ALBANY, NEW YORK

March 3, 1998

3:01 p.m.

REGULAR SESSION

SENATOR MICHAEL A.L. BALBONI, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BALBONI: The Senate will come to order. I ask everyone present to please rise and say the Pledge of Allegiance.

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

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate Monday, March 2nd. The Senate met pursuant to adjournment. Prayer by the Reverend Iris Tucker. The Journal of Friday, February 27th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BALBONI: 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 Stafford, from the Committee on Finance, reports the following bills:

Senate Print 242, by Senator Johnson, an act to amend the State Finance Law;

310, by Senator Skelos, an act to amend the Executive Law;

1684, by Senator Farley, an act to amend the Executive Law;

2210, by Senator Padavan, an act to amend the Executive Law;

3029, by Senator Holland, an act to create the Piermont Library District;

3083, by Senator Padavan, an act to amend the State Finance Law;

3766, by Senator Stafford, an act to amend the Executive Law;

3899, by Senator DeFrancisco, an act to amend the Executive Law;

4129-A, by Senator Marcellino, an act authorizing the Commissioner of General Services;

5161, by Senator Goodman, an act to amend the Arts and Cultural Affairs Law, and

6247, by Senator Wright, an act providing for the transfer of funds.

Senator Hannon, from the Committee on Health, reports:

Senate Print 737, with amendments, by Senator Johnson, an act to amend the Public Health Law;

934, by Senator Velella, an act to amend the Public Health Law;

1125, by Senator Libous, an act to amend the Public Health Law;

1488, by Senator Trunzo, an act to amend the Public Health Law;

1736-B, by Senator Hannon, an act to amend the Public Health Law;

2657, by Senator LaValle, an act to amend the Public Health Law;

3659, by Senator Hannon, an act to amend the Public Health Law; and

4422, by Senator Velella, an act to amend the Public Health Law.

Senator Seward, from the

Committee on Energy and Telecommunications, reports:

Senate Print 4278, by Senator Seward, an act to amend the Public Service Law;

4279, by Senator Seward, an act to amend the Public Service Law;

4282, by Senator Seward, an act to amend the Public Service Law.

All bills ordered direct for third reading.

ACTING PRESIDENT BALBONI: Without objection, all bills directly to third reading.

SENATOR SKELOS: Mr. President, at this time, if we could take up the non-controversial calendar.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Volker, Senate Print 3407-A, an act to amend the Criminal Procedure Law, in relation to the authority of police officers.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT BALBONI: Read

the last section. Lay aside for Senator Paterson.

THE SECRETARY: Calendar Number 101, by Senator Volker, Senate Print Number 5007, an act to amend the Criminal Procedure Law, in relation to criminal actions.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 188, by Senator Kuhl, Senate Print 5994, an act to amend the Agriculture and Markets Law, in relation to exempting working search dogs.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 3.

This act shall take effect on the first day of January.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar number 201, by Senator Maltese, Senate Print 2440, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalty for obstructing access.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The

bill is passed.

THE SECRETARY: Calendar Number 209, by Senator Stafford, Senate Print 150, an act to amend the Environmental Conservation Law, in relation to county responsibility.

ACTING PRESIDENT BALBONI: A local fiscal impact note is at the desk. Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 210, by Senator Stafford, Senate Print Number 389, an act to amend the Environmental Conservation Law, in relation to non-hazardous municipal landfill.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 215, by Senator Cook, Senate Print 5739-A.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT BALBONI: Lay it aside, by Senator Paterson.

SENATOR PATERSON: Lay aside.

THE SECRETARY: Calendar Number 219, by Senator Wright, Senate Print 3890, an act to amend the County Law, in relation to merger of departments.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 228, by Senator Marcellino, Senate Print 1135, an act to amend the Penal Law, in relation to criminally negligent homicide.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 229, by Senator Saland, Senate Print 1290, an act to amend the Penal Law, in relation to the minimum period of imprisonment for certain

persistent violent felony offenders.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Holland, Senate Print 1957, an act to amend the Penal Law, in relation to fixing sentences for persons committing crimes while on parole.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 231, by Senator Kuhl, Senate Print Number 1977, an act to amend the Penal Law, in relation to criminal possession of a weapon in the third degree.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 232, by Senator Saland, Senate Print 2016, an act to amend the Penal Law, in relation to

consecutive sentences of imprisonment for conviction.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Johnson, Senate Print 2522-A.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT BALBONI: Lay aside for Senator Paterson.

THE SECRETARY: Calendar Number 275, by Senator Present, Senate Print 2753, an act to amend Chapter 557 of the Laws of 1992 relating to sewer rent revenues.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 279, by Senator Rath, Senate Print 289, an act to amend the Criminal Procedure Law, in relation to prohibiting issuance of an order of recognizance or bail.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Skelos, Senate Print 306, an act to amend the Criminal Procedure Law, in relation to limiting plea bargaining for sexual offenders.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT BALBONI: Lay aside for Senator Leichter.

THE SECRETARY: Calendar Number 284, by Senator Skelos, Senate Print 589-B, an act to amend the Penal Law and the Criminal Procedure Law, in relation to providing for the life imprisonment of pedophiles.

ACTING PRESIDENT BALBONI: Read the last section.

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

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT BALBONI: Lay aside for Senator Leichter.

THE SECRETARY: Calendar Number 286, by Senator Libous, Senate Print 1915, an act to amend the Penal Law, in relation to

parole for certain sex offenders.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 288, by Senator Hannon, Senate Print 3660, an act to amend the Criminal Procedure Law, in relation to imposing plea bargain limitations.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT BALBONI: Read the last section. Lay aside, please.

THE SECRETARY: Calendar Number 300, by Senator Nozzolio, Senate Print 177-C, an act to amend the Executive Law, the Penal Law, the Correction Law and the Mental Hygiene

Law, in relation to treatment of sex offenders.

ACTING PRESIDENT BALBONI: Read the last section.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT BALBONI: Lay aside for Senator Leichter. That completes the non-controversial calendar.

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

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Committee on Racing and Wagering in the Majority Conference Room.

SENATOR SKELOS: I believe there are some substitutions at the desk. I would ask they be made.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: On page 10, Senator Holland moves to discharge from the Committee on Higher Education Assembly Bill Number 3920-A and substitute it for the

identical Third Reading Calendar 180.

ACTING PRESIDENT BALBONI: So ordered.

THE SECRETARY: On page 10, Senator Hannon moves to discharge from the Committee on Higher Education Assembly Bill Number 8546-A and substitute it for the identical Third Reading Calendar 182.

ACTING PRESIDENT BALBONI: So ordered.

Senator Hannon? Senator Skelos.

SENATOR SKELOS: Request we return to reports of standing committees. I believe there is a report of the Finance Committee at the desk. I ask that it be read and that you recognize Senator Stafford.

ACTING PRESIDENT BALBONI: Return to the order of business the report of standing committees. Senator Stafford.

Secretary will read.

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

Member of the Public Service

Commission, James D. Bennett, of Garden City.

ACTING PRESIDENT BALBONI:

Senator Stafford.

SENATOR STAFFORD: Mr. President, it's again a pleasure for me to rise and again compliment the Governor in the nominees that appeared before us, in addition to those that are listed here today. Fine appointments, and for the first nomination of Jim Bennett, I yield to the Senator from Nassau, Senator Hannon.

ACTING PRESIDENT BALBONI:

Senator Hannon.

SENATOR HANNON: Mr. President, it gives me extremely great pleasure to move the nomination of Mr. James Bennett for appointment to be a member of the Public Service Commission.

In this day and age where great challenges in energy and telecommunications lie before this state in terms of implementing deregulation, in terms of implementing protection for the consumer, I think there can be no better an individual to be moved to this appointment than Mr. Bennett, who brings

considerable background in public life, in business and in the energy field by being a member of LIPA, the Long Island Power Authority, for the last two years.

Mr. Bennett began his career as a councilman for the town of Hempstead, moved to supervisor of that township, a township of over 800 citizens -- 800,000 citizens, embracing all of the general problems that development brings to a government and dealing with those quite ably for over a decade. At the same time, he has been in the practice of law in the suburbs of New York City, also running his family business, giving him a sharp lesson in what it takes to run a business in the high energy cost area of New York City.

For the last few years, he has served ably through the repercussions that the Long Island Power Authority has had. I think all of this leads him to be ably qualified to be a recommendation of this body for accepting the recommendation of the Governor.

So move.

ACTING PRESIDENT BALBONI:

Thank you, Senator Hannon.

The Chair recognizes Senator Seward.

SENATOR SEWARD: Thank you, Mr. President.

I want to echo what Senator Hannon just said about our nominee, James D. Bennett, to be a member of the Public Service Commission.

Mr. Bennett, two weeks ago, appeared before our Senate Committee on Energy and Telecommunications. We had a wide ranging discussion with the Committee members on a whole variety of issues. Mr. Bennett will be going on the Public Service Commission at a very, very critical time, because the Commission is continuing to implement the provisions of competitive opportunities for seeding and also on the telecommunications side, of course, we've just had the second anniversary of the passage of a federal Telecommunications Act which is also doing much to bring additional competition in the telecommunications side, so there continue to be some very serious issues coming before the

Public Service Commission, and following our committee meeting, I went away fully confident that Mr. Bennett would make an outstanding contribution to this state as a member of the Public Service Commission.

On the personal side, obviously he has a very intelligent and very analytical mind which is very important. He has an outstanding record of public service and, because of his service as a member of the Long Island Power Authority, he very quickly has gained a good working knowledge of the energy issues under the very difficult circumstances there on Long Island.

So I'm very pleased to stand to second his confirmation and to publicly congratulate the Governor for making an outstanding choice and to wish Jim Bennett well as a member of the Public Service Commission. I know the people of this state, the ratepayers of this state are going to benefit from his service.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Seward.

Senator Balboni.

SENATOR BALBONI: Thank you, Mr. President.

I think it's indeed appropriate that the first time I address this body it's on a nomination. We have a friend and someone who I've admired for over a decade. Jim Bennett represents so many wonderful things from Long Island and from the state that we can be proud of and that is readily seeable when you take a look at his resume:

A valedictorian from his class in Cornell. His father was esteemed surrogate for Nassau County for many, many years, but I rise to give you just one other piece that perhaps you would not see on the resume. That is a man with infinite patience, an infinite ability to accept information, to assimilate, to consider it and, frankly, to give judgment not hastily, but with measured and thoughtful consideration.

Jim Bennett is going to be a wonderful addition to the Public Service Commission because he represents the heart and soul of what is Nassau County and what is Long Island and New York.

Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: The question is on the nomination of -- I'm sorry, Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. Chairman.

I couldn't miss the opportunity to rise in support of a good friend and colleague in Nassau County government, Jim Bennett. Jim Bennett will make an excellent addition to the Public Service Commission. I think he will serve this state well and certainly has served his constituents in the town of Hempstead very well over the years in Nassau County. He's made it a better place to live, and this is a good thing for the state of New York and the Governor is to be congratulated for this fine appointment.

Congratulations, Jim.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, it's my pleasure to stand and second the nomination of Jim Bennett. Jim Bennett may have moved to Garden City about 20 years ago,

but I recall Senator Hannon, he agreed, he really belongs to Rockville Centre which is my own home community, the community he grew up in, where he practices law today, and has various other interests.

I've known Jimmy all my life. My father tells me that, when Jimmy was a youngster, he used to pull him on his sled when there was snow, so the Bennetts and the Skeloses go back many, many years.

I also know Jimmy to be an outstanding practitioner of the law. Gordie mentioned to me that they went to Cornell Law School together, and I also know him to be a man of impeccable integrity and certainly he will have the interests of the ratepayers not only of Long Island but of the entire state in the forefront, in the forefront of his mind when he makes those very, very important decisions.

So, Jimmy, I congratulate you personally, and I thank the Governor for this very, very fine nomination.

ACTING PRESIDENT BALBONI: The question is on the confirmation of James

Bennett as a member of the Public Service Commission. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

James Bennett is hereby confirmed as a member of the Public Service Commission.

Congratulations, Jim, and wish you a good tenure.

(Applause)

Chair recognizes Senator Stafford. I'm sorry. Before that, the Secretary will read.

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

Member of the Board of Trustees of the State University of New York, Randy A. Daniels of New York City.

SENATOR STAFFORD: We have some people not in the chamber. Could we just lay that aside for one minute. People will be coming in the chamber.

ACTING PRESIDENT BALBONI:

Nomination is laid aside temporarily.

SENATOR STAFFORD: Just for a minute.

ACTING PRESIDENT BALBONI:

Secretary will read.

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

Member of the Board of Trustees of Cornell University, Jerold R. Ruderman, Esq., of Scarsdale.

SENATOR STAFFORD: Move the nomination.

ACTING PRESIDENT BALBONI:

Question is on the confirmation of Randy Daniels as a member -- I'm sorry, Jerold Ruderman as a member of the Board of Trustees of Cornell University. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Jerold Ruderman is hereby confirmed as a member of the Board of Trustees

of Cornell University. Congratulations.

Secretary will read.

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

Member of the Empire State Plaza Art Commission, Amy Solomon, of Delmar.

SENATOR STAFFORD: Move the nomination, please.

ACTING PRESIDENT BALBONI: The question is on the confirmation of Amy Solomon as a member of the Empire State Plaza Art Commission. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

Senator Paterson.

SENATOR PATERSON: Mr. President, I would just like to suggest that the Committee has made a wise decision.

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson.

As I said, all those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Amy Solomon is hereby confirmed as a member of the Empire State Plaza Art Commission.

Secretary will read.

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

Member of the Advisory Council on Alcoholism and Substance Abuse Services, Ginay Marks-Landro, of Brooklyn.

SENATOR STAFFORD: Move the nomination.

ACTING PRESIDENT BALBONI: The question is on the confirmation of Ginay Marks-Landro as a member of the Advisory Council on Alcoholism and Substance Abuse Services. All in favor signify by saying aye.

SENATOR GENTILE: Mr. President.

ACTING PRESIDENT BALBONI: The Chair recognizes Senator Gentile.

SENATOR GENTILE: Thank you,

Mr. President.

Just want to commend the Governor on this appointment. I know Ginay Marks-Landro, know her husband. I know her son, and she's already served nine distinguished years on the Governor's Advisory Council, so I commend him for continuing that service.

The past, oh, I'd say 20, 25 years, Ginay Marks-Landro has ably served Brooklyn as a prevention specialist in drug and alcohol and other substance abuse programs. She has -- she has also designed and implemented citywide AIDS and suicide prevention training for the school administrators and health personnel, and a prevention -- substance abuse prevention designed for elementary and junior high school.

She has ably served the people of Brooklyn. She's ably served on this advisory council. She will continue to do so. I congratulate her, her family, and, of course, the Governor for continuing this appointment.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Thank you, Senator Gentile.

The question is on the confirmation of Ginay Marks-Landro as a member of the Advisory Commission on Alcoholism and Substance Abuse Services. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Ginay Marks-Landro is hereby confirmed as a member of the Advisory Council on Alcoholism and Substance Abuse Services.

Secretary will read.

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

Members of the Citizens Policy and Complaint Review Council, Thomas K. Cross, of LaGrangeville and J. Theodore Hilscher, Esq., of Catskill.

SENATOR STAFFORD: Move the nomination, please.

ACTING PRESIDENT BALBONI: The

question is on the confirmation of Thomas K. Cross and Theodore Hilscheer as members of the Citizens Policy Review and Complaint Council. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Thomas K. Cross and Theodore Hilscher are hereby confirmed as members of the Citizens Policy Review and Complaint Council.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: I believe we have one more nomination to deal with at this time. Would you please call up the nomination of Randy A. Daniels.

ACTING PRESIDENT BALBONI: Secretary will read.

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

Member of the Board of Trustees

of the State University of New York, Randy A. Daniels of New York City.

SENATOR STAFFORD: Mr. President, as I mentioned with the previous nominee, we're very impressed with this nominee also, and I yield to the Senator from Suffolk, Senator LaValle.

ACTING PRESIDENT BALBONI: Senator LaValle.

SENATOR LAVALLE: Thank you, Senator Stafford.

Colleagues, we have before us the nomination of Randy Daniels, and I must say that the Governor should be congratulated on this nomination -- nominee.

The nominee came before the Higher Education Committee as he did this morning before the Finance Committee, and I think anyone who was there and listened to his presentation would be touched by that presentation and discussion of talking about family, being one of ten children and talking about some of the values that his parents gave to them in going out into the world, and the importance of higher education, particularly

public higher education, that Mr. Daniels is a product of.

I think his background is, like many of the nominees that come before us, just excellent. But more than what he has learned and what he has done is probably the answers to some of the questions that he gave to the Higher Education Committee. It showed deep sensitivity about the State University, a deep interest in students, and he made that eminently clear. He made it clear that he was sensitive to those students who had particular needs, that we should not abandon them and we should be helpful to them, but he made it clear that he believed in standards, and that is very important at this time as we try as a Legislature to give to the State University in a fiscal way the things that they need to be all that they can and should be as a state university, and so I think Randy Daniel is an excellent nominee and one that I am asking for your support as I move the nomination.

Thank you, Senator.

ACTING PRESIDENT BALBONI:

Thank you, Senator LaValle.

Senator Olga Mendez. Out of the chamber?

SENATOR MENDEZ: Mr. Chairman. Mr. President, I also do rise in support of the nomination of Randy A. Daniels as a trustee of the SUNY university system and I want to congratulate very warmly our Governor for submitting this gentleman to a task that nowadays has become increasingly difficult.

Mr. Daniels impressed as Senator Mendez -- as Senator LaValle mentioned, impressed everybody with his presentation. He is a man of clear intelligence, a man who has been able to combine, Mr. President, being a workaholic, at the same time making the time to maintain a loving family. His wife and his two daughters are here today.

His commitment to public education and, of course, higher education, came through very, very clearly, and I think that -- that our higher educational system of the state of New York is going to, in fact, benefit through his services. I have known him for a while. I consider him my friend,

and he is in a sense one of those wonderful success stories that we love to hear about happening to an African-American in our country. He was one of ten children. His father was a self-supporting man who maintained a home where the values of hard work and commitment were stressed.

So, Mr. President -- so, he's -- as I said before, his presentation has been welcomed by everybody and everybody was impressed. So, again, it is with pride that I stand before you in this chamber to support this nomination.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Thank you, Senator Mendez.

Senator Velmanette Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I rise to also second the nomination of Mr. Daniels. I am very pleased to know that we have a person who not only knows the value of higher education, but is also very, very much immersed in economic development in the state of New York, and I

believe that at this time in our development and our history that the combination of higher education and economic development are paramount to the future of this state; and so we're very fortunate, I think, to have a person who knows both of those very well.

As I said to Mr. Daniels when we were -- we were voting for his nomination in committee, that when we came to vote today, if he would be sitting on the Republican side of the house and so we can't look at him directly, but I want him to know that he has very strong support and admiration and respect on the Democratic side, and I'm only very happy to join the Governor in a few of the things that we totally agree with the Governor on, and that is this nomination.

So, Mr. Daniels, we're proud to be able to vote for you today, and we look forward to continuing to work with you in terms of your mission as trustee of State University, as well as your understanding and your goal of making that institution the economic engine of our state.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI:

Thank you, Senator Montgomery.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I too rise to second the nomination of Randy Daniels as a member of the Board of Trustees of the State University of New York.

I too, as Senator Mendez, consider Randy a friend. He's a person that you can pick up the phone and talk to and if you disagree, he's still willing to listen, and oftentimes he might even change his mind.

He is a respected person, not only in the African-American community, but all of the communities of the city of New York. He's joined today by his lovely wife and children, who play a major role in his life and the decisions that he makes, especially those on behalf of young people. He knows the struggles that our young people have in obtaining an education and he will do the right thing by us and he is making the decisions that will give them the right to

have a good education as a move forward in life.

I want to thank the Governor for this nomination because it is truly one that is deserved, and I know that Randy will not sell us short and he will always make us proud and I thank the Governor.

ACTING PRESIDENT BALBONI: Thank you, Senator Smith.

Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President.

I rise in seconding this nomination for the 50th year anniversary of the State University. It is certainly apropos to have an individual such as Randy Daniels to serve on the board of the State university and Randy Daniels certainly is one who exemplifies the qualities that are necessary for the State University and what it represents, and I think that here is an individual who has risen above all expectation, that he has an international perspective as well as a national perspective and he has the ability to work across the board, and Randy must be commended for his

ability to work with Democrats as well as Republicans and he has served Democratic mayors in the past, and I'm certain that he understands the role and responsibility and the social commitment in understanding the creation of the State University, and so I think that it is certainly a fantastic choice for an individual who certainly understands his role and responsibility to the community, and he's also a good church member as well. He served as a deacon in the church and I think that that's part of his real commitment and understanding about human faults and human values and understanding that the policy of the State University is really to afford those who are in need in terms of educating and providing them with the opportunity to be productive citizens in the state of New York.

So I rise for this occasion to say that he is truly a fantastic choice and one that would represent all of us well as a member of the State University Board of Trustees, and may he continue to strive on and do just as our motto is, to excel and he will do just that.

So, good luck and much success.

ACTING PRESIDENT BALBONI: Thank you, Senator Seabrook.

The question is on -- oh, excuse me. Senator Paterson, you wish to speak on the nomination?

SENATOR PATERSON: Thank you, Mr. President.

I think everything that needs to be said has been said. I'd just like to get up to add my voice to those who are supporting Mr. Daniels who hails from my district and who aspires to the SUNY board. He has served not only the people of our area but the people of the state well in many other capacities, particularly his outstanding work on the Empire State Development Corporation. We hope that he will be an independent voice for children, and that he will speak to the needs of those children all over the state. This has been his history.

He combines a rare combination of skills, those of independence when necessary and extreme loyalty when necessary, and we think that his ability to distinguish

between those elements makes him well qualified to be a board member, and I'm very happy, very pleased to welcome him and his family to the chamber. They have at times undergone great adversity, which is something that I assume has made him stronger.

Thank you very much.

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson.

The Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I was very pleased today during the Finance Committee to hear the responses that Mr. Daniels gave to a question I raised about the Ag and Tech schools in New York State. Having noted in his resume that he has had experience in developing countries where agriculture is clearly the basis of the economy and survival of the citizens in those countries and knowing that he had experience in broadcast journalism covering agriculture in the Midwest and the automotive industry, I am especially pleased.

Morrisville Agriculture and Technical College in New York State is the proud host of a new automotive program. It is also one of the foremost agricultural colleges in the United States, and yes, in years past we have seen the SUNY administration literally put the Ag and Tech schools on the auction block. It was only a couple of years ago where we fought back a terrible attempt led by some people in the inner sanctum of SUNY to cut loose those schools and to instead resort to a rather out-of-date urban or suburban elitist approach to education, and important as it is for everyone to be fluent in foreign languages and to understand global issues and to speak in detail about fine literature, it is also important for us to continue funding those programs that turn people out who are work place ready.

Morrisville has the highest level of employability upon graduation of any SUNY school in the system the last I checked, and I for one am very pleased to see that the Governor has nominated, and we are about to confirm an individual who understands and will

help increase that reliance on our technical and agricultural institutions, not only the four-year institutions.

ACTING PRESIDENT BALBONI: Thank you, Senator Hoffmann.

Seeing no other Senators wishing -- oh, Senator Roy Goodman.

SENATOR GOODMAN: Yes, Mr. President.

It gives me a great deal of pleasure to add a word of full support for Randy Daniels in this important post. The State University of New York is obviously a major educational institution with the greatest commitment to the public and a man of diversified background and demonstrated community concern, I think, serves the public interest extremely well.

I've known Mr. Daniels for some years. He's been involved in many projects within the city of New York and I believe that he will make an excellent addition to the board, and I'm delighted to second his nomination.

ACTING PRESIDENT BALBONI:

Thank you, Senator Goodman.

The question is on the confirmation of Randy A. Daniels as member of the Board of Trustees of SUNY. All in favor shall signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Randy A. Daniels is hereby confirmed as a member of the Board of Trustees of SUNY.

Congratulations, Mr. Daniels.

(Applause)

Also present in the chamber to day are Mr. Daniels' wife Jacqueline, daughter Tori and daughter Ashley. Welcome and congratulations.

(Applause)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: If we could return to motions and resolutions, I move that we adopt the Resolution Calendar in its

entirety, except for Resolution Number 2744.

ACTING PRESIDENT BALBONI: Motion to adopt the Resolution Calendar. All those in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The motion is adopted.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Senator Gold.

SENATOR GOLD: Yes, with the permission of the Majority Leader, may I offer a -- with the permission of the Majority Leader, I have a privileged resolution at the desk, and I would just move the resolution be passed.

SENATOR SKELOS: No objection. Will you please read the title and move for its immediate adoption.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: By Senator Gold, Legislative Resolution honoring Naomi Green on the occasion of her designation as

recipient of the 1998 Humanitarian Award on Sunday, March 8th, 1998.

ACTING PRESIDENT BALBONI: 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: Mr. President, would you please take up Resolution Number 2744. I ask that it be read in its entirety.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution 2744, commending Dr. L. Eudora Pettigrew upon the occasion of her retirement after 12 distinguished years as president of SUNY College at Old Westbury.

WHEREAS, it is the practice of this legislative body to take note of and publicly acknowledge individuals of remarkable integrity and character whose endeavors have enhanced the growth of education in this great

state; and

WHEREAS, Dr. L. Eudora Pettigrew will be stepping down after 12 years as president of SUNY College at Old Westbury. This unique institution has been called the "People's College" because its mission is to provide an education for minorities, older students and others who are not traditional students; and

WHEREAS, after 40 years of service as a higher education professional, Dr. Pettigrew will retire from her 12-year role as president of SUNY College at Old Westbury on June 1st, 1998. She has spent the last 24 years of her distinguished career in academic administration; and

WHEREAS, in addition to her tenure at SUNY Old Westbury, Dr. Pettigrew served six years as Associate Provost at the University of Delaware and six years as Chair of the Department of Urban and Metropolitan Studies at Michigan State University. Prior to her years as an administrator, she served the faculty in both two-year and four-year colleges as well as in major research

universities; and

WHEREAS, during her tenure at SUNY Old Westbury, Dr. L. Eudora Pettigrew heightened the visibility of the college by forging new partnerships with Long Island's educational, corporate and industrial communities. Her leadership also stimulated growth within the college community where enrollment increased and new programs were developed during her administration. She expanded the diversity at the college by revitalizing and initiating faculty and student exchange programs in Europe and Asia while working tirelessly to establish scholarships for students who otherwise could not study abroad; and

WHEREAS, in 1994 as a member of the Board of Directors of the American Association of State Colleges and Universities, and a member of the AASCU Committee on International Education, Dr. Pettigrew led an AASCU delegation of university presidents on a trip to China. In 1995, as Chair of the SUNY Commission on Africa, she led a SUNY delegation to South

Africa. She is currently a member of the Executive Committee of the International Association of University Presidents and Chair of the IAUP/UN Commission on Disarmament Education, Conflict Resolution and Peace. She has addressed major conferences in Russia, Taiwan, China, Japan, Spain, Egypt, and Palestine, and she developed and chaired a workshop on conflict resolution at the United Nations Women's World Conference in Beijing in 1995; and

WHEREAS, the Economists Allied for Arms Reduction invited Dr. Pettigrew to serve on its advisory committee and the UN Secretary General and the Secretary General of UNESCO have appointed her to a commission to make an in-depth study of the University of Peace in Costa Rica; and

WHEREAS, in October 1997 Dr. L. Eudora Pettigrew was named a Distinguished Alumna of Southern Illinois University; and

WHEREAS, Dr. Pettigrew's retirement as president of SUNY College at Old Westbury is a transition point in her remarkable career as she moves on to serve the

international higher education community. The students at SUNY Old Westbury, however, will continue to benefit from her vision, her 12 years of dedication to the college, and her legacy of academic excellence.

NOW, THEREFORE, BE IT RESOLVED, that this legislative body pause in its deliberations to commend Dr. L. Eudora Pettigrew upon the occasion of her retirement for her significant contributions to the field of education in New York State; and

BE IT FURTHER RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Dr. L. Eudora Pettigrew.

ACTING PRESIDENT BALBONI: Senator Skelos, on the nomination.

SENATOR SKELOS: Mr. President, before you recognize Senator Marcellino, there will be an immediate meeting of the Consumer Protection Committee in the Majority Conference Room.

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Consumer Protection Committee in the Majority Conference Room.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

Mr. President, I am proud to rise and speak on this nomination - nomination! -- this resolution because this is a resolution honoring a person who is engaged in a profession that I consider one of the most honorable, and that is the education profession. With all due respect to my friends in other professions, this one is mine and Dr. Pettigrew is a unique individual.

She took over a university that was in decline and was having major problems and in a period of time when money to institutions like it was also in decline. She turned it around. She turned it around, and it became known in the community as the "People's College" because she's a people person. She knows how to reach out. She knows how to make things happen. She reached out into communities and told people who otherwise would not have an opportunity to go to college that you can come here, and this is a place for you, and this will always be a place for

you here. But -- and it was a big but, there are no free rides. If you come here, we'll give you every opportunity and all the assistance you need, but you're going to have to produce and maintain standards, and she has always stood for that and her university has always stood for that, and during her 12-year tenure that university has improved and enrollment has gone up and it is a proud place to be, and it's in my district, and I'm proud to represent it.

Dr. Pettigrew is a credit to the educational community. She's a credit to the people of the state of New York and as a president, she's a credit to her profession and I respect her. I wish her well. The education -- international education community's gain is our loss in this state.

She will now have the time to do what she pleases. She tells me she likes to get up early in the morning, as do I, as an early riser, but now she'll be able to sleep a little bit later. I believe around 6:00 o'clock in the morning she'll be able to sleep. This is something unique.

Dr. Pettigrew is a special person, and I am proud to recommend the passage of this resolution. Dr. Pettigrew, we don't do too many things around here unanimously, but this is going to be one of them. So, ladies and gentlemen, I urge you to pass this resolution on behalf of a very wonderful person and a fine educator.

Thank you.

ACTING PRESIDENT BALBONI: Thank you, Senator Marcellino. The question is on the resolution.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. I rise again to compliment Senator Marcellino on honoring this great woman in education, who has really essentially made Old Westbury what it is, and has sort of brought along what I understand to be the youngest and one of the smaller campuses, brought it into the system and moved it into a position where it will be a premier educator of young people into the next century.

I know that she has shown an extreme amount of commitment to young people,

to students. She's been here any number of times to advocate for those students, and she has a vision which she has worked very hard to put into place at Old Westbury, and because of her extensive outreach to those of us who were not necessarily knowledgeable about Old Westbury, she's brought that institution alive for us in terms of making sure that we know what's happening.

We know the kinds of struggles and the kinds of issues and the kinds of programs that have been -- that have been brought there by her work; so I'm very, very honored to have known her as a president, and as one of the few African-American women to lead a major institution in this country. I admire your work -- her work, and I am very, very honored and pleased and happy that you are now going to retire, but I know that you're going to continue to share your wealth of wisdom, knowledge and experience with us in this state and with young people throughout the country.

So thank you, Mr. President.

ACTING PRESIDENT BALBONI:

Thank you, Senator Montgomery.

Senator Waldon, you wanted - did you wish to speak?

SENATOR WALDON: I thank you very much, Mr. President.

I walked over just to see if Dr. Pettigrew is the lady I thought she was, from out at the campus. She's a super person and a very enthusiastic leader, and so I'm just here to say "me too" to all of the encomiums and accolades that have been presented on her behalf by my astute colleagues both from the Island and from the real center of the universe, Brooklyn.

Thank you very much.

ACTING PRESIDENT BALBONI: Thank you, Senator Waldon.

The question is on the resolution. Will all those in favor signify by saying aye.

(Response of "Aye.")

All those opposed nay.

Senator Stavisky?

The resolution is adopted. Congratulations.

(Applause)

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT BALBONI: Senator Stavisky.

SENATOR STAVISKY: Will the record reflect had I been in the chamber, I would have voted for Randy Daniels to be a member of the Board of Trustees of the State University of New York, without objection.

SENATOR SKELOS: Without objection.

ACTING PRESIDENT BALBONI: Let the record so reflect.

SENATOR SKELOS: If we could return to the controversial calendar now, we'll start off with Calendar Number 215, by Senator Cook.

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: Calendar Number 215, by Senator Cook, Senate Print 5739-A, an act to amend the Education Law, in relation to improving school safety.

SENATOR STACHOWSKI:

Explanation.

ACTING PRESIDENT BALBONI: Explanation has been asked for. Senator Cook.

SENATOR COOK: Mr. President, I think that it has been evident for many years that there's a need for this legislation, but particularly now that we are pressing towards standards of higher performance in the schools, it becomes even more important.

What this legislation attempts to do is to establish a continuum of disciplinary procedures within the schools so that those students who are very seriously attempting to learn will have the opportunity to learn in an atmosphere that is conducive to learning, without being disrupted by fellow students who do not perhaps have the same intention or perhaps the same motivation.

The bill is, as I have characterized it on other occasions, both a velvet glove and an iron fist, because we recognize that there are, in fact, reasons why sometimes students have behavior problems in school, and we attempt to deal with those problems in this bill and in other ways; but

at the same time the bill insists that students, when they come into school, when they walk through that door, that they recognize that they're no longer on the street, that they, in fact, are in a place of learning, that they have a purpose for being there, and that it is a different atmosphere than it is when they're outside on the street.

So the first provision of the bill is to require -- and let me -- I guess I ought to also inject, Mr. President, that much of what's in this bill is not brand new, that it is either in its entirety or in pieces already in effect in many of the school districts and school buildings around the state, and we're not really attempting to reinvent the wheel here, but what we have tried to do is to organize this into a comprehensive continuum so that we do affect this need in a constructive way.

One of the weaknesses of the past, in my opinion, has been that we have been utterly reactive in dealing with what we have characterized as school violence, and we

have passed and, in fact, have in this bill some provisions that deal with school violence; but the emphasis that we have tried to take is also in the area of prevention, dealing with students first at the level of expectation, so that they know what is expected of them and, secondly, to deal with students at that area -- at that point in time when perhaps they are not conforming to whatever regulations are necessary for the operation, the orderly functioning of the school, and to deal with those at an early point before they become the kind of violence problem that they may become later on.

So we want to look at this as, if you will, an early intervention system, and part of the reason of having this law is to require that the schools first establish their standards, secondly that they enforce those standards, whatever they may be, and they will be by district or by school they will be done separately and individually, but thirdly that the students who are then becoming problems, that they will be identified and hopefully those problems will be dealt with.

The first provision of the bill then is to require each school to develop a code of conduct. Most schools probably already have these, but it is important that there, in fact, be written expectations so that every student, as I have previously said, understands that there are standards of conduct that are expected of them when they're in the school building, that may be different from what's expected of them on the street or, in fact, even in their own homes.

And secondly, that that code of conduct provide the -- a description of exactly what the consequences will be when students do not conform to that code of conduct, and thirdly, to provide the information so that every student and every parent will be advised as to what those standards are and that they will then know what the requirements will be.

Now, the next step down the road -- and let's assume that there will be some intermediate steps which we haven't talked about, because obviously much of what will happen is rather informal and that is

that those students who are not able to conform to the rules will be dealt with by the teachers. They will be dealt with in informal ways in the school system, but we do reach that point when the student becomes so disruptive to the classroom that it becomes necessary for the good of all the other students in the room, for that particular student to be excluded from the classroom.

There has been a great deal of criticism of this particular provision, particularly coming, I would say, from the School Boards Association and from the Superintendents Association because they have resisted giving this kind of authority to teachers, and I understand the concern that this could be abused. But there are a couple of provisions in there that ought to be noted, and the first being that the building principal -- that this decision by the teacher to exclude the student from the classroom for up to ten days is reviewable by the building principal, and if the building principal determines that the -- that the exclusion from the classroom is not made on good grounds,

that there is, in fact, some kind of personality problem on the part of the teacher that's causing some of this problem or this difficulty or that the teacher for some reason is punishing the child for some reason that has nothing to do with the classroom, that in fact that principal -- that building principal has -- has the ability to say no, this child cannot be excluded from the classroom because you've not given to me the reason why you sent this child out of the classroom; and let me tell you what is currently happening and what the teachers tell us is the problem right now, is that all too often the child is sent from them -- by them to the principal's office. The principal simply calls them on the telephone and says, This is your problem. The class room is your place. You have the responsibility for dealing with disciplinary problems in your class. The kid is coming back to your classroom; and so consequently the teacher then is caught up in having to deal with a disciplinary problem that is robbing all the rest of the students in that class of their ability to learn in a correct

learning atmosphere.

So we've tried to make this balanced so that first the teacher has the right to exclude the student, but in fact there is a check that, if the principal -- the principal may, in fact, call the teacher in and say whatever the reasons why you excluded this child and to make a judgment in terms of whether that is an appropriate action.

There is also a hearing process by which the parent may have a hearing within 72 hours if they do not agree with the exclusion from the classroom, so that the - the second echelon, if you will, is there.

Then we get to the velvet glove portion of it, which is what I was talking about before which says that then the school is required to provide an alternate educational program for this child. We really are not interested in excluding people from classrooms, and we certainly aren't -- we certainly are not interested in suspending them from school, because this only encourages and reinforces in some of students the desire to be excluded from the classroom and excluded

from the school and, more than that, it doesn't deal with the more basic problem of why is that child not able to function within the school setting.

So we have to provide that there has to be an alternative. There has to be an alternative to the classroom suspension. The next step then is the ability to actually suspend the student from the school totally.

Now, that may be a very subtle difference, but it still has a kind of a next step implication, but still within the state regulations there is a requirement that this student has to be continued. The educational program for the student has to be continued.

There are those who say this is terribly expensive. I think it is, but it is not, in my opinion, justifiable that -- to abandon these children simply because we are not able to deal with them in the regular classroom setting and, hopefully, it is in this context that we are then able to understand to some degree at least why -- why this particular child can't function in the setting that -- in the educational settings

that other children are functioning in.

So we have reached that point, and this, I think, really brings us down the path here of what I would call the disciplinary portion, and discipline I like to use in the broadest sense of the term, in not just enforcing rules, but what the expectations are, what the standards are, that's what the relationship is, is to following a standard and to lay that standard out, and that's what discipline really is.

So then we finally do reach the point of violence inside the school and so we then have the iron fist portion of the bill, one portion which is to protect the school employees by requiring that acts of violence be reported, and to protect the school employees from civil liability as they do report acts of violence, so that the parents cannot sue the school because the school or the teacher or another employee reported an act by the child.

A second is that these incidents within the school need to be reported to the state Education Department so

that we have a better understanding of exactly what types of acts of violence are occurring and how frequently they are occurring. We get the stories of the isolated incidents and perhaps we're not getting an accurate picture. Perhaps there are fewer incidents than we think there are. Perhaps there are more. Perhaps we just need to understand what those incidents are.

We make it a felony to assault a school employee. The problem with the mis demeanor provisions that we currently have is that they don't seem to deter some of the acts of violence, and let me say that this protects not just the employee, but it also protects students. If someone comes onto the grounds of the school and does not belong there, and creates an act against a child who is in the school, they also have the same penalties against them.

And then finally, we try to deal with the idea of the problem of possession and use of weapons, particularly firearms, on school properties, by increasing the penalties for those particular

violations. So I think that is a sort of a run-through of what the provisions of the bill are.

ACTING PRESIDENT BALBONI: The Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I want to compliment my colleague, Senator Cook, who is one of the most distinguished members of this body, on having done yeoman service on this issue and I'm sure that he speaks for all of us in the chamber today and for thousands of other New York State residents and parents about our concern for safety in the classroom and for the ability of teacheres to be able to teach without the fear of disruptive students making their lives difficult.

I think that there are some wonderful qualities in this bill, and I think that the intent to provide a safe learning environment is one of the most noble things that we have tackled this legislative session so far.

Having said that, however, I am

at this point compelled to vote against this particular bill because I believe that it still needs more work. I, with all due respect to Senator Cook and his excellent staff work in this area, I have to note that I find it somewhat interesting that even the most prestigious teachers organizations in this state have not been inclined to support the measure. I have no memorandum in support from NYSUT or from NEA, even though I went to some pains today to see if they had provided one.

I do, however, have a memorandum in opposition from the New York State School Boards Association. I represent, at last count, 28 different school districts in the 48th Senate District, and I have great admiration for the people who are brave enough to run for board of education. I never had the guts to run for that particular office. I started my political adventures as a member of the Syracuse City Council, but I know that the men and women who are willing to serve as school board members take a great deal of heat and they also expose themselves to a great

deal of risk, and if the school boards and the school districts that will have to address the legal questions that would arise in the event that a teacher is charged with having over stepped his or her jurisdiction through this measure, should it be enacted into law.

I'm also aware because of the School Boards Association memo, aware of the particular scenario which could occur in which a principal is actually put on the defensive and would have to prove that the teacher had overstepped or had done something wrong.

Now, I believe all of these are issues which could be addressed. I believe that it's possible for us to come up with a measure where the state of New York could provide teachers the ability to have students removed quickly, promptly, safely from a classroom when they pose a threat to other students, but given the very vast scope of this particular bill before us today and the noted absence of support from the teachers themselves, coupled with some very articulate opposition from school boards which find themselves in a potential position of

liability, I would urge my colleagues to register a no vote.

ACTING PRESIDENT BALBONI: Thank you, Senator Hoffmann.

Senator Leichter.

SENATOR LEICHTER: Mr. President, if Senator Cook would yield, please.

ACTING PRESIDENT BALBONI: Senator Cook, do you yield?

(Senator Cook nods head.)

ACTING PRESIDENT BALBONI: Senator Cook yields.

SENATOR LEICHTER: Senator Cook, Senator Hoffmann has made some of the points that I was going to make, and let me just preface my question to you by saying I appreciate your addressing this problem. It's a complex, difficult problem, and I know that you've worked hard on this and are trying in a very conscientious manner to provide some help and support for schools throughout this state and for teachers. Through my wife, I know what a difficult and what an important job it is and maybe sometimes in our effort to try to

be helpful, we're really creating more problems, and I think Senator Hoffmann has dealt with that.

I'm just somewhat puzzled by the provision you have. This is on page 8 in section 4, the protection of school employees and others who make a charge where the student has committed certain offenses, and what disturbs me is, and what I want to question you about is, you say that anybody who makes one of these complaints about a student shall have immunity from any criminal and/or civil liability.

My question to you is, suppose it turns out that somebody made a charge maliciously, falsely. Are you saying that that person cannot be prosecuted by the district attorney?

SENATOR COOK: Mr. President, I think this is similar to the provision that we have with reports of child abuse or other instances where the -- the report triggers an investigation and it really is not a criminal charge per se. In other words, if a person goes to the degree where they perhaps were -

were entering a criminal complaint, then those issues that you're talking about would enter in, but the problem that we have encountered or the schools tell us they encounter, is that both teachers and administration are somewhat reluctant to -- to report the incidents to the district attorney simply because they then, as the person reporting, end up having to defend themselves against the very kind of suit that you're talking about, and that's really the provision here, that if simply reporting the incident to the district attorney, which is then the district attorney's responsibility to determine whether there's criminal -- actually any criminal activity cannot -- that they can not be sued under that circumstance.

SENATOR LEICHTER: Mr. President, if Senator Cook will continue to yield.

Senator, I understand what you're aiming at. I suggest that you may have missed the target or that there's a better way to hit the bull's eye. I think it's -- you just provide that in the event of complaint made in good faith, I think to immunize people

who make a complaint maliciously knowing of its falsity, that in those instances the district attorney will want to prosecute and should prosecute because this is an open - this is really an open invitation for those who are so inclined, and I'm sure there's very few, but to slander their neighbors, if you will, or children down the block because nobody can take any action against them, and I think that you can cure that just by saying that it was made in good faith or not made maliciously.

You might want to under all circumstances -- I might support that - protect them from civil liability because even if you say as long as it was made in good faith and somebody is going to bring a complaint and say it wasn't made in good faith and that person will have to defend themselves to that extent, but I think that to preclude criminal liability or criminal prosecution, I really think is going too far and I would just commend that language to you, Senator, because I think that would cure what I think is a - is a significant problem with the bill.

Mr. President, on the bill, just very briefly.

ACTING PRESIDENT BALBONI: On the bill, Senator Leichter.

SENATOR LEICHTER: Senator Cook, I think that the memorandum in opposition of the New York State School Boards Association, I think, really states some very compelling reasons to be against this - against this bill.

I would also point out that not every instance of violence or not the general conditions for violence can be cured just by a code of conduct and stronger discipline, and I support, by the way, a code of conduct, and I think discipline is clearly important in a school setting, but I think some of the problems we have, particularly in inner city schools, also relate to the overcrowding, they relate to the terrible deteriorated condition of the schools. They relate to very difficult conditions that teachers work under. They relate to the fact that you have students that English is a second language and we may need more assistance and help.

So there are things that we may need to do here to support the school system that cannot be cured just by giving teachers the authority to throw students out of the classroom.

We have a responsibility to put money into the school system, to try to deal with some of these problems. Yes, money can't cure everything, but you certainly can't cure it without providing greater monetary support than we have, and I don't think anybody should fool themselves by passing this bill or a bill like this, that you are really making a major step or conclusive step against violence in the schools.

I think, Senator Cook, for the reasons Senator Hoffmann said and the School Boards Association, that this bill really needs more work.

ACTING PRESIDENT BALBONI: Thank you, Senators Leichter and Cook. Before we go on, would my colleagues suffer a brief interruption to give the stenographer a moment to collect her thoughts and her paper.

(Short pause)

ACTING PRESIDENT BALBONI: I believe we're ready to proceed. Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I rise to join my colleagues, Senators Hoffmann and Leichter, in expressing some concern and opposition to this legislation.

While I understand what Senator Cook would like to see his emphasis on, having the districts in the state develop a code of conduct, there are some real concerns about the fact that, one, we are extending the maximum period of suspension, with little cause, to ten days from five, and we're also placing the authority to suspend students from schools with teachers, pretty much without any recourse for that student, at least within 72 hours. For 72 hours, or up to 72 hours or perhaps even more because the bill says something about when 72 hours or however long the parental investigations *** shall upon request be given an opportunity for an informal conference with the principal to discuss the reasons for the removal, within 72

hours of the pupil's removal or as soon thereafter as reasonably practicable, so theoretically it should -- it could take quite a bit longer than 72 hours.

The problem with New York City in particular, Senator Cook, is that as I have experienced it, particularly and specifically as a parent, in classrooms, that teachers are very reactive and overwhelmed with the fact that they may have a fourth grade with over 30 students, and certainly that's probably not the experience that you have in districts in your -- in school districts, in school classrooms in your district, but it certainly is in mine and because of that teachers have very little time and opportunity to spend with individual students, some of whom may have issues that bring them to act out, sometimes in an anti-social way.

If there was an opportunity for teachers to refer students to someone who could work with them individually, it seems to me that that would be an option that made much more sense than having them or giving them the authority to use suspension as a means of

addressing problems that students may have.

There are some contradictions here, one of which I would like to point out to my colleague and Senator Cook, and that is on page 7, the bill says that the code of conduct shall be developed by the board in consultation with teachers, community members, parents or students attending such district, students and any other representatives that the board deems appropriate, but nonetheless, the Senator, in the first part of the bill, gives the teacher the authority to suspend students for various causes including having a disruptive student or a student that the teacher deems to be interfering with academic work.

So it seems to me that you put the cart before the horse. I certainly appreciate the provision to develop a code of conduct in consultation with all of the members of the school community, inside and outside, but if we give the teacher the authority to suspend students, it seems to me that we set up a situation where automatically that the teacher is operating outside of what

may eventually develop as a community code of conduct and in -- in many instances, it seems that this might cause a further conflict between teacher and parent and teacher and other parts of the community, because the community already is very suspect of the fact that there are very many suspensions, and that very often there are personality conflicts that arise between students and teachers and in addition there are students who just act out because they're expressing other problems that they have, and that there is no one there to address those problems and so they are suspended and all of this eventually evolves back to being viewed as the fault of the teacher, and so I don't think, Senator Cook, we want to set up a situation where we have - we escalate the sense of alienation of community from teacher.

So, for those reasons, in addition to the reasons expressed so eloquently by my colleagues, I would oppose this legislation once again.

ACTING PRESIDENT BALBONI: Thank you, Senator Montgomery.

Read the last section.

THE SECRETARY: Section 22. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BALBONI: Senator Paterson, to explain his vote.

SENATOR PATERSON: Thank you, Mr. President.

Quite often, in pieces of very valuable legislation such as the one that's set forth today by Senator Cook, there is somewhat of an over-emphasis on what would be the principle of the legislation and perhaps a cursory development of the substantive changes that need to be made.

This is an excellent bill that comes at a time when teachers in our classrooms need greater protection and we need greater enforcement, I guess, against those who would restrict not only their ability to teach but of the other students to learn. However, I see some issues in this particular

legislation involving due process, the fact that, for instance, students can be suspended for up to ten days without a hearing arbitrarily through the decision of one teacher. Everyone is fallible and this is why we try not to make these decisions independently, and I think that this needs to be addressed along with some other changes.

I'm going to vote for the legislation because of the content of its protections and the value that we are trying to establish in having a strict enforcement of rules in our school system. I understand that the Assembly is also going to pass similar legislation, and hopefully with the conference committees that the Majority Leader and the Speaker have worked to develop over the past three and a half years, we will be able to inevitably pass a stronger bill that protects not only the students but the civil liberties of all individuals.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Thank you, Mr.

President.

Mr. President, by coincidence -- it's good timing, Senator Cook -- by co incidence some people from the UFT were in to see me today to discuss school issues, and it's very difficult to expect teachers to be able to do all we ask of them, when you have 40 students in a kindergarten class, when you talk about passing legislation to make smaller classes, and there's no place for the classes.

There was one school that we were talking about, I think it was P.S. 80 in Queens -- an excellent school where they have used the behind the curtain space in the auditorium for classrooms. They've taken classrooms, cut them in half.

The point is that I believe teacher safety and student safety is very important, Senator Cook, and I'm glad that you're putting this bill forward and, while I have some questions in my mind about the propriety of the section as referred to by Senator Paterson, I too am going to vote for the bill, but I would urge upon the members of

this house while you pass this bill with complete sincerity and understanding, the problems that have been identified by Senator Cook, you've got to understand where some of these problems come from and they have come from overcrowding. They have come from teachers and they have come from safety issues within the school, and you can't just grab one of the flags, you've got to grab all of the flags.

So I'm really hoping now that the bond issue went down, the revenue estimates are out today and they range from, I think, about 400 million over the Governor's estimate from the -- from the Assembly side to a billion three over the Governor's estimate. I think we ought to be thinking about what are we going to do to make the schools safer by getting classroom sizes down and constructing some new schools.

I'm going to vote in the affirmative.

ACTING PRESIDENT BALBONI: Thank you, Senator Gold.

Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 215 are Senators Hoffmann, Leichter, Mendez, Montgomery, Sampson, Santiago and submit Smith. Ayes 52, nays 7.

ACTING PRESIDENT BALBONI: The bill is passed.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 21, by Senator Volker.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Volker, Senate Print 3407-A, an act to amend the Criminal Procedure Law, in relation to the authority of police officers.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT BALBONI: Senator Volker.

SENATOR VOLKER: Mr. President, are you going to ask for an explanation?

SENATOR GOLD: Explanation. I owe you one.

SENATOR VOLKER: Let me just say, I was reading the transcript from last

year and realized that this bill passed last year, the day that I just returned from a police officer's funeral that had been killed and there was quite a bit of collateral discussion on this issue and it is ironic that here we are almost exactly a year later and another Buffalo police officer was just killed last week and was buried this morning. Although the situation was considerably different in that the person was pursuing an individual on foot and he was killed by a passing car, it remains a very tragic and sad event, obviously, but I think the real irony of it is I just happened to look at the account of last year's debate and I realized, as you can imagine, it's exactly the same situation, that is, we are in a Tuesday in March and that funeral happened earlier in the day and we are in another Tuesday in March one year later and the exact same occurrence.

Anyway, so everybody understands, this was called -- you will note this bill was introduced last year -- this is a Governor's program bill, was introduced March 4th, '97 and you will note it's an "A"

print. Essentially the "A" print is -- it makes it the Police and Public Protection Act of 1998 instead of 1997. I think there was just one other technical correction. It is exactly the same bill as we passed last year.

You might ask me this question and I'll answer it right now. What's the difference between this bill and the bill that we passed, I believe about three weeks ago - two or three weeks ago -- January 27th? Thank you, David. My counsel here just told me January 27th, my learned counsel, I might add.

The first part of the bill is exactly the same. It talks about -- we debated it at great length -- on the issue of police stops based upon an objective, credible evidence that -- by a police officer. The police must have -- then can act in whatever is necessary under the circumstances, must not be arbitrary, capricious, and so forth, but can act in an objective, credible way. That, of course, we debated at great length here several weeks ago.

The part of this bill that's

different is the second part of the bill that essentially deals with the issue of suppression of evidence. There's two parts to it. One says that if evidence is suppressed -- evidence of tangible property is suppressed, and that's -- I don't think that's the most controversial part of it -- the court has to set forth its findings and reasons as to why the -- it determined that the defendant did not abandon the property.

This relates to a number of cases where defendants have contended in court the property that was clearly theirs because they weren't in direct contact with the property, and I won't get into some of the cases. Courts have -- several courts have determined that they had abandoned the property. In other words, one case the fellow dropped it as he was running and -- running around the corner and was arrested and they found, I believe burglary tools or whatever it was and the judge determined that since they couldn't directly connect him with that bag and couldn't absolutely say that that was his bag, even though the fellow had dropped it and

there was some evidence that had seen him with the bag, that it wasn't his and it was abandoned. It wouldn't necessarily change that but it would have the court set forth the reasons why they determined that the property was or was not abandoned.

The second part -- the other part of the bill, which I suppose is the most controversial, relates to a series of cases that relate to the so-called good or bad faith criteria where a law enforce... where a law enforcement officer or somebody had evidence suppressed because the court determined that there was some sort of technical violation of the law but where it can be determined that there was no finding of bad faith but the person acted in good faith but made some sort of mistake. This is called the so-called bad faith rule. Virtually the entire country - the federal government operates under that provision.

There had been determinations by courts in New York that seem to go way beyond Mapp versus Ohio and People versus Lauria, which are the major cases in this area

and say that the New York State Constitution, they've interpreted it, that it goes beyond the national -- or the federal Constitution, even though I might point out, as I think you are aware -- at least most of you are aware - the state constitutional language is exactly the same as the federal constitutional language on rights.

So what this bill would basically do, it says, the bill prohibits the suppression of evidence based solely upon allegation, violations of the state constitutional provision against unreasonable search procedures or any statutory provision. The court may suppress in the normal -- under federal constitutional standards and that, by the way, is what we debated last year at some length. Just so that you know, this bill passed 39 to 19 after extensive debate and that is essentially the bill.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Senator Gold.

SENATOR GOLD: Yeah. Would the Senator yield to just a couple of questions?

SENATOR VOLKER: Certainly.

SENATOR GOLD: Senator, I'm not sure I understood the last thing you said. Are you saying that this prohibits a judge from suppressing evidence if he feels it's a violation of the state Constitution?

SENATOR VOLKER: No, no, absolutely not. Where -- if it's a violation -- if the determination is that the state Constitution is superior to the federal Constitution, that is, if a decision is that the interpretation is that the state Constitution somehow supersedes the federal Constitution, the answer is, in effect, that's what -- that is true, that we would say that if it's a violation of the statute, quite clearly, it could be suppressed and if it's a violation of the federal Constitution - constitutional rules which is identical to the state, clearly it could be suppressed.

SENATOR GOLD: Senator, if you'll yield to one question.

SENATOR VOLKER: Sure.

SENATOR GOLD: Suppose for the sake of argument that the highest court in

this state gets a case where a judge suppressed something because it's a violation of the state Constitution and the Court of Appeals says that your statute here is in violation of the state Constitution, therefore, unenforceable, aren't we back to square one? The Legislature can't do anything about that, can we?

SENATOR VOLKER: I suppose they could. Of course, I would assume that would be appealed to the Supreme Court which, I would assume would rule it -- probably rule that decision as not valid, but you make a good point. I suppose that could happen. If the Court of Appeals again wants to try to supersede the Legislature, as in certain cases it's done -- not very often. Senator, remember, these cases are not directly attacking the Legislature. They are - collaterally attack legislation that we've done. At the same time they have said that the state Constitution, even though its language is identical to the federal, in effect, is superseding the federal constitutional rules.

SENATOR GOLD: Mr. President. Mr. President.

ACTING PRESIDENT BALBONI: Senator Gold.

SENATOR GOLD: Mr. President, on the bill.

I'm just going to address this point because I know -- I think Senator Waldon wanted to speak and a few weeks ago when I debated the other bill, the record will indicate I made reference to a lot of Senator Waldon's remarks from last year because I thought his argument was very excellent. So I'm going to leave that to Senator Waldon, but I just wanted to say, Senator Volker, that this provision that we just discussed is really a merry-go-round because I can't believe the United States Supreme Court would accept a case where the state Court of Appeals in New York said that we passed something which violates the New York State Constitution and, therefore, they won't enforce it. I assume that the United States Supreme Court will leave that for our court to deal with, and I would remind you of the law case that

every, every, every law student remembers, Marbury versus Madison where the United States Supreme Court, for the first time, ruled on this issue of taking power, declaring statutes unconstitutional and it worked because the court took away power from itself, and I think you're creating a similar situation. I mean, you're talking about whether we can effectively tell a court that it can't exercise what it believes is a constitutional function, and I don't think we can get away with that, Senator Volker.

On the other point on page 2, I am also a little confused because my understanding of the law -- and maybe I'm not understanding your argument -- is if a police officer sees somebody running away and throwing something on the ground, I think the police officer can pick that up and testify that the person threw it away. I don't understand the abandonment argument. It may be that I just didn't catch it when you were putting it forth, but you may want to explain that, but I'm going to vote against the bill principally because of page 1 of the bill, as

I explained it a few weeks ago, and relying upon what Senator Waldon has said on this in the past and what he might very well say today about it.

ACTING PRESIDENT BALBONI: Senator Volker.

SENATOR VOLKER: Just before, Senator, let me just respond, if I might, just to the -- you're right. My counsel and I were discussing the issue, and you're right. The possibility of a ruling by the Court of Appeals and then an appeal is very unlikely. I'm saying that could happen. What we're really trying to do here, though, is establish statutory authority on the suppression issue.

One of the arguments that have been made in these courts is, the courts have said, well, we fall back on the Constitution of New York absent some statutory authority to the contrary. Well, what this really is is this is statutory authority in a sense to the contrary. I mean, I understand what you're saying is probably true. You could get in the merry-go-round effect. If the Court of Appeals actually rules and says, we don't care

what your statute says, our Constitution, we think gives us authority to supersede the federal rules, you're probably right. The likelihood that the United States Supreme Court is going to over... it's possible but more than likely, we -- it's our opinion, and I think the Governor's opinion and the people that drafted this bill, that we are creating a statutory authority here on suppression and, therefore, saying to the Court of Appeals that we're not going to argue with you on what the state or federal does but we're giving you statutory authority on suppression and we think the Legislature has the right to do this.

ACTING PRESIDENT BALBONI: Senator Waldon.

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

Would the gentleman yield to a question or two?

SENATOR VOLKER: Sure.

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

SENATOR WALDON: Senator Volker, we went around Robin Hood's barn last year on this and it was at times electric and at times eclectic. I read the bill again and I'm as confused this year as I was last year, and when I look at line 12, on page 1 and it reads "In addition, when engaged in criminal law enforcement duties, a police officer may approach a person in a public place located within the geographical area of such officer's employment when he has an objective, credible reason not necessarily indicative of criminality and to the full extent permissible under the Constitution of this state and the United States may ask such questions and take such other actions as the officer thinks appropriate."

One, in New York City, once an officer is sworn in as a police officer, every day until he or she retires after that is 24 hours, 7 days a week a police officer. So there is no such time unless they're out of the jurisdiction or on vacation, not on and not carrying their shield that they are not functioning as a law enforcement police

officer, not peace officer.

So my question is, would there ever be a time for my jurisdiction when an officer would not be engaged under that circumstance in criminal law enforcement duties?

SENATOR VOLKER: Senator - excuse me.

ACTING PRESIDENT BALBONI: Senator Volker.

SENATOR VOLKER: First of all, I don't agree with that assessment and let me tell you why. A police officer is not on duty 24 hours a day. I know that that is the methodology, but the truth is that the duty of a police officer to act relates to what he is doing as a police officer on duty. I think it would be -- I suppose there could be a situation where a police officer might be - for some very good reasons might want to act even while he was not on duty, for instance, if he sees a felon or something of that nature, but I think it's pretty clear that - what we're talking about here, and that's why this language is quite specific. It deals

with a police officer who is acting within his responsibilities at the time, and I don't buy the fact that police officers, by the way, are on duty 24 hours a day. That's not quite correct. The only problem is if you happen to see a crime committed in your presence, then as a police officer you are supposed to do something about it, but you are not supposed to act as a police officer when you're not acting as a police officer; in other words, when you're not actually on duty.

I think there are some people who tend to believe that but it's not really true. Your duty is to act as a police officer when you are on duty and you only respond after that or need to respond after that if a crime is, in effect, committed in your presence or if you are -- for some reason, someone demands that you do something that needs to be done, but I don't think that - frankly, to me it's somewhat incomprehensible that this bill would be used by a police officer who is not on duty.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT BALBONI: Senator Volker, do you continue to yield?

SENATOR WALDON: I don't want to split hairs with you, Senator Volker, but it is my understanding -- and I have not been a police officer since 1975 -- that if you are out in the street, you finish your tour of duty, it's the weekend and you're off and something occurs which requires police presence and action, you are automatically on duty, and I do know from the trial room that officers who fail to act, that is, when I was still a police officer, fail to act, were not in uniform but sworn police officers for the city of New York, are subject to severe penalty, but let me move along to where I would like to solicit and elicit some edification, if you would be so kind.

Is there a time when the police officer is enforcing the laws which are not criminal law under this particular proposal?

SENATOR VOLKER: I don't think this really has anything to do with what sort of laws you're enforcing. I think, in fact,

you have to look at this in terms of a reasonable and prudent person. If there is no -- remember what we're saying here. We're talking about a reasonable -- an objective, credible reason.

What we're trying to do here is to realize that we have professional police officers -- and I think the interesting thing about this, a lot of the criticism is that police officers do wrong things. Well, then if they do wrong things, then they're not acting objectively and credibly and, therefore, they are subjected to the kind of cases that are some of these cases that we're talking about where they could lose the case. In fact, they could be brought up on charges in certain cases, whatever.

So what we're talking about here is a reasonable police officer acting in a reasonable manner, and I think the problem is we try to conjure up improper police procedures and all that sort of thing. If they are, then they're subject to the same problems that certain police officers would have now, and this wouldn't give them any

particular additional powers if they don't act in a proper and objective manner.

SENATOR WALDON: Would the gentleman continue to yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT BALBONI: Yes.

SENATOR WALDON: Senator Volker, it reads here, quote, "Credible reason not necessarily indicative of criminality", meaning the officer can do something when this event or this set of circumstances evidences itself. Would the officer ever enforce civil law? Is there a reason for a police officer to be involved with anything other than criminal law?

SENATOR VOLKER: I don't think this has much to do -- I don't think a law enforcement officer would enforce civil law and, by the way, especially not off duty. I don't think there would be any occasion where a police officer off duty that I can think of would be -- unless he's -- for some reason, someone in the public says something just happened and that person violated the law or

whatever. Other than that, it seems to me that this is talking about rational police procedure and acting off duty, for instance, to take care of zoning violations or things of that nature, which I assume you're relating to which is civil, wouldn't seem to fit into objective, credible kinds of situations, and I think you would be in the same kind of problem you would be in right now, by the way, because a police officer who acts when he's off duty and doesn't have any, I think reasonable reason to do so, acts in his own peril.

SENATOR WALDON: I'm sorry.

ACTING PRESIDENT BALBONI: Senator Waldon, please.

SENATOR WALDON: The conversation, I apologize for jumping, but would the gentleman continue to yield?

ACTING PRESIDENT BALBONI: Yes. Would you continue to yield, Senator?

SENATOR VOLKER: Certainly.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT BALBONI: My pleasure.

SENATOR WALDON: Senator, I guess the point I'm trying to arrive at is that police officers really only deal with criminality. It's not their role to deal with enforcement of civil statutes. They don't take -- summarily take action on the street in regard to civil violations. They're not there to promote tort situations in Supreme Court. They're there to deal with criminality and if such is the case, would, one, they ever do anything other than be aware of criminality committed in their presence or at least they thought it was, did someone advise them it was or it's about to be or their sixth sense as a police officer tells them it could be, and if so, would they ask any questions related to anything other than criminality? Isn't that what we're really trying to do as police officers in this state, to maintain the peace, to suppress crime, to ensure the safety and security of neighborhoods and, therefore, the police are there as our first line of defense to deal with criminals and criminality.

SENATOR VOLKER: Al, I think some of my former -- my colleague police

officers would probably say to you that they would wish all they had to deal with is criminal conduct. As you well know, they have to deal with dogs. They have to deal with traffic. They have to deal with all sorts of things and police officers, by the way, when they're on duty, sometimes have to even deal with zoning violations and all sorts of things because, as the people who are sort of the neighborhood eyes and ears at times, they're asked to get into things that sometimes, I think law enforcement officers think they would rather not get into.

Dog problems, in fact, from the jurisdiction that I was in, sometimes would become enormous problems and we couldn't just, for instance, call the dog warden very easily because sometimes the dog warden would come, sometimes it wouldn't come, but my point is that law enforcement officers, you well know, get into all sorts of areas short of criminality and there are times when you have to ask some people questions that don't relate necessarily to criminality but may relate to, for instance, violations of zoning codes and

things because it just falls to you as part of your duty as the representative of the community.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT BALBONI: Yes, he does.

SENATOR WALDON: Thank you, Mr. President.

Dale, it hasn't changed from last year to this year, my concerns, and my concern last year and this year again is that this gives license to police officers who have no cause other than a whim to stop someone, to question them, to engage them in activity and to perhaps arrest them where there's no probable cause, no reasonable suspicion, no causal factor as historically has been required in this nation and in this state for police to stop people while abroad.

Last year we discussed momentarily, if I recall correctly, I felt they could also go to someone's house and effectuate this and you said, no, that is not

the case. So I'm not going to deal with that this year, but my concern last year was this license to do whatever one deemed necessary on a whim not necessarily related to criminality, and it is my belief that police officers, if they have reasonable suspicion about a crime, they should do whatever is necessary, but just on a whim, it shouldn't be permitted.

And so I ask you once again, and I won't revisit this too long; I want to move on to the second part of the proposal, is that still the case, that the officer can, with no real perspective that a crime has been committed, is about to be committed, could have been committed, abroad in a public place can just stop someone because that person piques his interest?

SENATOR VOLKER: Al, if I thought that that were correct, I wouldn't sponsor this bill. I'll be perfectly honest with you. If I believed that law enforcement people could and would stop people on a whim, credibly -- I'm going to use the word credibly because that's what we use in this bill - then I would not sponsor this bill, because I

do not happen to agree with you that this will create a major change objectively in what happens in the street. I believe that where this may create a change, I say to you once again, is in how cases are looked at by the courts.

I am not foolish enough to think that any bill that I am going to sponsor in this Legislature, in my opinion, is going to make a major change in the streets, unless maybe it's the death penalty or something of that nature. If I thought that this would encourage bad police officers and allow them to do things that they shouldn't do in the street, I would not even sponsor that bill.

I believe this bill, more than just not allowing that, I think will create a better situation with police officers in the street and would allow them a more rational ability to deal with difficult situations in a more rational way and if they don't deal with it in an objective, credible way, then they're going to run into the same problems that some have run into under the old law, and in all honesty, they deserve to, because what we're

looking for here is rational conduct. We're not looking for any kind of situation where we're giving more police powers. What we are trying to do is to develop a more rational ability to conduct discussions in the street than has been occurring now because of what some of the interferences that has occurred from the courts.

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

ACTING PRESIDENT BALBONI: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT BALBONI: The Senator continues.

SENATOR WALDON: Thank you.

If we may, Senator, I would like to go to the second page of your proposal, line 15, and what in essence says that if an officer violates previously understood in this nation and in this state constitutional guarantees against illegally seized evidence, that the judge cannot bar that evidence from the proceeding, meaning that evidence can't be suppressed because it

was tainted by illegal seizure. Is that still your understanding of what's provided here, and that is the intent of what you're providing here?

SENATOR VOLKER: No. The intent is to conform New York law to standard procedures across the country in what is the federal statute in Mapp versus Ohio, and that is that -- and that is to eliminate something that has occurred. A number of cases in New York that seems to indicate that the courts have ruled that even if there is no showing of bad faith, that items can be -- can be excluded or can be suppressed, evidence can be suppressed because there was some -- something improperly done not going to the heart of the case because obviously if it's shown that the person's constitutional rights were clearly violated under the federal Constitution, that evidence has to be excluded, but what this - what this is saying here is that we're going beyond the federal Constitution and, therefore, that the state law -- we're putting in statute that state law should be, in effect, in concert with the rest of the

country and should not go beyond what the rest of the country is considering in these kind of cases.

SENATOR WALDON: Thank you very much, Senator Volker.

Mr. President, on the bill.

ACTING PRESIDENT BALBONI: Senator Waldon, on the bill.

SENATOR WALDON: Last year, Dale, when we went around this, I believe, if I recall correctly, I spoke of some situations I witnessed with my eyes, personally observed, where on the corner of 222nd Street and 116th Avenue was one and the other one was in Nassau County, police officers stopped young black men driving their autos. In one situation it was a salt and pepper team -- that's the one which occurred on my corner -- and the other situation, the officers were white. In both instances they stopped the car, removed the passengers, searched the passengers, searched the car, trunk, glove compartment, under the seats and then told the young men, you can leave.

I was able to get to the first

car in time to question the young men myself and to tell them after they shared their information that I wished to become their advocate. They said they were told there was a shooting at PS 176, which is about 12 to 14 blocks from my home and that they fit the description. I took -- I gave them my phone number at the district office and asked them to call me. I then called the 105th. There had been a shooting. The auto involved was a red car. This was a gray car. The men described in the shooting were not these two young men who were college students who were home on vacation, Christmas break. Thirdly, there was no way that from the time of the shooting and the time of the stop that there could be any necessary correlation because so much time had passed and they claimed they were in hot pursuit.

In the second situation, the young man, once I told him I'm Senator Waldon, Nassau County and I would like to help you, he said, I don't want any problems. These guys will come and haunt me if I get involved with you, and he took off.

The other two young men never called, even though I gave them the DO phone number, told them what I would be prepared to do for them. So the sergeant on duty repaired to my home and tried to brush off what had happened. I had a conversation with the then precinct commander and advised him that, you know, this was wrong and the falsification of the process and the records was wrong and he gave me his word that he would try everything he could to stop it but we couldn't find the officers who were involved. They were the prime combat unit.

Most complaints I receive in my district office, which is located in St. Albans, and if you walk two blocks from where I am, the homes start at 500,000, Addison Park -- start at 500,000 -- is that their children are on vacation or coming home from vacation Christmastime and in the summer, driving in cars their families can well afford to pay for, are rousted by the police. They exit parties from homes in the community and the police stop and search them, put their hands in their pockets. These are young men, some

of whom are like my son and his friends, graduated from Yale, Harvard, future doctors, future business people. This is not a neighborhood replete with criminals, but there are officers who feel with the current law, not what you're proposing, Senator, with the current law, that they have a license to search these young men and to search their vehicles.

My fear is if they are violating constitutional intent now, if we give them further license, how far will they take their illegal searches and seizures? How many other young, innocent black men will be intimidated because a zealous police officer decides to stop him and question him?

The parents in my community are in a state of frenzy about this situation. I have had meetings with 105, the 113th, the 103rd, the 100th, the 101st precinct commanders. I've had meetings with the borough commander, borough commander south and north, all of them, Charlie Mattice has been in consultation with me constantly about this issue. It may not be happening in Whitestone.

It may not be happening in Forest Hills. It may not be happening in Bayside or Bayside Harbor, but it is happening in St. Albans and Cambria Heights, Queens Village, Rochedale Village, Rosedale and the Rockaways.

Now, when you get out to the poor neighborhood out in the Rockaways where the projects are, it is unbelievable what the cops are doing, unbelievable at times. That doesn't mean every police officer, and I am not trying to indict all police officers.

What I'm saying is that there is an element in the police force which feels it has a license to do all of these things which are, in my opinion, in violation of constitutional guarantees and the true intent and letter of the law.

So I don't think we have to give them greater power. If we want a police state, give them the power. If we want fascism, give them the power, but if what we want is for this state and this nation to stand for what it has at least theoretically stood for for a long, long time, I think this is the wrong course of action to take and for

that and all of the other reasons I gave you last year, despite my admiration and respect for you, I can't go along with you again.

I'll have to vote in the negative.

Thank you very much, Mr. President. Thank you, Senator Volker.

ACTING PRESIDENT BALBONI: Read the last section.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I just have a couple of questions for Senator Volker. I'll try to be brief.

ACTING PRESIDENT BALBONI: Senator Volker, will you yield?

SENATOR VOLKER: It's a privilege.

SENATOR PATERSON: Through you, Mr. President. Senator, you discussed bringing New York State in what you termed compliance with the other states with respect to the test for the suppression of evidence, and I somewhat wish you would explain that

because my interpretation of what we have now is basically a two-prong system in which the police must reach a certain threshold before it is viable legally to conduct the kind of search that they do.

The other states have really what is a good faith test which is that as long as the police officer showed good faith, perhaps the states will accept it. What it appears exists in this legislation is that we're going beyond the good faith test to a level which is higher, to a higher threshold where you must prove bad faith on the part of the police officer, something that I don't know how a defendant would be able to prove in order to show that there was an unreasonable search.

Don't you think that goes beyond what is existing in most of the other states where the federal test applies?

SENATOR VOLKER: Senator, I don't agree with you. In fact, let me say, let's not mix the two issues here, the issue of objective, credible, as far as the stop. Let's talk about -- I guess we're talking

about suppression.

What we are trying to do here is establish a statute that, from what I understand, is very, very close to what statutes -- that are statutes in a number of the states and which will comply -- which basically sets us into a situation where we are still governed, quite clearly, by federal -- the federal rule on searches and seizures and the reason we are using the terms is because these are terms that are used in a number of cases, in fact, have been used in some of the cases that the courts -- certain cases have used here, I think even in New York, if I'm not mistaken, but which is not considered to be the general rule now, and that is if there is a -- what amounts to, although a violation of a technical rule, very often these relate to how search warrants are obtained, for instance, and although the search warrant was obtained, there might be something that was not done completely properly. So we're saying as long as there isn't a showing that the police officer or law enforcement officer, whoever it was, acted in

bad faith -- and keeping in mind the situation, we're establishing a statute here to be used, in effect, by the Court of Appeals -- I don't think we're certainly establishing any kind of a situation that would be greater than any other state in the Union that we are aware of and, in fact, as I say, it would level us ultimately with the federal government, which seems to be the test that these other places are using.

SENATOR PATERSON: Thank you, Senator.

If the Senator would yield for another question.

SENATOR VOLKER: Sure.

SENATOR PATERSON: The issue of the credibility of stopping someone extends beyond what would be means of criminality to questions the police officer might ask, not necessarily related to criminality. I may have asked you this question on January 21st and -- but I would ask you again. What would you consider a reason for a police officer to stop a citizen over some issue that does not relate to criminality?

SENATOR VOLKER: Well, we used, I think at the time, to question somebody who may appear to be ill. There's a series of things that, under the circumstances, might cause a reasonable person to stop and question somebody or check as to the person's situation, and I use the potential illness - I use that quite clearly. I've also used in the past the person's apparent condition at the time. There's a number of things that could, under the circumstances occur, and it seems to me that you've got to keep in mind that this is an objective, credible evidentiary situation and, as I said to Senator Waldon, I really do not believe that this would create any particular change except that it will create a potential change in the end result where a case is being tested in the courts.

I mean, you know, Senator Waldon talked about some bad situations. Bad situations are bad situations. We're not going to -- if somebody is acting unreasonably, then that is wrong and we are not going to do anything that is going to

change that. They're still going to have to answer when they -- when they act wrongly, but we should not make law based on a bad situation. We should make law based on the fact that we're going to try to make sure that good police officers are given the best opportunity to fulfill their duties and, you know, that's at least the opinion, I think of myself and I think the Governor who sponsored this bill.

SENATOR PATERSON: Mr. President, I want to thank Senator Volker for graciously answering these questions and going through this. It seems that we -- every two weeks, we're debating the same issue, and Senator Volker is always gracious enough to take our questions.

He mentioned Senator Waldon's comments about bad situations and Senator Waldon was pretty clear delineating some of the geography in Queens County and the places where the bad situations occur and the places where perhaps the conduct of the police officer is more in compliance with the standard of professionalism that he observed

as a police officer for many years in New York City.

Senator Waldon was not here on the day that we discussed this before and what we talked about in that debate was just the issue of raising that kind of concern that Senator Waldon raised, and it's the concern that there are -- this is a very delicate balance that we have in what is a democracy and at the same time trying to execute law enforcement to its fullest capacity.

The fact is that there have been numerous situations with poor law enforcement in what have been traditionally under-serviced communities, communities that are comprised of minorities in this country, communities that are comprised of individuals from perhaps a poorer economic standard and that in those areas, there have been documented greater incidence of perhaps over-reaching on the part of police officers in the execution of law enforcement and that it has been very difficult traditionally to try to have some kind of redress for this.

Back in the mid-'80s, the

mayor of the city of New York once remarked that there was a perception of police brutality, that it really didn't exist. It was highly isolated, but that it was something that was a perception of those who lived in certain neighborhoods and not two weeks after he made this comment, there was an incident involving the use of a stun gun in the 106th Precinct on April 22nd, 1985 that changed even the mayor of New York's perception of what police brutality could be. In 1991, in March there was an incident involving Rodney King that changed the country's perception of what excessive force might be on the part of police officers.

It is not my opinion that any greater number of police officers discriminate than any other workers in society. It is not my opinion that police officers are any more biased than any other group in society. It's not my opinion that police officers are any less professional and, in fact, probably are put in the position of having to display the highest degree of restraint and professionalism and patience with the general

public.

The issue is that in instances where there are violations, that these violations have a strong, strong repercussion because it is part of that delicate balance that we try to establish in our society between the freedoms guaranteed to us by the Constitution and our desire to protect individuals from the violation of those freedoms of other citizens.

What I see in this legislation is that in many ways it blurs the translation of constitutionality when it comes to the issues of stopping citizens. This is really not a piece of legislation that, in my opinion, relates to criminality. It's a piece of legislation that relates to what are the restrictions of freedoms in society and, as Senator Waldon said, this is the United States of America. We have to not only raise the flag in some instances, we have to raise them in all instances. We cannot allow the freedoms that are guaranteed to us to be violated in the fashion that can exist in this particular legislation and unlike in the

federal standard right now, that allows for a good faith exception on the part of police officers. This bill specifically mentions that there must be a demonstration of bad faith on the part of the police officer to render the investigation to taint the actual investigation process.

So what we're actually seeing is that unless the defendant can show this on the part of the police officer, which I think is next to impossible unless the incident was videotaped, then you're not going to have an opportunity to really have any redress in these types of situations.

There are not many times that I've chosen to address these types of events on the floor of this chamber even when I knew they probably existed, but this is one of those times that I can address it because of the overwhelming evidence that Senator Waldon referred to before. This is something that has really created a number of problems in which I think the police department eventually is victimized just as much as our society is because we are trying to exact standards that

really go over the line when we compare them to what is adequate in a democracy.

When we take evidence under Section -- Article I, Section 12 of the Constitution which has language that is exactly duplicating that which exists in the Fourth Amendment and try to undermine it through the kind of legislation that the Governor's proposing in this particular instance, we are really trampling on some of the most delicate protections that are -- that exist in our Constitution.

Right now historically crime is on -- is on the demise. Police officers have exercised their authority quite well in terms of reducing crime and being effective. There is -- there's no overwhelming public policy that shows that there is a need to pass this particular piece of legislation. There have not been violations to the rights of police officers, particularly where they were trying to stop individuals because of some cause related to criminality and to extend to individuals this kind of power, we think is certainly unhealthy. It is not the fault of

the police that they are human and that they are fallible, but it is the fault of society if we don't establish strict protections for police officers just as we are having strict protections for private citizens, and so in - with this piece of legislation, it's just our opinion that it goes too far. It's over-reaching and it has tipped the balance of what are democratic values in such a way that any one police officer perhaps out of 1,000 who would violate this standard could cause a great deal of damage and in my opinion could compromise the integrity of the police department itself.

And so I very much concur with what Senator Gold and Senator Waldon said earlier and urge that there not be passage of this legislation on this vote.

SENATOR SKELOS: Last section.

ACTING PRESIDENT BALBONI: Last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

SENATOR WALDON: To explain my vote.

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

SENATOR WALDON: Thoughts of Senator Paterson triggered my recall that the Koerner Commission reports from many years ago, 30 or 31 years ago, said that if we don't do something in this nation in terms of the way we are applying the law, the execution of the law, that we're truly creating a society separate but equal, one black, one white, and that is what has happened. We have now in our state a drive to create state-of-the-art prisons but we're not creating sufficiently state-of-the-art classrooms.

Most regrettably last year the people of the state, I believe foolishly, voted against the bond issue in regard to restructuring and refurbishing and taking care of business for our children in regard to schools. Huge, huge mistake. In New York City alone, we need 600 classrooms per year

for the next ten years just to stay up, not to get ahead, just to maintain enough classroom space for the students who are coming in.

In regard to legislation of this nature in this separate but equal society, New York City is paying out in settlements for actions of police brutality, obscene amounts of money. Despite the fact that crime is dwindling and despite the fact that we have a very, very tight hold on crime from this administration, meaning Mayor Giuliani's administration, the police are creating more problems for the City that we are paying the highest amount in terms of settlements in the history of New York City in regard to actions of police abuse.

So I don't see any need to continue this separate but equal society that we are creating. We are the cream of the crop. I think we are the 61 best minds of this state, with all due respect to my colleagues in the Assembly, to deal with thorny issues, issues of great philosophical concern for our future as a state.

ACTING PRESIDENT BALBONI:

Senator Waldon.

SENATOR WALDON: But I think it's a mistake -- 30 seconds, please. I think it's a mistake for us to do what we're doing here today and to not recognize that we failed to take action 31 years ago regarding the Koerner Commission report and this is just another glitch, another bump in the road of failure.

I vote nay.

ACTING PRESIDENT BALBONI: Thank you, Senator Waldon.

Senator Dollinger.

SENATOR DOLLINGER: To explain my vote.

Mr. President, I learned an interesting lesson in Black History Month. I went to a presentation and a young person got up and read the arrest record of Martin Luther King, Jr., and my recollection is that there were at least two instances in which he was arrested for doing one thing, failing to follow the direction of a police officer. The direction was that you cannot shout out in protest and that you must leave a public

place. That conviction was overturned by, I believe the Supreme Court of the great state of Alabama, and rightfully so.

His rights were violated in a court in a state that perhaps at that time was not receptive to the issue of equal rights, nonetheless recognized that police have no place in this country telling people that they cannot exercise their rights given to them by our Constitution.

This bill -- and I've talked before on this floor about the impact it has on the exclusionary rule which I continue to support, but it seems to me that if Martin Luther King, Jr. were standing in this chamber today and asked to vote on a bill that said a police officer, without any evidence of criminality, may ask any question and do anything else that he considers appropriate rather than what the Constitution says is appropriate, is wrong and Dr. Martin Luther King, Jr. would stand here and vote no, and I would join him, and I vote no.

ACTING PRESIDENT BALBONI:

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I think perhaps all of us, certainly I am guilty of the attitude that if it's not happening to me, it's not happening and perhaps Senator Volker does not understand because it probably has never happened to him or it doesn't happen in his neighborhood or in his district or in his part of the state to constituents, but this is the number one issue in parts of New York State, particularly where there are black and Latino neighborhoods and some other groups. There are also some issues in terms of Asian communities. The relationship between the police and the community is the paramount issue as has been pointed out so eloquently by Senator Waldon and, in fact, it was a major issue with the Black Panther party and the development of that party came about specifically because of this problem and the riots, the subsequent riots and the incident with Rodney King and the subsequent riots in Los Angeles, and we can go on and on with these incidents that have come about specifically because there is

a major conflict in the relationship between law enforcement and the African-American community and other communities.

This legislation only would serve to escalate that kind of relationship, and I think it is irresponsible to propose such a bill, to put in statute the authority for any law enforcement officer to stop people even if there is no evidence of criminality. It will signal specifically to the African-American community that we in this Legislature do not consider that issue as important as it is to black people in this country and as well in this state.

So I am adamantly opposed to it. I think that even police officers would be opposed to it because they want to improve the relationship, many of them do, with the community, and so this is not something, I think, that is universally desired by law enforcement.

So I hope that we will all vote negative on this legislation today.

Thank you.

ACTING PRESIDENT BALBONI:

Thank you, Senator Montgomery.

SENATOR MONTGOMERY: I am voting no.

ACTING PRESIDENT BALBONI: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 21 are Senators Abate, Breslin, Connor, DeFrancisco, Dollinger, Gonzalez, Kruger, Leichter, Markowitz, Mendez, Montgomery, Nanula, Onorato, Paterson, Rosado, Sampson, Santiago, Smith, Stavisky and Waldon. Ayes 39, nays 20.

ACTING PRESIDENT BALBONI: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 233, by Senator Johnson, Senate Print 2522-A, an act to amend the Penal Law, in relation to including sales of controlled substances as an underlying offense.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 233 are Senators Leichter, Montgomery and Paterson. Ayes 56, nays 3.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Skelos, Senate Print 306, an act to amend the Criminal Procedure Law, in relation to limiting plea bargaining for sexual offenders.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT BALBONI: Senator Leichter.

SENATOR LEICHTER: Yes. Would Senator Skelos yield, please?

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT BALBONI: Lay it aside for the day.

THE SECRETARY: Calendar Number 284, by Senator Skelos, Senate Print 589-B, an act to amend the Penal Law and the Criminal Procedure Law, in relation to providing for life imprisonment for pedophiles.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first day of November.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 288, by Senator Hannon, Senate Print 3660, an act to amend the Criminal Procedure Law, in relation to imposing plea bargaining limitations.

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Smith, do you wish to be counted in the negative on that last bill?

(Senator Smith shakes head.)

ACTING PRESIDENT BALBONI: The Chair recognizes Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Calendar Number 233.

ACTING PRESIDENT BALBONI: Without objection.

The Secretary will read.

THE SECRETARY: Calendar Number

300, by Senator Nozzolio, Senate Print 177-C.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT BALBONI: Lay it aside for the day.

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

ACTING PRESIDENT BALBONI: Yes, Senator Skelos. I'm informed there is some housekeeping at the desk.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendars Number 101 and 231.

SENATOR SKELOS: No objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT BALBONI: Without objection.

SENATOR MONTGOMERY: Thank you.

Senator Montgomery, would you please give us the number again.

SENATOR MONTGOMERY: 101 and Calendar 231.

ACTING PRESIDENT BALBONI:

Thank you, Senator.

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

ACTING PRESIDENT BALBONI: Yes, Senator. We have reports from standing committees.

The clerk will read.

THE SECRETARY: Senator Alesi, from the Committee on Consumer Protection, reports the following bills:

Senate Print 4266, by Senator Alesi, an act to amend the General Business Law;

4432, by Senator Alesi, an act to amend the General Business Law;

4912-A, by Senator Alesi, an act to amend the General Business Law; and

5122-C, by Senator Alesi, an act to amend the General Business Law and the Executive Law.

Senator Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Print 4025, by Senator

Larkin, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law;

4174, by Senator Larkin, an act to amend the Business Corporation Law;

4186, by Senator Larkin, an act to Amend the Racing, Pari-mutuel Wagering and Breeding Law;

6057, by Senator Hannon, an act to provide for the claiming and award of a lottery prize; and

6077, by Senator Cook, an act to amend at Racing, Pari-mutuel Wagering and Breeding Law.

Senator DeFrancisco, from the Committee on Tourism, Recreation and Sports Development, reports:

Senate Print 4117, by Senator DeFrancisco, an act to amend the Navigation Law.

All bills ordered direct for third reading.

ACTING PRESIDENT BALBONI: Without objection, all bills to third reading.

SENATOR SKELOS: Please

recognize Senator Present.

ACTING PRESIDENT BALBONI: Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Trunzo, on page 16, I offer the following amendments to Calendar 267, Senate Print 5322, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT BALBONI: The amendments are received.

SENATOR PRESENT: Mr. President, on page 18, I offer the following amendments to Calendar 293, Senate Print 4112-A, and ask that it retain its place.

ACTING PRESIDENT BALBONI: The amendments are received and both bills will retain their place on the Third Reading Calendar.

Senator Paterson.

SENATOR PATERSON: Mr. President, first I would like to say that I thought you did an excellent job today.

ACTING PRESIDENT BALBONI: Why, thank you, Senator.

SENATOR PATERSON: And this being the birthday of one of our colleagues, Senator Connor, I know you'll join me in wishing Senator Connor, who's 28 years old today, a very happy birthday.

ACTING PRESIDENT BALBONI: 28 once again. Congratulations, Senator Connor.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT BALBONI: No, there is not, Senator.

SENATOR SKELOS: There being no further business, I move we stand adjourned until Wednesday, March 4th, at 11:00 a.m.

ACTING PRESIDENT BALBONI: On motion by Senator Skelos, the house stands adjourned until March 4th, at 11:00 a.m.

(Whereupon, at 5:39 p.m., the Senate adjourned.)