ALBANY, NEW YORK

April 8, 1998

3:00 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order. I'd ask everyone present to please rise for the Pledge of Allegiance.

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

In the absence of clergy, I'd ask that everyone bow their heads a moment of silence.

(A moment of silence was observed.)

The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 7th. The Senate met pursuant to adjournment. The Journal of Monday, April 6th, was read and approved. Upon motion, the Senate adjourned.

ACTING PRESIDENT MEIER: 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 Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Print 6373-B, by Senator Larkin, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

Senator Maltese, from the Committee on Elections, reports:

Senate Print 560, by Senator Goodman, an act to amend the Election Law;

4511-B, by Senator Present, an act to amend the Election Law;

4883, by Senator Maltese, an act to amend the Election Law.

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

Senate Print 2849, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law;

3674-A, by Senator Leibell, an act to amend the Public Authorities Law;

4085, by Senator Marchi, an act to repeal Section 630 of the Business Corporation Law; and

5732, by Senator Marchi, an act to amend Chapter 393 of the Laws of 1994.

All bills directly for third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Johnson, on page 10, I offer the following amendments to Calendar 256, Senate Print 2550-C, and I ask that that bill retain its place.

On behalf of Senator Nozzolio, on page 33 (23), I offer the following amendments to Calendar 535, Senate Print 474-B, and I ask that that bill retain its place.

Mr. President, on page 29, I offer the following amendments to Calendar 597, Senate Print 2318, and I ask that that bill retain its place on the Third Reading Calendar. That's

Senator Maltese's bill.

On behalf of Senator Marchi, on page -- I offer the following amendments to Calendar 603, Senate Print 4085, and I ask that that bill retain its place.

On behalf of Senator Marchi, I offer the following amendments to Senate Print 5732, and I ask that that bill retain its place.

ACTING PRESIDENT MEIER: The amendments are received and so ordered.

The Secretary will read the substitution.

THE SECRETARY: Senator Farley moves to discharge from the Committee on Local Government Assembly Print 3758-A and substitute it for the identical Senate Bill 2339-A.

ACTING PRESIDENT MEIER: The substitution is ordered.

Senator Skelos.

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

ACTING PRESIDENT MEIER: The Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number

98, by Senator Volker, Senate Print 3456-A, an act to enact the Criminal Procedure Law Reform Act of 1998.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 187, by member of the Assembly Brodsky -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 364, by Senator Nozzolio, Senate Print 4084-A, an act to amend the Civil Practice Law and Rules.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 387, by Senator Cook, Senate Print 366, an act to amend the Education Law, in relation to defining non-residents of a district.

ACTING PRESIDENT MEIER: Read the last -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 418, by Senator Maziarz, Senate Print 5231, an act to amend the Highway Law and the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 419, by Senator Holland, Senate Print 6069, an act to amend the Vehicle and Traffic Law, in relation to providing.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

450, by Senator Present, Senate 764, an act to amend the State Administrative Procedure Act.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 462, by Senator Velella, Senate Print 2334-A, an act to amend the Penal Law, in relation to the crime of criminal mischief.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 466, by Senator Nozzolio, Senate Print 4917, an act to amend the Civil Practice Law and Rules and Court of Claims Act.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 497, by Senator Kuhl, Senate Print 6018, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

507, by Senator Skelos, Senate Print 3410-A, an act to amend the Correction Law and the County Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 508, by Senator Skelos, Senate Print 5259, an act to amend the Correction Law, in relation to requiring.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside, please.

THE SECRETARY: Calendar Number 528, by Senator Johnson, Senate Print 6833, an act to amend the Environmental Conservation Law, in relation to winter flounder regulations.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 560, by Senator Larkin, Senate Print 1346, an act to amend the Vehicle and Traffic Law, in relation to authorizing the city of Newburgh.

ACTING PRESIDENT MEIER: Read the last section -- Senator Skelos, there's a home rule message at the desk on this. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

561, by Senator Present, Senate Print 1891, an act to amend the Highway Law, in relation to distribution and payment.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 562, by Senator LaValle, Senate Print 2467-A, an act in relation to the Long Island Suburban Highway Improvement Program.

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR SKELOS: Mr. President, on the controversial calendar, would you please call up Senator Holland's bill, Calendar Number 419.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 419.

THE SECRETARY: Calendar Number 419, by Senator Holland, Senate Print 6069, an act to amend the Vehicle and Traffic Law, in relation to providing.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Holland, an explanation has been requested of Calendar 419.

SENATOR HOLLAND: Mr. President, all this bill does is set up manufacturer's plates for -- license plates for any organization that manufactures ten or more vehicles a year. It's just like dealer plates or transporter plates.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Holland would yield for a question.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: My question is pretty basic. I'm just a little unclear on what

the actual need for the legislation is.

SENATOR HOLLAND: It is so that the manufacturers can move the cars around the roads. They're still charging for the plates, Senator. They will be $25 each, but it's done in all other -- most other states and it is not done in New York and it simply gives them the ability to buy a license plate and move their vehicles around the road.

SENATOR PATERSON: So this is similar to dealer plates?

SENATOR HOLLAND: Same as dealer plates, yes, sir.

SENATOR PATERSON: Okay. Just one last question, Senator. Do you have any idea why we for such a long period of time have not had this in New York State?

SENATOR HOLLAND: I do not know, sir, but Mercedes is moving into my district and they've requested it and it sounds like a good idea to me.

SENATOR PATERSON: Okay. Thank you very much, Senator.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I'm not going to oppose Senator Holland's bill, even though we're not -- our Deputy Minority Leader had some questions about it, but I do just want to say, Senator Holland, that I'm very happy to know that you are taking such an interest in issues related to traffic because, as you know, I live in a district where we have lots of traffic problems and some of those traffic problems are related to students, and I have some students in my -- in the -- who are visiting us today who are looking at this chamber and trying to figure out what it is we do here, and I just want them to know that Senators like you, Senator Holland, even though you represent Orange County, you care about problems in Kings County, and so that's what this bill represents, and I just wanted to be able to stand

up and say to you that those young people who are here visiting with their counselors and their teachers from School District 13 who are here to find out just what we do with our time when we're in Albany, they will now understand and know that one of the important things that happens here is that Senators like you, Senator Holland, are working on their behalf as all of us are in trying to make this a better world and a better life for young people in our state. So I thank you.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the affirmative.

The Secretary will read the results.

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be a meeting of the Social Services Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Meeting of the Social Services Committee in the Majority

Conference Room.

SENATOR SKELOS: Continue now on the controversial calendar, regular order.

ACTING PRESIDENT MEIER: The Secretary will read the controversial calendar in regular order.

THE SECRETARY: Calendar Number 98, by Senator Volker, Senate Print 3456-A, an act to enact the Criminal Procedure Law Reform Act of 1998.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested of Calendar Number 190 -- I'm sorry -- 98.

SENATOR VOLKER: Okay. This is a bill that's passed this house several times before. It's essentially the same bill, although there's been some modifications in the last year to take care of some technical procedures. It's known as the Criminal Procedure Reform Act of 1998. The Criminal Procedure Reform Act of 1997 that was virtually the same bill, passed this house by a vote of 49 to 10.

The bill basically -- the bill basically deals with a series of cases that have come before primarily the Court of Appeals in

changes in procedure.

Let me just outline several of those. I think most the people in this house are very familiar with them. One of the -- one of the changes that this bill would deal with would be the so-called Rangel case which deals with the failure to produce pretrial statements.

In the issue of prejudice, what happened in the case was that a murder case, I believe it was, was thrown out because there was a pretrial statement that the district attorney at the time prior to the case was not aware of and became aware of during the trial and, in fact, one case -- another case after the trial in the attorney -- the defense attorney used it as an appeal and was able to have the conviction thrown out on the basis of the fact that the district attorney did not produce or did not inform the attorney for the defense in time, even though the attorney for the defense was aware of the statement.

What this bill would do is, in effect, say that you would use a standard that would say that as soon as was possible, that the prosecution would provide the ability to the

defense attorney to review the statements and if the statement was not produced, then there would be a question of whether any actual harm was done to the defendant.

The second piece that's involved here relates to the issue of the defendant's right to be at all proceedings of a trial. We do not change that in this bill at all except that what has happened on several occasions, a defendant who had the right to be at provisions of the trial in one case at a time when two jurors were dismissed and was not available, he was not there at that time and after the trial was over, the defense attorney raised the objection that the defendant was not present even though he had not objected during the trial, even though the defendant would have had the right to have been there, the case was thrown out on the basis that the defendant was not given his right to be there at all parts of the trial.

But this provision says that the defendant certainly has the right to do so. If he objects, then the case goes on and it keeps him from being there, then he has certainly an objection but if he doesn't object, he can't

later come back and say that he was denied his right to be present at all proceedings in the trial.

There's a number of other provisions here. One relates to identification. For some years police officers have had difficulty where cases have gone on for many years and a previous identification is not allowed at the trial and the person who is trying to do the identifying cannot identify that person because of time or change in the person's perspective, and so forth, and the result is that a number of cases have been thrown out. This would allow previous identifications to be entered into a trial, even though the defendant can object and bring up many kinds of objections.

So those are the prime changes that are suggested by this bill. As I say, this bill passed 49 to 10 last year and I think 48 to something the year before and that's the bill.

ACTING PRESIDENT MEIER: Read the last section.

Senator Paterson.

SENATOR PATERSON: I'm sorry, Mr. President.

I have a few questions, if Senator Volker would yield.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Thank you.

Senator Volker, when I listened to your interpretation of the Rangel decision, I would be persuaded to have a pretty fair understanding of why this bill would be on the calendar today because the lack of knowledge on the part of the prosecutor would certainly seem to indicate that it would be unfair to go back into the trial or even after the trial and hold the prosecutor culpable for information that was never in the possession of the office at that particular time, but I thought that the general spirit of the Rangel decision, even if some of the facts in that case might certainly challenge what would be our sense of fairness, that the spirit of the decision was to even the playing field and to make sure that evidence was transmitted to all parties equally, and so with respect to, perhaps not the facts of the Rangel decision but the real dicta from that particular case, I'm wondering would that not be a basis for

continuing the Rangel doctrine as it stands now to make sure that prior statements are made available, that, in other words, to pass this particular bill would actually reverse the case and we would have exceptions far more devastating than, perhaps the Rangel case.

SENATOR VOLKER: Senator, I think my argument on that would be -- and we've looked into this -- I don't think this totally reverses the Rangel case and I don't think it necessarily should.

The concept that statements should be made available to the defense as soon as possible and that any evidence that is useful the defense should be provided, I don't think this would outlaw that.

I think what it does is I think it is an attempt to avoid the technical nature of the Rangel case when there is no showing that - particularly where there is no showing of any error that is -- and not a deliberate error or a deliberate negligence by the prosecutor.

I think what this bill represents is an attempt to continue the spirit of the Rangel case, but I think bring some fairness on

both sides into the system which I think is something, I think we both are looking for.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker would continue to yield.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: I agree with you, Senator Volker. I think we are in the end looking for the same fairness and the fairness should be on both sides. I would agree with you about that.

My concern is that passing this legislation would, in a sense, create the opposite, that the murkiness that would be established by leaving it to court determination or just the decision of a particular judge in each individual case would create a situation where it's not clear what the necessity would actually be to provide prior statements to the - to opposite counsel, and what I'm saying is that at least with the Rangel rule, we do have the bright line test that when properly administered

does create a very clear sense of what the responsibilities of all the parties are.

To pass this legislation, I'm fearful -- and I'll give you certainly the chance to convince me -- that we wouldn't have a single standard. We wouldn't be able to really be clear on what -- at what point the Rangel protection is exhausted and -

ACTING PRESIDENT MEIER: Senator Paterson, could you suspend for a minute, please. Could we have some order in the chamber, please.

Sorry, Senator Paterson. Please go ahead.

SENATOR PATERSON: That's all right, Mr. President. I really don't blame them because I haven't been really, really clear with this question. Perhaps Senator Volker can ferret through this discussion to get to the main point of it, but I guess what I'm really asking Senator Volker is, would this take the bright line test out and would that cause greater discrepancy rather than clear it up?

SENATOR VOLKER: Senator, I don't think that would be true. I think the problem

with the Rangel rule, I think it -- I guess it certainly set up a bright line, all right. According to some of the best legal scholars in this state -- I don't profess to be one of them, by the way. I know you are, but I am not -- this rule actually goes beyond any other state or federal statute that anybody's aware of because it in a sense sets up such a potentially rigid test that virtually any kind of statement that turns up in the hands of a defendant after a case or even during the case that the D.A. -- that the district attorney, the prosecutor could be inferred somehow to be -- should have shown - could, in effect, be used to throw the case out.

I would like to think that what we're doing here -- and I think we are -- is going back to pretty well the standard the way it appeared to be before, and that is that the prosecutor still has the obligation to provide information to the defense, and I happen to believe that that's the way it should be, whenever practicable, that is, whenever it's possible to do so, but in certain cases, it doesn't seem as if we should be looking to find a way somehow to sort of stick the prosecutor with

a line that is almost impossible for him to follow.

I would agree with you that you could argue that this may create some more cases, but I think what it will do is in many ways it will clear away some of the things that have been incurring because what judges have been doing is chipping away at the Rangel case because it seemed as if the line was too rigid on the defense side and what we've had, I think, is a lot of confusion since then. I think this bill attempts to create -- to clear up some of that confusion since that case.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Volker for his responses and respond to the bill.

ACTING PRESIDENT MEIER: Senator Paterson on the bill.

SENATOR PATERSON: Mr. President, I think Senator Volker's point is well taken, that if there is a thumb impinging upon the scales of justice that tilts the opportunity in favor of the defense, then it would be important

to establish some kind of fairness in the proceeding, but I would caution that one of the reasons that the Rangel rule really came into existence is that there were so many times when this type of information was not provided, when this type of information was not even believed to be necessary, that it really created what was at that time and could very well exist right now probably a desire on the prosecution's part, perhaps not to comply with what would be the most desired situation where the information would be transferred to opposing counsel, but what I think is most important about the Rangel rule is that there is a bright line test, that there is a very strict, if you would -- and I understand Senator Volker's concern about it, but it is a well defined rule that places on all of the parties in a criminal proceeding certain duties and responsibilities which we not only respect but we definitely would want to have in this kind of a situation that involves a case that reflects on someone's life or someone being brought into the criminal justice system.

It's my belief that the rule as it stands right now is effective, that it has evened

the responsibilities and has provided a greater opportunity for both sides to present their cases with full knowledge and full awareness.

I understand Senator Volker's point that to use the term "could have known" or "should have known" not only for a prosecutor but for any arm of criminal justice is somewhat misleading and at the least it creates an onus of responsibility that often cannot be fulfilled and to that respect, I don't think that the rules should actually apply, but to go to this extent which I believe would restore some of the obfuscating situations that existed previously would be going too far, and for that reason I'm looking to vote against the bill, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 98 are Senators Connor, Leichter, Markowitz, Montgomery,

Paterson, Rosado, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon. Also, Senator Mendez. Ayes 47, nays 13. Also, Senator Gold. Ayes 46, nays 14.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 364, by Senator Nozzolio, Senate Print 4084-A, an act to amend the Civil Practice Law and Rules, in relation to establishing a complete bar to recovery by persons injured.

SENATOR WALDON: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been requested by Senator Waldon.

SENATOR NOZZOLIO: Mr. President, my colleagues, Senator Waldon, as we debated this bill last year, it has not changed. It enacts the Crime Victims Protection Act which amends the Civil Practice Law and Rules to establish -- in relation to establishing and eliminating a complete bar from recovery by persons injured while committing a crime. We believe that that bar to prevent those who have committed a crime on an individual's property, then the ridiculous

absurd result occurring during the commission of that crime, an individual, the perpetrator of that crime is injured and then sues for recovery, the homeowner or property owner because of some -- because of that injury, this action -- this measure would establish that complete bar to recovery to persons injured while committing a crime.

SENATOR WALDON: Mr. President, would the gentleman yield to a question or two?

ACTING PRESIDENT MEIER: Does the Senator yield to a question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Senator Nozzolio, do you recall the Rodney King case?

SENATOR NOZZOLIO: Yes, Mr. President, I recall the Rodney King case.

SENATOR WALDON: If I recall that case, there were 87 blows rendered to Rodney King in approximately 54 seconds. The blows were so severe that they turned his cheek bones into powder and caused grave injuries to him and he

was guilty of driving while intoxicated but the officers were found -- excuse me -- found to be acting beyond the pale of acceptable behavior.

If such a situation were to occur in New York and if this proposal became law, someone suffering the injuries under the circumstances as Rodney King suffered his injuries would have no recourse to sue the police involved; is that not correct?

SENATOR NOZZOLIO: Mr. President, I couldn't hear the question. Would Senator Waldon be so kind as to repeat it.

SENATOR WALDON: Absolutely, Mr. President. Rodney King was brutalized by the law enforcement authorities in California. His injuries were quite severe. If your proposal became law and a similar situation occurred in this great state of New York, would not the person suffering as did Rodney King be precluded from bringing an action against the police who acted far beyond their parameters?

SENATOR NOZZOLIO: Mr. President, absolutely not. This would not bar Rodney King from seeking his damages. That -- certainly we hope that type of case does not occur in New York

or any place else for that matter.

The peace officers in question, Senator Waldon, were not the victims of a crime perpetrated by Rodney King, that Rodney King himself was a victim of a crime, that we're talking about civil litigation here. No, I don't believe that this matter would appropriately bar -- would in any way bar the recovery - appropriate recovery in the hypothetical you mentioned.

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

ACTING PRESIDENT MEIER: Does the gentleman continue to yield for a question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Senator Nozzolio, would someone who's suffering from or has suffered from an illegal choke hold by a police officer be precluded under your proposal from bringing an

action?

SENATOR NOZZOLIO: Mr. President, I stand by my previous answer, that whatever hypothetical Senator Waldon would like to engage in this afternoon regarding police officers and the perpetrators of crime, we'll have the same response that was given in his hypothetical relative to Rodney King.

ACTING PRESIDENT MEIER: Senator Waldon.

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

ACTING PRESIDENT MEIER: Will the gentleman yield for another question?

SENATOR NOZZOLIO: Mr. President, I would be happy to yield to Senator Waldon's question.

ACTING PRESIDENT MEIER: The Senator yields happily, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Let's put a different twist on this. Someone is committing a crime. They are fleeing from the scene of the crime. Elsewhere someone is robbing a bank. The bank robbers get

into their car and they're driving away from the scene of the bank robbery. A kid who snatched a pocketbook, the first person that I spoke about, is running across the street. As he crosses the intersection, the thieves or robbers from the bank run him down causing grave and serious injury. Would he be precluded from suing or his family be precluded from suing under your proposal?

SENATOR NOZZOLIO: Mr. President, as you and I went to law school together, the great Syracuse University College of Law, we were confronted with hypothetical upon hypothetical upon hypothetical.

Mr. President, I can't recall since those days in law school receiving as extensive a hypothetical as one presented by Senator Waldon this afternoon.

Having said that, if I followed your hypothetical correct -- your series of hypotheticals correctly, Senator, I would have to say that no, it was a separate intervening action, that the bank robbers who happened to be poor drivers in running over the purse snatcher would not be barred -- the purse snatcher would

not be barred for recovery against the bank robbers.

I very much appreciate the mental exercises of going through these hypotheticals, Senator, and I very much congratulate you on your creation. They are creative, extensive and frankly, though, I must tell you, Senator, they're going to yield the same answer, that if this measure -- let me just -- to try foursquare this measure -- this measure is designed, Senator, to prevent those perpetrators of a crime from going directly against the victims that they are perpetrating that crime upon and suing them for something like having a broken floor board or not having a railing on the staircase and as they exited they tripped down the staircase and decided they would sue the victim of the crime, adding certainly tremendous insult and agony to this already heinous act against them.

Unfortunately, Senator, real world hypotheticals occur -- real world situations occur in these cases and not that yours isn't a real world. I respect what you're saying, but we're looking at civil actions against the direct victims of the crime and that's the focus of this

legislation. It's not to prevent anyone from suing a police agency if their conduct was beyond appropriate. It does not prevent that type of recovery whatsoever. It focuses only on civil actions against the individuals who were the direct victims of the perpetrated crime.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon on the bill.

SENATOR WALDON: I guess we've reached that stage of the year where we look for levity in what we do and perhaps that was the driving force to our exchange. However, I thought that I was being serious in terms of the approach vis-a-vis the questions simply because these are serious issues that you are addressing.

I think there's enough law on our books now to allow people to take care of business and to sue or be sued, and I think it's a stretch to do what you're doing.

Sometimes you come up with great ideas, Senator Nozzolio. This time, I think this is not one of your great ideas, and so I would encourage my colleagues to recognize that the

laws on our books now are sufficient and we need not go into this murky area.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR GOLD: Will the gentleman from Cornell yield to a question?

ACTING PRESIDENT MEIER: Even though I'm in the Chair, I take a matter of personal exception to that.

Go ahead.

SENATOR GOLD: Senator, you just said one thing to Senator Waldon which I don't see in the bill. The bill says that if there's an injury during the crime or in flight, there's nothing that I see in the bill at all that says that the defendant in the civil case has to be the victim. I don't see that. If it's there, maybe you can just show it to me you, but I don't see it in the bill at all.

SENATOR NOZZOLIO: We're barring -- Mr. President, through you. We're barring recoveries for those -- for the claimants who perpetrate actions constituting a crime, Senator.

SENATOR GOLD: No, Senator. I'm not telling you I'm for or against the bill. I just wanted to clarify something because you said to Senator Waldon, if I understood you a moment ago, that this did not protect the agency, if it was a police officer, it didn't protect this or that, that it was only dealing with the original crime victim, and I don't see anything in the bill that limits that.

SENATOR NOZZOLIO: Senator, again, I was dealing with Senator Waldon's hypotheticals, that I contend that this measure bars claimants to sue the victims resulting - actions resulting from their crime. This did not bar victims of crime like Rodney King from suing against perpetrators of the crime, in that case would be the police officers themselves, battery, unlawful detention, unreasonable force. Those kinds of actions against Rodney King would not be barred by Rodney King. The police officers would not be able to sue Rodney King, I think under this circumstance, because they would be the perpetrators of the crime in that instance.

SENATOR GOLD: If the gentleman would yield to one more question.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The Senator continues to yield.

Senator Gold.

SENATOR GOLD: As I understand your bill -- and maybe you could answer this kind of yes or no -- it involves a situation where somebody gets hurt and if I'm reading the language properly, during the commission of a crime or it involves somebody that gets hurt in fleeing or trying to escape from a situation. In the Rodney King case, I don't think he was involved in a crime to begin with, but assuming that somebody actually committed a crime, burglarized a house and was now being taken into custody by police and was not trying to escape and the police used improper holds or whatever, the way I read your bill, you could still have a lawsuit. The crime has ended. He's no longer in the commission of a crime and there's no escape.

So the way I read it, if there is police brutality or whatever in arresting the person, I read it that your bill would, in fact,

allow that person to bring that action. Am I correct?

SENATOR NOZZOLIO: Senator Gold, I believe that we had this discussion last year, that I believe that there would be an intervening factor.

SENATOR GOLD: There would be a what?

SENATOR NOZZOLIO: You would have two separate consecutive events that would, in fact, determine that we now are in a different ball game, a different set of facts, a different -- in effect, the first crime would have ended. The creation of a second crime against the perpetrator of the first crime would cut and that cut would, in effect, create a new fact pattern, a new victim and that new victim would certainly be able to sue against the perpetrators of the second crime.

ACTING PRESIDENT MEIER: Read the last section.

Senator Leichter.

SENATOR LEICHTER: Would Senator Nozzolio yield, please?

ACTING PRESIDENT MEIER: Senator,

will you yield to a question from Senator Leichter?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LEICHTER: Yeah. Senator, presently it's case law in the state of New York that if a homeowner or somebody else, shop owner puts in his store a device or mechanism where if somebody breaks in he has a gun that automatically will fire at a person who, let's say goes through a window and the courts have held that that's unreasonable use of force. Now, your bill, as I read it -- and please correct me if I'm wrong -- would it not overrule that whole line of cases?

SENATOR NOZZOLIO: Mr. President, in response to Senator Leichter's question, it's the same question, Franz, that Senator Gold asked. I think that you, in effect, have an intervening crime. Excessive force in itself is a crime, that that excessive force would be the excessive force used by the property owner and that that, in effect, becomes a new victim. The

victim in itself because of the excessive force definition is the perpetrator of the crime even though he entered the scene, all of a sudden the circumstances -- the tables must turn because the homeowner becomes the perpetrator of a crime in a sense by definition, Franz, using excessive force.

So, Senator Leichter, I think that, again that intervening set of circumstances would have shifted the claimant, shifted the victim and the criminal conduct would, in effect, would be of the homeowner, but we're trying not to get -- in that circumstance you reference, I think is certainly a valid concern, but I believe by simple definition of excessive force, the homeowner is forbidden from using that excessive force, as you well indicate, and that that then turns the individual into, in effect, a crime victim.

Now, what we're trying to prevent are those instances where the homeowner is not using excessive force, where he simply may have a loose board on his porch or has maybe a rug in the wrong place that the criminal ended up slipping and falling on and injuring himself and

then suing the property owner which does occur in this state. It occurs in a number of cases where we believe that that certainly should be barred, and that's why this legislation is necessary, appropriate.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator continues to yield.

SENATOR LEICHTER: Senator, I don't think that Senator Gold or Senator Waldon or I have any problem with the examples you give where you would like to provide protection against what we would see as a frivolous or unjustified civil action. The concern we have is that the bill is so broadly written that, for instance, in the example that I gave of where there is this trap which causes grievous injury which is all out of proportion to the crime that's being committed, that your bill would not allow the -- that teenager who climbed through a window, he's now paralyzed for the rest of his

life. Even if the homeowner could be convicted and maybe he could be convicted of a crime but as far as that teenager suing the homeowner in civil -- for civil action -- that's, of course, what your bill deals with -- I think the language of it makes it fairly clear that that could not happen.

SENATOR NOZZOLIO: Senator, I believe that that intervening circumstance of criminality with the use of excessive force would not bar that individual, as you indicate. I appreciate your suggestions and thank you very much for making them.

SENATOR LEICHTER: Well, let me just -- if you would be so kind. Just ask this other question.

Senator, isn't it -- what you're doing then, if you -- if you put up the defense of intervening force, that all that's going to happen is that in instances, for instance, where you have in mind the instance that occurred, of course, in the New York subway with Getz, and so on, all that the criminal who committed the crime -- and admittedly that's what -- well, I guess there may have been some question in the Getz

case but, assuming a crime had been committed, now the criminal after assaulting somebody in the subway runs away and somebody pulls out a gun - the victim pulls out a gun, he's not in any danger anymore and he shoots this person in the back. You're saying, well, he's not committed a crime. Therefore, there is an intervening cause and, therefore, my law doesn't apply, in spite of the fact that it doesn't really say so, but if that's the -- if that's the defense that somebody's going to use, then people are just always going to say, well, there was an intervening cause. They used excessive force and, frankly, then your bill is not going to achieve the goal that it has.

SENATOR NOZZOLIO: On the contrary, Senator. I think it will achieve the goal that we're setting out to achieve, which is to prevent those who are committing crimes from profiting from those crimes and becoming, in effect, the crime victim losing twice. Certainly he loses because he was the victim of a crime and secondly he loses because he was a victim of a civil litigation, a civil lawsuit that, in effect, held him liable because he didn't have

his porch boards tightened down enough. That's what we're trying to rectify here, Senator, and I believe that this bill does it.

The other hypotheticals you mentioned certainly are legitimate -- legitimate concerns, but I believe that the intervening criminality that you're throwing into these hypotheticals turns the table and we're talking then about the entity that was the object of a claimant's criminal conduct. In effect, then we have another criminality thrown in here and that's what we're trying to bar the innocent victim from being sued by the perpetrator of a crime.

The hypotheticals you've thrown in here have shown that once in a while maybe victims aren't innocent and that's -- certainly I believe does happen from time to time in rare occurrences and when it does happen, this legislation certainly would bar the appropriate crime perpetrators from litigation and protect those who are innocent victims from being sued.

SENATOR LEICHTER: Mr. President, just on the bill.

ACTING PRESIDENT MEIER: Senator

Leichter on the bill.

SENATOR LEICHTER: I think we have a situation here that, unfortunately, occurs too frequently and one that Senator Gold, particularly over the years has, I think very eloquently spoken about, and that is that a bill which is certainly well intended and deals with a problem that we have but is written in such a way that it provides a result which defies either common logic or in this instance, I think is against good public policy.

Now, I guess you can get up at meetings and campaign rallies and say, I put in a bill so that criminals aren't going to be allowed to sue, and so on, that sounds great, but when you take a look really at what the bill does, it accomplishes things that are totally different and if Senator Nozzolio's explanation, well, if there's an intervening cause can be accepted, then I think he reads the very purpose of the bill out because that criminal who's now suing is always going to say whether there was an intervening cause.

All I think that we're saying here is that you could draft a bill a little bit more

carefully drafted, more focused, more directed, Senator, and I think that you would really accomplish something because we agree with you that the burglar who goes in and slips on a rug should not be allowed to sue the homeowner for damages. It goes without saying. I think the Getz case is one that I think we would all agree upon, but I think that your bill as drafted is going to have situations where that teenager who climbs who through his neighbor's window because he wants to steal a bottle of whiskey or something and then gets shot and paralyzed for life is going to be precluded for suing in other instances of that sort and that shouldn't happen, and the truth of the matter is you can put out a bill like this and you can pass it in the Senate because I assume your colleagues, with all due respect, will vote for anything that you -- that has your name on it, I mean, but what have you accomplished?

I guess you could bring it back year after year after year and we'll have the same debate. Hopefully I won't be here to do it, but in any event, I really think, Senator, that good intentions but a bill that's not artfully

drafted.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEIER: I'm sorry. Senator Balboni.

SENATOR BALBONI: Mr. President, it is a pleasure to rise on the floor for the first time to be able to speak on a bill that I have waited for seven whole years to come to the floor of some Legislature because Lord knows it never happens in the state Assembly and this is one of these great bills that we can finally get up and talk about common sense.

There are three ironies inherent in this entire issue. First off is that this whole situation, the ability of an individual who committed a crime and then sue is really a function of a glitch.

In 1975, this Legislature codified the new comparative negligence standard. We left the contributory negligence standard which had inherent in the Section 411 the assumption of risk doctrine, probably the most common sense doctrine we've ever had in our body of law, that is, if you commit an act and you knew the risks inherent in that act and you were injured, tough

luck. You're out of the ball game.

In addition to which, the arguments that -- and I -- surprising to most people, I have a bill too on this issue. I approach it from a slightly different issue and hopefully maybe we'll even get a chance to discuss that particular measure at a later time, but we have had -- we have had a lot of discussion regarding some of the issues that were brought here today and what always surprises me is you never get into the true elements.

I have tried these cases. I have stood in court in Nassau County as a deputy county attorney and have defended the county against an individual who has been shot while going after a police officer with a knife. Now -- by the way, subsequently convicted of menacing and harassment with the knife and third degree assault as a plea.

I've seen the cost encumbered by the municipality who has to defend these lawsuits year after year after year, and I have also been involved with the arguments of, well, what about police brutality?

I have defended police officers,

and if you ask any officer what is the true deterrent? The true deterrent is not a civil lawsuit against the individual officer because those lawsuits are nine times out of ten done as a response to that superior; in other words, the municipality defends the police officer. The police officer is rarely on the hook individually. So there is really no deterrent effect. What's the deterrent effect?

A 1983 civil rights action for denial of constitutional rights or a criminal action, an indictment in prosecution. Those are the real deterrents for police brutality. To take away the right in the state to sue is not taking away any deterrent and what is the real irony of this type of statute is that this has been the case law of this state since 1982. The Court of Appeals in probably Judge Wachtler's best decision, Barker versus Kalish, came out with a clear enunciation, that if you commit a felony -- if you commit a crime and you were injured during the course and commission thereof -- and that's the key phrase -- then you are not able to sue, and what is ironic is that 1997 - in December of 1997, Manning versus Brown, the

Court of Appeals again affirmed Barker versus Kalish. So this has been our case law; this has been our common law and it stems back, by the way, to the 1890s in a case called Riggs versus Palmer where the Court of Appeals spoke on this issue for the very first time.

So there has been a very consistent thread through our common law, that it's high time we codify. This bill is a common sense bill. This bill is something that is overdue. I may have a different way of doing it but frankly the intent is the same. It's a good bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR GOLD: Mr. President, it's a delight to listen to Senator Balboni and everybody now sees the brilliance that I have known was there for years but, Senator Balboni, I have listened to your cases. The problem is in the case of the Senate versus the Assembly, this ain't going to become a law in its present law. That's what we have been talking about.

What we're talking about is not a

situation where a police officer is attacked by someone with a knife and the guy gets shot and we all say, you know, you took that risk. What about the case where someone comes at a police officer with a knife and they knock the knife away and the guy's having cuffs put on him and then they shoot him? Well, we say this law as it's proposed doesn't make enough of a distinction. That's all we're talking about.

The concern I have, Senator Nozzolio, is that you said a lot of things in explaining the bill which some of us might be able to live with, but if you take a look at the cases, judges who are very well meaning and one of them in this very field, by the way, who I know, a Cornell graduate, good lawyer, he said that he read the legislative intent but he couldn't do his decision on that basis because he had to make his decision based upon the way he read the plain English of the law.

Now, I asked you a question before and I gave you a situation where a crime had ended and somebody was injured and you said, there's an intervening act. There's no intervening act. The crime ended. So under your

bill I'm not really worried about it.

The problem is when you talked to Senator Leichter and the example that he gave was given to me earlier by my intern Russell Fredico, who was very upset with me earlier today because I didn't want to yield right away to his arguments which were very excellent, but when you were answering Senator Leichter, the second crime isn't an intervening effect that stops the first crime. You have two crimes going on together. If two people are shooting at each other and nobody's got a license for the gun, you got two people committing a crime. One crime doesn't stop another crime and that, therefore, the answers you gave to Senator Leichter just don't fit what your bill is all about, and the problem of the person who falls on a porch committing a crime and sues the owner, Senator, as has happened with the partial birth apportion bill and all of that, your side comes to us with slogans. You don't come to us with well drawn legislation, and what I'm suggesting to you, Senator, is that if you reread this debate -- I mean today you're going to pass the bill because that's what you fellows all do. No matter what's

said on the floor, you pass the bill. Hopefully those of you with, you know, a little more legislative real zeal bring it back a week later and amend it and, Senator, what I'm saying to you is if you read this debate today, you, Senator Nozzolio, have the basis of a bill which a lot of people could support and want to support. Not only that, having the bill is irrelevant. Having the law would be very significant, and it could also be very helpful to the people of the state.

So we're only saying make a distinction between ordinary negligence. Make a distinction between gross negligence. Perhaps there ought to be a distinction for intentional tort, intentional wrongdoing, intentional excesses, and then we've got a bill which everybody's going to be proud of and you will be the driving force behind that and as a fellow alumnus I'll be very proud of you for it, but muscling it through the Senate and not having it become a law really doesn't accomplish much.

So I want to thank Russell for pointing it out to me earlier and, Senator Leichter, I appreciate your debate today and,

Senator Waldon, you certainly did clarify the issues.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MEIER: Senator Leichter.

SENATOR LEICHTER: Mr. President, would Senator Balboni yield, please?

SENATOR BALBONI: Of course.

SENATOR LEICHTER: Senator, you're new to our chamber, so I'm not going to take you to task for it, but we have traditions here and we're not used to the citation of cases. The next thing you're going to cite statutes. We like to be more general in a description.

No, obviously that was a joke and what I really meant to do was to compliment you and how well prepared you were and you certainly threw some helpful light on the -- on the situation and it shows how fortunate we are really to have you on this side of the Capitol than on the other side where you were and on this side of the aisle almost but, Senator, if as you say -- and I'm sure you're correct. You cited the Baker case and others, so that we really codified those extreme examples of a criminal

who's injured in the course of perpetrating a crime and then suing the victim. So what I understand from you is that the situation that Senator Nozzolio wants to take care of is already really taken care of by the case law and our concern is that now he's gone beyond this and he's written out of the case law those instances where somebody has, in the example I gave, sets up a trap in his house which causes grievous injury to somebody who brakes into the house.

So what's really the purpose and aim of passing this bill? You say it's high time we codify it. Why do we have to codify it and if so why in this form?

SENATOR BALBONI: Mr. President, if I may respond. If the Senator would check CPLR 32.12 and you take a look at the provisions relating to the motion for summary judgment, most courts are loath to rule on a motion for summary judgment without a statutory element. In other words, the case law, the Parker versus Kalish does not permit most courts, as it has not in my personal experience, to grant summary judgment on a motion for 32.12 at the outset of the case. Codifying this case would allow the court to come

in and say, you're right. The assumption of risk doctrine provides that you don't have a case. Therefore, we can address this at the outset, therefore, saving municipalities, insurance companies, all sorts of entities, the defense - the cost of defense and frankly taking it out at the hands of the jury because we shouldn't be putting these questions before a jury because you can cite any type of case that would have an emotional appeal but the fact of the matter is this used to be the law in the state of New York. When we had the contributory negligence, when we had the former 1411 statute before in 1975, this was our law, and I think you would be hard pressed to point to examples where people were shut out who committed a criminal act and were not able to sue. It was only because we did it as a glitch, as I started out. We did not excise the felonious plaintiff from the scheme that we set up in 1975 that we even have this problem.

So that is why you need to codify Barker, codify Manning and make it applicable to a 32.12 motion at the outset in the threshold of a civil action.

SENATOR LEICHTER: Mr. President, if Senator -

ACTING PRESIDENT MEIER: Senator Leichter, if you've already spoken twice on this measure, you wish unanimous consent?

SENATOR LEICHTER: No. I had the floor.

ACTING PRESIDENT MEIER: I apologize, Senator Leichter. Of course, you're right. You did have the floor.

SENATOR LEICHTER: I would - Senator, I would just say my experience as far as summary judgment is concerned, courts pay a lot more attention and will follow the Court of Appeals precedent a lot more than they will one of our statutes, but I understand what you're saying and you obviously have a great deal of knowledge in this area which is helpful. I think the answer may be that we ought to have a statute, but I think that it's got to be more carefully drawn and more targeted than I think the bill that's before us.

SENATOR BALBONI: Mr. President, one last comment. Then perhaps I might appeal to a reading of Justice Brandeis' quote in the

Olmstead Supreme Court case, where he talked about the codification of the mores of society, where to lend our justice system to the aid and assistance of someone who's chosen to break the law, step out of the bounds of society, in fact, has a deleterious effect on the observance and the credence given to all laws.

So if you would like to take it to a higher plane, I would recommend you and refer you to Justice Brandeis' comments. By the way, all cites are available to you after for free. I won't charge you anything.

Thank you, Mr. President.

SENATOR MARCELLINO: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Balboni -

SENATOR BALBONI: Of course.

SENATOR PATERSON: -- be able to pause from his reflections and yield for a question?

SENATOR BALBONI: Yes, of course. Mr. President, this is why I was told not to

stand up.

SENATOR MARCELLINO: That's the reason I stood up, Mr. President.

ACTING PRESIDENT MEIER: The Chair would note that autographed copies of the Law Review article will be available immediately.

(Laughter.)

SENATOR PATERSON: Mr. President, Senator Balboni, looking at the -- not withstanding Judge Brandeis' comments, looking at the whole circumstance with which we would be codifying what would be case law, you don't think that it would be somewhat vague due to the broadness of the way it is presented in this bill? And maybe what I really want to ask you is, what is it that you are actually suggesting? Since we're on the same subject, I don't think it would be rude and not germane to the topic, what would be the way that you would suggest it be codified?

SENATOR BALBONI: Actually, I'm sorry, Senator. I don't have my particular measure before me now and I don't recall -

SENATOR PATERSON: Senator, why would you need that?

SENATOR BALBONI: -- the specifics of that bill, but I'll tell you what, if you wait here, I'll go get a copy and I'll come back and we can talk about it over a cup of coffee. What do you say?

SENATOR PATERSON: Okay. That's good. Finally, by the way, Senator, it was one thing -- it was one thing to talk about the Kalish case but Riggs versus Palmer, I think that was before the turn of the century.

SENATOR BALBONI: Yes, it was.

SENATOR PATERSON: And not remembering very much about it, what I guess I'm asking is would the case law as standard as it was in 1975 when we changed from what is now the -- when we changed to what is now the comparative negligence statute, are you saying it was the omission of the Legislature in 1975 that moved us away from 1411, or are you saying that this is something that we did knowingly at that time but because of subsequent cases need to return to the system as it was before then?

SENATOR BALBONI: Actually, I fault the judicial conference in their initial recommendation pre-'75 for the changes that we

made in the CPLR for not including this carve out.

SENATOR PATERSON: Okay. Thank you very much, Senator.

SENATOR BALBONI: Thank you, Mr. President.

SENATOR PATERSON: It's certainly been an education for all of us, and I think that with certainly the issue of individuals who are in violation of the law and according them special rights certainly challenges, I guess the morality, or as Senator Balboni quoted Justice Brandeis, really what is the fabric of our society and yet there are a lot of laws that are certainly not used very much or are not particularly in vogue or perhaps we haven't gone back and eliminated them from statute, that would actually qualify individuals to be in the position of not being able to recover under this and that was really all that I think Senator Leichter and Senator Gold and earlier Senator Waldon were trying to get at that with some specificity perhaps we have had situations that could be addressed by some piece of legislation.

It was just that in the one case

where there was a recovery and it was seemed to be egregious, I believe that was the Cummings case, we didn't want to be legislating against the exception. We wanted to put something forth that would make sure that, although we don't want to give any special rights to individuals who are perpetrators at the time they were injured, at the same time we don't want to almost encourage any kind of excessive force to those who then under the protection of citing the criminality of the injured party would then be excused or in any way not held responsible for their actions.

SENATOR ONORATO: Mr. President. Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: I've heard a wonderful debate here today. I've learned a lot about CPLR 14 and 76. I would like to take at this time a high point of privilege to read the last section.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Waldon to explain his vote.

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

I won't be long. I read the proposal by Senator Nozzolio again because in the debate I was confused and baffled by some of his responses. He kept speaking of intervening forces, but if we look at line 5, it reads, and I quote, "In the event that the personal injury or injury to property occurred while the claimant was engaged in conduct constituting a crime as defined in Subdivision (6)", et cetera, et cetera, "or immediate flight therefrom" and then we go down a little farther -- or further, as you will, and it reads, line 10 -- no, line 9, "the culpable conduct attributable to the claimant, including contributory negligence or assumption of this, shall bar recovery from the person or other entity who is the object of the claimant's criminal conduct."

I didn't see anything which really

spoke to responses that the esteemed Senator was giving us. So I cannot support what he's proposing. I found it rather confusing, and I would like to at some later point really understand where all of those intervening forces came from.

I vote in the negative.

ACTING PRESIDENT MEIER: Senator Waldon in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 364 are Senators Gold, Leichter, Mendez, Montgomery, Paterson, Rosado, Sampson, Santiago, Seabrook, Smith and Waldon. Ayes 50, nays 11.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator Cook, Senate Print 366, an act to amend the Education Law, in relation to defining non-residents of a district.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Cook, an explanation has been requested of Calendar Number 387.

SENATOR COOK: Mr. President, I

would be glad to give an explanation. I think we had one yesterday and I think we really laid the bill aside to give Senator Lachman an opportunity to make some comments. If he has questions that he would like to ask, I would certainly respond to them, but I think he may have some things he would like to say.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yes. I do have some questions and I appreciate your willingness to respond to them, but I would be remiss, Senator Cook, if I did not acknowledge my thankfulness to you for laying the bill aside yesterday. I had to take a couple of hours from deliberations in the chamber to attend a funeral in New York City that I would much rather not have gone to if possible, and I think your thoughtfulness, Senator Cook, in laying the bill aside, is indicative of a graciousness and an overall thoughtfulness that will be missed when you retire from this chamber because you are an outstanding Chairman of the Education Committee and basically, as they say in French, a real mensch as well.

Now to the questions and forgive me if you have to repeat any answers when I was not here yesterday. In this particular situation, approximately how many children are involved?

SENATOR COOK: Mr. President, let me indicate that there is, in fact, a situation that I have in mind, but I think in fairness we ought to indicate that the bill does have statewide implications. It is possible that it will apply to other situations because there is a local option involved here. So we need to get that out on the table that it is not specific to this situation, but in the case which really brought this bill out here before us, there are about 30 children. The number changes slightly from time to time because it is a -- often sort of a transient population but 30 is the approximate number.

SENATOR LACHMAN: Senator Cook, do you know of any precedent in this -- Mr. Chairman, may I continue? Do you know of any precedent in your county or in the state of New York where the parents of public school children have to pay for their education even though

they're residing in buildings which are tax exempt, thereby denying the resident status and charging their children to attend a public school in the state of New York?

SENATOR COOK: Mr. President, there are situations in which people choose to send their children to schools that are in some district other than the one in which they reside, in which they pay tuition but, of course, under present law, it is not legal to charge tuition for anyone who resides within the school district.

SENATOR LACHMAN: So -- may I continue, Mr. President?

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: So what you're basically saying, Senator Cook, is that this will have a precedent setting motive that could change the entire Education Law in the state of New York if we adopt this measure today and if school systems decide to follow suit?

SENATOR COOK: Mr. President, the education system at the local level, except in the city of New York, in large measure, is

supported by property tax. A tax is levied upon all properties but it is levied upon the residential properties as well and, therefore, whether the person is an actual owner of the property or whether the person is a tenant of the property, some portion of their income or some portion of their rent goes to support the public education system.

What we have here is people who, in effect, evade paying anything and in this case are costing the district something like a quarter of $1 million that has to be picked up by those other homeowners whose children are attending the public schools and they have to pay not only the cost for their own children but for these 30 who are residing in the tax exempt property. So, yes, indeed, it is changing -- changing the premise upon which some of education is funded.

SENATOR LACHMAN: I'll discuss, if I may later on the bill the issue of the tax exemption and the real property tax, but one more question before I make a statement on the bill.

ACTING PRESIDENT MEIER: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LACHMAN: Obviously a bill such as this has to be very carefully crafted in terms of its constitutionality and you have obviously studied the constitutionality of this bill. You do feel, Senator, that this bill is constitutional?

SENATOR COOK: We feel that it is constitutional. The issue was discussed briefly yesterday as to why rather than doing it in this manner we don't have a payment in lieu of taxes on the property itself, and the issue was that you cannot force a payment in lieu of taxes because the property itself is constitutionally protected.

However, we don't feel that there is a constitutional prohibition against requiring that the individual in this case contributes toward the cost.

SENATOR LACHMAN: Before I discuss the bill, I would differ with you on the constitutionality issue. I think that the bill is unconstitutional and sets into motion a precedent that would be deleterious, not only to

the state but to your district, Senator Cook.

Now, on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Lachman on the bill.

SENATOR LACHMAN: I understand, Senator Cook, your frustrations and your great concern for the people who live in South Fallsburg in Sullivan County because this bill, as I believe I intimated last year, is even more complex than perhaps most of the Senators in this chamber realize.

It not only touches upon basic constitutional rights and the history of the public school system, but it impacts on religious groups.

Now, there is a particular religious group from which these 30 children are part of, I believe, and this group has been written about in various publications, including the New Yorker, Time magazine and, I believe, The Village Voice.

We are discussing a group known as Syda, S-y-d-a, or Syda Yoga Dam, which is a multi-million dollar complex in South Fallsburg in Senator Cook's district, and there are ashrams

now in many locations in his district, three major -- or former hotels, I believe Brickman's, Gilbert's and the Windsor, and there could be as many as 3,000 people at a particular ashram.

Now, very briefly, Mr. President, the founder of Syda Yoga Dam or home of Syda Yoga, as it's known, was a man named by Swami Muktando, who died in October of 1992. He came to America in 1970 and founded this group. According to his will, he was supposed to be succeeded by a sister and a brother whose names are Gurumayi and Nityananda.

Now, there was a violent split between these siblings and the sister came out on top and the brother took a faction of the group out of the group -- the larger group now controlled by the sister. Both sides have accused the other side of using brainwashing, sexual and physical abuse of women and children and the focusing of veneration upon an individual rather than a deity.

Parts of both sides as well as outsiders, according to the New Yorker article, have even called this group a destructive cult and not a religion, and that becomes a major

issue, Senator, because if it is accurate, this group might not have the tax exemption which you believe hurts your county.

Now, whether these allegations are accurate or not, there is a basic issue which rides above it and which we now must discuss. The issue is basically a tax problem and not an education problem. The issue is the growing real property tax that is exempt. The issue is not about children and children, therefore, should not be punished for what is basically a tax problem which could or should be changed.

All children in the United States have a right to a free public education regardless of tax issues. I'm informed that approximately 76 percent of the real property in Albany is tax exempt. Should we deny a free public education to those children?

This is a huge problem but not only for you district, Senator Cook, for all districts in the state of New York. We do have a problem but it is not a problem of closing a public school door to a child; it is a problem based upon real property tax because of the growth in property tax exemption.

This is part of the reason why I think, quite clearly, that this bill is unconstitutional. It is very well-intentioned and it attempts to address a particular problem and it's author is a very distinguished gentleman of this chamber but, again, I would like to urge every member of this chamber, including the author of this bill, not to punish children whose parents are part of a cult group and who are in the greatest of need of the open dialogue, the free discussion, the diversity of this state's outstanding public schools.

Ladies and gentlemen, these children are in desperate need of a free public education which can open their minds that might have been closed by others. Please, let us not deny these children the open dialogue and the free discussion of the great public school systems of the state of New York.

Thank you.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator

Cook would just yield for some -

ACTING PRESIDENT MEIER: The Senator will yield.

SENATOR OPPENHEIMER: -- smaller questions. I'm just trying to understand how this would be interpreted, this bill.

Specifically, what would happen with children in group homes? Would they be required to pay tuition because the group homes are tax exempt?

SENATOR COOK: Mr. President, if there were a group home -- if the school district were to decide that they were going to charge tuition, in fact, the agency or -- the public agency that is the -- in locus parentis of that child, would become responsible for the tuition.

SENATOR OPPENHEIMER: It would be an enormous burden to agencies who are already very overburdened.

SENATOR COOK: Well, yeah. I would indicate, Senator, that some cases are where those agencies are the state of New York and the local school districts are picking up some very, very hefty cost for kids that are in

great need of very expensive education and nobody pays to support that -- those educational costs of those kids either. So that's another problem.

SENATOR OPPENHEIMER: That is an enormously complex problem.

One other question.

SENATOR COOK: Yes.

SENATOR OPPENHEIMER: If the property, let's say a religious institute, rents out the property and then there is a renter who moves into that building, would the renter then be responsible for the tuition of a child?

SENATOR COOK: Mr. President, if a property is rented, then it becomes a commercial property and it loses it's tax exemption. So, therefore, it wouldn't be liable, no.

SENATOR OPPENHEIMER: That, unfortunately, is not true. We know of many religious institutions where there is money being earned in the buildings and they are still tax exempt but, you're right, technically yes, it is a rental property.

Thank you.

ACTING PRESIDENT MEIER: Senator

Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Cook would yield for a question.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, I think you've -- are aware of the feelings of the two previous Senators about the need for public education of students and particularly where we may have these types of situations where we are somewhat worried about the individual's ability to hear more than just what might be an environment filled with perhaps what we might consider to be some narrowed points of view. It would seem it would even be a greater necessity to have the operation of a public school education, but I do understand the concern that you relayed earlier about not only what was going on in your district but what could be a statewide problem, but what I would suggest to you is that even if this was just something going on just in your district, perhaps we're looking at this problem the wrong way. Perhaps what we're doing

is visiting the problems that we had with the parents on the children who desperately need a public education.

So my suggestion, which I would just like to hear some feedback from you, what if we were to send up what would be termed tax incremental financing districts where these particular districts, once proceeds were diminished below what would be a numerical amount that we would set up, that these districts would qualify for the state coming in much as we have done in the STAR program and paying to make sure that the local property taxes, or at least the local governments, get their money from the property taxes.

Then, if that were the case, districts such as yours where there might be large portions of land that are tax exempt, would be compensated for the amount of money that we would spend and yet at the same time the young children would still receive a public education, which I think we would all want.

This is something that we have done in other areas. We have done in situations where we thought this was a special need and we

could do it in a particular area because of the overabundance of tax exempt property in that particular area, as may exist in your district and some areas around the state.

SENATOR COOK: Mr. President.

ACTING PRESIDENT MEIER: Senator Cook.

SENATOR COOK: We do have examples, in fact -- in particular, where the federal government has a great deal of exempt property within a school district. They pay an impact aid -- I'm not sure -- an impact amount. I'm not sure what that is, how it's defined. So the local school district has to pay for those students who live on that property, which is indeed a tax problem, though what you describe is that you have religious properties now. They're owned by a variety of people. In that particular county, there are numerous of these old hotels that are owned by non-profit organizations, really religious organizations.

I will say, to their credit, that most of these organizations have their own schools. They run their own -- well, in most cases their own yeshivas to which their own

students -- which their own students attend and they don't send these students to the public schools, so there's no cost imposed upon the district.

The situation that you describe, however, would be that if you had a certain percentage of these religious properties that were tax exempt, the state of New York would somehow then have to come in and pay the impact aid.

I think if the property were state of New York property and we were sending students to the public school, that would be one thing. I think it becomes more difficult if the tax exempt properties are owned by religious groups and the state ends up paying the impact. That becomes - that becomes a difficult problem, I think structurally to do.

SENATOR PATERSON: Thank you very much, Senator Cook.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson on the bill.

SENATOR PATERSON: I suggested that as a remedy to the situation for Senator

Cook because I preferred that even though the state would be coming in, and in many respects making the local area whole with no real obligation or necessity, but I just prefer that to the value of charging tuition to cause a hardship perhaps on families or if you have park rangers living on tax exempt property or you find the local minister living on tax exempt property and there's an agreement that the ministers would come to these churches and quite often they are of meager means and they would actually qualify to actually have to pay tuition here.

Senator Oppenheimer cited the possibility of the group homes. There are a number of different ways in which tax exempt properties is used by those who really couldn't afford to pay a tuition for public school, and it would really defeat the whole purpose of the public school credo in the first place.

So I thought that perhaps a state involvement in perhaps wresting some of that cost away from the local government of the local county would be an answer. Otherwise, I'm really just, by my own belief, restricted from voting for this bill because to me this would undermine

the whole concept of public education and in spite of the fact that there are some owner tax exempt property who may even be taking advantage of it, the fact remains that for all citizens and when we look at the state in the entirety, we would hope that there would be public school education for any student that needed it.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I have one last question, if the sponsor will yield.

It would seem to me that a minister, a member of the clergy, living in the parsonage next to the church, if that minister had children, he would also have to pay, or she would have to pay, for the children to go to the public school.

SENATOR COOK: Mr. President.

ACTING PRESIDENT MEIER: Senator Cook.

SENATOR COOK: You're correct, Senator, that if that school district were to charge tuition, they would, in fact, have to

charge it to everyone. They could not simply charge it to one organization or another.

I must say, as a Protestant who is in the situation you talk about, I'm not opposed to having my pastors being required to pay tuition to send their kids to public schools. I'm not sure why they shouldn't participate in the cost of supporting the school system just like everybody else does, but that's -- that would be a local option.

SENATOR OPPENHEIMER: On the bill. I think that considering what we pay - I'm on the bill now. Considering what we pay our ministers to do the difficult work that they do do, I feel that they should not be paying to educate their children in the public system.

I'll be voting against this bill.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 387 are Senators Breslin, Connor, Gentile, Kruger, Lachman, Markowitz, Montgomery, Onorato, Oppenheimer, Padavan, Paterson, Rosado, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon. Also, Senator Leichter. Also, Senator Gonzalez. Also, Senator Mendez. Ayes 40, nays 21.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Committee on Finance in the Majority Conference Room.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Reports

of standing committees.

The Secretary will read.

THE SECRETARY: Senator Holland, from the Committee on Social Services, reports:

Senate Print 5741, by the Committee on Rules, an act to amend the Social Services Law, directly for third reading.

ACTING PRESIDENT MEIER: Without objection, third reading.

SENATOR SKELOS: If we could take up Calendar Number 466 by Senator Nozzolio.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 466.

THE SECRETARY: Calendar Number 466, by Senator Nozzolio, Senate Print 4917, an act to amend the Civil Practice Law and Rules and the Court of Claims Act.

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been requested of Calendar 466.

SENATOR NOZZOLIO: Thank you, Mr. President.

Who asked for the explanation?

ACTING PRESIDENT MEIER: Senator

Oppenheimer requested the explanation, Senator.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues, this bill amends the Civil Practice Law and Rules and the Court of Claims Act in relation to prisoner litigation reform. What we are establishing is a -- permitting a partial filing fee for inmates within the Court of Claims and New York State Supreme Court, that this filing fee would be a refundable $50 filing fee for the Court of Claims and it would not apply to any claimant filing a claim for the appropriation of real or personal property or any interest thereon.

The refundable filing fee is also subject to a waiver that the court could determine that certain inmates the Supreme Court approves their application would have a reduced filing fee. If the inmate wins the litigation in the Court of Claims, the filing fee is refundable.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Would the

gentleman yield to a question?

ACTING PRESIDENT MEIER: Does the Senator yield to a question from Senator Waldon?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Senator Nozzolio, is the reason you're making this proposal that there has been a tremendous increase in lawsuits by prisoners?

SENATOR NOZZOLIO: Mr. President, in response to Senator Waldon's question, let me state that in the last 20 years, the number of inmate lawsuits has risen from 63 to almost 7,000, that primarily, however, we're finding that a small number of inmates is filing an inordinate amount of lawsuits. The top ten filers in this state, those top -- those prisoners that are filing the most litigation, that virtually 12 percent of the entire -- 12 to 15 percent of all inmate litigation is filed by 10 litigants.

So what we look to seek is simply

a reduction in the sport of inmate litigation, those inmates using the courts more as a sport than as a true redress of grievance.

We're also asking, Senator, in this measure to have inmates just as every other citizen to exhaust any administrative remedies that they may have available first prior to going to the litigation route.

SENATOR WALDON: Would the gentleman yield to another question?

ACTING PRESIDENT MEIER: Would the gentleman yield for another question from Senator Waldon?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields, Senator Waldon.

SENATOR WALDON: Senator, in that period of time when the suits by number have actually increased sufficiently to give us the number that you just shared with us, what has the increase in the prison population been?

SENATOR NOZZOLIO: Senator, today there are about 70,000 inmates in our prison system. I really couldn't tell you what the

number was in 1978. So I'm sure, though, that the inmate population has increased significantly in that 20-year period.

SENATOR WALDON: Would the gentleman yield again?

ACTING PRESIDENT MEIER: Do you continue to yield for another question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields, Senator Waldon.

SENATOR WALDON: Before I ask a question this time, Senator, my information indicates that there were approximately 21,000 in our prison system 15 years ago, but the question is, in your capacity as the chairman of our distinguished Corrections Committee and in your many years of having this to be the area where you have generated and involved your energies and involved yourself and developed what might be characterized as an expertise, have you not noticed that oftentimes the prisoner's litigation, these suits brought by prisoners are actually correcting some of the ills existing in our criminal justice as well as our correctional

system?

SENATOR NOZZOLIO: Yes, Mr. President, certainly that there are instances throughout our state's history where particular grievances brought by inmates have proved to be extremely valid and that those required redress. The Senator's point is well taken. There are those items of litigation but, Senator, what we're trying to do is to place some reasonable ness to this standard that we now have such a large number of losses, particularly again by ten of the filers in the situation. We're saying let's at the very least place a modicum of cost to the filing of this litigation, that it's only fair and right that your constituents, if they, in addressing the courts, Senator, wish to address the civil courts, that they would have to, as you well know, pay a filing fee.

One last point, if I may. The federal government in the federal courts requires inmates to present a modest filing fee and this legislation that we have before us was modeled after the request and requirement of the federal government to have such a fee.

SENATOR WALDON: Mr. President, on

the bill.

Thank you very much, Senator Nozzolio.

ACTING PRESIDENT MEIER: Senator Waldon on the bill.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Nozzolio.

I think that we should not unnecessarily demonize those who are imprisoned. Even if we accepted the premise that all who are there belong to be there -- which I don't accept, but for discussion sake I present to you -- they still have a right under our jurisprudence system to be able to sue when they feel that they are being abused, maligned, ill-treated.

This is a nation which has emblazoned upon the doors of the Supreme Court equal justice under law, but if we're going to be unduly punitive towards those who happen to be prisoners, we certainly can't have a level playing field. We certainly can't have equality under the law.

The fact of the matter is that prison litigation per capita is dramatically down. The increase in the number of prisoners

maybe has caused a greater number of suits to be filed than 15, 16, 20 years ago but on a per capita basis, the litigation is down and by a great, great number.

Furthermore and lastly, if some corrections result from these suits which make the system better, which improve the quality of life of the correction officers, the prisoners, the wardens, which allow for justice to be better served, then I see no need to unnecessarily punish those who are not making even the minimum wage in what they do in terms of their work situations in prisons.

So I think this is overbearing. I think it's unnecessary. I think we do ourselves a disservice to implement legislation of this nature despite its inspiration, meaning the federal level, and so I encourage my colleagues to do the right thing and to vote against this proposal.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 466 are Senators Connor, Paterson, Sampson, Stavisky and Waldon. Also, Senator Smith. Ayes 55, nays 6.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 507, by Senator Skelos, Senate Print 3410-A, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Mr. President, I know on the last bill that some of the members on the other side of the aisle are in the Finance Committee meeting and they'll probably want to record negatives. So we'll accomplish that when they come back.

This legislation which has passed

on various occasions amends the Correction Law and the County Law to provide that a prisoner who has been found to be non-indigent may be -- and that's at the county option -- may be required to reimburse a county jail or city jail expenses incurred during his or her term of imprisonment. The factors that would have to be considered would be the financial resources of the individual, health, age and other relevant factors.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Skelos would yield for just a question.

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The Senator yields to a question.

SENATOR PATERSON: Senator, did you have any idea how much the -- do you have any idea how much it would cost to locate and pursue those who would be non-indigent in order to accomplish what this bill designates?

SENATOR SKELOS: Mr. President, if

I could answer that. I'm using Nassau County as an example where, of course, $153 a day per inmate. I think the county or the city of New York -- again, it's at their local option. So if they feel it would be counterproductive to start this type of program, they do not have to, but I think the county or the city would use their good judgment in going after people, for example, like in my county several years ago, Joey Buttofucco. We were giving him medical care, capping his teeth, doing everything that good hard-working people have to pay for and yet the county was paying for this type of treatment. This is the type of individual that I think it's fair for the county or the city, if they opt into it, to go after and seek reimbursement.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Skelos would continue to yield.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

Senator continues to yield.

SENATOR PATERSON: Senator, divorcing from the issue of just who would be indigent and who would not be, my question really is what the -- we know what the cost is that the county accrues for keeping these prisoners in prison. My question is what would be the cost of locating or designating which individuals are indigent and which are not? In other words, what would be the procedure?

SENATOR SKELOS: Just to answer that, I think the county or the city, which would be the petitioner to seek reimbursement, it's really a judgment call on their part as to whether they feel it would be worthwhile to go after an individual and seek reimbursement.

SENATOR PATERSON: Okay. Thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson on the bill.

SENATOR PATERSON: We're just not convinced at this point that the amount of money it would cost to research and investigate who is actually eligible, we trust that the county would

make a good judgment as to obviously there would be some defendants that would be -- it would be clear that they are indigent and we think that the judgment on the part of the county would be fine, but what we're also saying is that just the cost of proving who would actually be eligible would be an issue of cost and -- although Senator Skelos is right, there are many of those defendants. He cited one who obviously could have paid for his residence since he paid for it in other places from time to time. It's clear that there would have been no problem getting him to pay but what we're really trying to do is to figure out whether what we could get back would be equal to what would be paid out, and that's something that perhaps with a little further research we would be convinced, but at this point it would seem that I don't know that even the value of savings to the county would necessarily be realized by passing this bill.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 507 are Senators Connor, Kruger, Markowitz, Paterson, Sampson, Seabrook, Smith, Stavisky and Waldon. Ayes 52, nays 9.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 508, by Senator Skelos, Senate Print 5259, an act to amend the Correction Law, in relation to requiring inmates to make medical co-payments.

ACTING PRESIDENT MEIER: Senator Skelos, an explanation has been requested by Senator Waldon.

SENATOR SKELOS: Yes, Mr. President. This state Commission on Corrections departmental bill would authorize an inmate medical co-payment for certain medical and dental services provided by local correctional facilities. The co-pay would be $2 per inmate, inmate-initiated medical or dental service. An inmate shall not be denied care because of lack of funds and there shall be no charge for routine

services provided at the time of admission to the facility, emergency services, continuing care visits necessary for follow-up treatments, infirmary care, chronic care or mental health services.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thanks to Senator Skelos for his -

ACTING PRESIDENT MEIER: Senator Waldon, so the stenographer can hear you, could you stand -

SENATOR WALDON: Oh, I'm so sorry.

ACTING PRESIDENT MEIER: -- so our new microphones -

SENATOR WALDON: One becomes convinced that one's voice travels everywhere. I recognize that I'm human too.

Thank you very much, Senator Skelos, for your explanation. If I may, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon on the bill.

SENATOR WALDON: I think the same concerns raised by our esteemed leader, David Paterson, are appropriate and applicable here. For a $2 per person co-pay just to plug the computer in is probably going to cost us about $3. I don't see the need to do that. I think it's being penny-wise and pound-foolish. I think that what happens here is that we overwork the system where that energy could be better utilized elsewhere.

So I think it's a redundancy to do this kind of thing. If they had the true ability to pay and if we could extract 25, $30 per and it were appropriate and there were no reservations within the community of prisoners or those who support prisoners, politically it might fly, but as it stands now, I don't see any reason for us to do it. I think it's going to prove to be wasteful in terms of the energy of the Corrections Department and all of those who are working here so well and it just doesn't make any sense. So I encourage my colleagues to vote no on this issue.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 508 are Senators Montgomery, Paterson, Stavisky and Waldon. Ayes 57, nays 4.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 562, by Senator LaValle, Senate Print 2467-A, an act in relation to the Long Island Suburban Highway Improvement Program.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President.

SENATOR SKELOS: If we could just lay that bill aside temporarily. I believe

Senator LaValle is in the Finance Committee and I believe Senator Oppenheimer has some questions. So we'll just lay that bill aside temporarily.

ACTING PRESIDENT MEIER: Withdraw the roll call. Lay the bill aside.

SENATOR SKELOS: If we could just stand at ease.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

SENATOR SKELOS: Do we have a privileged resolution? If we could have the title read.

ACTING PRESIDENT MEIER: The Secretary will read the title.

THE SECRETARY: By Senator Leibell, Legislative Resolution honoring the Reverend and Mrs. Mervyn L. David for 22 years of dedicated service to the congregation at Mt. Lebanon Baptist Church, Peekskill, New York.

ACTING PRESIDENT MEIER: All those in favor of the resolution signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is carried.

SENATOR SKELOS: Mr. President, would you please recognize Senator Montgomery.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I would like unanimous consent to be recorded in the negative on Calendars 507 and 466.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendars Number 507 and 466.

SENATOR MONTGOMERY: Thank you.

SENATOR SKELOS: If we could stand at ease.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease 5:07 p.m. until 5:43 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: Immediate

conference of the Majority in the Majority Conference Room.

Senator Paterson.

SENATOR PATERSON: Mr. President, there will be an immediate meeting of the Minority and since the Majority Conference Room is being used, we'll use the Minority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Minority Conference in the Minority Conference Room.

SENATOR SKELOS: We'll be returning with the Minority, as discussed at 6:00 p.m., at which time we'll take up, I believe the Finance Committee report and we'll stand at ease until 6:00 p.m.

ACTING PRESIDENT MEIER: The Senate will stand at ease until 6:00 p.m.

(Whereupon, the Senate stood at ease from 5:45 p.m. until 6:50 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to report of standing committees, I believe there's a report of the Finance

Committee at the desk. I ask that it be read.

ACTING PRESIDENT MEIER: The report of standing committees.

The Secretary will read.

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

Budget Bill, Senate Bill Number 6102-D, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Gold, why do you rise?

SENATOR GOLD: After this, I would like to be recognized.

ACTING PRESIDENT MEIER: So ordered.

Senator Gold.

SENATOR GOLD: Mr. President, I'm sorry, but I was at the Finance Committee meeting when we voted on Calendar Number 466, Senate Bill 4917, and I would ask unanimous consent to be recorded in the negative.

ACTING PRESIDENT MEIER: Without objection, Senator Gold will be recorded in the negative on Calendar 466.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Senate 6102-D.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 435, Budget Bill, Senate Print 6102-D, an act making appropriations for the support of government.

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

ACTING PRESIDENT MEIER: Yes, there is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: The motion is to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR GOLD: Mr. President, I would like to thank Senator Stafford at the committee meeting, he was very gracious and allowed for a lot of questions to be answered. His distinguished counsel who was answering the questions, I don't see, but if she wants to leave the Majority and work for me, I can only offer her -- I know it's below what she's getting now but maybe 3- or 400,000 a week because that's what she's worth, but I don't see her, but I want to thank him. He answered most of my questions at the meeting and, therefore, I can at this point feel comfortable in voting on the bill.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 61.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MEIER: Senator

Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 466, 507 and 508, please.

ACTING PRESIDENT MEIER: I want to make sure I've got that correctly, Senator. You said 466, 507, 508.

SENATOR LEICHTER: Right. Those passed while we were in Finance.

Thank you.

ACTING PRESIDENT MEIER: Without objection, Senator Leichter will be recorded in the negative on Calendar Numbers 508, 507 and 466.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 562 by Senator LaValle.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 562.

THE SECRETARY: Calendar Number 562, by Senator LaValle, Senate Print 2467-A, an act in relation to the Long Island Suburban Highway Improvement Program.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 61.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Senate 5741, which was reported earlier today from the Social Service Committee.

ACTING PRESIDENT MEIER: The Secretary will read Senate 5741.

THE SECRETARY: Calendar Number 609, Senate Print 5741, by the Committee on Rules, an act to amend the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEIER: Senator Maltese, an explanation has been requested by Senator Leichter.

SENATOR MALTESE: Mr. President, this is a bill that would amend the Social Services Law in relation to medical assistance exclusion. This would prohibit the use of taxpayers' dollars for the purpose of performing abortions.

Expenditures of these monies should be directed toward the goal of producing healthy birth outcomes, as is indicated in the expenditure of funds in this year and in prior years for projects like the New York State's Maternity and Early Childhood Foundation, which provides for healthy babies. It positively addresses the needs of mothers, many of them poor, single adolescents, and their families, services such as home visits, child care instruction, prenatal care, counseling. Emergency resources like food, diapers and formula are provided through these grants. These are viable alternatives to abortion. These are real choices for women.

I wanted to spend a moment to commend the Majority Leader, to commend Governor Pataki who has indicated that he would sign this particular -- a portion of that funding bill for

early maternal -- maternity and early childhood. Speaker Silver and especially Assemblyman Denis Butler, who have placed in all -- counting the Assembly, the Senate and the Governor -- over $1 million in the budget last year and have already indicated that they will spend a similar or larger amount this year.

This particular bill that I am discussing now would, instead of spending that money in saving lives and protecting pregnant women, would use taxpayers' dollars for abortions.

This amends the Social Services section of Section 365-A and adds a new subdivision and would prohibit abortion and abortion-related services from the list of benefits.

As in the past all these many years, there would be exclusions for medical necessity to preserve the life of the mother or the pregnancy as a result of rape or incest and the incident is reported to a valid law enforcement agency for investigation.

This is the self-same debate that we have had so many years. There's so many

things that have been said that do not need at this moment to be re-said, but I would like to simply comment on the fact that there are heartening signs on the situation of abortion vis-a-vis New York State.

In 1995, the last year we had figures available, the abortion -- total abortions performed in New York State went down to 134,405. Of that number, approximately 50,000 were Medicaid funded. That brings up the amount that we would save, which would be in the area of around 26- to $30 million.

The reason that I particularly point out the figure of 134,000, that is the lowest number of abortions performed in New York State in almost 20 years, and that is the explanation of the bill.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT MEIER: I'm sorry. Senator Goodman.

SENATOR GOODMAN: Mr. President, each year when this comes up, we have extended debates, so I'll try to keep my remarks as brief

as possible, but I cannot let this occasion pass without spreading on the record briefly my deep concern with the implications of this legislation.

First of all, let's note that although this house will undoubtedly pass it since the votes are here to do, it will not become law because the Assembly has consistently blocked it and I say thank goodness that it has.

In 1973, the U.S. Supreme Court in Rowe v. Wade guaranteed women the right to choose abortion, period. It did not make that right dependent upon age, marital status or ability to pay, but since 1976 with the passage of the Hyde Amendment, Congress has severely restricted federal funding for low income women's abortions.

Make no mistake about it, this bill targets one segment of our population and that is the women who are least able to afford to pay for their abortions. This attacks the poor woman's right to choose. There is no question that a poor women does not have sufficient funds available to her with which to seek an abortion and the notion that she has free choice under

this existing arrangement if the bill were to pass is an absolutely fatuous concept.

Mr. President, let me just say to you that the implications of this economically for the state could be disastrous. The unwanted births that could occur as a result of poor women being unable to seek abortions and obtain them would result in spreading upon the public rolls thousands and thousands of babies who instead of being in a position to have been prevented due to timely action prior to the quickening of the fetus, it would be placed in society in such fashion as to make it impossible for us to do anything other than to support them at a minimum rate of $4,000 a year. This contrasted to the very modest investment in the early abortion which would not in any way imply the taking of a life, the fetus had not reached quickening.

Mr. President, the benefits of New York's decision to legalize abortion and funded under Medicaid were immediate. In the first two years after legislation the annual rate of abortion rate-related deaths in the state fell over 50 percent. As the procedure became both legally and financially accessible to women of

all socioeconomic backgrounds, deaths from abortion complications became almost unheard of. In states where public funds do not cover the costs of abortion, 23 percent of Medicaid eligible women are forced to carry unwanted pregnancies to term because they cannot afford the procedure and 22 percent of Medicaid eligible women who have second trimester abortions are forced to undergo these later riskier procedures because of their need to raise the necessary money. New York State legislators have long understood that it is not the function of government to control people's reproductive choices.

And let me stress in conclusion, those of us who take this view are not pro abortion but we are very strongly in favor of the notion that a woman has the right to free choice with respect to this matter and that any attempt to prevent that free choice due to economic circumstances would be cruel and unusual punishment, economically counterproductive for the state and a long step backward in the role which New York has always played as the leader in giving women the right to choose for themselves

in consultation with their husbands and their clergymen and their doctors.

For this reason, I urge the house to consider the possibility once and for all of putting this away by voting in the negative on this very ill-advised bill.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I rise in support of this, as I always have, for the 22 years I have been here and this bill generally passes, almost always passes the Senate.

You know, abortion is a very personal and a private decision and incidentally, what this does is put us in step with the rest of the nation, the preponderance of states. I think there's only ten or twelve states that do not have this provision that they'll only pay for elective abortions where the life or health of the mother and rape and incest.

Let me just say this: I think it's terribly important that there's a number of people that vote for this that consider

themselves pro-choice, including the Governor who voted for this bill. It's a reasonable bill. You know, and at least this house has an opportunity to vote on it. They won't even let it on the floor in the other house and, of course, I think it's a tragedy that the other - which I don't even think is a pro-life or pro-choice situation, late-term, partial birth abortion bill, that doesn't even come up in the other house because I think it would pass in a heartbeat if it ever got on the floor, but let me say this: This is a reasonable piece of legislation. It is legislation that brings us in conformity with the rest of the nation and its time has come and generally speaking, what we're talking about, we cannot outlaw abortion regardless of how some people feel. We can't do it. The Supreme Court has spoken, but we can limit how much we use taxpayers' money for this and that's in essence what this legislation does.

It also has a good facet to it that we're trying to do something for young mothers, and so forth, to allow them to -- and I commend Senator Maltese and Assemblyman Butler for what they're trying to do with that, but I

urge the passage of this legislation.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I don't agree with my colleague who just spoke earlier. We -- Senator Farley -- because we are not the only state to have Medicaid funding for abortion. There are 13 other states who spend money for poor people, poor women to have abortions, and I would not like to think that the only people who can exercise their constitutional guarantee to choice would be middle income or well to do women. Surely we should offer it to all women who need these -- this service.

Since 1970, New York, in our state, we have had the right -- the right to choose has never hinged upon the ability of a woman to pay. New York has never turned its back on low income women who need access to free reproductive health services. Instead we fairly and we impartially provided equal access to either maternity care or abortion through Medicaid.

All women, regardless of their race, age or income should have access to safe

legal abortion services. Medicaid funding of abortion ensures that all these women, regardless of how poor or rich they are, will be able to exercise their constitutional rights.

A constitutional right to abortion and reproductive freedom is of no practical value if a person does not have the ability and the money to exercise that constitutional right. Removing Medicaid funding of abortion is tantamount to a constitutional amendment which would outlaw abortion for any woman who is poor.

By funding child birth for the Medicaid dependent woman and not the abortion alternative, the government is actually providing biased and coercive reproductive health care and making it virtually impossible for millions of women to choose abortion.

Cutting Medicaid funding for abortions would force millions of women to bring unwanted pregnancies to term, would lead women to risk their lives through self-induced abortions or seek unsafe back alley abortionists in desperation, and we know that many thousands of women lost their lives in those back alleys prior to Rowe v. Wade.

Low income women are more vulnerable to health complications and death when pregnant because many receive less consistent or absolutely no preventive and prenatal health care. Enabling women to choose if and when to bear children has had a significant impact and a positive impact on their lives as well as the health and welfare of their families and, indeed, of society generally.

We should be very proud that New York State has refused to turn its back on the pregnant poor and that we have been voting down every effort to defund Medicaid abortions.

Medicaid provides fair and impartial coverage for both maternity care and medically necessary abortions. This policy gives all women an equal choice regardless of income, and I strongly urge all legislators to support the continuation of this long-standing and enlightened policy.

If we here feel that we want to decrease poor women's abortions and we want to offer prenatal and pregnancy prevention care to poor women, we can use our vastly increased revenues this year, using just a very small

percentage of our increased revenues and we can dramatically increase preventive, voluntary family planning services throughout our state. We could ensure that all teenagers and all poor or near poor women can plan and space their pregnancies, make the most of job training and placement programs to become financially independent and have healthy children when they are ready. California is already covering family planning for all poor and near poor woman - women and all at-risk adolescents. If we want to make a positive contribution in this area, we ought to be following the lead of California.

I'll be voting no on this.

ACTING PRESIDENT MEIER: Read the last section.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I too would like to go on record joining my colleagues who are speaking against this legislation.

As we know, the one most important factor that determines whether or not a woman will be -- will live most of her life in poverty is whether or not she has the ability to control

her child bearing, the number of children and/or very often when those children are born, and in this country, we know and especially in our state that there is a tremendous problem especially for low income women because they very often at an early enough point in their lives don't have access to sex education. They do not have access to condoms or information about how to use condoms or how to influence their mates to use condoms. They very often do not have access to primary health care and certainly we do not have access to school-based health clinics, not nearly enough so that young women at a point in their lives when it would make the most difference for them to have all of these things available, they do not have it, and now we come with this legislation which presents one additional obstacle so women will have less and less opportunity to make the choice for themselves and, therefore, will be more and more likely, especially poor women will be more and more likely to live in total abject poverty, and so since we do not -- we have not addressed some of the critical underpinnings as it relates to women's ability to make a choice, I think that it

is criminal to say to those women, particularly the poor women that you now will not have access to this particular reproductive choice, nor will you have any information, nor will you have appropriate health care, nor will we provide adequate school-based health clinics, sex education, and so forth, and so on.

So I'm going to be voting against this legislation because I think this is really -- it's -- it is an anti-women's legislation but more specifically it is particularly anti-poor women.

So I'm voting against it, Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Certainly all of us can understand that we're talking about an issue whose root manifests a lot of deep personal and spiritual concerns, and I certainly can understand the feelings of those who don't agree with the law as it stands on the books right now and perhaps the law that they feel they are responding to is one

that commands that in any way the current Supreme Court decision of Rowe v. Wade be undercut or in any way diminished or in any way truncated is the best fashion, and so by introducing this piece of legislation, certainly its passage would do that.

It would limit the number of abortions that would become available in this particular state, but unfortunately it would be done in a disproportionate way that would affect those who are least able to afford the procedure. It is a serious procedure. No doubt everyone, regardless of their own personal point of view, agrees with that and, therefore, as serious as it is, it would qualify those who are afflicted for the same kinds of protections in terms of Medicaid funding, in terms of any kind of assistance that they might receive just as any other procedure of like fashion would be.

The legislation would, in that respect, create a divide, in many respects based on class against the haves versus the have-nots, in many respects the have-lesses. Even though it would accomplish the goal of trying to diminish the strength and what would be the spirit of the commanding law in this country right now, the

fact is that if there's a desire to change that law, then perhaps energies should be directed in that fashion.

I would oppose that. I believe in a woman's right to choice, but what I would say even more than that is whatever our opinion is about that issue, the fact is that this legislation creates a secondary test whereby it would be a financial circumstance that would really determine who would be eligible and who would not be.

There are many different feelings about morality in this chamber but we all have to understand that the awareness of time has a way of impinging on the concept of morality. Those who might feel that they are against this kind of process may have at times been put in a position in their lives where they actually had to reconsider that.

The point is that those who would come to that conclusion should have every bit as much of a right as anyone else and it should not be barred by any economic -- any cost or any financial limitation that would be provided such as set forth in this legislation.

For that reason, even before we even consider the right to choice itself, this piece of legislation must be defeated.

This piece of legislation would really create a cast system in those who would be seeking an abortion in this state and would probably create further divides among people in this state and would really mean that the law applies only if you can afford it, and I don't think that would be a good measure or a good example to be setting in any respect.

For that reason, Mr. President, I don't oppose this legislation and would like to notify the members that I would like to ask for a slow roll call on this vote.

ACTING PRESIDENT MEIER: Senator Waldon.

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

I'll be brief. My colleagues on this side of the aisle have spoken so eloquently to this issue, further putting out for our consideration the fact that it is about a woman's choice. It is about, as Senator Paterson characterized, perhaps a cast system if we were

to accept this, but I think it's a bit more pointed than that.

The people who have the least wherewithall to pay for these abortions look mostly like Senator Montgomery, myself, Senator Seabrook, Senator Sampson, Senator Mendez and others who happen to be from the inner cities of this great state for the most part and who happen to be very, very poor.

We can't educate them properly, it seems. We can't stop the jails from bursting at the seams with people of color and now we're going to further burden them by saying even if you want to take care of business, control the production of children so that you will be allowed as a family to do better, it ain't going to happen.

I know that Senator Maltese is a good guy. He and I hang out a lot together. We have loads and loads of conversations. I have great respect for him and know that he's all right, but I think what he's proposing, if it were to become law, would have a disparate impact on people of color and, therefore, without intent, would be somehow racist in its

actualization.

And so I encourage us to recognize that that is also a component of this proposal and for that and a whole host of other reasons we should defeat it. I'll be voting in the negative.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Mendez.

SENATOR MENDEZ: Mr. President, I also rise in opposition to this bill. The issue of abortion has been, in my view, the most difficult one that anybody in this chamber could possibly consider, that one and the death penalty, but this one even more so because it affects enormously the life of women.

I hope that there is -- that we can see the day where not one single woman would have to go through the situation of having an abortion. I personally believe it is killing a life, but on the other hand, I -- and I am a Catholic. I, my own personal views and as a Catholic, I as an individual must try to save my own soul and being a Catholic and having my own beliefs do not mean that I have to impose them on

other women in the country, especially when the law of the land is that a woman has the total right to decide whether or not she should have an abortion.

I personally feel sorry for the women who must go -- decide to go through that procedure because in the final analysis, as a believer, myself I feel that after everything - after the one up there sends for us, we will have to explain what we did and didn't do in the time that was allotted to us while living in this - being alive.

The second issue, Mr. President, the second issue that we first took in this bill preventing women to have an abortion through Medicaid, that is adding insult to injury.

Why? We know that in New York State and in New York City the Medicaid program that was designed by the federal government in 1964 to provide access to primary health care to the working poor and the poor, we know that in New York City and in New York State it is precisely the working poor and the poor, the population that was intended to be helped with that -- without ever offending are being

excluded.

In New York City the only working poor who have access to primary health care are, in fact, those working poor who work with corporations such as Con Edison, AT&T, as well as being members of unions. The rest of the working poor who work in small businesses, because health insurance is so expensive, when they get sick, they go to an emergency room in their hospital and after they wait six or seven hours, that hospital bills the state of New York for over $1,000.

So this specific group of women who are poor are going then once more to be excluded -- excluded when they make a choice to have -- to undergo that horrible procedure.

So it is in my mind not allowing the women who are poor to have the choice of having an abortion would not only be paid by Medicare is excluding them totally from a health program that was precisely created to help them.

So it's a situation of discrimination in terms of economics and that, in itself, again, is in my view unconscionable.

So, Mr. President, there is no way

that I could possibly support this bill. I will be voting in the negative, and again, I feel horribly sorry for the woman who has to go through an abortion but she must have the right to choose what to do. She must have her own reproductive freedom.

Thank you.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR LEICHTER: Slow roll call.

ACTING PRESIDENT MEIER: The Secretary will call the slow roll call.

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Alesi.

(There was no response.)

Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Breslin.

(Negative indication.)

Senator Bruno.

(Affirmative indication.)

Senator Connor.
(Negative indication.)
Senator Cook.
SENATOR COOK: No.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Dollinger.
(There was no response.)
Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Fuschillo.
SENATOR FUSCHILLO: Aye.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: No.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
SENATOR GOODMAN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: No.

THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Yes.
THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: No.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Yes.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator

Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Mr. President, if I may briefly.

I've raised this consideration many times before and I'm going to vote yes on it because I feel that it's symbolic. I just don't feel -- I feel that the practice is wrong. On the other hand, it's tied to -- it's tied to tax dollars and that is not the way to approach it.

I think Senator Paterson came close to that. It's tied to what's appropriated and doesn't go directly to the question of what happens to that baby under any circumstance. We're not speaking about abortion. We're speaking about confining the limits of it to those who must have it through taxpayer dollars.

That, I think many of us have very deep reservations about that baby. That baby certainly can't speak for itself and for thousands of years in every known civilization, it was just a practice that was shunned and anybody who went to law school at the time I did, you know, it was a crime at that time, but -- and

certainly the circumstances are very compelling, probably more compelling with poor people than it is with anybody else, but I still think this is the only way which we can continue to manifest a deep concern over the feeling that prompts - that urges and reinforces our problems with the whole abortion issue.

So I'm going to vote aye, but I - I just wish we could have attacked this more frontally. At one time I even said, well, suppose it was only members of the Senate. I don't know. It must have been many years ago. I believe you spoke on that one too for public employees or something, you know, who were who are all insured. That's another thing. People are insured and these insurance laws are passed by us which provide for it.

So we don't attack that. I mean, it's -- you know, the only slender read that addresses this problem is the question of who pays for it.

Well, I'll vote aye as a symbolic identification with my deep concern with the abortion issue because I don't think what we have now is acceptable. On the other hand,

alternatives are presently lacking.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

(Negative indication.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

(Affirmative indication.)

Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: No.
THE SECRETARY: Senator Rath.
SENATOR RATH: Aye.
THE SECRETARY: Senator Rosado.
SENATOR ROSADO: Yes.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Sampson.
SENATOR SAMPSON: No.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Seabrook.
SENATOR SEABROOK: No.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: No.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: No.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(Negative indication.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT MEIER: Call the absentees.
THE SECRETARY: Senator Abate.
(There was no response.)
Senator Dollinger.
(There was no response.)
Senator Gold.
(There was no response.)
Senator Gonzalez.
SENATOR GONZALEZ: No.
THE SECRETARY: Senator Santiago.
(There was no response.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Ayes 33, nays 24.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Balboni.

SENATOR BALBONI: The house will stand at ease temporarily, please.

ACTING PRESIDENT MEIER: The Senate will stand at ease temporarily.

(Whereupon, the Senate stood at ease 7:31 p.m. until 7:35 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Senator Leichter has a motion to discharge which he has assured me will be done expeditiously and to the members of the Majority, after we adjourn, there will be a Majority Conference.

Senator Leichter.

ACTING PRESIDENT MEIER: Senator Leichter.

SENATOR LEICHTER: Yes. Thank you very much, Senator Skelos, and I also thank you

and the Majority for allowing me to put this over from yesterday to today and the reason that I will be brief aside from the late hour is that this bill is so compelling and so clear it doesn't need a lengthy explanation.

Mr. President, I guess is the bill properly before the house?

ACTING PRESIDENT MEIER: Not yet, Senator Leichter. What's the number?

SENATOR LEICHTER: This is Senate 2981-A.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Leichter, Senate Print 2981-A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Senator Leichter.

SENATOR LEICHTER: Mr. President, thank you.

I waive the reading and I ask an opportunity to explain and speak in support of the motion to discharge.

This is the Private Environmental Law Enforcement Act we headed before. What it

seeks to do is to empower the citizens of this state to bring private actions to enforce the environmental laws of the state of New York.

It's a right that exists nationwide. It's a right that's been granted by Congress to the people of the United States. It's a right that exists in many states because it recognizes the interest that each and everyone has, all of the citizens of this state in having a clean environment, and we appreciate and understand that the government by itself is not in a position to enforce the laws. It's not in a position to bring all the suits that need to be brought, and so what this bill will do and achieve is to stop pollution, by catching more polluters, compliments government's enforcement efforts, create more disincentives to pollute, improves environmental standards and prevents environmental degradation. It's an important right that every citizen should have. We ought to pass this bill.

Mr. President, I urge all of the members to support this motion.

Thank you.

ACTING PRESIDENT MEIER: The

question is on the motion to discharge. All those in favor signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 26, nays 35. Party vote.

SENATOR OPPENHEIMER: May I explain my vote?

ACTING PRESIDENT MEIER: Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: Is that possible? I thank you very much, Mr. President.

There are some common misconceptions that I just wanted to very briefly clear up. One is that there are going to be tons of frivolous suits and all I can tell you is that this has simply not happened. It's not been documented.

Between 1981 and 1987, 75 of the total 78 citizen suits that were brought in New

York under federal law were disposed of in the plaintiff's favor, which means that they were valid cases and even in the three that were tossed out, they weren't tossed out because they were frivolous.

There's another misconception that citizen suits are anti-farmer and in all the states that have citizen suit provisions applicable to farmers, there is not one reported case of a suit filed against a farmer, including those northeast states with similar patterns of development and demographics to us. So that is another false statement.

And I just want to say that 32 other states have this provision for citizen suits and it's worked terrifically well and it's been in federal statute forever, for many, many years.

So there's no earthly reason why we don't have it in New York State.

SENATOR SKELOS: Results, please.

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Ayes 26, nays 35. Party vote.

ACTING PRESIDENT MEIER: The motion is defeated.

Senator Skelos.

SENATOR SKELOS: Mr. President, we have one more motion.

Would you recognize Senator Gentile, please.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

I believe there's a motion at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Gentile, Senate Print 1462-B, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: I would ask that the reading be waived and I be allowed to explain.

ACTING PRESIDENT MEIER: The reading will be waived and you may proceed to

explain.

SENATOR GENTILE: Thank you.

Despite the late hour, Mr. President, this motion to discharge contains some good news and that good news is that in the past week the budget committees had recommended that the repeal of the sales tax on clothing also include footwear in this year's budget and my motion deals with the Bill 1462-B, which is my bill, to repeal the sales tax on clothing and footwear up to $500.

While I applaud the budget committees for getting on board with this issue of including shoes and increasing that exemption, it's really not enough. It's really not enough especially when we consider that states like Connecticut, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island all have significant sales tax exemptions or no sales tax at all, and that certainly puts our state at an economic disadvantage, and I must say that this effort has taken a bipartisan track.

This effort for the sales - repeals of the sales tax on clothing and footwear is supported by the Republican Governor to the

Republican mayor of New York City, to even this esteemed leader, Majority Leader in this house, Senator Bruno who has indicated that he has a priority to cut taxes that create the -- create the most jobs the fastest and that Senator Bruno believes that as a principle, sales tax on clothing and shoes is wrong, but that's good to hear given the fact that sales tax on clothing and shoes is highly regressive. It is, I agree, with Senator Bruno, the wrong tax. To tax necessities is wrong. It's wrong for budget draft consumers and it's wrong for trying to boost our economy.

So I applaud Senator Bruno for that position. Indeed, I have thousands of signatures in my hometown of Brooklyn and my hometown of Staten Island attesting to the fact that the people of this state want this repeal of this sales tax up to $500 and to include shoes.

If the experimental weeks of the repeal of the sales tax has taught us anything, Mr. President, it has taught us that lower taxes can spur economic activity.

Indeed, the Department of Taxation and Finance has reported that in the September

and January one-week experiments, 92 percent of the retailers experienced increases in clothing and footwear sales and 63 percent of consumers stated that the exemption affected their purchases. Those are outstanding -- outstanding numbers. How anyone can impose the repeal of the sales tax on clothing and footwear based on those numbers, it's hard to believe.

Another economic reality about this bill, Mr. President, is that with the sales tax in place, less retail activity means fewer jobs. People spend less and we lose jobs as a result.

Right now New York City, for example, loses more than $700 million in economic activity to New Jersey. That translates into a loss of almost 20,000 new jobs for New York City residents.

Increased activity brings jobs. We have that surplus to spend here. The Governor, for example, had created a $100 million pool for unspecified tax cuts. The New York State Economic Development Corporation estimates that the tax eliminating the sales tax on clothing and footwear would bring the City $1.4

billion in new economic activity and nearly 20,000 new jobs and create enough new revenue from other sales corporate and income taxes to recover almost 40 percent of the forgone sales tax revenue. Almost 40 percent will be recovered in new economic activity and call it my conservative view, Mr. President, but my conservative view says that for the other revenue that is not created -- that is not recovered from the economic activity, creating jobs in the free market is a better jobs program and a better use for those tax dollars than giving those tax dollars to the government to spend. That's my conservative view and that is something -- that is why I think this is important to put forth in this house today.

In fact, I think it's so important that I took great note in noting that just yesterday several of my Republican colleagues also have introduced a similar legislation in this house yesterday led by, I believe Senator Maltese.

So it is clear that there's great bipartisan support with the mayor of New York City, the Governor, members of this house. There

should be no reason why we can't take a bipartisan approach and to discharge this bill from committee. It's good enough for a one-week exemption. It should be good enough for a 52-week exemption.

Mr. President, I ask these members, especially those who support the other bill, that this is the bill we can move forward with.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question is on the motion to discharge. All those in favor signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 26, nays 35. Party vote.

ACTING PRESIDENT MEIER: The motion is defeated.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There is no housekeeping at the desk.

SENATOR SKELOS: Just a reminder to the members of the Majority that there will be an immediate conference in the Majority Conference Room and there being no further business, I move we adjourn until tomorrow, April 9th, at 12:00 noon.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Thursday, April 9th, at 12:00 noon.

(Whereupon, at 7:42 p.m., the Senate adjourned.)