ALBANY, NEW YORK

February 3, 1998

3:03 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order. I ask that everyone present in the chamber please rise and repeat the Pledge of Allegiance with me.

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

The invocation today will be given by the Reverend Peter G. Young of the Blessed Sacrament Church in Bolton Landing.

REVEREND PETER G. YOUNG: Thank you, Senator.

Let us pray. As we enjoy the gift of this beautiful and mild weather, may we remember those in our North Country who are now in an attempt to pull together their spirit and resources after their disastrous ice storm.

We also ask Your prayer for our dear friend, Senator Norman Levy, as he attempts to regain his health so he can be again with us in this esteemed chamber.

O God, Your guidance and help are always greatly appreciated. We ask You this in your name now and forever more. Amen.

ACTING PRESIDENT MARCELLINO:

Thank you, Reverend.

Can I have the reading of the Journal.

THE SECRETARY: In Senate, Monday, February 2nd. The Senate met pursuant to adjournment. The Journal of Saturday, January 31st, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports from standing committees.

The Secretary will read.

THE SECRETARY: Senator Maltese, from the Committee on Elections, reports:

Senate Print 1167, by Senator Lack, an act to amend of the Election Law;

1440, by Senator Maltese, an act to amend the Election Law;

1446, by Senator Maltese, an act to amend the Election Law;

2651, by Senators Farley and

others, an act amending the Election Law and the State Finance Law.

Senator Kuhl, from the Committee on Agriculture, reports:

Senate Print 545-A, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

546, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

548, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

3084, by Senator Padavan, an act to amend the Agriculture and Markets Law;

4834-B, by Senator Johnson, an act to amend the Agriculture and Markets Law;

5994, by Senator Kuhl, an act to amend the Agriculture and Markets Law.

Senator Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Print 1854, by Senator Padavan, an act to amend the Public Authorities Law;

5991-A, by Senator LaValle, an act to amend the Public Authorities Law;

6056, by Senator Skelos, an act to amend the Business Corporation Law.

Senator LaValle, from the Committee on Higher Education, reports:

Senate Print 249, by Senator LaValle, an act to amend the Education Law;

559, by Senator LaValle, an act to amend the Education Law;

2461-A, by Senator Holland, an act to amend the Education Law;

5470, by Senator Rath, an act authorizing SUNY College of Environmental Science;

5690-A, by Senator Hannon, an act in relation to persons.

Senator Levy, from the Committee on Transportation, reports:

Senate Print 440, by Senator Goodman, an act to amend the Vehicle and Traffic Law;

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

809, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

914-A, by Senator Levy, an act to

amend the Transportation Law;

916-A, by Senator Levy, an act to amend the Vehicle and Traffic Law;

2440, by Senator Maltese, an act to amend the Vehicle and Traffic Law;

5919, by Senator Present, an act to amend the Vehicle and Traffic Law;

6011, by Senator Stafford, an act to amend the Highway Law.

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

Senate Print 255, by Senator Rath, an act to amend the Family Court Act;

1983-A, by Senator Skelos, an act to amend the Domestic Relations Law;

5083, by Senator Maziarz, an act to amend the Executive Law;

5799-A, by Senator DeFrancisco, an act to amend the Domestic Relations Law.

All bills directly for third reading.

ACTING PRESIDENT MARCELLINO: Without objection, all bills are directed directly to third reading.

May I have reports of select

committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I move that the following bills be discharged from their respective committees and recommitted with instructions to strike the enacting clause: Senate Print 5578 and Senate Print 6040.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time could we adopt the Resolution Calendar in its entirety.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: At this time may we please have the non-controversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read the non-controversial calendar. Can all members please take the conversations out of the room, the staff take your seats, please. It's difficult to hear in chambers.

The Secretary will read the non-controversial calendar, please.

THE SECRETARY: Calendar Number 69, by Senator Skelos, Senate Print 557-A, an act to amend the Social Service Law and the Family Court Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 73, by Senator Spano, Senate Print 5372-B, an act to amend the Social Services Law.

ACTING PRESIDENT MARCELLINO: 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.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 86, by Senator DeFrancisco, Senate Print 487, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 105, by Senator Kuhl, Senate Print 2654, an act to amend the Public Authorities Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 142, by Senator Saland, Senate Print 1292, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 145, by Senator Libous, Senate Print 1918, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 146, by Senator Volker, Senate Print 3532, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 147, by Senator Maltese, Senate Print 4300, an act to amend the Penal Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 148, by Senator Cook, Senate Print 4644-A, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40, nays 1, Senator Kuhl recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 149, by Senator Velella, Senate Print 5421, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO:

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 150, by Senator Volker, Senate Print 5691-A, an act to amend the Penal Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 151, by Senator Velella, Senate Print 355-A -

SENATOR PATERSON: Lay it aside.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Can we lay that bill aside for the day at the request of Senator Skelos.

Senator, that finishes the non-controversial reading.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, and if you could take up Calendar Number 147 on the controversial calendar.

ACTING PRESIDENT MARCELLINO: We could do that. There will be an immediate meeting of the Rules Committee in Room 332. Rules Committee meeting immediately in Room 332, please. All members proceed there and will the Secretary read Calendar Number 147.

THE SECRETARY: Calendar Number 147, by Senator Maltese, Senate Print 4300, an act to amend the Penal Law.

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: Senator Leichter would like to debate that bill but he's on his way to the Rules Committee, so could we -- it's just an observation, Mr. President, but -

ACTING PRESIDENT MARCELLINO: Senator, if you could just hold on a second, please.

SENATOR LIBOUS: We'll lay it aside temporarily.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Libous, for your magnanimity. Can we proceed with Senate bill, Calendar Number 150.

Thank you, Senator Libous. The Secretary will read.

THE SECRETARY: Calendar Number 150, by Senator Volker, Senate Print 5691-A, an act to amend the Penal Law, the Criminal Procedure Law and the Executive Law.

SENATOR PATERSON: Mr. President, I'm sorry. What Calendar Number are we on?

ACTING PRESIDENT MARCELLINO: Senator, it's Calendar Number 150, Senator, Senator Volker's bill.

SENATOR PATERSON: Oh. Well, in that case, would the sponsor yield for a question?

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT MARCELLINO: I believe he yields, Senator.

SENATOR PATERSON: Would the sponsor wait until I can think of a question?

ACTING PRESIDENT MARCELLINO: Is that in the form of a question, Senator?

SENATOR PATERSON: The -- this is a piece of legislation, Senator Volker, that I supported this last year. I supported this year in committee, and I imagine I will vote on it, but I do have some misgivings about some of the provisions in this bill, the provisions which the Governor calls bail reform and sentencing reform. Would it not be fair to say that since they don't relate to sexual offenses, that actually rather than there being two provisions in this bill, that these are really two separate thoughts which could theoretically be two separate bills that we could consider separately?

SENATOR VOLKER: Well, Senator, you're right, this bill passed 57 to nothing last year, if I'm not -- yeah, 57 to nothing. I think -- let me just say this: What you're saying is that those two provisions relating to bail reform and of sentencing reform, not only pertain to sex offenses but also pertain to other offenses and that's true, but they do pertain to sex offenses, however. In other

words, the bail reform, obviously would pertain to this bill as do the sentencing reform.

This bill represents the most comprehensive reform of sex assault since about 1970-something. In fact, I think it's even earlier than that, but you're right. Those two provisions in this bill do pertain generally to the Penal Law other than -- and the Criminal Procedure Law, obviously, other than sex offenses, but they also -- it might be said, they do pertain to these reform changes and sex offenses also, so if a person is convicted of the enhanced penalties in this bill, those provisions would still be in place and, therefore, the bail reform and -- they're charged with these offense, I should say, not convicted because they would be charged with them -- the D.A. would still have the right to appeal bail and also would have the right to appeal for what he considers to be light sentences, he or she considers light sentences.

SENATOR PATERSON: Thank you very much, Senator Volker.

That is very responsive and Senator Volker has done a lot as this bill

itself would be emblematic to reform a lot of our procedures and laws as they relate to sexual offenses. I'm troubled by the manner in which this bill is put together, and it's not an issue that I have with any of my colleagues in this chamber, but it's what I often refer to as the politics of confusion.

There are a number of victim service organizations here today, domestic violence groups, different types of organizations that all of us in this chamber have historically supported. They would like very much to see this bill passed. I guarantee that if those two provisions relating to prosecutorial appeals for bail reform and sentence reform were withdrawn from this bill, this legislation would fly through the Senate and the Assembly and could be enacted into law.

So, therefore, if there was a real serious effort to try to reform sexual offense laws and domestic violence laws as is practiced in this particular bill, I suggest that that would be the solution that would inure to the benefit of victims and it could happen as early as next week.

Unfortunately, we have attached to them two pieces of legislation that a number of my colleagues would like to debate, and they relate to prosecutorial appeals of bail reform and sentence reform and whatever your point of view is about that issue, it is a separate issue. It is not really correlative to the issues of domestic violence and it certainly would make a lot of sense to separate them so that if necessary we can pass two bills and those who have problems with an appeal of bail, which would be a reform that might actually challenge some of the protections of the Eighth Amendment to the Constitution and an appeal of sentencing which has similar issues, that those issues could be discussed separately.

To vote against this piece of legislation would make it appear that you're against the overwhelming number of reforms that are in this bill that are actually very positive.

So while I encourage that this bill pass unanimously this year as it did last year, I can't do it without the caveat that we need to address the issue of how we can get

reforms in the domestic violence prosecutorial area and the procedures relating to sex offenses as quickly as possible, and we could do that by not putting in ancillary issues into legislation and just letting the public policy that we want to change on those specific areas, which are the title of the bill, to pass them and enact them into law as immediately as possible.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 46. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR LIBOUS: Mr. President, is there any housekeeping?

ACTING PRESIDENT MARCELLINO: Yes. We can go back to reports of standing committees, sir. I think we have a report of that very important Environmental Conservation Committee.

The Secretary will read, please.

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

Senate Print 121, by Senator Stafford, an act to amend the Environmental Conservation Law;

150, by Senator Stafford, an act to amend the Environmental Conservation Law;

389, by Senator Stafford, an act to amend the Environmental Conservation Law;

1388, by Senator Marcellino, an act to amend the Environmental Conservation Law;

2613-A, by Senator Leibell, an act to amend the Environmental Conservation Law; and

3157-A, by Senator Kuhl, an act to amend the Environmental Conservation Law.

All bills directly for third reading.

ACTING PRESIDENT MARCELLINO: So ordered. Without objection, all bills reported directly to third reading.

SENATOR LIBOUS: Mr. President, could we stand at ease momentarily.

ACTING PRESIDENT MARCELLINO: The Senate will be at ease momentarily.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: To correct a vote from yesterday. Yesterday Senate 00397 was approved by this chamber. I shall like the record to reflect if I had been in the chamber, I would have voted in the negative.

ACTING PRESIDENT MARCELLINO: The record, without objection, will reflect that had you been in the chamber, Senator, you would have voted in the negative on that bill.

SENATOR STAVISKY: Thank you.

(Whereupon, the Senate stood at ease from 3:21 p.m. until 3:24 p.m.)

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 147, by Senator Maltese.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 147, please.

THE SECRETARY: Calendar Number 147, by Senator Maltese, Senate Print 4300, an

act to amend the Penal Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Maltese, an explanation has been asked for by Senator Leichter. Before you do, can we have some order in the chamber, please? Everybody just settle down. Thank you.

Senator.

SENATOR MALTESE: Mr. President, this is an act to amend the Penal Law in relation to clarifying the definitions of physical injury and serious physical injury.

This is an Attorney General's legislative program bill which is supported by the New York State Bar Association. It is currently carried in the Assembly by Assemblyman Brian McLaughlin and co-sponsored by 32 other Assemblymen, all Democrats with the exception of one Republican.

It would amend certain subdivisions of the Penal Law to redefine physical injury and serious physical injury to clarify the nature of evidence needed, and it would remove the present definitions and, for instance, in the case of physical injury, it

would have physical injury mean physical pain, illness, the presence of a visible or palpable mark or impairment of physical condition, and further it would indicate that physical injury may be established through the testimony of the victim alone. Physical pain may be established by evidence of the injuries inflicted in the light of common experience, and I think that's the common theme in changing both of these definitions.

The same with serious physical injury. Presently it would -- the definition - under definition sections, Section 10, it indicates that that injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

We and the other sponsors of this legislation feel that it should be altered and amended to -- in the light of common sense, to specifically with serious physical injury have the definition mean physical injury causing death, creating a risk of death, or causing

extreme physical pain, impairment of health, the loss or impairment of the function of any bodily member or organ, or the loss or impairment of any mental faculty. Serious physical injury may be established by proof that the victim requires surgery, hospitalization for more than 24 hours or a course of physical rehabilitation. This legislation -- this portion of the legislation was part originally of another bill, passed the Senate 51 to 5 in 1996.

I would like to just refer to the Bar Association memo which was prepared by the Committee on Women and the Law, and that is dated July 16th, and they approved the bill, so far as I know unanimously, and the points they made were that in the past physical injury was treated -- was very difficult to prove, was not proven in specific criminal cases by ordinary common sense and as a result it was extremely difficult for women to prove -- to prove injury and as a result in many cases the perpetrators were judged to be guilty of harassment or minor degrees of assault and punishable by only a - not punishable as a misdemeanor and punishable by no time in jail.

The Women's Bar Association point out that domestic violence victims and child witnesses often involve the police and not during a major abusive incident but during the less physically damaging but equally controlling tension building stage. In that stage, the injuries are usually minor and might not be categorized as physical injuries. So they indicate further that it is these more frequent abusive attacks that intensify the abuser's control and, therefore, they further say that with this bill, law enforcement would be able to establish that a physical injury occurred when there is any physical pain, illness or visible mark, thus matching the law to the reality in which abuse victims and children live, and they make substantially the same arguments as to serious physical injury.

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

SENATOR LEICHTER: If Senator Maltese would yield, please.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR LEICHTER: Senator Maltese, thank you for a very full explanation.

I really only have one question, something I'm not clear about. Presently to create a physical injury or a serious physical injury, there has to be some physical contact, is that correct?

SENATOR MALTESE: I would judge on the basis -- on the basis of the law as it's written, yes.

SENATOR LEICHTER: And you're not -- excuse me, if the Senator would continue to yield.

SENATOR MALTESE: Yes.

SENATOR LEICHTER: You're not changing that. It still requires a physical contact, is that correct?

SENATOR MALTESE: Mr. President, I don't know that that's the case. It was one of the -- one of the situations that was seized upon by the New York State Bar Association. I believe that in a certain set of circumstances, it is at least possible that a physical injury

under this definition which may be established through the testimony of the victim alone, that it could very well qualify as physical injury if there was not an actual physical contact but that perhaps substantial risk of physical contact or a near contact, some situation where the -- it was not an actual physical contact but you had testimony of the victim and, in addition, some condition that would qualify in the light of common experience as physical injury.

SENATOR LEICHTER: Mr. President, if Senator Maltese continues to yield.

SENATOR MALTESE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield.

SENATOR LEICHTER: Senator, that gives me some pause for concern. I mean, suppose it was only a matter of a couple yelling at each other and one of the two says, you know, Your yelling makes me sick. I'm going to bed, lies in bed for two days and, as we know, sometimes these verbal abuses can be very, very painful but we've never treated it in that category, and I really wanted a clarification of

that.

Are you saying that the sort of argument that often occurs even between loving spouses could give rise to a claim that it's a misdemeanor if it results in physical illness?

SENATOR MALTESE: Mr. President, I think -- I appreciate at this time the questions by Senator Leichter, and I would say it is not the intent of myself as the sponsor to put the type of action that Senator Leichter is presently referring to in the situation -- in the terminology that would be encompassed within the terms of this bill. The physical injury section and the serious physical injury definitions, in the light of common experience, would have to be carried to a very -- I believe would have to be carried to extremes.

I could see a situation, as I have just indicated, that physical injury or serious physical injury would require hospitalization as has been indicated in the second portion relating to serious physical injury, but I think the entire context should be read in the -- with the view that we are not changing the law with reference to injury or

serious physical injury because what we're doing is clarifying it and that clarification would be, I believe aided by our definitions, but I could see in an extreme situation a case as referred to by Senator Leichter, where an actual physical contact would not be needed, but I believe it is a -- it would be an aberration, and I do not believe it would be covered by our sections of the law, but very honestly, I could see a situation where you would have a mental condition caused by not an actual touching but something perhaps being put in fear or a close call, so to speak, an ax whizzing by your ear, for instance, or something like that, that might well require hospitalization, but I think it would be read in the light of common experience by a judge or a jury or a district attorney with a view toward indictment, and I think in that context, I'm comfortable with the definitions as we've enumerated them in the bill.

SENATOR LEICHTER: Mr. President, I'm somewhat reassured by what Senator Maltese said, and if he yields to just one more question, I think one more question should do it.

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

(Senator Maltese nods head.)

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR LEICHTER: So really the purpose and aim of this bill, you're not really addressing the nature of the act as much as you're addressing the consequence of the act and how we define the act by the consequence. So it may be fair to say that as far as the acts are concerned, you're not changing the law, but you are changing the law as to the consequences that may prove the act.

SENATOR MALTESE: I think that's correct, Mr. President, and I think this change would serve a purpose, a laudatory purpose that would be espoused by both Senator Leichter and myself.

SENATOR LEICHTER: Good. Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read Calendar Number 69.

THE SECRETARY: Calendar Number 69, by Senator Skelos, Senate Print 557-A, an act to amend the Social Services Law and the Family Court Act.

ACTING PRESIDENT MARCELLINO: Read the last -- Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Mr. President, this bill which has passed in two prior legislative sessions, once the vote 55 to 2 and last year 55 to 1 with Senator Montgomery voting in the negative, would in a sense reverse a 1995 Court of Appeals ruling in the case of Nassau County DSS versus Denise Jay.

This decision rendered a positive toxicology test of a newborn no longer

sufficient to support an indicated report without more evidence of abuse and neglect. In essence, the child, when born with drugs in its system, would have to go home and be further abused before Social Services could intervene.

This legislation would reverse that and have Social Services step in immediately to protect that child from abuse.

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

SENATOR MONTGOMERY: Yes. Would the sponsor, Senator Skelos, yield to a question of clarification?

(Senator Skelos nods head.)

SENATOR MONTGOMERY: Senator, I believe -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Senator, do you yield?

SENATOR SKELOS: Yes, I yield.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR MONTGOMERY: Thank you.

Senator Skelos, I believe last year I asked the question of the legislation at

that time and I don't know if you've added any language subsequently. Does this bill in any way address the issue of once the child or the mother has been identified as having abused drugs -- and, therefore, this child will come under your legislation -- does the legislation then speak to what happens to the mother at that point?

SENATOR SKELOS: No.

SENATOR MONTGOMERY: It does not. Okay. And what about does it also cover alcoholism, the fetal alcohol syndrome?

SENATOR SKELOS: No.

SENATOR MONTGOMERY: All right. Thank you, Senator Skelos.

Mr. President, I opposed this legislation last -

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: -- last year when Senator Skelos presented it to us and I'm going to do so today for a number of reasons but specifically and primarily, I am concerned that this legislation seeks to address a real problem by -- by dealing with a symptom. Removing the

baby from the mother because there is evidence of drug abuse by that mother does not help either necessarily the baby or the mother. I understand that we want to protect the child and I certainly agree with that and I'm appreciative of the fact that Senator Skelos has identified this as something that the state should be concerned about, but at the same time, I know that there are parents of children who refuse drug treatment simply because they know that they are -- they're going to lose their children to the state if they agree to receive drug treatment. So we have a situation where these -- these mothers who appear and there's evidence of drug treatment, they're automatically going to lose their children and we're not going to attempt in any way to address their problem, which is the root of the problem, and that is their drug abuse.

Usually, in most cases when there is a drug abusing woman, we know that there are many other issues related to that mother. So it seems to me that if we're going to address the question of child abuse in relationship to drug abuse of a parent, particularly the mother, we

need to address the problem of drug abuse by the mother, not just to remove the child.

So while I can understand and identify with the intent that Senator Skelos wishes to address in this legislation, it certainly is definitely the wrong way to address it and, in fact, it's going to create much more of a burden for the state without the benefit of really addressing the issue and the cause and, therefore, in the long run will be totally ineffective.

So I hope that my colleagues will join me, and I'm certainly interested in working with Senator Skelos and Senator Saland on a bill that would really do what Senator Skelos would like this bill to do.

Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: I'm sorry. Senator Gold.

SENATOR GOLD: On the bill. I would first of all like to point out to my colleagues that this bill apparently was voted

on last year and the vote was 55 to 1. Last year, it's my understanding that this piece of legislation was considered by a substantive committee of this house, approved by that substantive committee, sent to the floor of this house and approved by this house 55 to 1.

I'm informed that this year this bill, even though the substantive committee very carefully considered it last year, it went back to that substantive committee. I know you're shocked. It wasn't given to the Rules Committee to just report out because the substantive committee might have wasted its time, but it followed the procedure of going to the substantive committee which after this bill apparently not passing in the Assembly took a new look at it and decided we ought to take another crack and put it out on the floor. I just wanted to point that out to you.

I want to say I voted for this last year. There is a memo in support, I believe from the city of New York, but there's a memo in opposition from NOW which raises some constitutional questions, which everybody knows has never stopped a bill from passing in this

house, but the -- I will probably vote for it again, and I want to say that I give my thanks to the Committee on Children and Families for taking the time this year to take another look at this bill and to suggest once again to the members of the Legislature that we ought to consider it.

Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays 2, Senators Leichter and Montgomery recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: May we move back 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 MARCELLINO: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bill directly for third reading:

By Senator Maltese, Senate Print 6135, an act to amend the Penal Law.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: On the motion, Mr. President.

ACTING PRESIDENT MARCELLINO: First, the motion is to accept the report of the Rules Committee.

Senator Gold, on the motion.

SENATOR GOLD: Mr. President, it's no news to anybody hearing me speak right now that the Republican Party in this house has a majority of members and under the rules that the Republican Party in this house adopts for this house, it has an enormous amount of power. It has the power to create those rules and all

that the Minority can really do is to abide by those rules, hope that the Majority would live by their own rules and hope as is the tradition in America, that a majority would understand its obligation to a minority because we are all part of this society and part of this country.

I think in the Rules Committee we saw a display of total arrogance without purpose and the kind of arrogance that leads to the kind of wastes of time that many of you and my colleagues on the other side seem to dislike so much.

I say to myself sometimes, Why does any normal person create these kind of unnecessary confrontations and I say to myself, Gee, maybe if they -- Republicans aren't mad enough at us, they do something ridiculous that causes us to respond and that gives them some fodder to say, Well, you know what those guys do to you.

So let's see what I'm talking about for those of you who as yet may not know. We just had before us Calendar 69. That bill passed the Legislature, this house last year, with one dissenting vote, overwhelming vote. It

came out of the Committee on Children and Families. This year the bill not having passed the Assembly last year, it went back to its committee and the committee decided to send it out again and that committee reported it out and it is before us -- or was before us today. That procedure doesn't seem so incredible. It sounds kind of normal to me.

The next bill I see on the calendar is Calendar Number 73. That bill was from, let me see, the Committee on Rules. Did that come out of Rules this year? The bill was introduced last year some time and apparently when it was introduced it went to the Rules Committee.

The next bill I'm showing in my book here is Calendar 105. Do we have the bill -- 86? Okay. 86 was Senator DeFrancisco's bill. Last year that bill passed 61 to nothing. That bill last year was reviewed, Mr. President, by the Codes Committee and it came out on the floor. I don't know whether it was debated or not, but apparently all of the members of this house thought that Senator DeFrancisco's bill made some sense and we

adopted it last year in this house 61 to nothing. This year the bill not having passed the Assembly, the bill again went to Codes, was reported out of Codes to the floor. I congratulate Senator Volker for doing the work of the Codes Committee.

Now, that bill didn't bypass Codes this year to save Codes any work. It didn't bypass Codes this year because of any procedure in the Senate which says that if we take a look at it one year, we don't have to take a look at it the following year in the substantive committee. The bill went in the normal course to its substantive committee. You see a pattern here?

The next bill, 105. This bill we had last year. It came out of Corporations, Senator -- yeah. It was Senator Kuhl's bill, went to Corporations and the Corporations Committee considered that bill last year and they said, By gosh, Randy, that's a 300-yard drive down the middle. We're putting that bill out and it came to the floor.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO:

Excuse me, Senator.

Senator Skelos, why do you rise?

SENATOR SKELOS: Just to remind the members that under the rules, the debate may not exceed more than one hour, one half hour for each side.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: The clock started at 3:46.

SENATOR GOLD: Yeah. I think I'll just about make it.

ACTING PRESIDENT MARCELLINO: Somehow I had no doubt.

SENATOR GOLD: Just about make it. Now, the Senate as a whole took a look at that bill and said, Yes, we agree that bill ought to pass and we all voted for that bill, everyone that was here, 59 to nothing. The bill didn't pass the Assembly, apparently. So what happened this year?

The bill was not derailed from its substantive committee. No one suggested the substantive committee was worth garbage. Certainly nobody on this side considers the Republican Committee chairmen garbage. We

respect you all. I hope everyone on your side respects you as much as we respect you. No one said, Oh, it passed before. Send it to Rules, put it out to get the substantive committee, and so the substantive committee did, in fact, consider that bill, reported it out and that's how it got on the floor. Nothing to do with Rules. I think we hit four in a row.

Let's see the next one. Senator Saland. Senator Saland's bill came out of a committee last year. Apparently it didn't pass the Assembly but this house liked it and we passed it 60 to nothing. It was nobody I know of who said, Hey, that's a 60 to nothing good ol' Saland bill. Let's forget the committee. Let's send it to Rules, right to the floor, Rules report. Let's not waste any more time. Apparently somebody said that's the bill that belongs in the committee. It says criminal procedure. Was that Codes? Probably Codes. Senator Volker does a great job for us. Let it go through his committee. Maybe they'll want to reconsider. Well, the Codes Committee didn't want to reconsider and we liked what we did last year and we put it out again this year and we

passed it again, and you will notice that the Rules Committee had nothing to do with it. It got here from the substantive committee, voted on by the members in the normal course. I think that's about five in a row. It seems to be a pattern.

Next we have Senator Libous, 145. This one last year passed 61 to nothing. Can't do better than that, Tom, 61 to nothing, home run. Enhances penalties for first degree assault, third degree assault, second degree harassment, when the offender has a prior conviction for such an offense within the previous ten years. Throw that book at him. That's what we all said. Throw that book at the bum. The Codes Committee put it out last year. It passed unanimously, everybody being here. This year I didn't see anybody saying, Dale, why don't you give us all those bills over to Codes. Don't waste your time. You've got a tough committee there. It's one of the best committees in the house. Take it off your hands. We'll take it into Rules and put it out. Nobody said that. 61 to nothing. Nobody suggested the substantive committee not be

involved.

146, this one is by Senator Volker. It creates a new offense of endangering the welfare of a child. This passed last year 60 to nothing. This bill, as a matter of fact, last year was introduced by the Republican Attorney General of this state as part of the Attorney General's program, 60 to nothing last year, backed by the Attorney General of the state -- present Attorney General of the state of New York and neither Senator Bruno nor anybody else or any deputies over there said, Don't waste your time in committee. Don't waste your time. Send it to Rules, right to the floor, new procedure in the Senate. This non-controversial bill went through the process, got to the floor by way of the Codes Committee and we had a chance to vote on it and we passed it today. The Rules Committee had nothing to do with it. Well, I see a pattern and perhaps there are other people who may want to be heard on this issue.

So my point is a simple point. The Rules Committee of this house provides an extraordinarily important function. There are

times throughout the year when things must be done. We have emergencies. At the end of the session committees are closed down, not by my doing, by your doing because I would keep them going because I respect committee chairmen, but there are times when things must be done and we have a Rules Committee and on that Rules Committee, for the most part, are a lot of the senior members, a lot of the leadership members from each side and the Codes Committee and the Rules Committee does important work.

This bill, which is the subject of this report, is a bill that had been introduced last year, I am told, and a bill which I guess didn't have a vote or in some way was -- had its last section stricken, but a bill which last year went through the Codes Committee and it went through the Codes Committee because it I guess sets up some criminal activity and that's the proper committee for it to be dealt with.

The bill was introduced today, today. What we got was a -- not the normal kind of printer's version, but I guess a computer generated bill today, and the bill does not say

on it that it is referred to the Codes Committee. It says it's referred to the Committee on Rules. The Rules Committee called for a meeting.

I asked what was on the minds of a lot of people on that committee, at least on my side, and said to the presiding officer of that committee, Senator Bruno's deputy, Why? Why is this bill introduced today, the subject of a Rules report today directly to third so that it's got to be on next Monday? This is a bill, by the way, which didn't pass unanimously. It is a bill which will not pass unanimously, a bill which has controversy surrounding it. As a matter of fact, I see a vote on a similar bill last year with 19 negatives; in 1996, the similar bill, 21 negatives. Now, if there ever was a bill that ought to be considered by a committee, that's such a bill. Obviously there are things to be said on each side and a substantive committee ought to be involved.

One of the reasons given by the person sitting in for Senator Bruno was that we don't need the substantive committee because

last year the substantive committee put the bill out and why does it have to go back this year, and I say to that person, look at today's calendar. You want to know why? Look at today's calendar filled with bills by Senator Volker and Senator Saland and Senator Libous and others, with bills that have passed unanimously in prior years and which passed unanimously today but we send them through the committee system. Maybe the reason it didn't pass the Assembly last year is some minor adjustment that the committee might want to negotiate or make, maybe not, but to take a bill with such controversy to it and to arrogantly and flippantly say to members of this house who ask a legitimate question, it was in the committee before, it was in last year, we don't need it again, that is what I characterize as unnecessary confrontation. That's what I characterize as unnecessary insult. It's what I characterize as unnecessary abrasiveness.

So to my Republican colleagues, I say this to you. It's about time after all these years that you weren't surprised that when you slap someone, they slap you back. It's

called counterpunching, and if you want to take a look at the record of proceedings in this house, you will find in almost every situation, in almost every situation it is your party or one of the people in your party who instigates, who shows an abuse of power in an unnecessary situation that causes the delays, that causes the trouble.

At the committee meeting, I raised the issue as to where this bill should be and I said, Well, if that's the case, I would move that the bill be referred to the Codes Committee. That is a decision that the members of the Rules Committee can make. It is a decision that the Republican Majority on the Rules Committee cannot make if it doesn't want to. I was told by the person conducting the meeting that I couldn't even make that motion because that's the Rules Committee, and if you can show that to me in the rules, I'm willing to learn. I'm willing to learn, but there's no such rule and you know it. Everyone knows it. The Rules Committee can refer a bill to any other committee. It can do whatever it wants. I said, Well, then I would appeal the ruling of

the Chair, at which point I was told by this person that I can appeal any damn thing I want. He's going to call a vote to put it on the floor. Well, I guess a vote was called and it's out on the floor. What's on the floor? The Rules Committee report.

I tell all of you not by way of lecture. I'm not here to lecture, but as somebody who's been around a day or two and won't be around -- I know many of you say thank God -- not too much longer, what I'm talking about is the dignity of this house. That's what it is. If my motion had been defeated, it would have been defeated, that would have been that. If I appeal the ruling of the Chair -- I'll tell you one thing, if you appeal the ruling of the Chair in this house, it never bothers the Chair. They've got a Republican Majority that says whatever the Chair does is right, but the concept of having to flex muscle when it is meaningless is -- who is it impressing? I wasn't impressed, I'll tell you that. There wasn't anybody on this side that all of a sudden got impressed that some member of this house can sit as an acting chair and tell somebody that

they'll violate the rules. As a matter of fact, the only expression I can use to accurately portray it is that I was underwelmed.

When forced to vote, I voted no in the committee on the motion to put it out and as everybody knows, those votes are not substantive votes. Who knows? I might be convinced by debate that the bill ought to pass. I know one thing. Maybe the reason the bill wasn't sent to Codes is the fault of Senator Volker, because I've sat in your committee meetings, Senator Volker, and you know as well as I do what goes on in your meetings. You allow people to talk. You allow people to think. You allow people to exchange ideas. One of the least Republican things that happens in this house. Somebody is so afraid of your committee that this bill had to be avoided? Senator, I think that's almost a red badge of courage that they wouldn't put it in your committee.

This is a session where I think to everybody's delight the Governor of this state after three years of budget battle filed a budget which might not take us as long as some

other years. I think certainly the Governor has expressed the desire to make a real effort to bring a budget in on time. Maybe there isn't a sign on the horizon that doesn't have controversy to keep us going. So maybe someone whispered in the ear of whoever it was that held that committee meeting and said you better start some controversy, but I tell you, this is nonsense. It is insulting nonsense and there's no reason for it.

The sponsor of the bill that is before us is a gentleman from Queens by the name of Serphin Maltese, and I think that there's probably more things that we disagree with than any other two people in the house, except that I said there was a gentleman by the name of Serphin Maltese, and in all of my disagreements with Senator Maltese, there's not one person who could say I said anything other than he was a gentleman. We are two people who disagree on certain issues.

Whether this bill went to Codes or didn't go to Codes, I have a feeling it would have wound up on the floor, except maybe - maybe you know something I don't. Maybe the

Codes Committee members, even the ones on your side, don't agree with this bill and maybe you couldn't get it out of the committee. Now, that would have been terrific. What are your alternatives then? A motion to discharge. That would have been terrific. Senator Leichter and I would have sat here with big grins and said, Can you imagine, Republicans are making motions to discharge. I wonder if this one will pass. Whether a bill makes it or doesn't make it from a committee is not even the issue. I think early in the session we ought to be doing things which don't demean the house.

I know that at least in the opinion of one person on your side, whenever I or any of my colleagues object to your abuse of power, you believe that that is what tarnishes the reputation of this house, but I can tell you that no matter what your little group says in your own little world, there's a world out there that always knows the truth and when they see the kind of roughshod that you run over democracy in your own committee meetings, you are not admired, and if a lobbyist or two takes you out to dinner and tells you how great you

are, well, it's understandable, but I'm more concerned about what people say behind my back, not what they're saying at dinner because they got bills in my committee.

I would urge that this report be rejected. I would urge that this bill go back to Codes and if it is reported out of Codes, we can handle it in the normal course of business.

I'm going to oppose the report. I would hope that on a slow roll call we would also stand up for some sense of honor among ourselves, courtesy among ourselves, stand up for the dignity of this house, and I think the way you do it is by voting no.

ACTING PRESIDENT MARCELLINO: The motion is on the -- on the motion to remove the bill to the floor on the Rules Committee -- I'm sorry -- to accept the report of the Rules Committee -

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT MARCELLINO: Slow roll call has been requested. Do we see five Senators? Five Senators are rising. A slow roll call will be held on the motion. Can we ring the bells and get our members in for a

slow roll call.

The Secretary will read the roll call slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

SENATOR SKELOS: Mr. President, could you please recognize Senator Rath for the purpose of voting.

ACTING PRESIDENT MARCELLINO: Senator Rath.

SENATOR RATH: Yes.

ACTING PRESIDENT MARCELLINO: Senator Rath recorded in the positive.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication.)

Senator Connor.

(Negative indication.)

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: No.
THE SECRETARY: Senator Farley.
(There was no response.)
Senator Gentile.
SENATOR GENTILE: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: No.
THE SECRETARY: Senator Holland.
(There was no response.)
Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

(There was no response.)

Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

(There was no response.)

Senator Leichter.

SENATOR LEICHTER: Mr. President, may I have my name called.

ACTING PRESIDENT MARCELLINO: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yeah, Mr. President. I think Senator Gold made a very strong, and I think a very persuasive statement, but the one thing that really deserves to be underscored is that this Rules report and the procedure relating to this bill just runs roughshod over the committee system.

Now, I serve on a number of committees, and I want to say that these are good functioning committees. All of the chairmen do a conscientious job, a fair job. That's certainly true of Senator Volker and his committee and I've served on it for many years, and this bill deserved to go to his committee. There is no reason in the world why this bill that was printed today was rushed to the Rules Committee and put out to the floor. If you want for some scheduling purposes or reason to put this bill on early in the session, you can certainly do it, but you should not undercut the committee system, and when we do something of this sort -- and the Republican Majority has done it unfortunately at times and you have the power to do it -- you can twist the rules. You can twist our procedures. You can make a mockery of the way we proceed here, but in the long run you hurt this Legislature and maybe that's one of the reasons that we have so little public confidence and why there's so much skepticism about our work.

This is a wrong procedure. It's unfair. It's undemocratic. It has nothing to

do with the merits of the bill. Those are going to be taken up on the floor, but process is important and this violates the basic process.

If you want to say, let's do away with the committees, go ahead and do it, but that's really what you're doing and what you're saying by moving this bill on through the Rules Committee without having it go before one of the substantive committees.

Mr. President, I vote no.

ACTING PRESIDENT MARCELLINO: Senator Leichter will be recorded in the negative. Continue the call.

THE SECRETARY: Senator Levy, excused.

Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

(There was no response.)

Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Yes.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Yes.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
(Negative indication.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: No.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: No.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Aye.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: Mr. President.
ACTING PRESIDENT MARCELLINO: Senator Paterson.
SENATOR PATERSON: Mr. President,

if there were an extremely extraordinary circumstance that perhaps gave us rise to bring a bill directly to third reading and then to the floor, I could certainly understand that we would use that procedure.

However, in this case, no such information to that effect has been given, and that's, I think what Senator Gold was actually seeking was an explanation for why there had to be this amount of a rush to get a bill that is highly controversial. I believe Senator Gold read into the record that there were 19 no votes on similar legislation in 1997 and 21 no votes on similar legislation in 1996. Therefore, this is an extremely controversial bill, and I think that to rush it in this fashion actually compromises the issue and the severity of the feeling whether you support or oppose this legislation.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Can we have some order in the house, please.

SENATOR PATERSON: Thank you, Mr. President.

And just to conclude, I think

that Senator Gold has taken the time to offer us all somewhat of a lesson in terms of what this chamber means, what the spirit of government means and what our personal duties are, and in spite of the advantages that we may have and in spite of the title that we may lend for the time that we are here, there is a certain responsibility that we all enjoy and it should be used professionally and it should certainly be used with respect not only for our colleagues but for the process that we're in.

For that reason, Mr. President, I must vote no.

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

Continue the roll.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath voting in the affirmative earlier today.

Senator Rosado.

SENATOR ROSADO: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.
SENATOR SAMPSON: No.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: Senator Seabrook.
(There was no response.)
Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
(There was no response.)
Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: In the negative.
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(There was no response.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT MARCELLINO: Can we call the roll of the absentees, please.
THE SECRETARY: Senator Farley.
(There was no response.)
Senator Gonzalez.
SENATOR GONZALEZ: No.
THE SECRETARY: Senator Goodman.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Lachman.
(There was no response.)
Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.

THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Rosado.
(There was no response.)
Senator Seabrook.
(There was no response.)
Senator Smith, excused.
And Senator Waldon.
(There was no response.)
ACTING PRESIDENT MARCELLINO: Announce the results, please.
THE SECRETARY: Ayes 32, nays 19.
ACTING PRESIDENT MARCELLINO: The motion to accept the report of the Rules Committee is passed.
Senator Skelos -- Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes. I was out of the chambers. I would like unanimous consent to be recorded in the negative on Calendar 148, Senate 4644-A.
ACTING PRESIDENT MARCELLINO: So ordered, without objection.
SENATOR SKELOS: Mr. President,

there being no further business, I move we adjourn until Monday, February 9th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Monday, February 9, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 4:25 p.m., the Senate adjourned.)