ALBANY, NEW YORK

July 15, 1997

12:19 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would you 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, July 14th. The Senate met pursuant to adjournment. The Journal of Sunday, July 13th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination:

Judge of the Niagara County Family Court, John F. Batt, of North Tonawanda.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of John F. Batt, of North Tonawanda, as a judge of the Niagara County Family Court. Mr. Batt has been examined by the staff of the committee. His credentials have been found to be in order. He appeared before the committee this morning, and was unanimously recommended to the floor of the Senate, and I most proudly yield to no doubt his strongest supporter in the Senate and an old and very long time friend, our own Senator Maziarz.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

Madam President, it's with a great deal of pride and pleasure that I stand before my colleagues today to recommend the

confirmation of a good friend of mine, John Batt, to the position of Niagara County Family Court Judge.

I've known John for almost 30 years now. We graduated from high school together. It's a long way from the halls of Bishop Gibbons to these halls, John, but you've certainly earned your way here. You're going to do a great job.

John has been practicing law for a number of years in Niagara County with a specialty in the practice of Family Court law and I know, Madam President, that probably it's the most difficult assignment for any attorney is to sit on the Family Court bench and to make decisions that are going to affect the lives of children in particular and determine their course perhaps for the rest of their life.

John has the unique ability, I think, to make those types of decisions. He's served as a counsel to Assembly member David Seaman, who joins me here in the chamber today to offer his support of this excellent nomination, and we certainly want to thank Governor Pataki for choosing John Batt. He's a

highly respected attorney in Niagara County and, as I said earlier, he's earned his way here. He is going to serve with distinction on the Family Court bench and we are absolutely certain that come November he's going to be elected to a full four-year term.

So, Mr. President, I would ask my colleagues to accept my recommendation of Judge Batt and unanimously confirm him.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of John F. Batt, of North Tonawanda, to become the judge of the Niagara County Family Court. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is unanimously confirmed.

We're very pleased to have now Judge Batt with us in the chamber seated to your left, along with his wife Carol Ann, his in-laws

Louis and Rita Szot, and Ronald and Cynthia Szot and a good friend, Michael Norris.

Judge, congratulations.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Judge of the Madison County Court, Biagio Joseph DiStefano, of Eaton.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Senator Kuhl.

I rise to second the nomination of Biagio DiStefano, of Eaton, as judge of the Madison County Court. His credentials have been examined by the staff of the committee, appear to be in order. He appeared before the committee this morning and was unanimously referred by the committee to the Legislature - of the Senate and, in the absence of Senator Hoffmann, I would respectfully yield to Senator DeFrancisco for purposes of seconding.

ACTING PRESIDENT KUHL: Chair

recognizes Senator DeFrancisco, on the nomination.

SENATOR DeFRANCISCO: Mr. President, it's with great honor that I rise to support and speak on behalf of the nomination of Mr. DiStefano.

You know, it's very interesting that we look at these nominations all the time and we always talk about we want to have qualified people for the positions. There could be no more qualified individual than Mr. DiStefano for Family Court. He's been a hearing examiner in Madison County for Family Court matters since 1985, 12 years, hearing over 25,000 cases. Most judges don't have that experience in a -- in their full term.

To have a person of this quality and this experience for this position is a great tribute to Governor Pataki in his process of nominating qualified individuals.

More importantly even than his experience as a hearing examiner, is his reputation for being a quality person, a fair individual, and someone who is going to honor the court system by giving everyone a fair shake

who comes before him.

He comes in a great tradition of fine judges in that community, many of whom I appear before. I'm looking forward to seeing Judge DiStefano hearing cases as a Family Court judge in the fine county of Madison and the county seat Wampsville.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Hearing none, the question is on the nomination of Biagio Joseph DiStefano, of Eaton, to become the judge of the Madison County Court. All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed. We're very, very pleased to have Judge DiStefano together with his wife Sue, children Kristen and Blaze, and some friends with us in the chamber seated to your left. Please welcome them.

Judge, good luck.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Judge of the Allegany County Court, James E. Euken, of Belmont.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

I rise to support the nomination of James E. Euken, of Belmont, as judge of the Allegany County Court. As with our other judicial nominees this morning, Mr. Euken has appeared before the committee. His credentials have been examined. He personally attended a committee meeting this morning, was unanimously moved from the Committee to the floor of the Senate, and it's with great pleasure that I yield to Senator Present for purposes of a second.

ACTING PRESIDENT KUHL: Chair recognizes Senator Present, on the nomination.

SENATOR PRESENT: Thank you, Senator Lack.

Mr. President, I rise enthusiastically to move the confirmation of a

good friend and colleague, the Honorable James E. Euken, of Belmont, to the position of Allegany County Court judge.

Jim not only possesses the intellect, judgment, temperament and character for this position, he also has more than 20 years experience in the legal profession.

In February 1972, Jim Euken was admitted to the New York State Bar Association, Fourth Judicial Department, and began his career as a partner in private law practice in the Wellsville area. During the same period, Jim Euken also served as public defender in Allegany County.

In November 1983, Mr. Euken was elected Allegany County District Attorney and was elected and reelected in '87, '91 and '95. On behalf of the Allegany County 50,000 residents, Jim first prosecuted cases from their preliminary stages through appeal to -- in 40 local courts, County Court, the Appellate Division and the Court of Appeals.

He has received numerous citations for his service to the public. Jim Euken is the past president and member of the

Executive Committee of the Allegany County Bar Association and has been a lecturer at various seminars conducted by the New York State Welfare Fraud Investigators Association.

It is indeed an honor and a privilege for me to move for the confirmation of the Honorable James E. Euken as Allegany County judge. I know his impeccable credentials and record of service to the public will enrich the civil and criminal justice system in Allegany County.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to speak on the nomination? Question is on the nomination. All in favor of nominating James Euken of Belmont for the judge of the Allegany County Court signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Motion is approved.

Judge Euken, congratulations. He joins with us today in the chamber with his wife Molly and his daughter Caitlin.

Congratulations, Judge.

(Applause)

Senator Lack. Secretary will read. I'm sorry.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Judge of the Surrogate's Court of Steuben County, Joseph W. Latham, of Canisteo.

ACTING PRESIDENT MARCELLINO: Now, Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Joseph W. Latham, of Canisteo, as Surrogate of Steuben County. Again, as with our other nominees, he's been -- his credentials have been examined by the staff of the committee, have been found to be of superior knowledge. He appeared before the committee this morning, was unanimously moved by the committee to the floor of the Senate, and it's with great pleasure that I yield to Senator Kuhl for purposes of a second.

ACTING PRESIDENT MARCELLINO: Chair recognizes Senator Kuhl.

SENATOR KUHL: Thank you, Mr. President, and thank you, Senator Lack. It's my pleasure -- indeed my pleasure and privilege to be able to stand before the members of this body to nominate or second the nomination of Joseph W. Latham to a position of Surrogate judge in Steuben County.

As many of those residents of upstate New York know, when you're elected or nominated and appointed and confirmed to a position such as the Surrogate judge in a county, it's not only that position that you fill, but you fill several others. In Steuben County it's a three-hatted judgeship, if you will, because the person who serves as a Surrogate judge also serves in Family Court and also serves in the County Court, which means that they deal with not only family matters but criminal matters and civil matters and also estate matters.

It takes a person of a wide ranging background, certainly a great deal of experience and a great deal of intellect and integrity. Joseph W. Latham brings that to the position of Surrogate judge in Steuben County,

so it's my privilege to nominate and second the nomination again of a friend, an adversary on many occasions, and a colleague on certainly many more.

Joseph, it's my pleasure again to second the nomination. Good luck in your future.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this nomination?

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Stafford.

SENATOR STAFFORD: I don't want to repeat what Senator Kuhl has said so well, but I think it's very nice to point out that I believe it would have been this gentleman's great aunt who served here in the Senate for over, believe it or not, 50 years, and served a number of people in the Senate, and she was very, very proud of her family, and it was Helen Darling, and, as I say, it's a pleasure for me to move, together with Senator Kuhl, a relative of Helen's who was here for so many years and so

well respected, and I'm sure that what Senator Kuhl said is completely accurate.

ACTING PRESIDENT MARCELLINO: Any other Senators wishing to be heard? Question is on the nomination of Joseph W. Latham, of Canisteo, for judge of the Surrogate's Court of Steuben County. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

The judge -- congratulations, Judge Latham. The judge is joined by his wife Margaret and Aunt Margaret Marian, cousins Chilton, Caitlin and Alexandria Latham, and family friends, Bill and Donna Hatch.

Judge, congratulations and good luck.

(Applause)

Senator Skelos, may we move to the next order of business?

SENATOR SKELOS: Are there any communications and reports from standing committees?

ACTING PRESIDENT MARCELLINO: We have privileged resolutions we'd like to read.

SENATOR SKELOS: We'll go to motions and resolutions, and I believe there is a privileged resolution by Senator Farley. I ask that the title be read -- read the entire resolution, and then move for its immediate adoption, and then recognize Senator Farley.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Farley, Legislative Resolution honoring Lisa Esler, upon the occasion of being named Miss New York State.

WHEREAS, the state of New York takes great pride in acknowledging outstanding individuals who distinguish themselves in service to their community and who serve as an inspiration to their friends, family and peers; and

WHEREAS, Lisa Esler, of North ville, New York, was crowned Miss New York State on Saturday, June 28, 1997; as Miss Fulton County, Lisa Esler won this esteemed annual pageant which was held in Watertown, New York.

She will go on to represent New York State in the Miss America Pageant this September in Atlantic city; and

WHEREAS, in winning the Miss New York State scholarship pageant, Lisa Esler competed against 17 talented young women from across the state for the title which includes a $9,000 scholarship and the opportunity to compete for the Miss America title;

This talented and dedicated individual, currently a pre-med student at the State University of New York at Binghamton, is pursuing an undergraduate degree in both Chemistry and Biology;

In addition to receiving the prestigious title of Miss New York State, Lisa Esler has received scholarships from both the Miss New York State pageant and the Miss Fulton County Scholarship pageant. Upon completion of her duties as Miss New York State next year, she will reassume her studies in hopes of becoming an orthopedic surgeon.

Lisa Esler has assumed the unique public relations role that comes with being named Miss New York State. She will use her

position to reach out to young people about the serious problems that arise from alcohol abuse and will be speaking to children in elementary schools during her statewide appearance tour.

In addition to her notable academic endeavors, this committed individual has dedicated much of her time and talents to volunteer service in area hospitals, as well as the Children's Miracle Network, among others. Lisa Esler is also an accomplished singer, and performed "Memory" from the musical "Cats" during the Miss New York State pageant.

Lisa Esler is also a member of a loving and close-knit family. Her proud and supportive parents, Celina and Richard Esler, as well as her brother David and sister Valerie, share in her excitement over the opportunities presented by this esteemed award; and,

WHEREAS, this outstanding young woman, who has accomplished so much and is graced with talent and intelligence as well as a belief in herself and in humankind, will serve as a positive role model for young people and an exceptional representative of New York State; her message of hard work, commitment and

responsibility presents a timely lesson to the youth of today.

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to commend Lisa Esler upon being crowned Miss New York State for 1997-1998 and to wish her continued success as she represents the state of New York in the upcoming Miss America pageant; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to Lisa Esler of Northville, New York, along with our sincere congratulations.

ACTING PRESIDENT KUHL: Chair recognizes Senator Farley, on the resolution.

SENATOR FARLEY: Thank you, Mr. President.

Along with Assemblyman Marc Butler of Fulton County, it is indeed a pleasure to brighten up this chamber with this magnificent young lady, Lisa Esler, who is Miss New York State going on to the Miss America pageant, I believe it's September 13th, and everybody here -- and Senator Smith says we're all going to be cheering for her, and I know

that she's an outstanding candidate.

Let me just say a couple words about her and her family. Incidentally, her mother is right -- seated right over here, Celina Esler, and, of course, the pageant director, Diane Scribner, is also with us.

But let me just say something about Lisa. She was number two in her class at Northville High School and, as a professor, let me tell you that with a double major of Chemistry and Biology, she is pursuing one of the most difficult academic disciplines in our great State University of New York at Binghamton.

Miss Esler is also a talented singer. She is also a person that is -- cares about our children and pursuing alcohol abuse in the family, and it is with a great deal of pleasure and thrill that we have her here in this chamber, and I know that everyone here wishes her well and knows that she's going to go on to Atlantic City and do New York State proud.

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is unanimously adopted.

Lisa, we're very, very pleased that you chose today to come and spend a few moments of your life with us. We wish you well and will all be rootin' for you in Atlantic City. Knock 'em dead.

(Applause)

MISS ESLER: Thank you.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: Secretary will read the title to the privileged resolution 2097 by Senator Alesi.

THE SECRETARY: By Senator Alesi,

Legislative Resolution 2097, congratulating Mr. and Mrs. Thomas Griffo upon the occasion of their 50th Wedding Anniversary.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Finance Committee, immediate meeting of the Finance Committee in Room 332, the Majority Conference Room.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Senator Skelos, we have a privileged resolution by Senator Gentile at the desk.

SENATOR SKELOS: Please read the title and move its immediate adoption.

ACTING PRESIDENT KUHL: Secretary will read the title to the privileged resolution by Senator Gentile.

THE SECRETARY: By Senator Gentile, Legislative Resolution applauding A web Internet services' creation of the Asian Community Bulletin Board website.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

We also have some motions if you'd like to take that up at this point in time.

Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf of Senator Leibell, on page number 4, I offer the following amendments

to 1168, Senate Print Number 3215-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Velella, I wish to call up his bill, Print Number 3242, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 344, by Senator Velella, Senate Print 3242, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which the bill was passed and ask that the bill be restored to the order of third reading.

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

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino, the bill is restored, before the house.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

SENATOR MARCELLINO: Mr. President, I now move to discharge the Committee on Rules from Assembly Print Number 5700-A and substitute it for Senator Velella's identical bill.

ACTING PRESIDENT KUHL: Substitution is ordered.

SENATOR MARCELLINO: I have Senator Tully, he had the Finance.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I wish to call up Senator Skelos' bill, Print Number 3208, from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary

will read.

THE SECRETARY: Calendar Number 479, by Senator Skelos, Senate Print 3208, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: On behalf of Senator Rath I wish to call up her bill, Print Number 3802-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 823, by Senator Rath, Senate Print 3802-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: On behalf of Senator Maziarz, I wish to call up Print Number

4982, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar 758, by Senator Maziarz, Senate Print 4982, an act to amend the Real Property Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which this bill was pad.

ACTING PRESIDENT KUHL: Motion to reconsider the vote by which the bill passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: I wish to call up Senator Levy's bill, Print Number 4234, recalled from the Assembly which is knew at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 991, by Senator Levy, Senate Print 4234, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

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

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Finally, Senator Marcellino.

SENATOR MARCELLINO: Oh, no. More.

On behalf of Senator Seward, I wish to call up his bill, Print Number 4790, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1083, by Senator Seward, Senate Print 4790, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which the bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now offer

the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: On behalf of Senator Spano, I wish to call up his bill, Print Number 2487, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1398, by Senator Spano, Senate Print 2487, an act to amend the Correction Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which the bill passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

And finally Senator Marcellino.

SENATOR MARCELLINO: As always I save the best for last, sir.

On behalf of Senator Libous, I wish to call up Print Number 4473, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1078, by Senator Libous, Senate Print 4473, an act to authorize the town of Richford.

ACTING PRESIDENT KUHL: Senator Marcellino.

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

ACTING PRESIDENT KUHL: Motion is to reconsider the vote by which the bill passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

SENATOR MARCELLINO: Thank you, sir.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, the Senate will stand at ease pending the report of the Finance Committee.

ACTING PRESIDENT KUHL: Senate will stand at ease pending the report of the Finance Committee.

(At 12:47 p.m., the Senate stood at ease until 1:05 p.m.)

SENATOR SKELOS: Mr. President. If we could return to nominations, I believe there's one more nomination to be taken up by Senator Lack from the Judiciary Committee.

ACTING PRESIDENT MARCELLINO: Yes, Senator Skelos, there is. Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination: Judge of the Otsego County Family Court, Brian D. Burns, of Oneonta.

ACTING PRESIDENT MARCELLINO: Senator Lack.

SENATOR LACK: Thank you, Mr. President. I rise to move the nomination as the judge of the Otsego County Court of Brian D. Burns of Oneonta.

I'd just like to thank Mr. Burns and his family for waiting for Senator Seward who wanted to speak on his behalf. He had obligations of a conference committee. Thank Senator Seward for getting here, and there's always that kind of problem, for the record.

Mr. Burns' qualifications have been examined by the staff of the Judiciary Committee. They've been found to be of the highest caliber. He appeared before the committee this morning and was unanimously moved from the committee to the floor, and I would

most respectfully yield, Mr. President, to Senator Seward for purposes of a second.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: Thank you, Mr. President and Senator Lack.

It's with a great deal of personal pride that I rise to second the confirmation of Brian D. Burns to be Otsego County Court judge.

I've known Brian Burns for a number of years. He's eminently well qualified to assume this new responsibility. Mr. Burns has served as an assistant district attorney in Otsego County, as well as chief assistant district attorney and acting district attorney. He currently is the Oneonta city prosecutor and in that capacity and throughout his career, Mr. Burns has given special attention, the way I would describe it special attention to the victims of crime, not only prosecuting the defendant but being sensitive to the victim of the crime, and that's -- that says a lot in terms of the type of individual that Brian Burns is.

In addition to his career as a prosecutor, Mr. Burns is a practicing attorney in Oneonta with the firm of Bookhout & Burns, and also is a professor for upper level management courses in business law at Hartwick College.

In Otsego County, we have what's called a three-hatted judge. The County Court judge deals with the criminal matters, Surrogate as well as Family Court, and it's a special - takes a special individual to assume that type of responsibility, and Brian Burns is that special individual.

He's a man of integrity, intelligence. He's hard working. His professional abilities are unquestioned. He's an experienced prosecutor. He is going to make an outstanding County Court judge, and I'm very pleased to rise to support his confirmation and also to congratulate the Governor for making an outstanding choice and also congratulate Brian and his wife Elizabeth, who is joining him in the gallery today and, of course, there are three small children who are back at home today.

It's -- it's going to -- today is going to be the beginning of what I know will be a long and distinguished judicial career for Brian Burns and on behalf of myself and more importantly the community-at-large back in Otsego County, I'm very pleased to rise and support his confirmation.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Seward.

Is there any other Senator wishing to be heard on the nomination? The question is on the nomination of Brian D. Burns, of Oneonta, as judge of the Otsego County Court. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed unanimously.

Judge Burns, congratulations. We know you're joined here by your wife Elizabeth and your parents, John and Barbara Burns. Congratulations once again, and much success.

(Applause) Senator Skelos.

SENATOR SKELOS: Mr. President, I

believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT MARCELLINO: There is a report of the Finance Committee at the desk, and the Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Trustee of the Power Authority of the state of New York, Frank S. McCullough, Jr., Esq., of Rye.

ACTING PRESIDENT MARCELLINO: Senator Stafford.

SENATOR STAFFORD: Mr. President, I have said this before this session, but when it's true I think it should be said. Once again a nominee appeared before us today who was nominated by the Governor to be a trustee of the Power Authority who is a distinguished citizen of Westchester County, and I'm speaking on behalf of Senator Spano, but I think he will be coming in, but I just want to emphasize again that the nominee certainly acquitted himself just as well as anyone could before the

committee.

He has a distinguished record in his profession, and as I mentioned that despite where he went to college which is a small school up in the north, we, of course, can't say enough good about him, but I will now yield to the Senator from Westchester, who I'm sure will be most effective as always.

Senator Spano.

ACTING PRESIDENT MARCELLINO: Senator Spano is recognized.

SENATOR SPANO: Thank you, Mr. President, Senator Stafford.

It's my pleasure to second the nomination of Frank McCullough as a trustee of the Power Authority of the state of New York.

I've known Frank McCullough for a number of years, a person who is uniquely qualified to serve in this unpaid position as a member of the Power Authority. He has volunteered on a pro bono basis for a number of charitable activities in Westchester County, has demonstrated his commitment to our community in Westchester, is a successful attorney, someone who understands the important role that he will

play as a member of the Power Authority, and it's -- and it's my pleasure to second the nomination, congratulate the Governor on an excellent appointment of someone who admits that he may not know everything about the Power Authority and power in the state of New York, but is a very quick learner and is eager to learn and is willing to listen, and that is - those are the attributes of a person that will do very well in making sure that the issues, the important issues that he will deal with as a trustee of the Power Authority will be heard and will be dealt with effectively and efficiently.

So it's my pleasure to second the nomination of Frank McCullough.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes. Frank McCullough lives in my Senate District, and I think we are very fortunate that he does live in my Senate District. He is a person who has gained great respect professionally, having a very fine and respected law firm. He has gained respect both personally, not just professionally

but personally for the character and the quality gentleman that he is. He has gained respect for the kinds of philanthropic and civic work that he has done in our community, ranging across the board from presidencies of civic groups and hospital groups and just been an immensely caring and giving man.

He is also respected as a wonderful family man with three children, and all have done beautifully. So I think that personally, professionally we have an extraordinary man here and, as my father once said, you can tell the intelligence of someone by how well they listen and how well they're willing to say, "I don't know that answer but I'll be happy to research it," and I think we have that, character of that man, that type of person here and so we're very fortunate that he will be willing to serve on the Power Authority.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on the nomination? Question is on the nomination of Frank S. McCullough as trustee of the Power Authority. All in favor signify by saying aye.

(Response of "Aye.")

All opposed nay.

(There was no response.)

The nomination is confirmed.

Mr. McCullough, we congratulate you on the nomination. We know you're joined by your wife Corky, your daughter Christine Brown. Congratulations once again, and much success.

(Applause)

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 5704, by the Senate Committee on Rules, and Senate Print 5705, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT MARCELLINO: Without objection, third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar 1532.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number

1532, by the Senate Committee on Rules, Senate Print 5704, an act making appropriations for the support of government.

SENATOR SKELOS: Is there a message of appropriation and necessity at the desk?

ACTING PRESIDENT MARCELLINO: Yes, there is a message of appropriation and necessity at the desk.

SENATOR SKELOS: Move to accept.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The messages are accepted.

SENATOR SKELOS: Last section.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator -

SENATOR DOLLINGER: Just a point of order. Is this Calendar 5704? I wanted to make sure.

SENATOR SKELOS: 5704, Calendar 1532.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Announce the results.

THE SECRETARY: Ayes 47, nays one, Senator Dollinger recorded in the negative.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Call up 1533, Print 5705.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 1533, by the Committee on Rules, Senate Print 5705, an act making appropriations for the

support of government.

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

ACTING PRESIDENT MARCELLINO: Yes, Senator Skelos, there is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MARCELLINO: Motion is to accept the message of necessity and appropriation. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Messages are accepted, Senator. Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Can we count the negatives and announce the results, please.

Senator Hoffmann, to explain her

vote.

SENATOR HOFFMANN: Thank you, Mr. President.

I recognize this is a small and very futile statement to make, but we are in the middle of July. We have not passed a budget yet. We have been doing this rather ridiculous process of one week extenders which have now become an institutionalized late budget, and yet there are no ongoing discussions by the individual members of the Legislature about the state's budget, not in any Finance Committees, not in the sub-categories, transportation, social services, mental hygiene, agriculture. The many committees that are appointed by the leadership of this chamber and the other chamber should be earnestly discussing the budget and looking for ways that we can meet our obligations, our sworn responsibility to the taxpayers of this state.

I can not, in clear conscience, sanction the notion that here on auto-pilot we as sitting members of the Legislature should continue to draw our own salaries, so I would just like the record to reflect at least for the

people of the 48th Senate District, who seem to be paying attention to this process, that I would like to vote in the negative on the matter of legislators being paid in the absence of a state budget after this long a duration.

ACTING PRESIDENT MARCELLINO: Senator Hoffmann will be recorded in the negative.

Senator Stafford, to explain his voted.

SENATOR STAFFORD: Mr. President, I have a great deal of respect for the fine Senator who just spoke, so now I'll just take the other tack, which is always good to balance things out, and I would just point out first that, you know, we have 211 people in the Legislature and if 211 people just want to do what they want to do, we'd get nothing done.

When I first got here, I didn't like the seniority system. I've been very enamored with it in the last couple of years. Things change but, on a serious note, we have to have a system and we have to have a leader and the leader has a constituency and, Mr. President, there isn't one person in the

Legislature that can't give input toward these negotiations, and I assure you, many are.

It would be good if we could have a conference committee of 211 people. Unfortunately, that doesn't work. It is not practical. I would say that, yes, I agree there should be a budget. We're working toward a budget, but I'm not going to hesitate to say that this is a very complex state. I'm not making excuses. I'm just stating fact, and we have people that represent districts that are 180 degrees different. Frankly, that's one of the strengths of this state, and we have the intellect, the sensitivity and the decency to live together and have the Empire State and the best state in the nation.

And finally, Mr. President, let me share this. To the Governor's credit, to the Majority Leader's credit, Senator Bruno, to the Speaker's credit, Speaker Silver, and the people in the Assembly and the people in the Senate, we are passing legislation which keeps the government functioning. People are being paid. Bills are being paid while we hammer out a budget on the anvil of discussion, sensitivity,

decency, compassion and, shall I say, patience, and I'm the first one to say that is tested. I understand that. But I think that should be said also and, Mr. President, again, everyone has an opportunity for input with their fiscal committees, Ways and Means, Senate Finance Committee, the Majority Leader's office, the Speaker and, with that, Mr. President, I would hope that we could pass the legislation and yes, I too look forward to a budget and we will continue to work toward that end.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Is that what we're up to?

ACTING PRESIDENT MARCELLINO: That's what you're up to.

SENATOR GOLD: I'd like to explain my vote.

With great admiration for Senator Stafford -- and that is not said sarcastically; that is said sincerely -- I have a little bit of a disagreement with him in terms of everybody having input and patience and all of that.

Senator, in my book, if a lot of people around here would mind their own business and let you be the chairman of Finance and let "Denny" Farrell be the chairman of Ways and Means and if we had a committee and we held the hearings and we had the conference committees, I think we'd have a budget.

I think that one thing I can say is that Mario Cuomo, if he -- you want to say he had a worse day, had more dedication to getting a budget than George Pataki in his dreams. There's been no leadership. I mean I hear we're passing a one-week extender today and somebody said we're going to get a six-week extender next week.

Somebody has got to wake up this Governor. We need a budget. Now, if the Governor wants to buy one of the great American newspapers, the Daily News -- and it is -- and instead of using the editorial page for the kitty litter box, which most of us do when you read it, then I guess you can blame Shelly Silver; but the fact is the Governor gave an in adequate budget this year; the Governor gave an inadequate budget last year. He shows no

leadership; he doesn't drag people together and everybody knows it. So why are we horsing around?

And as far as everybody having input and everybody doing their job, I will do this and take my pay because my pay is to protect the people from George Pataki's budget and that's what I do. That's what I get paid for, so I don't have any problem voting for that but, Senator Stafford, I know that you are one of the hardest working people, one of the most sincere people. Why don't you give a message down there that instead of them preoccupying themselves with whatever it is they're doing they ought to get this budget done or if they don't do it, let Ronnie Stafford, Manny Gold, "Denny" Farrell, Faso, Senator Hoffmann, Senator Oppenheimer, all the members of the committee, we'll do the budget if they can't get to it.

I vote yes.

SENATOR DOLLINGER: Mr. President.

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

SENATOR DOLLINGER: Mr. President, I have voted consistently against this measure, and I'm going to continue to do that. I vote against the continuing resolution because that's really where we are, Senator Gold.

We -- it's -- I feel there is an interesting political metamorphosis going on here in Albany. We're starting to look more like Washington. We don't pass a budget, we just pass continuing resolutions. We just keep rolling the government forward, and we never actually sit down and come to the hard decisions about what we ought to spend and what we ought not to spend, and so what I find so interesting is that we're rolling toward Washington and yet the one thing that Washington has that we don't have, and Senator Gold properly pointed out, are empowered conference committees, empowered chairmen of committees.

Senator Stafford, you're the chairman of the Finance Committee. As far as I'm concerned, you ought to be at the seat, at the table pounding out those numbers, figuring out what we're going to spend, figuring out what

we're going to do. You should be working in conjunction with Assemblyman Farrell, the director of the -- the chairman of the Ways and Means Committee in the Assembly. I would include Senator Gold and Mr. Faso from the Assembly, because you're the four or five guys who should know the numbers and should be able to bring to your leadership what the numbers ought to look like.

I've said this with respect to the chairman of the Health Committee. He ought to be empowered by the Legislature, by this body, to negotiate health issues with the other chamber and not have to do it through the strong leadership system. What I find so fascinating is that the strong leader system hasn't worked. It hasn't worked. It hasn't produced the compromise for a budget.

If it isn't working, let's empower the committees and try what Washington does. We're trying continuing resolutions. We've bought into the Washington approach to the budget. Let's buy into the Washington example of powerful chairmen of committees who can set the agenda, who can sit down and strike a deal

on behalf of their house. Let's empower the committees to make them work. Senator Gold has a good idea.

I agree with Senator Hoffmann. I think that this issue of legislators' pay, frankly, from my point of view, the people that I represent in the 54th Senate District.

I'm going to vote against it. I historically voted against it, but it's a protest about a powerful leader system that is dysfunctional. It's not working. We're on our way to trying to do what Washington does with continuing resolutions. Let's try and empower committee chairs as well.

ACTING PRESIDENT MARCELLINO: Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 1533 are Senators Alesi, Dollinger, Hoffmann, Maziarz and Oppenheimer. Ayes 43, nays 5.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could continue with the nominations from

the Finance Committee.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the New York State Olympic Regional Development Authority, Serge Lussi, of Lake Placid.

SENATOR STAFFORD: Move the nomination, please.

ACTING PRESIDENT MARCELLINO: Question is on the nomination of Serge Lussi to the New York State Olympic Regional Development Authority. All those in favor aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Public Employment Relations Board, Mark A. Abbott, Esq., of Point

Lookout.

ACTING PRESIDENT MARCELLINO: Question is on the nomination of Mark A. Abbott, Esq., of Point Lookout, for a term to expire May 31, 2003, as a member of the Public Employment Relations Board. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Advisory Council on Alcoholism and Substance Abuse Services, Bruce A. Greenwood, of Norwood.

ACTING PRESIDENT MARCELLINO: Question is on the nomination of Bruce A. Greenwood, of, Norwood as a member of the Advisory Council on Alcohol and Substance Abuse. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Advisory Council to the Commission on the Quality of Care for the Mentally Disabled, Grace E. Clench, of Brentwood.

ACTING PRESIDENT MARCELLINO: The question is on the nomination of Grace E. Clench, of Brentwood, as a member of the Advisory Council to the Commission on the Quality of Care for the mentally Disabled. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Members of the Citizen's Policy and Complaint Review Council, Brian W. Cotter,

of Rensselaer, and E. Robert Czaplicki, of Syracuse.

ACTING PRESIDENT MARCELLINO: Question is on the nominations of Brian W. Cotter and E. Robert Czaplicki, as members of the Citizen's Complaint and Policy Review Council. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominations are confirmed.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Mental Health Services Council, Jeffrey Davis, of Binghamton.

ACTING PRESIDENT MARCELLINO: Motion is to confirm the nomination of Jeffrey Davis, of Binghamton, as a member of the Mental Health Services Council. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Members of the Board of Visitors of the Capital District Developmental Disabilities Services Office, Marcella B. Ryan, of Hudson Falls, and Francis J. Sheridan, of Delmar.

ACTING PRESIDENT MARCELLINO: Question is on the nominations or reappointments as members of the Board of Visitors of the Capital District Developmental Disabilities Office of Marcella B. Ryan, of Hudson Falls, and Francis J. Sheridan, of Delmar. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominations are confirmed.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Members of the Board of Visitors of the Metro New York Developmental Disabilities Services Office, Al Agovino, of the Bronx, and Alera M. Dominique, of the Bronx.

ACTING PRESIDENT MARCELLINO: Question is on the reappointment of Al Agovino, of the Bronx, and Alera M. Dominique, of the Bronx, as a member -- as members of the Board of Visitors of the Metro New York Developmental Disabilities Services Office. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominations are confirmed. Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Board of Visitors of the Rockland Children's Psychiatric Center, Matthew John Murphy, of Pearl River.

ACTING PRESIDENT MARCELLINO: Question is on the nomination of Matthew John Murphy, of Pearl River, as a member of the Board

of Visitors of the Rockland Children's Psychiatric Center. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination:

Member of the Board of Visitors of the St. Lawrence Psychiatric Center, Orman Bomyea, of Malone.

ACTING PRESIDENT MARCELLINO: Question is on the nomination of Orman Bomyea, of Malone, as a member of the Board of Visitors of the St. Lawrence Psychiatric Center. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

if we could return to motions and resolutions, I'd like to move to adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MARCELLINO: We will return to motions and resolutions, and the motion is to adopt the Resolution Calendar in its entirety. All those in favor signify by saying aye.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, if I could just explain my vote on one of the resolutions before the house.

ACTING PRESIDENT MARCELLINO: Let me just finish making that call. You will be recognized then immediately. Move the Resolution Calendar. Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President.

I just rise to make a brief mention of Resolution Number 2089, which is sponsored by myself, my colleagues from Monroe County, Senator Alesi, Senator Maziarz and Senator Nozzolio, and this is a congratulations to Eastman Kodak Company for its work on the

Mars landing.

Eastman Kodak Company provided to the Jet Propulsion Lab the digital sensors that allowed the vehicle on Mars to travel, and the furthest operating piece of equipment from Rochester, New York is a device that has digital sensors which really provide the eyes for the Mars landing probe; so it's a great moment for Eastman Kodak Company, it's a great moment for New York because it's a moment when we celebrate the technology that we all want to bring to New York State, the high technology that allows us to explore other planets.

So I rise in support of the resolution and ask my colleagues to support it as well.

SENATOR GOLD: Will you hold on just one second. That's all right.

ACTING PRESIDENT MARCELLINO: All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution carries, approved.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe the Minority wishes to have a short conference at this time. Senator Paterson.

SENATOR PATERSON: We'd like to have a long conference but we will have it shortly in the Minority Conference Room immediately upon our recess. There will be an immediate meeting.

SENATOR SKELOS: We understand that the Minority is requesting about 15 minutes for the Conference, so that why don't we come back about ten to -- ten to 2:00.

Enjoy your lunch. The Senate will stand at ease until ten to 2:00.

ACTING PRESIDENT MARCELLINO: There will be an immediate meeting of the Minority Conference in the Minority Conference Room. Minority Conference in the Minority Conference Room.

The Senate will stand in recess until about ten minutes to 2:00.

Senator Wright, I'm sorry.

SENATOR WRIGHT: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Senate 5705.

ACTING PRESIDENT MARCELLINO: It will be done, sir.

(Whereupon at 1:36 p.m., the Senate recessed until 1:50 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT ALESI: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT ALESI: Immediate meeting of the Rules Committee in the Majority Conference Room.

(Whereupon, the Senate resumed at 2:05 p.m.)

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

Senator Skelos.

SENATOR SKELOS: I believe there's some housekeeping at the desk.

ACTING PRESIDENT KUHL: There is.

We'll return to the order of motions and resolutions.

The Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf of Senator Johnson, I would like to call up his bill, Print Number 5410-B, recalled from the Assembly which is now at your desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 1493, by Senator Johnson, Senate Print 5410-B, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which the bill was passed.

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

(The Secretary called the roll on

reconsideration.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Skelos, I wish to call up his bill, Senate Print Number 331, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 486, by Senator Skelos, Senate Print 331, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT KUHL: The

Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. There is a report of the Rules Committee at the desk.

I'll ask the Secretary to read.

ACTING PRESIDENT KUHL: Senator

Bruno, from the Committee on Rules, reports the following bills:

Senate Print 5702, by the Senate Committee on Rules, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law;

5706, by Senator Seward, an act to amend the Public Authorities Law and others; and

5708, by Senator Lack, an act to amend the Judiciary Law.

All bills ordered direct for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could take up Calendar 1531, Senate Bill Number 5702.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1531.

THE SECRETARY: Calendar Number 1531, by the Senate Committee on Rules, Senate Print 5702, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

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

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1531, Senate Print 5702, which is at the desk. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

Senator Skelos.

SENATOR SKELOS: Read the last section, please.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1531 are Senators Padavan and Tully. Ayes 47, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Social Service Committee in the Majority Conference Room, I believe to take up one nomination.

SENATOR HOLLAND: Right.

ACTING PRESIDENT KUHL: Immediate meeting of the Social Services Committee, immediate meeting of the Social Services Committee in the Majority Conference Room, Room 332.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 1534, Senate Bill Number 5706.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1534, by Senator Seward, Senate Print 5706, an act to amend the Public Authorities Law and others.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1534, Senate Print 5706. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last

section.

THE SECRETARY: Section 9. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT KUHL: Senator Seward, to explain his vote.

SENATOR SEWARD: Mr. President, I would like to explain my vote and just simply say that this bill that we are passing today represents the culmination of negotiations by the ten members of the Conference Committee on Economic Development and Power.

That committee took two very separate bills and forged them into a product which will provide 400 megawatts of low cost power to assist our businesses as we transition to a new era of competition in the electric utility industry and the lower rates that will result from that competition, and I simply want to rise to thank the Senate members of the Conference Committee who worked so well with me, Senators Alesi, Meier, Wright and Senator

Dollinger, our Ranking Minority member of our committee and I'm very excited about this product. It will mean the retention of jobs, the creation of jobs in the state of New York through low cost power.

I vote aye.

ACTING PRESIDENT KUHL: After an electrifying explanation, Senator Seward is recorded in the affirmative.

Senator Dollinger, to explain his vote.

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

I rise to join the Chairman of the Energy and Telecommunications Committee in support of this bill. I commend him for his work with Assemblyman Tonko in bringing this bill together.

This was a -- in my opinion, the first true test of the Conference Committee ideal in which a committee could sit down with very different bills and bring those bills together. The other members of the Committee, I think contributed in the Senate and in the Assembly, and I thought the process worked well.

Just a couple quick comments. One, I think the pollution issue, the question of cheaper power that would perhaps be dirty power, it was discussed in the Conference Committee. We have attended to that here in which we have talked about in the legislative findings a commitment to producing power that is clean and has a reduced impact on our environment and we have given the Allocation Board and the Power Authority the ability to consider those factors in determining what low cost power is.

The other thing I just again commend Senator Seward on, he has been a long-term supporter of reductions in the gross receipts tax. This bill is the first time in which we are going to provide a reduction in gross receipts tax dependent upon utilities working to make power available -- cheaper power available.

So I commend Senator Seward. We aren't at that final destination of eliminating this tax but we're a step closer to it because of your leadership.

I'll just conclude. Throughout

the Committee, throughout the whole time we talked about things, the message was we have to get cheaper power to provide the one thing we all agreed on, the solution to our welfare problems, the solution to many of our social service problems, the solution to many problems that face families in this state and that's the creation of new jobs, and I hope that this bill and the power that we will be providing at reduced costs will meet that goal and make this state a better place.

Again, I commend Senator Seward and everybody for bringing this bill together.

I vote aye.

ACTING PRESIDENT KUHL: Senator Dollinger will be recorded in the affirmative. Announce the results.

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Stand at ease for a moment.

(Whereupon, the Senate stood at ease from 2:12 p.m. until 2:18 p.m.).

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1535, Senate Bill Number 5708.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1535, by Senator Lack, Senate Print 5708, an act to amend the Judiciary Law.

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

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1535, Senate Print 5708. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 6. This

act shall take effect immediately.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Senator.

ACTING PRESIDENT KUHL: A very reluctant request has been made for an explanation by Senator Paterson.

SENATOR LACK: Thank you, Mr. President.

This is an agreed upon version of a renewal and extension of the outstanding authority for cameras in the courts.

Cameras in the court legislation which has been on the floor of this Senate six times in the last ten years, this would be another extender extending it for two more years.

46 of the 50 states in the United States have authorization in one form of another for cameras in the courts legislation. That ranges from the least restrictive, the state of California, which unfortunately in the past two

years produced a very bad trial which certainly confirms the adage that one bad trial does not make good law but California does have the most liberal, unrestricted law for cameras in the courtroom, to the most restricted law in the state of New York, which is New York's law, and with the revisions and amendments that are contained in S.5708, the instant bill we are talking about now, will make that language, indeed, even more restrictive.

Since cameras in the courts have been debated six times in the last ten years on the floor of the Senate, unless specifically questioned by Senator Paterson or others, I won't go into what is the current extant law.

I will, however, dwell on the six significant changes that are being made and contained in S.5708 and how that changes current New York law.

First, with respect to procedure. Current law is that the media makes a request to the court seven days before the commencement of trial proceedings. Pretrial conference is currently held between counsel and the media. Counsel convey to the court any

concerns of prospective witnesses but witnesses, parties and/or victims are not parties to that proceeding.

S.5708, the bill before us today would change that by making the victim and/or parties, parties to the proceeding for media coverage if they so choose and within ten days before proceedings instead of seven days, a party or a victim can file a formal objection to audio/visual coverage and then the law would proceed as it currently does. There would be a hearing before the trial judge. That would be appealable only to the administrative judge of the Judicial District or the city of New York as the case might be and that would be the end of the appellate process.

The standards -- the current law lists certain factors that the judge has to consider with respect to authorization of cameras in the courts. If, under 5708, a party or a victim of a crime objects, the court can still grant coverage but only after finding the public benefit of the coverage, quote, "substantially outweighs the risks of such coverage."

Currently, after proceedings start, no coverage is allowed unless counsels for all party agrees. S.5708 would also add that all victims of the crimes, assuming it's a criminal proceeding, which are the subject of the proceeding must consent before coverage would be permitted if coverage is to start after the commencement of proceedings.

With respect to pretrial criminal proceedings, the current law is that coverage of arraignments and suppression hearings were permitted only upon consent of the defendant and prosecutors. S.5708 would add bail hearings and preliminary hearings to pretrial criminal proceedings and they would be closed to audio/visual coverage unless all parties agree.

In the last ten years since cameras in the court legislation became effective, post-trial criminal proceedings have included a victim impact statement. Current law makes no mention of how to handle a victim impact statement. This bill would recognize that a person giving a victim impact statement at sentencing can make a determination whether he or she would like audio/visual coverage, that

is, a victim giving a victim impact statement can say I do not want the camera on or can permit the camera to be on if the camera is present.

Probably the most significant change, the last one, current law is on witness. In criminal cases, a non-party witness, as the current law, can request that his or her visual image, that's the blue dot, be obscured and the court must so direct and that would leave the current audio/visual coverage.

S.5708 would change that to extend one, to civil cases as well as criminal cases, would extend the protection to all witnesses not just a non-party witness, to allow cameras to be turned off, not just a blue dot, that is, there would not only be no visual reference to the witness testifying but no audio reference as well and, indeed, it would be blacked out at the choice -- choice of that witness.

Those are the significant changes made in 5708 to be grafted upon the current Section 218 of the Judiciary Law and finally the extension would be for two years after June

30th, 1997 before this would come up for sunset or review.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Yes. Mr. President. I acknowledge the somewhat paucity of interest on this bill and I also acknowledge the explanation in terms of the improvements that have been added to this experiment as it relates to cameras in the courtroom.

I would like to suggest, Mr. President, that this experiment which has gone on for ten years has failed. It's failed on one significant point, that the essence of this experiment was to provide an opportunity for the general public to be educated and become more aware and knowledgeable about the judicial system that operates in this state and everything that I have read and heard indicates to me that that has simply not been the case.

I think one of the sources of that conclusion is the New York Broadcasters Association who said in their own words, "As far as education, we in the media don't believe it's our business to educate. That's why we have an

educational system" and that statement, which is a direct quote, was in response to that point being made to them.

A study of TV coverage at the federal level confirmed the media is not involved in a public education process. Quite to the contrary. A pilot program that we have had was analyzed in New York and found seriously lacking. The average length of courtroom coverage was 56 seconds, hardly enough, I think, to illustrate anything that's significant about the judicial system and the Judicial Conference at the federal level concluded in 1994 that cameras should be banned in the federal court and the reason they gave, and I support again, the intimidating effect of cameras on some witnesses and jurors is cause for serious concern.

More specifically, here in New York, a survey was conducted by Judge John Feerick from Fordham Law School and some of their observations, I think are significant. One of the things was that 30 percent -- 37 percent of the judges they surveyed indicated, and again I quote, "That cameras led judges to

render rulings they otherwise might not issue. 80 percent believe that TV coverage is more likely to serve as a source of entertainment than education. Cameras also intimidate crime victims."

There have been a number of other surveys, including a Marist public opinion poll which indicated that 61 percent of New York State registered voters feel that it's a bad idea for trials to be shown on television and 65 percent believe that rather than increasing accuracy of news coverage of a trial, television serves more to sensationalize a judicial proceeding.

Now, irrespective and despite the protections that are in this statute, a witness knows there are cameras in the courtroom and he or she is intimidated. Tell them everything you want to, they're still intimidated. Jurors feel uncomfortable. Certain members of the judiciary and certain members of the legal profession will attempt to manipulate that opportunity. All in all, there are more negatives than positives.

If I felt that there was an educational value and a significant reason to

continue forward on this, well, I might be persuaded that these negatives should be overlooked, but if there is no primary positive -- and we've got, I think ample proof of that -- then why are we even risking these potential problems and ones that have been identified at the federal level, at the state level by independent bodies that have sought to determine for our benefit how this experiment has worked out, and that being the case, I see no reason to continue it.

ACTING PRESIDENT KUHL: Senator Waldon.

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

On the bill. I am very much in agreement with what Senator Padavan has said and for the reasons that he made his statements. However, my opposition to this goes beyond the parameters of his statements to us.

When I came into the Legislature in 1983, our prison population was much different than it is now in terms of the numbers. The numbers have increased almost geometrically and as they have increased, the

representation of young African-American males has increased disproportionately. This happened while cameras were in the courtroom, and so I believe it is not just that the cameras have failed to educate. Clearly the O.J. Simpson trial was not about education. It was about those who worship at the fountain of prurient interest. People were glued to their TVs on a regular basis, trying to enjoy and participate vicariously in the worst that we have as a society.

So while cameras in the courtroom have been in existence, more and more and more and more young African-Americans have been given stiffer and stiffer and stiffer sentences. The racial disparities report which came out of the Democratic Conference most recently spoke to the concern that if people similarly situated, black and white, same block, same socioeconomic background and education were arrested for the same crime and went through the same courts, one-third of those who were white would result -- or their situation would result in a criminal justice statistic adhering to themselves. Two-thirds of those who were black

would have a record and this nation, as we speak, there are more young black men between the ages of 18 and 25 in prison, on probation, are on parole or in our local jails than in college. As we speak, we have a disproportionate number of blacks not just in our prisons but in our local jails. Something has failed. Something has failed. Not only has our priority failed in terms of we should be doing things to ensure that such a great resource doesn't end up as cannon fodder for the prison system but something has failed in the fact that the criminal justice system treats those of color differently than it does all others, and I submit that part of that is a result of cameras in the courtroom.

The judges sentence differently because they are being scrutinized by the eye of the camera. The prosecutors prosecute differently because they are being scrutinized by the eye of the camera. The police officers testify differently because they are being scrutinized by the eye of the camera.

So this has not only failed because it has not educated us in this last ten

years -- these last ten years but this process of having cameras in the courtroom from a social perspective has failed abominably. The society is in trouble in terms of the way it treats its people of color, especially those who are young and part of that process that is resulting in this shame is the camera in the courtroom.

So I submit to you that the smart thing that we can do is to return the courts to the judges, to the prosecutors and to those involved in the process absent the need to have the stage of theatrics be the courtroom. The whole world is a stage, as we all know. Everyone is playing a role but the role that's been played most recently in the courtrooms with the prosecutors and the police and the judges has really failed the people of color of this state especially, but I submit across the nation.

So I would encourage us to do the right thing, to recognize that this was an experiment. It has failed on all four points and that we send it off into the sunset where it belongs.

Thank you very much, Mr.

President.

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: This issue before us which, as Senator Lack pointed out, has come up many times on a temporary basis over the last decade, really compels us to go back and re-examine the Constitution.

This is one of those issues for which constitutional scholars have enormous food for thought and much evidence within the last few years to provide new interpretations of the document that our forefathers created well in advance of the electronic age and little did they know or anticipate when they wrote the First Amendment and the Fourth Amendment the degree to which they would come into scrutiny today.

The First Amendment -- first article of the Constitution, Article VI, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained

by law and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense."

Article I, that's the fourth - that's the sixth article dealing with freedom - dealing with a fair and speedy trial and the other article to which this is addressed is "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or bridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances."

Now, it is this first article, the freedom of press stated in conjunction with religion and assembly, which has brought the Newspaper Publishers Association, the Broadcasters and many other individuals in the media to the steps of these Capitol -- this Capitol and other capitols many, many times seeking what they believe is their constitutionally guaranteed freedom to broadcast

in its entirety any trial of their choosing. The right of a defendant, and by inference the rights of victims, to receive justice through the court system has not been similarly lobbied upon this Legislature, and I would submit to my colleagues that there is no significant organization out there anything on a scale in terms of personal power and resources to represent victims and witnesses which could be balanced by this Legislature in contrast to the press with its mighty power.

The press has maintained that this is a very simple issue. They believe that this document I have just quoted, the Constitution of the United States, guarantees them access and those of us who have watched the experiment, as Senator Padavan pointed out so eloquently, Senator Waldon so eloquently also, state that it has not been an unqualified success and there are numerous cases where witnesses and victims have had their rights violated in the exercise of so-called freedom of press by the broadcast media.

Would our forefathers have drafted the Constitution any differently if they

could have anticipated broadcast trials? Who knows? This is the sort of thing that can be argued by constitutional scholars and all the way up to the Supreme Court of the United States without a clear and uniformed position, but we have to take the process as it evolves, draw our conclusions from the evidence as we see it from each one of these experiments and determine whether we are, in fact, on the right track and if this is one of the most awesome responsibilities we have in this branch of government -- because here in the Legislative Branch we are dictating to the Judicial Branch how they shall conduct their activities without our ability or without the Executive Branch's ability to micro-manage them or have any additional redress. All we can do is define a basic ground rule. This is merely a blueprint and then entrust the courts to implement them the way we perceive they should be implemented. We must wait until the end of this experiment to determine whether or not it has been well handled and that has been our pattern over the last ten years.

I have my own reservations about

cameras in the courtroom. I believe that the courts are open and accessible right now. I went one year myself to listen to a very eloquent attorney in Syracuse do the summation at the end of a long and highly publicized trial because I wanted to see what it was he did. I wanted an opportunity to hear this eloquent speaker and to have a little better understanding. Those courtroom doors were open to me. I was able to walk in and hordes of members of the media were there and many other public interested citizens were there as well and the same is true for numerous other trials.

Would it have been easier for me to simply turn on my television and watch the summation? I suppose it would have, but does that mean that television has a responsibility to broadcast every trial, or what is the criteria by which television executives determine they will broadcast trials? Is it for only the most sensational? Is it for those trials which fit neatly with the product which is simultaneously being sold on a television station? Is it because there is already a sensational aspect as in the case of a well

known individual like O.J. Simpson or William Kennedy Smith that a trial becomes a broadcast?

These are very subjective criteria. It is virtually impossible for us in this chamber to anticipate every circumstance like that and to determine when a trial should and should not be broadcasted, but we do know - we do know that we have a responsibility to see that justice is the ultimate responsibility of the court system not broadcasting for the public's entertainment or even for the public's education. Justice must be our number one concern today and if we lose sight of that, we will have violated the responsibility of this branch of government to provide guidance to the Judicial Branch of government.

Now, there are cases where it appears justice has not been well served because of the broadcast media's presence in the courtrooms.

Senator Padavan has stated many of the anecdotal and the documented examples of questionable conduct and questionable outcome caused by cameras in the courtroom and yet we are really left with a very limited number of

options in drawing up the guidelines for cameras in the courtroom and most of them fall under the general category of judicial discretion.

It is the judge in that courtroom who assumes the Godlike responsibility of determining what can emanate from that courtroom to the public. The control of that individual really is almost absolute. Once we devise some guidelines, we must rely upon individual judges in their own courtrooms to interpret them. So all we are really doing is providing some direction and hoping for the best.

There is, in this particular bill, great progress made in addressing the responsibility of judges to consider the status of the victims and the rights of the victims and of the witnesses. That was almost absent in the previous cameras in the courtroom experiments that we've had in this state, and I commend the sponsors of this on page 2, beginning on line 39, where it begins "The court shall only grant permission for such audio/visual coverage upon a finding that, in accordance with the purposes of this section, the benefit to the public of audio/visual coverage in such a case

substantially outweighs any risk presented by such coverage."

Now, this statement was inserted to explain under what circumstances a witness or a victim or any party in the trial who requested coverage not be permitted would have that request thrown out and this implies, again, a really, almost Godlike responsibility in the hands of the judge to determine that there is some overwhelming public good to be served by broadcasting that trial.

I, frankly, can't imagine a situation where there would be an overwhelming public good to be served that would supersede the rights of a victim or a witness to be subject to broadcast coverage, and I believe that there is ample evidence -- some of it is anecdotal, but I believe that those of us who have followed this issue over the years knows that there are cases where rape victims chose not to prosecute and, in some cases, not to even report the crime of rape out of fear that the trial in which their attacker would be tried would put them on the stand as much as the perpetrator of the crime.

Over and over again in this country, we have seen in the cases of sexual assault that it is often the victim and not the attacker who faces the greatest scrutiny and one forgets sometimes who it is actually on trial. The case of William Kennedy Smith is probably one of the greatest living examples of that. The young woman who was the victim in that case was barely obscured by the infamous blue dot and her entire history was divulged to the world at large before the trial was over.

There was a new case in New Bedford, Massachusetts, where a young woman had her identity inadvertently disclosed by the media in the course of a covered trial and there are numerous examples, including some in this state, one in which during an arraignment, the identity of the victim was broadcast in a news brief just before the 6:00 o'clock. "It was a mistake. Oops. We're sorry", said the local television station responsible. How could that very trite apology ever begin to alleviate the damage suffered by that young victim?

So I have my qualms in supporting this measure today. I have considerable qualms

that this little paragraph in here is going to be able to guide the judges of this state over the next two years and will help them find some overwhelming public reason why there must be audio/visual coverage in instances where the witnesses and the victims would choose not to be otherwise covered.

I believe, and I've said it many times before, that we could have a bill that would be fair to the broadcast media of this state without compromising the criminal justice system and the rights of the victims, a bill that would simply allow an automatic exemption from coverage at the behest of the victim, period. Why is it so difficult to do that? If we had such a bill, I would willingly support it.

I will today give my support, my limited for this measure because I believe we are on the right track. I think this is progress and it's a two-year time period, and I would work to see that that other protection could be inserted whenever we come up with a future extender, but I have reasonable doubts about whether we can put in the hands of the

judges of this state this awesome responsibility without compromising the rights of people who are to become victims in the years ahead.

One other little note I would just make, my constituents seem not to be concerned about this matter at all. I find it fascinating that on the many areas on which we are lobbied regularly, I don't hear from the people of the 48th Senate District asking for extended coverage of cameras in the courtroom. In fact, I will occasionally ask them at town meetings what they think and they shrug their shoulders and mutter something unpleasant about the O.J. Simpson trial and then want to know what we're doing about the budget. There are many other things on their mind.

This is a matter that has been driven by people who will personally benefit, including some lawyers who would like to have the exposure. This is obviously great advertising for those members of the bar who find themselves on television and gentlemen and ladies of this chamber. Notwithstanding, I think we all know there are some people who want to play to the crowds and look forward to this

opportunity to market themselves but is that really our responsibility? Should we be helping them to do that? Are there judges who also face election in this state who are worthy of this kind of free exposure and if there is even a possibility that it is at the expense of victims, we have every need to put the greatest possible restriction on it imaginable to protect the victims and to ensure that the primary responsibility still must be for the courts of this state to meet out justice not entertainment.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could have the title read at this time for the purposes of Senator LaValle voting.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator

LaValle, how do you vote?

SENATOR LAVALLE: In the negative.

ACTING PRESIDENT KUHL: Senator LaValle will be recorded in the negative. The roll call is withdrawn. Debate is continued.

The Chair will recognize Senator DeFrancisco on debate.

SENATOR DeFRANCISCO: I'm going to support this bill, and I think its only drawback is it's not permanent, because if you have a ten-year experiment, I don't know when the experiment ever gets over. We've had ten years under a bill very similar to this and there has been very little, if any, negative feedback from what's happened in the courtrooms.

I speak from a little different point of view. I am one of those lawyers who have had a trial televised when the bill first came into play. It was a very serious criminal case and, no doubt, from time to time individuals that are being broadcast or being filmed on what they say somehow sometimes play to the cameras, sometimes speak longer than they

should have. That also applies, by the way, to legislators, as some of you might have noticed from time to time, but the fact of the matter is that if it's a trial, the participants are so wrapped up in the trial -- and I can speak from experience -- that they're concerned more about what they're doing for their clients or for the people of the state of New York than they are about how they happen to look on a camera.

As far as the judges administering this law, there's been concerns - some have expressed concern that the judges should not be left with this awesome responsibility. Well, judges are left with a lot of awesome responsibilities, including sentencing people on very serious crimes, making evidentiary rulings that could determine the outcome of trials and they certainly have experience in what to do to protect the victims as they have in our county, in my county and they have throughout this state. To suggest that judges could not use their proper discretion, I think is not being fair to judges and also if there is a judge who has a televised case that is not ruling properly or is

discriminating in some way or can't control the courtroom, as I believe occurred in the Simpson case, then the whole world will know about it and that judge would become open to the public scrutiny that the judge might not otherwise have been held to.

So there's many factors on both sides of this issue, but I think that the experiment has been a positive one. Cameras in the courtroom should be made permanent, and I'm going to vote in favor of this bill.

ACTING PRESIDENT KUHL: Senator Stafford -- Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

I'll be very brief. Ten years ago we passed this bill. I was the sponsor and I looked so terrible during that period that everyone felt sorry for me and passed it. It actually had not passed a few times before. The first time it came up, I think there were maybe three or four votes for it. Senator Anderson was the sponsor. It didn't fair very, very well. I voted for it at that time and I'm going to vote for it again. I'm just going to make

this point.

I respect all the concerns that people have here on this bill and I have tried lawsuits with the camera and without the camera, and I assure you there are always possibilities of abuses. There are always possibilities of, you know, disadvantages.

On the other hand, here is my point and this is a point that I made the day that we passed the bill, and I remember Senator Gold sitting where Senator Connor is right now, and he nodded as I said this ten years ago. The courts are an integral part of our system and if there's one thing we pride ourselves in with this system is it's open to the public.

Now, all of us, myself included, sometimes have some things open to the public that we say, well, wait a minute, the public doesn't have to know that. I do it. We all do it, but I suggest this to you. If there's any function in our system that should be open to the public, it's the courts.

Now, you're going to have trials when you would rather it was not open. You're going to have trials when you think it would be

good to have it open, just as every function of government, whether it is legislative or executive. This is judiciary.

I compliment Senator Lack and all those who have worked on this bill for the safeguards that they have put in the bill. I think this makes it a better bill than we passed ten years ago, but once again, I just make this point. If there's any function in our system that should be open to the public where one person is in a lawsuit or one party is in a lawsuit with another party or whether, unfortunately there's a trial where the government is a party and we have a defendant, in our system, we say we operate in the public and, therefore, I say there will be times we would rather not have this. There would be times we rather have it. In government, there are times we like to have things public. There are times we say, well, wait, maybe it shouldn't be public, but I think we all come down on the side that actually this is one of the strings on our democracy.

I think the bill is good. I suggest there hasn't been any severe problems.

I suggest that the bill should be continued and I would go so far as to say, as someone said earlier here, that we ought to make it permanent and get on with it.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I and so many other people remember these debates all the way back and like so many other people, I probably voted yes and voted no along the way and I'm back again to something my friend Senator Farley said in the discussion I had with him as to whether or not we vote on bills or whether we vote on labels. Everybody gets excited. This is Court TV. Well, is this the bill that Court TV wants? Is this the right bill for Court TV? I think that's a legitimate question.

The last few days, we've seen some things which have horrified me. I don't know the reaction to my friends in this chamber, but I don't know what came over people in another part of this country that decided to release autopsy reports on that little child,

Jon Benet. To me it was horrifying. The prosecutor didn't want it done. They're trying to find the murderer. It had to be done. The press had the right to know. I think that's junk. I think that's silliness if it interferes with an investigation. That had nothing to do with cameras in the courtroom.

I was also upset within the last month that a New York judge -- and I'm not criticizing the judge. Please understand. A judge makes a decision and does the best he or she can, but I was surprised in the Chavez case that the court was opened up and they were trying very hard to deal with a youngster in a family at tragic times and I don't know why that was opened up. It's not my understanding. It's not anything I ever wanted but, again, that wasn't the cameras in the courtroom. It wasn't the TV. It wasn't the radio, and I guess the point I'm making is that if you want to talk about openness and you want to talk about horror stories, you'd probably find 40 to 1 the print media versus any other media and we all go through that and you say to yourself -- you pick up a paper and you say to yourself, How do they

print that stuff?

So one of the original arguments that was made for Court TV was if you've got print media people in there and they're writing stuff, what could they -- what more harm could it be to have a camera in and one of the first hits on cameras in the courtroom was the concept that you could show a picture of somebody, it's a picture, it's a photograph and it's 15 seconds or whatever and you could give the wrong impression and the argument that came back against that was one print media reporter in two paragraphs or one paragraph can give you just as bad a reaction.

So the answers, after all was said and done, we gave it a try and Senator Hoffmann said something a few minutes ago which I think reflects my district also. I mean, if you go around the district, people aren't yelling and screaming for or against it, but I think part of that -- I read it a little differently than the Senator. I think part of that is just that people have just accepted some things now today as a part of life.

As a matter of fact, sometimes

you'll pick up a paper and you'll say, How did that get on the front page and instead of getting outraged, I say to myself, Thank you, God. We're not at war. If things are quiet down with Russia, then I guess the country is safe, if the only thing they could do is put the junk on the front page that they put on the front page.

The O.J. Simpson trial was something which I think has had an interesting effect on America. Number one, they saw a criminal trial. Number two, they saw a civil trial and a lot of people, for the first time in their lives, learned that there was a difference. They also saw how inept prosecution can go on and on and on and some people can get away with something and how you get a lawyer who may be a trial lawyer type as the -- that bar likes to call themselves, go in there, shorten a trial and convince the jury that something happened that's different.

I, for one, was not watching this trial every day but there were people who were and it was out there. If it wasn't on television, you couldn't stop it from being in

the newspapers every single day and even though it was on television, it was in the newspapers every single day.

The question of whether or not that part of our society that deals with the courts should be entertainment, we can shrug our shoulders. It obviously has come to some extent entertainment.

As far as it being education, I do believe in that and I do believe, as was said earlier, that these two elements should not override justice because the courts weren't created for entertainment and they weren't created for anything else other than justice, but I do believe that if you take the label, if you listen to Senator Farley and take the label, I personally have no objection today with the concept of cameras in the courtroom and I say that a little bit early. They haven't followed any of my trials yet and I'm in the middle of a trial, had to give up today to come here but if and they wanted to bring their cameras Friday, but the point is as a concept, I'm not opposed to it.

One thing has started to get me

upset, though, and that is that I am now hearing that perhaps the people actually involved in cameras in the courtroom may not support this bill and if they don't support the bill, I guess maybe they don't go in and maybe you don't have it anyway.

So I say to myself, Senator Farley, as much as you and I have debated whether we vote on concepts or bills, I really do believe we vote on bills and I, with the greatest respect for Senator Lack and the work he's done, have to throw out to you that I have still got a question on my mind.

I am prepared to vote for cameras in the courtroom. It makes no sense to me to vote for cameras in the courtroom if the bill I'm voting on is opposed by the people with the cameras. If the people who are going to go in or could go in or would go in are opposed to this and say, Look. We want to do it but this isn't the way to do it, that concerns me, and so until I really get it clarified in my mind as to what those involved want to do, I'm going to wait my own decision until the end of this debate.

I can support the concept but there's no way under our system that I could vote for a concept. I'm only allowed, Senator Lack, to vote for a specific bill with specific language and that's the bill I want to know how the people involved feel about it.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I have to respond to several of the issues that have been raised in the course of this debate. I'll start with Senator Padavan who talked about the fact that cameras in the courtroom hadn't educated the people in the state of New York and that the Judiciary did not want to have cameras in the courtroom continue.

My suggestion is, like most levels of government, the concept of sunshine to the Judiciary is not a particularly appealing one, that the notion that the public will watch the Judiciary more carefully or with an eye of a camera is something that no doubt the Judiciary is afraid of. Quite frankly, the Legislature has proven in the past that we haven't been

willing to authorize gavel to gavel coverage of the state Legislature under the electronic eye of a camera because we don't necessarily want that level of sunshine brought into our proceedings. So the people of this state could watch this debate live and this house live and watch how it works. I suggest that when the Judiciary suggests we don't want cameras in the courtroom, what they're saying is we would like to conduct our proceedings the way we want to without the glaring eye of the people on them. Sunshine is sometimes a difficult thing to get used to.

To my friend, Senator Waldon, who talks about the racial imbalance in our criminal justice system, this is an enormous problem that we in America have to face. The concept that justice for African-Americans and justice for whites is different in our system, a system that we pride on being color blind, should affront and outrage all of us but, Senator Waldon, what do I suggest is the solution to that? Less exposure of that difference or more?

I would simply call your attention to, Senator Waldon, that we had

150-year history -- a 100-year history anyway, of segregation and lack of justice for African-Americans and at least based on my recollection of history, what turned it around? The eye of the television camera watching the conduct of Bull Connor use electrical prods on African-Americans in Selma, Alabama because they were protesting the fact that they didn't have equal rights to vote. It's America looking at that image in the face that rallied the conscience of Americans, black and white, to say it must be finished. It is on outrage to our sense of who we are and I would suggest to you, Senator Waldon, that the camera in the courtroom might some day achieve the same goal. It might some day force us to confront the fact that blacks are sentenced to disproportionately higher rates, that their race is used against them in the criminal justice system in violation of all that we hold sacred, and I would suggest it's the eye of the camera in the courtroom that will prove to us that that is the case. It's the eye in the courtroom that will show America across the nation that whites are treated differently from blacks and that we will

hopefully come to our senses just as in 1963, we came to our senses about inequalities in voting and just as in 1970, when we came to our senses about a war that we were fighting in which we did not have an objective, in which we did not fully understand and it was the televised pictures that came back into our living rooms that drove home the message that something was wrong.

I also think it's important in this debate to differentiate what we're talking about. We're simply talking about the eye of the television camera. All of those who are concerned about witnesses, all of those who are concerned about statements made by people recognize that the print media has access to these proceedings. The only thing that this bill talks about is allowing the eye of the camera to accompany those in the print media. This is about bringing television to the courtrooms. It's not about ending public access. Witnesses will still have -- there will be print reporters in the pews of a courtroom taking down names, taking down statements, taking down public information.

So it seems to me that this bill raises the issue of the role of television in a courtroom. It seems to me to raise significant issues.

I will close with one final observation, and that is that the question of how much authority a single witness should have to curtail cameras in the courtroom. Senator Lack, you can correct me if I'm wrong in your summary on this bill, but my understanding is the way this bill is drafted, any witness on the witness stand, be they police officers or anyone, can ask that the court cameras be removed from the courtroom.

I would suggest that giving a single witness, a police officer, anyone the ability to turn off that camera without the judge making a ruling that it will somehow promote a fairer trial seems to me to give the witness, be it Mark Fuhrman, be it Bull Connor, be it anyone who is a witness in a courtroom the ability to turn off the camera, gives them too broad a discretion and that that provision may defeat the whole purpose of having cameras in the courtroom, which is to open to the public

eye not necessarily to educate the public, not necessarily to entertain it but to open for the public the judicial process.

Those who have been critical of the O.J. Simpson case, I would simply suggest that that was not a fault of cameras in the courtroom. That was an absolutely outrageous performance by a trial judge who lost control of his courtroom. It didn't have anything to do with the fact that there were cameras there. It had to do with the fact that the judge lost control.

So this is a difficult concept for me. I'm torn between what I see as significant rights, significant protections, but I believe that if you support the notion that cameras should be in the courtroom, if you support the notion that the public should be allowed to go into the courtrooms in this state, to allow a witness to unilaterally close the door gives too much power to a witness to defeat the beneficial purpose of this bill.

SENATOR LACK: Mr. President.

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

SENATOR LACK: As the sponsor of the bill, I would like to -

ACTING PRESIDENT KUHL: We have a list going.

SENATOR LACK: Oh, I think, Mr. President, you should recognize me for a moment, if you would.

ACTING PRESIDENT KUHL: Pardon?

SENATOR LACK: I think you should recognize me for a moment with respect to the bill. I don't think the waiting list will mind.

ACTING PRESIDENT KUHL: Pardon, Senator Connor?

I have a list, Senator Lack, going, and if you want to ask Senator Dollinger to yield to a question while he has the floor before you're released, that's fine, but -- or I'll put you next.

SENATOR LACK: No. I'm standing to make a motion with respect to the bill, which I believe will take precedence over it and without objection of anybody in the body in the course of making that motion, that it will require me to make a statement for a moment or

two.

ACTING PRESIDENT KUHL: Senator Connor, you have any objection to Senator Lack?

SENATOR CONNOR: Mr. President, I would just like to briefly comment on this bill and make one thing clear. I am for the concept of cameras in the courts, as I have said. I am for openness in the courts. I am also for openness in the Legislature. We vote on bills. This is a bill we saw for the first time-- or most of us saw for the first time an hour and a quarter ago. There are obviously problems with it. Those who -- and I, in my early days, was against the concept of cameras in the court but I became a believer but when the newspaper publishers, Court TV and others who are concerned about this say they're against this bill, I listen and I listen not because they tell me where to be or their position is dispositive. I listen because they have an interest and they ought to get more than an hour and a quarter to state their case on a particular bill about why they may have objections.

In view of that, Mr. President, I

would be happy to yield to Senator Lack.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Mr. President. Thank you, Senator Connor, for yielding.

Senator Connor, as you know, you might have just seen the language a few moments ago but the language with respect to S.5708, indeed, has actually been around, been discussed for probably the better part of two weeks. Some of the language which is complained about on the floor of the Senate is language that has been - would you close the door, please -- language has been complained about emanates from requests made by the Assembly with respect to the exact same types of situations that both Senator Gold and Senator Dollinger referred to in trying to balance the rights of victims and witnesses versus the rights of the public parties to any particular litigation, et cetera. It was specifically at the request of the Assembly and the Assembly Majority that language was included which gave witnesses their right to turn off - not only to have the so-called blue dot which is

current law but also turn off the audio portion of cameras in the courtroom to take away whatsoever any statement made by the witness. That was to balance, particularly where the witness is a victim, his or her belief that their situation as a victim was aggravated by the presence of cameras in the courtroom. That is not a provision that emanated from the Senate. It emanated from the Assembly Majority, part of the negotiations. They wanted it - they wanted it in the bill and so be it, it has been put in the bill. It is my personal belief that that still allows for cameras in the courtroom and, in fact, is not different from some provisions that exist in other states but so be it.

If there are members of this chamber who feel that the language requested by the Assembly Majority should not be in the bill, far be it for me to disagree and far be it for me to have a bill pass this house where there is disagreement because of language that has emanated from the Assembly Majority.

So, Mr. President, I move to strike the enacting clause of S.5708, as the

sponsor. Please strike the enacting clause. If you would like it more properly, Mr. President, please lay the bill aside and I'll move to strike the enacting clause.

ACTING PRESIDENT KUHL: Senator Lack, I think that would be the appropriate procedure because a vote was taken on the bill. So we will withdraw the roll call, lay the bill aside at your request. Now if you would like to move to strike the enacting clause, I'll entertain that motion. The motion is to strike the enacting clause on Senate Bill -- Calendar Number 1535, Senate 1997 -- excuse me -- 5708. All those in favor of the motion signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The motion is successful.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1493, Senate Bill Number 5410-C.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1493, by Senator Johnson, Senate Print 5410-C, an act to amend the Environmental Conservation Law, in relation to the management of marine fisheries.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1493, Senate Print 5410-C. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: Return to motions and resolutions order and the Secretary will read the title to the privileged resolution at the desk by Senator Libous.

THE SECRETARY: By Senator Libous, Legislative Resolution 2099, commending the United Communities Against Substance Abuse upon the occasion of its designation as the recipient of the New York Conference of Mayors Local Government Achievement Award.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Nothing at the desk, Senator Skelos.

SENATOR SKELOS: A reminder to the members of the Majority, there will be a Majority Conference at 11:00 a.m. on Tuesday, July 22nd, and there being no further business, I move we adjourn until Tuesday, July 22nd, at 12:00 noon, intervening days to be legislative days.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, the Senate stands adjourned until Tuesday -- for an announcement, Senator Paterson?

SENATOR PATERSON: Mr. President, there will be a conference of the Minority, Minority Conference in the Minority Conference Room at 11:30.

ACTING PRESIDENT KUHL: For the benefit of the members, before the adjournment

of the house, there will be a Majority Conference in the Majority Conference Room next Tuesday at 11:00 a.m., a Minority Conference in the Minority Conference Room at 11:30 a.m. and without objection, the Senate stands adjourned until next Tuesday, July 22nd, at 12:00 noon sharp.

(Whereupon, at 3:20 p.m., the Senate adjourned.)