally doesn't. Companies come in and might contest what an actuary says. He then evaluates the evidence and then either makes a ruling for or against the proposed rate.

SENATOR PATERSON: Thank you, Senator.

SENATOR VELELLA: You're welcome.

SENATOR PATERSON: Then, if I am to -- if I am to infer from those remarks that there would be no opportunity to actually change the rates by the individual companies, then that satisfies my concern.

I have just one last question if the Senator would yield.

SENATOR VELELLA: Yes.

ACTING PRESIDENT MARCELLINO: Senator, do you yield? Senator Velella yields.

SENATOR PATERSON: Senator Velella, my question is just simply we passed this legislation last year. We sunsetted the

legislation for this point. Is there any reason why we would not just establish permanency or should I take from your original remarks that there still isn't enough data or we have not really acquired enough information to let us know whether or not this should be a permanent system?

SENATOR VELELLA: Well, I think yes, you can take from my remarks that this is an area where we have a state of flux. We're dealing with very difficult issues to try and evaluate, the cost of a hurricane hitting, the cost of what -- what type of policy will allow us to have availability in the marketplace, and at the same time deliver a premium that is reasonable to a homeowner, the issue of inner city fire coverage. These are all things that are in a state of flux.

I do want to -- I do have an obligation to correct something you said. I can not and nothing I said guarantees you what the rates will be in the future. There is a mechanism in place to prevent unconscionable increases but the increases that might result in premiums are subject to the Superintendent's

approval based on data that's presented to him by actuaries which can be contested by either consumer groups or insurance carriers, like any other insurance that we have in this state. Rates cannot be guaranteed into the future, so I am not saying to you that there is no possibility a rate may be increased.

As it is now, we believe that rates will remain basically the same and that's why we only have a one-year extender because this is an issue that's in a state of flux. We have to get better evaluations of the market place, some better programs in place. We have many bills that have been filed by our Senators with ideas as to how we might stabilize that market, ideas about whether or not deductibles should be raised to keep the insurance afford able, whether or not that's the right thing to do in the marketplace. Joint underwriting groups have been -- made proposals. Re-insurers of the state of New York and the national groups have come in and said they can provide reinsurance to lower the premium.

There are a battery of things that have to be done. That's why we think a

one-year extender is something that we should have.

SENATOR PATERSON: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: On the bill. Senator Velella should be assured, as much as we would like to preserve the lowest rates possible for policyholders, we recognize the fact that there could be a fluctuation in the rates based on a number of actuarial figures.

We're just happy to hear from Senator Volker -- Senator Velella's, remarks that we're going to be able, through this process, to make sure that the Superintendent of Insurance is involved.

We also would suggest that there is as immediate a conference with the Assembly because our fear is what could really be the end of NYPIUA and there are so many policyholders around this state who run great risks from being in the geographic locations particularly where they are, that we're somewhat concerned that any delay or any possibility of this sort of

coverage running out would certainly inure to their detriment and this is the reason that we would encourage that some permanency be established in this legislation as soon as is reasonable.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Would the sponsor yield to one question?

ACTING PRESIDENT MARCELLINO: Senator Velella, would you yield to Senator Dollinger?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: When we did the prior bill, I asked you have a couple questions regarding the applicability of the coastal zone insurance program in upstate New York, and particularly on the south shore of Lake Ontario. Can I assume from this bill since it is just an extender, that the program and the participation in Lake Ontario where we have exceptionally high water as a result of the very wet spring we've had there, Lake Ontario is way up, we expect storms that could have significant damage in the community of Greece or Hamlin,

some of the communities that Senator Maziarz, Senator Nozzolio and I share, can we be assured that the program -- the insurance program will continue to be in effect for them for the next year as well?

SENATOR VELELLA: We are extending whatever is in existence now will be in effect for the next year of that if they are eligible under the program, and I believe they are, that would continue. We've taken nothing out of the authorizations in this bill. We're simply continuing on for one year because, as you pointed out, Senator Maziarz, Senator Nozzolio has pointed out to me there are some unique problems in upstate that don't really reflect the problems we're addressing on the coastal areas in downstate. However, they are just as important and any program should include them, yes.

SENATOR DOLLINGER: Yes, just to Senator Velella, it's my intention, Senator, I'm going to give you just a short little memo maybe after the session or after the recess period for a couple weeks just to bring you up to date on some of the additional insurance-related

problems that I have experienced and my constituents have experienced in dealing with the high water problem on Lake Ontario, and I would just urge -

SENATOR VELELLA: I believe there is also some federal insurances that are available, federal programs that play into this and we ought to tailor our program to that, and we'll be happy to work with you.

SENATOR DOLLINGER: Again through you, Mr. Chair, just on the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: In upstate New York, we don't actually get to flood level because the water rises but it doesn't reach flood level, so we don't trigger the federal protection but nonetheless when the water rises and the lake winds kick up, you have worse than a flood; you actually have the equivalent of huge waves pounding the shoreline, substantial erosion, damage to homes, not covered by the federal flood plan because it doesn't rise high enough enough to constitute a flood but nonetheless it's the equivalent of a flood for

insurance purposes and I'll will give you a memo on that and maybe it can be included in the discussions.

Thank you, Mr. Chairman.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 336.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 336, by member of the Assembly Tocci, Assembly Print 2958, an act to amend the Retirement and Social Security Law, in relation to establish ment of a presumption.

ACTING PRESIDENT MARCELLINO:

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR SKELOS: Is there any housekeeping to take care of?

ACTING PRESIDENT MARCELLINO: I believe the house is clean, sir.

SENATOR SKELOS: The house is clean?

ACTING PRESIDENT MARCELLINO: The house is clean, sir.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Monday, May 5th, 1997 at 3:00 p.m., intervening days to be legislative days, and we wish everybody good health.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned until Monday, May 5th, at 3:00 p.m., intervening days to be

legislative days. Everybody take care and come back healthy.

(Whereupon at 12:32 p.m., the Senate adjourned.)