ALBANY, NEW YORK

May 5, 1998

3:02 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order. All rise and repeat the Pledge of Allegiance.

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

We have with us Bishop Muriel Grant of the Mount Olivet Discipleship in Christ, from Brooklyn.

Bishop?

BISHOP MURIEL GRANT: Let us pray.

May the infinite power of the Almighty God be with us. O God, Who has given unto us this land for our heritage, may we prove to be a people mindful of Thy favor and glad to do Thy will. We thank You, O God, even for those others sent before us, our pioneers who were so directed and guided by You and were instrumental in the formation of these United States.

Bless our land with industry now, sound living, purity and good mannerism. Save us, O God, from violence, discord, confusion, pride and arrogance, and from any

evil way that will hinder our growth or unity. We have now presented ourselves as a multitude of people which have come hither from diverse towns and cultures. Imbue with a spirit of wisdom those to whom we have entrusted the authority of government, that there be justice and peace at home and that through our obedience to Thy laws, we may become a people worthy of sharing Thy praise to other nations of the world.

Bless the President of these United States. Fill our hearts with thankfulness. Let not our trust fail in You, but now, O gracious God, I humbly beseech Thee not only for the people of these United States in general but so especially for their Senate here assembled, Republicans and Democrats, bless their Senate ruler. Bless all Senators here. Pour down an abundance of Your wisdom and power upon their counseling session. Heal their infirmities. Direct and prosper all Senate consultations, giving them wisdom of laws needed for effective leadership to the advancement of Thy glory, the good of Thy church, the safety, honor and welfare of Thy

people, that things ordered and settled by the endeavors of these Senators will rest upon the surest and best foundation of peace and happiness and justice and piety so that it may be established amongst us all now and forever.

This I pray in the name of my Savior, my Lord Jesus Christ. May by the power of God vested in me the extension of the blessings of God the Father, the Son and the Holy Spirit rest and remain with you now and forever. Amen.

THE PRESIDENT: Thank you, Bishop.

We have the reading of the Journal.

THE SECRETARY: In Senate, May -- Monday, May 4th. The Senate met pursuant to adjournment. The Journal of Sunday, May 3rd, was read and approved. On motion, Senate adjourned.

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

We have presentation of

petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Motions and resolutions.

Senator Cook.

SENATOR COOK: Madam or Mr. President

ACTING PRESIDENT MARCELLINO: Excuse me?

SENATOR COOK: That's what it says.

On page 32, I offer the following amendments to Calendar 651, Senate Print 6174-A and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: Amendments received and accepted and the bill will retain its place on the Third Reading Calendar.

We have a substitution. Can we take that up now, please? Secretary will read.

THE SECRETARY: On page 5,

Senator Farley moves to discharge from the Committee on Civil Service and Pension Assembly Print 9167 and substitute it for the identical Senate Bill 6116.

ACTING PRESIDENT MARCELLINO: Substitution is ordered.

Senator Johnson.

SENATOR JOHNSON: Mr. President, may we please adopt the Resolution Calendar with the exceptions of Resolutions 3292, 3325, 3326 and 3327?

ACTING PRESIDENT MARCELLINO: Senator, we'll do that if we can have some order in the chamber, please. We have conversations. Can we take them out of the chamber so we get our work done, please.

All right. All in favor of adopting the Resolution Calendar with the exceptions of Resolution 3292, 3325, 3326 and 3327 signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted with the aforementioned exceptions.

Senator Johnson.

SENATOR JOHNSON: Mr. President, I believe we have a privileged resolution at the desk, and I ask that its title be read in its entirety and move its immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution commemorating the 47th consecutive observance of the National Day of Prayer in the state of New York, Thursday, May 7th, 1998.

WHEREAS, it is the sense of this legislative body to participate in events of significance to the people of this state and nation;

Attendant to such concern and fully in accord with its long-standing traditions, it is the intent of this legislative body to commemorate the 47th consecutive observance of National Day of Prayer in the state of New York on Thursday, May 7th, 1998;

This legislative body is proud

to have observed the National Day of Prayer in Albany for so many years. This year's fitting theme is "Turning Our Hearts to God;"

Prayer has always been an important part of our nation's heritage. National Day of Prayer is a tradition first proclaimed by the Continental Congress in 1775 when John Hancock signed a Congressional order establishing the first Day of Prayer;

In keeping with our founding fathers' faith, civic prayers and national days of prayer have a long and venerable history in our constitutional republic. In 1983, in Marsh versus Chambers the Supreme Court affirmed the right of state legislatures to open their sessions with prayer. The Supreme Court and the United States Congress both begin each day with prayer;

The observance of a National Day of Prayer became the law of the land in 1952 when a resolution was unanimously passed by Congress and was signed by President Harry Truman;

An amendment to this law was signed by President Ronald Reagan in 1988

designating the first Thursday in May as the annual Day of Prayer;

National Day of Prayer provides an opportunity for Americans of all faiths to join in united prayer to acknowledge our dependence on God, to give thanks for blessings received, to request healing for wounds endured and to ask God to guide our leaders and bring wholeness to the United States and her citizens;

It is fitting and proper to give thanks to God by observing the National Day of Prayer in New York State on May 7, 1998 when all may acknowledge our blessings and express gratitude for them while recognizing the need for strengthening moral and religious values in our state and nation;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to commemorate the 47th consecutive observance of National Day of Prayer in the state of New York on Thursday, May 7th, and to urge the citizens of New York to observe this day in ways appropriate to its importance and significance; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to the Reverend Stephen Lalor, Chairperson, National Day of Prayer, Albany Area Task Force, Glenmont, New York.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is passed.

Senator Bruno -- Senator Johnson.

SENATOR JOHNSON: Mr. President, just don't call me Sheldon.

Would you please take up Resolution Number 3225, by Senator Maziarz, have it read in its entirety and move its immediate adoption.

Thank you.

ACTING PRESIDENT MARCELLINO: Yes, Senator Johnson, we will do that, sir.

Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution memorializing

the Honorable George E. Pataki, Governor, to proclaim May 5th, 1998 as Senior Citizen Day in New York State.

WHEREAS, the more than 3 million residents of New York State 60 years of age and older are vital, integral and contributing members of our society;

The more than 3 million senior citizens residing in the state of New York have contributed to the commonwealth of the state by building and helping preserve the customs, traditions and ideals of the many ethnic groups that make up the mosaic of New York State;

The wisdom and experience of senior citizens constantly enrich the lives of the young people of our state through a strong tradition of volunteerism;

Since 1962, the month of May has been declared by Presidential Proclamation Older Americans Month in order for communities around the nation to set time aside to celebrate and reflect on the unique role older Americans play in the fabric of our society;

The legislative and executive

branches of the New York State government have as a primary goal the improvement of the quality of life of older New Yorkers and the assurance of their continued dignity;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to memorialize the Honorable George E. Pataki, Governor, to proclaim May 5th, 1998 as Senior Citizen Day in the state of New York and,

BE IT FURTHER RESOLVED that all the residents of New York State are urged to honor all citizens who are the cornerstone of the strength of our nation and to whom a debt of gratitude is owed; and

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

Senator Maziarz, you wish to explain your vote?

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

On behalf of myself as chair of the Senate Aging Committee and on behalf of Senator Hugh Farley as the former chair of the Senate Aging Committee who is aging as we speak, it is with great pleasure and admiration of the senior citizens of New York that I stand before my colleagues and guests today memorializing our Governor to proclaim May 5th, 1998 as Senior Citizens Day in the state of New York.

In my second year as chair of the Senate Aging Committee, I have to say that Senior Citizen Day has become a very important day for me, and it's one I look forward to with vigor. Through their sacrifices and tireless volunteer efforts, seniors have made New York State a better place to live and work for all of us. Senior citizens have made remarkable contributions to all facets of society, including children, the disabled and the frail elderly.

Today we attempt to give back a small fraction of what their many years of service, contribution and dedication have so unselfishly given to their respective communities.

I would urge all of my colleagues to talk about this day, and I would open this resolution and invite all members to sign on as co-sponsors. I would take the take the liberty, however, Mr. President, of asking the secretary to sign Senator Farley on as a co-sponsor as he doesn't want to stand up on his own right. He's a little tired today.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: We will accept all members on the resolution unless you wish not to be. If you wish not to be on the resolution, let the Chair know. Otherwise, everyone will be placed on the resolution.

The resolution is passed.

Senator Johnson, please.

SENATOR JOHNSON: Mr. President, would you please have Resolution 3266, by Senator Holland, read in its entirety

and move its immediate adoption.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: By Senator Holland, Legislative Resolution, commending Timothny P. Finn upon the occasion of his designation as the recipient of the 1998 New York State Senior Citizen of the Year Award.

WHEREAS senior citizens bring their special wisdom, experience and enthusiasm to countless endeavors helping to shape and strengthen the character of the communities of the state of New York and the quality of our lives;

It is the sense of this legislative body to recognize and honor the senior citizens of New York State for their diverse talents and generous service on behalf of others;

In conjunction with the celebration of Senior Citizen Day in New York State on May 5th, 1998, this legislative body takes great pleasure in honoring Timothy P. Finn as the 1998 Senior Citizen of the Year;

The Senior Citizen of the Year

Award recognizes a senior citizen who has tirelessly advocated on behalf of seniors and has assisted in providing needed support services and activities which enhance the lives of senior citizens;

Timothy P. Finn, of Orangeburg, New York, truly exemplifies these qualities;

As a member of the New York City Police Department now retired, Timothy Finn organized Shields, a fraternal organization for law enforcement officers as soon as he moved to Rockland County in 1966. In addition to its work with disabled children at the Rockland Psychiatric Children's Hospital, Shields works diligently to inform senior citizens about the various scams perpetrated on the elderly and counsels seniors on the protection of their property and finances;

Timothy Finn is a tireless advocate for the needs and protections of senior citizens. Since his retirement from the New York City Police Department, he has dedicated his dynamic and industrious efforts to lobbying actively and advising on

legislative matters affecting seniors on the local, state and national levels;

As an active member of the American Association of Retired Persons, AARP, Timothy Finn has become a national spokesperson on health and economic issues affecting senior citizens, including health care, social security, consumer protection, retirement packages and tax and other policies affecting pension recipients. He was also instrumental in improving and publicizing the EPIC prescription drug program for senior citizens;

In addition to his service as chairman of the AARP Committee on Pensions and New York State's AARP Legislative chair and national spokesperson, Timothy Finn is a New York Veteran Police Association's vice-president and legislative chairman; chair of the Executive Committee of the Rockland County Health Care Coalition and a member of the Orangetown Senior Citizen Advisory Committee, Rockland County Senior Advisory Committee and the New York State Advisory Committee on the Aged and the Senate

Commission to Restructure Services for the Aging;

WHEREAS, through all these endeavors, Timothy Finn has demonstrated unflagging commitment to the improvement of the quality of life of our state and nation's senior citizens and the enhancement of human dignity;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to most joyously recognize the significance of Timothy P. Finn's contributions with its 1998 Senior Citizen of the Year Award; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to Timothy P. Finn.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

Senator Holland to explain his vote. Can we have some order in the chamber,

please. Please!

Senator Holland.

SENATOR HOLLAND: Mr. President, I am extremely pleased to announce that New York State's Senior Citizen of the Year for 1998 is my Rockland County neighbor Tim Finn.

Tim has some -- Tim Finn has been active in Rockland County as a volunteer since 1966 when he moved to Rockland and founded the Shields which today is the county's largest fraternal organization of law enforcement officers. For many years Tim and the Shields sponsored a Christmas party for children at the Rockland County Psychiatric Center. Upon his retirement as a decorated New York City police officer, Tim decided to put his numerous abilities to work on behalf of retirees and senior citizens.

He served as a special assistant to Senate Minority Leader Manny Ohrenstein and joined the American Association of Retired Persons where he rose to the position of president and legislative chairperson representing AARP's members before

state and national lawmakers.

Many of us here like to think we shape public policy. However, it is the people like Tim Finn who drive successful grass root campaigns to make new laws, change outdated ones and get rid of laws that are burdensome or just plain ineffective.

His efforts over the years on the local, state and national level have included working for pension increases for retirees he represented, helping protect social security benefits from unnecessary taxes, supporting more effective Medicaid legislation and helping more of New York State's seniors become eligible for the state's low cost prescription drug program known as EPIC.

In our roles as policymakers and elected officials, we aim to make the quality of life here one that will allow our older residents to continue to make New York their home long after retirement. With his conscience and his commitments as his guide, Tim has helped make New York a more compassionate and comfortable home for our

seniors.

Tim has been recognized many times before for his dedication to improving the lives of our senior citizens, most recently as Rockland County's Senior Citizen of the Year. Today's award, which coincides with the celebration of Senior Citizens Day is the culmination of years of hard work and numerous achievements on behalf of the state's more than 2 million seniors, and I ask that everyone in the room join with me here today to welcome Peggy, his wife, Tim Jr., his son, and Tim Finn, the Senior Citizen of the Year for New York State.

Tim, would you please stand up.

(Applause)

ACTING PRESIDENT MARCELLINO: Mr. Finn, on behalf of the chamber, we welcome you and congratulate you on your award and in spite of Senator Holland's speech, it was passed unanimously.

The Chair recognizes Senator I believe it's Senator Bruno.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 670.

ACTING PRESIDENT MARCELLINO: Yes, Senator, the Secretary will read Calendar Number 670.

THE SECRETARY: Calendar Number 670, by member of the Assembly McEneny, Assembly Print 9999-A, an act to amend the Public Authorities Law, the Public Buildings Law, Transportation Law, the Environmental Conservation Law, in relation to the financing and construction of certain facilities.

ACTING PRESIDENT MARCELLINO: Read the last section.

Senator Bruno.

SENATOR BRUNO: Yeah. Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Bruno, on the bill.

SENATOR BRUNO: I would just like to acknowledge that this bill before us is the so-called "Albany Plan", and this is the Albany Plan that we passed, I believe, last year, some changes. The Assembly has

changed -- has passed it and with our passage it will go on to the Governor and the Governor, of course, has been very, very supportive in initiating the activity here and it will become law, and what it will mean for the city of Albany which is the capital of New York State, as we all know, is about $245 million worth of construction, hundreds of jobs, maybe thousands of jobs in the construction phase, and most important, state employees have been working in conditions that have been unsafe, unhealthy in many respects. This will help correct that.

There are two buildings involved. There are renovations to two other buildings, the Alfred E. Smith Building and the DEC building on Wolf Road. There will be a 24- to 2600-slot parking garage, all part of this plan, and we expect that the entire Capital Region will benefit from the activity that will take place during construction and all of the employees that live in the Capital Region and travel in from other parts of the state, as well as visitors will have facilities that are commensurate with the

Empire State.

Mayor Jennings is here from Albany, who has been in the forefront of helping make things happen in partners with our great Governor, George Pataki. So I am proud to speak on behalf of the implementation and passage of the Albany Plan.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Senator, I'm sorry.

SENATOR FARLEY: I'll explain my vote.

ACTING PRESIDENT MARCELLINO: O.K. Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Farley, you want to explain your vote?

SENATOR FARLEY: Just to explain my vote.

I'm pleased to support this piece of legislation as being part of the Capital Region, as Senator Bruno is. We are -- many of my constituents, and so forth, have to come to Albany to work, and so forth, but we are all one Capital Region, and I know how committed the Governor is to Schenectady and I know how committed this Legislature is to helping the Schenectady area and, with that in mind, I would like to support this legislation and vote aye.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Breslin, to explain his vote.

SENATOR BRESLIN: Thank you, Mr. President.

I rise to commend Senator Bruno, my Senate colleagues, the Assembly and the Governor for coming together on such an important piece of legislation for the city and county of Albany, my district.

It will bring, as Senator Bruno said, $240 million worth of construction but much more important, better working conditions

and a more cohesive Capital District, and I commend you, Senator Bruno.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Announce the results, please.

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Johnson, should we return to the Resolution Calendar.

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

SENATOR JOHNSON: Please have Resolution Number 3327, by Senator Saland, read in its entirety and move its immediate adoption.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Johnson. Secretary will read.

THE SECRETARY: By Senator Saland, Legislative Resolution congratulating Edmund Newhard upon the occasion of his selection as the New York State 1998

Outstanding Contribution by a Senior Citizen Award.

WHEREAS, in conjunction with the celebration of May 5th, 1998 as Senior Citizen Day in the state of New York, the Senate Committee on Aging and the Assembly Standing Committee for the Aging have solicited and received numerous nominations for the Outstanding Contribution by a Senior Citizen Award from various counties of the state;

This award honors a senior citizen who has made a positive and beneficial contribution to the senior citizens of his community. After careful consideration the representatives of both committees have chosen a nominee they believe exemplifies the qualities that benefit the noble appellation and is, therefore, deserving of this honorable recognition;

Edmund Newhard, of Hopewell Junction, Dutchess County, New York, has over the course of many years contributed to the quality of life in his community for citizens of all ages and truly merits recognition as

the recipient of the New York State's 1998 Outstanding Contribution by a Senior Citizen Award;

Edmund Newhard served the United States in World War II as a combat aerial photographer. He was shot down in the Pacific, parachuted out and landed behind enemy lines. Local residents guided him to safety and he promptly returned to active duty. He has been on active duty for his community ever since;

For 30 years, Edmund Newhard has been a member of the East Fishkill town planning board. He has spent countless volunteer hours helping to guide the growth of his community with his knowledge and expertise;

Edmund Newhard is a landscape architect who donated his services to landscape the new East Fishkill Community Center where community members congregate and socialize. He has also arranged for East Fishkill Rotary, of which he is past president, to donate the beautiful trees that line the outside of the Center. The Dutchess

County Office for the Aging Senior Nutrition Site and the Dutchess County Association for Senior Citizens Drop-in Center are located in this important community facility;

Edmund Newhard also helped organize the Rotary-sponsored Internet Club at John Jay High School. He has been honored with the 1997 Rotarian of the Year Award and he was named Dutchess County Senior Citizen of the Year for 1997 by the Dutchess County Office for the Aging Advisory Council;

Edmund Newhard's widespread good works are emblematic of the millions of hours of volunteer work performed by many of New York's more than 3 million senior citizens, volunteer work that keeps the fabric of American communities strong;

With commitment to the treasured principles of social responsibilities, ideals so clearly evident in his daily efforts and actions, Edmund Newhard has labored to preserve, to enhance and to further the uniquely American tradition of joining together for the common good;

WHEREAS, throughout his

involvement as an active and contributing member of his community, Edmund Newhard has combined tireless commitment with intelligence and leadership to improve and beautify his community;

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to most joyously congratulate Edmund Newhard upon the occasion of his selection as a recipient of the 1998 New York State Outstanding Contribution by a Senior Citizen Award; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to Edmund Newhard.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

Senator Saland, you wish to explain your vote?

SENATOR SALAND: Thank you, Mr. President.

Mr. President, it is a distinct pleasure and privilege for me to arise on behalf of Mr. Newhard's award today, his recognition today.

Mr. Newhard, as you've heard at length during the course of the reading of the resolution, is a man who has served not merely his country with great honor but he has served his community time and again in many different capacities with equally great honor.

It's interesting that, oh, some of 150 years or so ago, Alexis deToqueville talked at great length and wrote at great length about the uniquely American characteristic of volunteerism, something which was not really present and probably to this day is not as present as anywhere else but in this nation, and Mr. -- and Mr. Newhard, by his efforts, has time and again shown his willingness, whether it's in services of some 30 years as a member of the East Fishkill planning board, of a service which as I'm sure many of us in government are aware, the service which is performed as a volunteer, is not a salaried position; whether

it's commitment to service for the social organizations, the service organizations, he has been truly an outstanding member of his community and I'm sure I speak for everybody in this chamber when today I, on behalf of this chamber and on behalf of all of those who participated in the process that selected Mr. Newhard, commend him for being chosen as New York State -- New York State's Outstanding Contribution by a Senior.

Congratulations. I wish nothing but more good things for you, and East Fishkill and Dutchess County is very fortunate to have you within its midst.

Thank you very much.

I'd like to ask, with the President's permission, that Mr. Newhard be recognized. He's seated in front of the chamber. He's been joined by John Beal who is the director of the Office of the Aging in Dutchess County and, with your courtesy, Mr. President, I would welcome that you recognize him.

ACTING PRESIDENT MARCELLINO: Senator Saland, we'll do that, glad to do

that.

Mr. Newhard, we welcome you and salute you for your endeavors and your work and be well. Godspeed!

(Applause).

Senator Maziarz, I have Senator Farley's permission to recognize you.

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

I just, as chair of the Senate Aging Committee, I want to recognize my counterpart who assisted us greatly today in recognizing these two outstanding New York seniors, Assemblywoman Barbara Clark, chair of the Assembly Aging Committee.

Assemblywoman Clark and I were honored to have lunch this afternoon at the Governor's Mansion with both of our outstanding seniors and also several other seniors who have been doing some great work throughout the various counties in New York State, and I want to join my colleagues, Senator Holland, Senator Saland, in particularly congratulating Tim Finn and Ed Newhard for their contributions to the

Rockland County seniors and to the Dutchess County seniors, and this brings to a close their rather hectic day.

Mr. President, I said to both of them early this morning that this would be a day of picture taking, proclamations, pats on the back and a whole lot of eating, and we have done all three, Mr. President.

Thank you very much.

ACTING PRESIDENT MARCELLINO: And on behalf of Senator Saland, we would like to open the resolution. Anyone -- we'll put the entire chamber on the resolution honoring the gentleman unless someone indicates otherwise.

Senator Johnson, that completes the Resolution Calendar.

SENATOR JOHNSON: Thank you, Mr. President.

At this time, may we please have the reading of the non-controversial calendar.

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

THE SECRETARY: Calendar Number 111, by Senator Velella, Senate Print 5107, an act to amend the Public Authorities Law, in relation to increasing the monetary value.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 273, by Senator Padavan, Senate Print 2202, an act to amend the General Municipal Law, in relation to reporting.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 319, by Senator Padavan, Senate Print 2210, an

act to amend the Executive Law, in relation to cooperation between police agencies.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 338, by Senator DeFrancisco, Senate Print 4117, an act to amend the Navigation Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 361, by Senator Saland, Senate Print 665, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law.

ACTING PRESIDENT MARCELLINO:

Read the last

THE SECRETARY: Section 8.

This act shall take effect immediately.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO:

Lay the bill aside, please.

THE SECRETARY: Calendar Number

448, by member of the Assembly Sanders,

Assembly Print 925, an act to amend the Labor

Law, in relation to restoring.

ACTING PRESIDENT MARCELLINO:

Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO:

The bill is passed.

THE SECRETARY: Calendar Number

459, by Senator Padavan, Senate Print 2011, an

act to amend the Penal Law, in relation to

making citizenship document fraud.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 461, by Senator Padavan, Senate Print 2223, an act to amend the Penal Law, in relation to making unlawful immigration a Class C felony.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 471, by member of the Assembly Hill, Assembly Print 21-A, an act authorizing the county of Nassau.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 542, by Senator LaValle, Senate Print 1295, an act to amend the General Municipal Law, in relation to creating the town of Southampton.

ACTING PRESIDENT MARCELLINO: You have a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 553, by Senator Rath, Senate Print 4408-A, an act to amend the General Municipal Law, the Public Housing Law and the State Finance Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 586, by Senator Goodman, Senate Print 5209-A, an act to amend the Tax Law and the Administrative Code of the city of New York.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

SENATOR JOHNSON: Thank you, Mr. President.

At this time, I'd ask that we now return to the controversial calendar and read that controversial calendar.

ACTING PRESIDENT MARCELLINO: Secretary will read the non-controversial calendar, beginning with Calendar Number 273.

THE SECRETARY: Calendar Number 273, by Senator Padavan, Senate Print 2202, an act to amend the General Municipal Law, in relation to reporting information.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Excuse me.

SENATOR DOLLINGER: Explanation.

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

SENATOR PADAVAN: Yes, Mr. President.

This bill very simply prohibits the establishment of any local law, rule or regulation that would preclude the notification of INS when an individual has (a) broken a law and is to be in violation of

federal immigration laws.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 273 are Senators Abate, Connor, Dollinger, Gentile, Leichter, Markowitz, Mendez, Montgomery, Paterson, Rosado, Smith and Stavisky. Ayes 42, nays 12.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 319, by Senator Padavan, Senate Print 2210, an act to amend the Executive Law, in relation to cooperation between police agencies.

SENATOR PATERSON: Explanation.

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

SENATOR PADAVAN: Yes, Mr. President.

This bill requires that there be cooperation between police agencies and the United States Immigration and Naturalization Service for any person who is arrested under state law and who is reasonably suspected of being an illegal alien.

Yes?

ACTING PRESIDENT MARCELLINO: Senator Padavan, you have a question?

SENATOR PADAVAN: Senator Paterson has the question.

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

SENATOR PADAVAN: Hopefully I'll have the answer.

SENATOR PATERSON: Senator Padavan, in the July 19th decision of a federal court in Manhattan, of 1997, last year, your first piece of legislation which is Calendar Number 273 would basically be

sustained by that decision. Mayor Giuliani has appealed it, and I hope that his appeal is successful, but certainly your desire to make that state law is quite understandable.

However, in the same decision there is dicta in that case that says while the -- while the municipality cannot compel the agencies not to report illegal aliens, it also makes just as clear that we cannot compel the agencies to report this information; so while your first piece of legislation is quite on point and we're hoping that it's reversed on appeal, I'd like to ask you how you synthesize that with the bill that's before us right now.

SENATOR PADAVAN: First, your statement is dicta and not the core of that decision. I justify this bill on a very simple basis, and it need not relate to anybody's knowledge of the law. It's just common sense.

If someone's arrested and you find in his possession forged documents, and we know this happens because we read about it, wholesale sale of forged drivers' licenses as

an example. If someone is in possession of such forged documents and the local law enforcement agency reasonably presumes that that person is an illegal immigrant that they contact INS.

We cooperate with federal agencies all the time, the F.B.I., other federal agencies involved in one area of law enforcement or the other, the Treasury Department and so on. It is seemingly logical that in a situation where someone's been arrested, and I emphasize that point, the arrest is inexorably tied together with the contact of INS.

The decision you referred to dealt with Executive Order 124 and, as you properly pointed out, and we obviously have been dealing with this legislation over a number of years in an attempt to overrule 124. Now, presumably the federal courts will do it for us, but that case did not deal with this particular issue.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Padavan would

continue to yield.

SENATOR PADAVAN: Yes.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Well, Senator, they don't type in the court decisions with a different color for dicta as opposed to what's substantive, and I would suggest that that's really your assumption that that is dicta and not actually part of the mandate of the court decision, but my question to you is that, when looking at the scenario that you described where the police make an arrest and there are forged documents, what is the intervening cause that takes this from a situation where a person is concealing their identity or engaging in some kind of forgery or something even more unlawful, what makes the arresting entity know that this is related to immigration?

SENATOR PADAVAN: Well, if you have read the bill, there are some stipulated

conditions or attempts. First you find out if he is a citizen, someone who is here as a permanent resident, an alien lawfully admitted, an alien lawfully admitted for a temporary period of time which may have been over-stayed, a person who is otherwise authorized under federal law to be present, an alien who is present in the United States in violation of federal immigration laws.

The verification process may include but shall not be limited to questioning the person regarding his place and date of birth and entry into the United States and requesting to see documentation indicating his legal status, and so on and so on. It's all specified in the bill.

SENATOR PATERSON: Thank you, Mr. President. Thank you, Senator Padavan.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: I still, in spite of the conditions that are laid out in Senator Padavan's bill, see a great leap of faith that becomes the catalyst for

determining whether or not an individual may be an illegal alien. Unfortunately, there are many Americans, and it's unfortunate for this bill; it's rather fortunate for this country, who are of diverse backgrounds and would display different characteristics that, unfor tunately to some would still cause individuals to err in the direction of making the assumption that these individuals are not citizens, that they are not Americans, that they are not people who are in many cases born and bred right here in this country.

It's that leap of faith that we are concerned about as we vote against this piece of legislation. Senator Padavan wants to compel agencies to go forward in these situations, which is really in contradiction to a court decision that actually affirms his point of view about municipalities issuing executive orders mandating that there not be this type of investigation, but the fact remains that this part of the court decision, in spite of the fact that Senator Padavan isn't in agreement with it and doesn't think it's relevant, still was written and it was

written for the purpose of trying to clear this area up, and what it really connotes is the fact that while we don't want to restrict any reporting of this type of situation, this scenario where we may be actually -- where we may actually have the responsibility, we don't want to compel the agency -- we don't want the agency to start engaging in such a speculative and subjective test for what constitutes citizenship that we are causing people, most of whom may be citizens, an unreasonable harassment by constantly causing them to reaffirm the citizenship to the country in which they were born and grew up.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Padavan.

SENATOR PADAVAN: First, I would say to Senator Paterson that faith moves mountains. In this case, it isn't moving you but we're going to try again.

What Senator Paterson fails to note in referring to that court decision, this bill deals with someone who is arrested,

Senator, someone who is arrested. The court decision that you refer to in the federal court, by the way, does not relate to this situation directly. There is conversation that may imply to some degree but it does not address the issue of someone who is arrested.

Now, we had a very terrible situation a couple years ago of a young man who was arrested for selling drugs. The police department did not notify the court nor the district attorney that this person was presumed to be an illegal alien. The court allowed that individual out on very low bail. Two weeks later he shot and killed a police officer.

Now, if this had been law at that time, INS would have been notified as would everyone else, that individual certainly would not have been out on bail and that police officer would be alive today.

Now, we are dealing with, I think, a very specific area here. Senator Paterson broadens it. We have over half a million illegal aliens in the metropolitan New York City area as reported by INS. Therefore,

we're not dealing with an isolated very remote potential situation. We're dealing with a very real one, of one of those illegal aliens being arrested for committing a crime, and if you look at the 8,000 immigrants we have in our state prisons, over half of them are illegal aliens and most of them are arrested for selling drugs; so again it is not a hypothetical or rather vague presumption that this situation exists, continues to exist, and we ought to have the benefit of the statute to enable us to deal with the problem.

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

SENATOR PATERSON: Mr. President, because I know Senator Padavan would want me to rise.

ACTING PRESIDENT MARCELLINO: Oh, I don't think so. Can we take that to a vote?

SENATOR PATERSON: Mr. President, the arrest of an individual in our society, in spite of a serious offense, still connotes a presumption of innocence until proven guilty. At the point that an

individual is arrested, we as a society support that many rights and many privileges are taken away from this person because they are deemed to have an imminent or may be presenting an imminent danger to other members of society, but the fact that an individual is arrested, is not necessarily an invitation to now go into an examination of all of their documents to determine whether or not they have paid the Internal Revenue Service in the last year, whether or not they are up to date with all of their bills.

It really doesn't give us an opportunity to examine necessarily their citizenship rights just because the arresting officer may get an inkling of a feeling that this person is not a citizen, and so I think that the court decision does have merit here because the distinction that Senator Padavan is drawing on its face sounds very forceful because it -- it is responding to a situation where the individual's arrested, but we have people who are arrested for vehicular violations. We have people now getting arrested for jaywalking. We have people

getting arrested for a number of violations and misdemeanors that don't come close to the kinds of problems they would have or at least the threat to their faith in our society if we extend it to going through an entire perusal of their citizenship rights.

So I would just continue to maintain that this legislation be defeated on the grounds that it really causes too many Americans, people who Senator Padavan is not necessarily looking for, to be placed in the position where innuendo and suspicion and often bias and all kinds of situations that those individuals are all too familiar with are repeated in a -- in what is really a hunt for illegal aliens at the expense of too many citizens.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Waldon.

SENATOR WALDON: Were you about to ask for a vote?

ACTING PRESIDENT MARCELLINO: Yes, I was, Senator.

SENATOR WALDON: On the bill.

ACTING PRESIDENT MARCELLINO: Was going to ask that the last section be read.

Senator Leichter, you rise also. Senator Waldon was going to explain his vote. Would you like to do that as well?

SENATOR LEICHTER: No, I want to be heard on the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, if you didn't mind.

SENATOR LEICHTER: If Senator Padavan would yield, please.

ACTING PRESIDENT MARCELLINO: Senator Padavan, you yield to Senator Leichter.

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR LEICHTER: Senator, there are certain provisions of the bill that give me some pause for thought. One is where you authorize the police official to engage in what you call a verification process and to request to see certain documentation as well

as asking questions regarding place and date of birth and entry into the United States.

My question is, when those questions are totally unrelated to the reason for the arrest, have you looked into whether that's constitutional, both under the U.S. Constitution and the New York State Constitution?

SENATOR PADAVAN: Yes, it is. Senator, I've never been arrested. I presume you haven't either, but normally when someone is arrested, these are standard questions, name, birth, address. I mean these are things that are normally asked aside from this legislation, place of birth, who are you, you know, that -- and frequently that information is put through a computerized system on a national basis if there's a federal warrant or something out on that individual. This happens every day.

SENATOR LEICHTER: Through you, Mr. President.

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

SENATOR LEICHTER: Senator, the

information

ACTING PRESIDENT MARCELLINO: He does.

SENATOR LEICHTER: -- that you seek and authorize under this bill is not standard information. You add entry into the United States. That is not commonly asked or asked at all of people who have been arrested. You can certainly ask, Who are you, where do you live? You may ask date of birth. You can ask questions that are related to the alleged crime, but you can't, at least as far as I know, at least you don't ask when were you admitted in the United States and I request to see documentation indicating legal status. Those are really the two things that I'm referring to and that I question.

I'm not sure of the answer, but I have some doubts as to whether or not that's legal or within the province of a New York law enforcement official because, as you and I well know, the enforcement of the Immigration Law is reserved by the U. S. Constitution to the federal government.

SENATOR PADAVAN: If someone,

when asked name, address, date of birth, place of birth says, I was born in Colombia, you say, Well, are you in this country legally? Tell us how. That's not unconstitutional.

SENATOR LEICHTER: I -- I don't know, Senator. I -- I don't know, Senator. I wish I could just say, Well, Senator Padavan says it's constitutional, it must be constitutional. I think it really raises a question, and I think it would be one thing if your bill provided that where there was information that the person was not legally in the United States that that information be transmitted to the Immigration Service, but that's not what you do. You go beyond that and you empower New York State law enforcement officials to -- in effect, you deputize them as part of the Immigration Service to make inquiries and to ask questions which certainly are presently not being asked. I -- I think that's a problem.

Let me ask you this other question if you would be good enough to yield.

ACTING PRESIDENT MARCELLINO:

Senator Padavan, you continue to yield?
Senator continues to yield, Senator.
SENATOR LEICHTER: As I understand it, the the law enforcement official is to notify the Attorney General and the U.S. Immigration Service, is that correct?
SENATOR PADAVAN: Yes.
SENATOR LEICHTER: Then, in addition, the Attorney General is also supposed to notify the U.S. Immigration Service, is that correct?
SENATOR PADAVAN: Yes.
SENATOR LEICHTER: Why -- why, since the law enforcement official is advising the Immigration Service, do you also have the Attorney General pass on that information?
SENATOR PADAVAN: I say, Senator, on the presumption that the Attorney General might have additional information that would be pertinent.
SENATOR LEICHTER: Well, again with all due respect, sir, and
ACTING PRESIDENT MARCELLINO: Senator Padavan, do you continue to yield?
The Senator continues to yields, Senator.

SENATOR PADAVAN: The Attorney General is responsible for maintaining complete and accurate records of such reports and shall provide any additional information that may be requested.

SENATOR LEICHTER: But not line 21, 22 says that the Attorney General shall that report that was submitted by the law enforcement official to the Attorney General, that report shall be transmitted to the United States Immigration and Naturalization Service.

SENATOR PADAVAN: Correct, but it's their -- it's their prerogative.

SENATOR LEICHTER: Let me ask you

SENATOR PADAVAN: It's all part of paragraph four, Senator. You want to take one sentence away from the other, I think that's inappropriate.

SENATOR LEICHTER: Well

SENATOR PADAVAN: The entire paragraph should be read together.

SENATOR LEICHTER: Senator, that's what we always do. I mean if you have

one sentence that says that the report shall be transmitted, you can't well qualify by another sentence. I don't think it's of great moment, but I think it -- it does lead to a duplication.

What worries me most of all, Senator, is paragraph 3, lines -- I'm sorry, it's paragraph or subdivision (c). It's lines 13 and 14 which empowers the law enforcement official not only to notify the United States Immigration and Naturalization Service as well as the Attorney General, but then you add some language that I think could be very meritricious which says, "*** and provide any additional information that may be requested by any other public entity," without in any respect qualifying it to the matter of immigration status. You seem to authorize any public agency to ask information of that law enforcement official or that law enforcement official be free to provide any information to any other public agency, totally unrelated to immigration.

SENATOR PADAVAN: Give me an example of a public agency that might seek

information that would be undesirable.

SENATOR LEICHTER: Well, I could -- yeah, I could see that

SENATOR PADAVAN: How about Social Services, would that be undesirable?

SENATOR LEICHTER: It might well be, absolutely.

SENATOR PADAVAN: I'd say if that person is an illegal immigrant, it would be very desirable.

SENATOR LEICHTER: But, Senator, there hasn't been a determination made that that person is an illegal immigrant. That can only be made by the Immigration Service. Why would you authorize

SENATOR PADAVAN: Senator, may I interrupt you?

SENATOR LEICHTER: Sure.

SENATOR PADAVAN: And I'd like to read something to you that's federal law which may answer some of your questions.

It's Section 132 involving interior enforcement relevant to immigration laws. "The Attorney General may enter into a

written agreement with any state or any political subdivision of a state pursuant to which an officer or employee of the state or subdivision who is determined by the Attorney General to be qualified to perform a function of immigration officer in relation to the investigation, apprehension or detention of aliens in the United States, including the transportation of such aliens across state lines into detention centers, may carry out such function at the expense of the state or the political subdivision and to the extent consistent with state and local law."

What you have here is a very firm federal statute authorizing. You said as agent, I think your phrase was we'd become an agent of the INS. Well, if you want to use that term, you certainly have that prerogative, but this federal law provides for it, provides for direct cooperation between the federal authorities and the state and/or its local subdivisions in regard to illegal aliens.

Now, it says here, "Further an agreement under this subsection shall require

that an officer or employee of a state or political subdivision of a state performing a function shall have knowledge of and adhere to federal law." It goes on and on, pages here, but it's very, very clear that we are authorized by federal law to implement the legislation that you find troubling.

SENATOR LEICHTER: Senator, I can't believe, with all due respect, that you would read that because that is such a strong argument against this bill, and I would expect Senator Paterson to read that section. That section provides that the federal authorities are authorized, subject to the procedures and the approval of the Attorney General, to enter into agreement with state officials.

No question that the federal government can go to the New York City Police Department and having assured itself that the New York City Police Department is familiar with federal rules, familiar with immigration to, in limited areas, enact a cooperation agreement, but that's not what your bill does at all.

SENATOR PADAVAN: That's not

true, Senator. You either didn't hear me or I didn't make myself clear. The State Police Department, by the way, cooperates fully as do many other subdivisions of this state. Where we have the problem primarily is within the city of New York. This bill will, in effect, push us in the direction that the federal law provides for.

Your earlier question, Senator, was is this constitutional. Well, my evidence is that we have federal law which has not been ruled unconstitutional.

SENATOR LEICHTER: No, no. Senator, my point was that the federal government, having preempted and through the Constitution being authorized to engage in and to enforce the immigration laws, that a state cannot say we're going to start enforcing the immigration laws absent the very thing that you mention, which is where the federal government enters into an agreement and authorizes the state to do this.

Let me ask you, has the federal government -- has the federal government authorized the state of New York and the law

enforcement agencies in the state of New York to do the acts that your bill authorizes them to do?

SENATOR PADAVAN: Yes.

SENATOR LEICHTER: It has?

SENATOR PADAVAN: Absolutely, and what we're saying here is

SENATOR LEICHTER: Where is that agreement?

SENATOR PADAVAN: Senator.

ACTING PRESIDENT MARCELLINO: Excuse me, gentlemen. The Chair has been willing to let the debate to go on to enhance

SENATOR PADAVAN: My question is, where is that agreement?

ACTING PRESIDENT MARCELLINO: Senator, can the questions and answers come through the Chair, please, so we can keep this in order.

SENATOR PADAVAN: Yes. In response to Senator Leichter's question

SENATOR LEICHTER: You're right, Mr. President.

SENATOR PADAVAN: In response

to Senator Leichter's question, the fact remains that our State Police and many other jurisdictions in this state do exactly that.

What we're trying to do, very simply, is to motivate by re-emphasizing what is already permitted, the cooperation that I think serves everyone's best interests in this state, and that's what this bill is all about.

SENATOR LEICHTER: Okay.

SENATOR PADAVAN: I merely quoted the state law -- the federal law so that I would put your mind at rest when you raised the question earlier, is it constitutional for a state or its subdivision to be in effect -- and I think this was your phrase -- an agent of INS, and I hope I've put that to rest. Maybe I've not convinced you of the wisdom of this bill but that part of it to me is very important and your question was obviously asked sincerely and I'm giving you a proper response.

SENATOR LEICHTER: Good. Mr. President, I want to thank Senator Padavan, but I must say that whenever we get into one

of these debates and I hear the sponsor say, Well, what we're trying to do -- you know, and that's not the issue. The issue very often is what your language says.

Senator, there's no question that the federal government can under the law or the regulation you just read authorize agencies in New York State to help the Immigration Service, but when I asked you, where is the agreement they would authorize every law enforcement agency in New York State to do the acts that your bill does, you talk about, Well, we have an agreement with the State Police. First of all, without having seen it but I would bet my last dollar, the agreement between the State Police, the Immigration Service, does not provide the powers and the authority, that broad sweep which your bill provides for.

Secondly, it certainly doesn't cover the Hempstead Police Department. It doesn't cover the Watertown Police Department. There's no agreement between them. So the fact of the matter is that I think the question and the issue that I

raised, can the state of New York on its own decide that it's going to empower agencies that have not entered into an agreement with the Immigration Service to enforce the immigration laws, can we do that, is that are we authorized to do that? I have a serious question.

I think certainly where we know that a crime has been committed or we know that somebody is here illegally, I think that you're certainly authorized to pass that information on to the Immigration Service, but you don't do that. You go much further. You empower New York State law enforcement officials to pry into people's immigration status and that, to my mind -- and I'm not sure of the answer, I must tell you, but that raises a constitutional question.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Padavan.

SENATOR PADAVAN: Senator Leichter asked the question, is there a written agreement. What I said to him is, in

effect, whether it's written or not, the State Police and other law enforcement agencies in this state are cooperating on a regular basis with INS.

Now, beyond that point, I think it's important for him to understand -- and I will read the section of federal law that is pertinent, "Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a state or political subdivision of a state (a), to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States (b), otherwise to cooperate with the Attorney General in the identification, apprehension, detention or removal of aliens not lawfully present in the United States."

Now, what that says, very directly -- it doesn't require any interpretation -- is absent a written agreement, the things that we are attempting to motivate in this bill are permitted and not

only permitted but encouraged by federal law.

SENATOR LEICHTER: Mr. President, continuing my comments on the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: Yeah. Senator Paterson, those two sections you read -- I'm sorry. Senator Padavan.

ACTING PRESIDENT MARCELLINO: Seems to be a common error today.

SENATOR LEICHTER: I always take my cue from you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

SENATOR LEICHTER: But, Senator Padavan, what you just read is (a), the first provision was exactly what I said, that any law enforcement official, for that matter, any citizen knowing that somebody is here illegally is authorized to so inform the Immigration Service. You and I have that authority. We don't need any statute to give us that power and (b), it just says to cooperate with the Immigration Service. That's fine. Everybody has that right and

that authority, but what I'm concerned about is your having officials of the state of New York ask questions that right now they cannot ask and maybe that even with this bill they can't ask or shouldn't ask.

I am also concerned, as I pointed out, Senator Paterson, a provision that I just don't think makes any sense where he says that law enforcement officials may provide any additional information that may be requested by any other public entity, information that's totally unrelated to immigration, information that maybe now police departments cannot or should not pass on, whether it's to a social service agency, the Health Department. Why put that provision in there? It's totally unnecessary or at the very least -- at the very least, you ought to say provide information relating to the immigration status of the individual to any agency that properly needs that information, but the way you have it now, it's an open-ended blank check to law enforcement officials to pass on all sorts of information to other agencies.

Let me deal with the substance of the bill, and I think -- Senator Padavan, I think put it very well. There's no question that we have a problem in this state and in this country of a large number of illegal immigrants. That is a matter that really needs to be dealt with much more effectively by the federal government and we understand the problems considering the large boundary shorelines that this nation -- nation has, but there's certainly things that can be done.

I think it's a question that we have to ask ourselves, is -- should it be the policy of the state of New York to actively engage in the enforcement of the Immigration Law, forgetting for a moment whether we have the authority, assuming even that we have the authority, is that something that we want our law enforcement officials to do and one of the consequences of giving them that authority, that power considering not only all the other responsibilities that they have but the likelihood that this is going to intrude upon people's privacy in a manner that hasn't been

done to date, do you want to do that? I don't think that you do.

I think that there are ways of dealing with illegal immigration through the federal government that we should support. Maybe we should ask the federal government to do more, but I don't think, one, the state of New York should take on the enforcement of the immigration laws, and secondly, I don't think that we ought to get police officials in this state to ask the sort of questions, to make the sort of inquiries, to pass on the sort of information that your bill provides.

I think that you're stepping into an area where we shouldn't be. I think we will be infringing on people's privacy. I think we will be opening up a lot of problems in relationships between police and people who may have come from other countries or their ance... or their ancestors have come from other countries. I can see a great deal of problems. As Senator Paterson said, biases and prejudices are going to be shown. I just don't think that we want to put that burden and create that problem for our law

enforcement officials.

ACTING PRESIDENT MARCELLINO: Senator Waldon, please.

SENATOR WALDON: Would the gentleman yield to a question?

ACTING PRESIDENT MARCELLINO: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR WALDON: Senator, do you recall when we discussed the Police and Public Protection Act here in this chamber, this session, the part of that act which allows police officers to stop people abroad for merely a whim, not necessarily any act of criminality which would provoke them to stop the person?

SENATOR PADAVAN: No, I don't recall it, Senator.

SENATOR WALDON: Okay. On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Waldon, on the bill.

SENATOR WALDON: Thank you, Mr.

President. Thank you, Senator Padavan.

I recall that, and when I place that in conjunction with what you've proposed here today, it is ominous the potential impact upon society but especially upon people of color and people who are recently from foreign lands; for example, the Caribbean, South America, Africa, Asia. Those are the people who will be stopped indiscriminately by police, coupled with the rights and what you're proposing today and if that other proposal were law in the state, those in conjunction create a pincer move on the rights of people, a vice which would trap these people in terms of the impact of the law.

I think this is un-American. I think this is not what our society is all about, nor should it be about, and so I caution my colleagues to recognize that this is very thin ice that we're skating upon, and that if we're really concerned about the rights of some of the people who happen to be from foreign lands recently or who do not look like most of us in this chamber, we cannot abide this proposal, and I would encourage you

to vote in the negative.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Padavan yield for couple of questions?

ACTING PRESIDENT MARCELLINO: Senator, do you yield to a couple of questions?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator Dollinger.

SENATOR DOLLINGER: The Attorney General that's referenced in the bill, is that the Attorney General of the state of New York?

SENATOR PADAVAN: U.S. Attorney General.

SENATOR DOLLINGER: This amendment will go in the exec...

SENATOR PADAVAN: Senator, I'm sorry. Did you say -- what? I may have said it wrong in not hearing your question right.

SENATOR DOLLINGER: Okay. In the bill it says that this -- in addition

to the other obligations of the police agencies

SENATOR PADAVAN: The bill refers to the New York State Attorney General.

SENATOR DOLLINGER: Okay. What jurisdiction to enforce the immigration laws does the Attorney General of the state of New York have?

SENATOR PADAVAN: We've used this word "enforcement" here rather liberally but we're not reading the bill. Enforcement of immigration laws rest with INS.

SENATOR DOLLINGER: Right.

SENATOR PADAVAN: We're talking about cooperation, providing information, referral. That's what we're talking about.

SENATOR DOLLINGER: Okay. But my

SENATOR PADAVAN: The Attorney General might have in his possession information that may be useful.

SENATOR DOLLINGER: Okay. The information will go -- both go to the INS and to the New York State Attorney General so

they'll both have a list, is that correct?

SENATOR PADAVAN: Local law enforcement would give that information, yes.

SENATOR DOLLINGER: So we'll have one list for the

SENATOR PADAVAN: But the Attorney General may have additional information that came from another political subdivision.

SENATOR DOLLINGER: But there will be a list maintained by the Attorney General of the state of New York, again, Mr. President, if Senator Padavan

SENATOR PADAVAN: I'm not sure what you mean by "list" but information that would be appropriate would be in his possession.

SENATOR DOLLINGER: Well -- but you will require him to maintain this information. It says here that he shall maintain accurate and complete records regarding who's on the list, correct?

SENATOR PADAVAN: Records of any referrals made by local jurisdictions.

SENATOR DOLLINGER: And the INS

will maintain the same list.

SENATOR PADAVAN: Pardon me?

SENATOR DOLLINGER: The INS will maintain the same list.

SENATOR PADAVAN: Maintain the same list?

SENATOR DOLLINGER: Well, again through you, Mr. President. The bill requires that the local authorities tell both the Attorney General of the state of New York and the INS.

SENATOR PADAVAN: That's correct.

SENATOR DOLLINGER: So presumably there will be a list with the New York State Attorney General.

SENATOR PADAVAN: The information will be in both places, if that's what you're asking.

SENATOR DOLLINGER: Right. So we're going to duplicate the efforts of both agencies. We're doing exactly the same thing.

SENATOR PADAVAN: You realize there are different INS districts throughout

the state.

SENATOR DOLLINGER: I understand, but I

SENATOR PADAVAN: So the information that would be in the possession of our state Attorney General would be made available to any one of them. An illegal immigrant might be in New York City one day, might be in Oswego a week later.

SENATOR DOLLINGER: Right, but there will be two lists.

SENATOR PADAVAN: The information would presumably be available in both places if it was forwarded -- if it was forwarded.

SENATOR DOLLINGER: Okay. Again through you, Mr. President, if Senator Padavan will continue to yield.

ACTING PRESIDENT MARCELLINO: I believe the Senator continues to yield.

SENATOR DOLLINGER: Thank you.

This requires that suspected aliens be put on the list, is that correct?

SENATOR PADAVAN: You know, Senator, I'm troubled somewhat by your

reference to being put on a list. Keep in mind this is someone who was arrested, not just a suspected alien, illegal alien, someone who was arrested, and as an indication by virtue of that process of arrest that the person is an illegal alien, and what we are calling for is cooperation between the local jurisdiction, whether it be the State Police, the police in the city of New York, or the police in Oswego, New York, to provide that information to the Attorney General and to INS.

SENATOR DOLLINGER: Okay, but again through you, Mr. President, if Senator Padavan will yield.

ACTING PRESIDENT MARCELLINO: Senator Padavan -- excuse me, Senator.

Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: This bill says that they shall notify the Attorney General and the United States Immigration

Service of such persons suspected of illegal immigration status. That's what you would do, is have the police agency

SENATOR PADAVAN: Someone's been arrested.

SENATOR DOLLINGER: Right, but the suspected status is turned over to the INS.

SENATOR PADAVAN: Correct.

SENATOR DOLLINGER: My question to you is what happens if it turns out that suspected alien is actually a legal resident but his name has already been transmitted to the Attorney General as -- and to INS as a suspected alien? There's nothing in this bill that would allow, for example, if this person is determined not to be an illegal alien, then the police entity shall transmit information to the Attorney General and to the INS, that his name shall be struck from the list of those who are suspected aliens and his records expunged completely. There's nothing in this bill that says that, is there?

SENATOR PADAVAN: Senator, if the person turns out to be a legal immigrant,

then nothing happens.

SENATOR DOLLINGER: Except his name is on the list maintained by the Attorney General and the INS.

SENATOR PADAVAN: You keep using the word "list". The information that's kept by the Attorney General which is used in a circumstance like that would obviously be corrected.

SENATOR DOLLINGER: Is there a provision in this bill

SENATOR PADAVAN: Oh, Senator.

SENATOR DOLLINGER: -- that provides for the correction?

SENATOR PADAVAN: No, but I think it's clear if that information is erroneous, it would be corrected.

SENATOR DOLLINGER: Okay. Thank you, Mr. President. On the bill.

Senator Padavan, I agree with Senator Leichter

ACTING PRESIDENT MARCELLINO: Senator Dollinger on the bill.

SENATOR DOLLINGER: -- that the problem of illegal immigration is one that we

face in this country and that we have to deal with. The question is whether this bill deals with it and, quite frankly, with all due respect to Senator Padavan, I have to look at this bill and question why we're doing it, because we're transmitting information to the Attorney General of the state of New York who has no enforcement power over illegal immigration. We're asking him to produce a duplicative list of suspected aliens that the Immigration and Naturalization Service, which has nationwide -- frankly, Senator Padavan, they could be in New York City in one day and Oswego the next and in Santa Jolla, California the following day. INS which has nationwide authority would be much better off tracking that suspected illegal alien than would the Attorney General of the state of New York or the regional office of the INS and then it says that it's only their suspected alien status. What happens when the suspected alien's name is transmitted to the Attorney General or the INS and it's later determined in a proceeding that he or she is a legal immigrant, in fact a citizen, entitled to be

here? They're already on the suspected alien list. They're already on the suspected list. The information has already been passed as a suspect. They don't get a chance to go back. This bill doesn't provide for the suspected alien who's found to be a citizen to go back and erase his name from the suspicion list.

With all due respect, Senator Padavan, the fact that we're duplicating efforts, we don't have a provision for expunging the wrongful determination by the police, and yet we create a duplication process in the efforts, raises to me a question as to why we're doing this bill. Why would we do it if all we're trying to do is duplicate the efforts of INS for suspected aliens and there's no expungement provision.

What this bill does, and I agree with Senator Waldon. This is an "us" and "them" bill. This is all about us and them. It's all about a group of people. Look around this room and figure out who "us" is. This is a bill that will never be used against Canadian illegal immigrants. It will probably never be used against Australian immigrants.

It will probably never be used against New Zealand immigrants. You know what it's going to be used again? It's going to be used against Puerto Ricans. It's going to be used against African-Americans. It's going to be used against Japanese-Americans. It's going to be used against Chinese-Americans. It's going to be used against people who don't talk like us, don't look like us and don't act like us, and the problem is there was a time, not long ago, go back 50 years and you know what we would have done? We would have used this very same bill and said, My gosh. You wear one of those pins in your lapel that has orange, green and white, you must not be an American. You walk around with a yarmulka on, you must not be an American. You walk around speaking Italian, you must not be an American. You have a heavy Slavic accident accent, we better put you on the suspected alien list.

The problem is this bill preys on our worst fears of who the thems are, and the problem is it seems to me that if anything has been proven in American history it's that

sooner or later, the thems become us. That's what we're all about. We were all once the thems that someone else was trying to keep out.

Senator Padavan, the problem of illegal immigration -- I voted for bills that you've brought up about illegal immigrants. I don't think we have to shelter illegal immigrants. I don't think we have to provide them with certain cases with special protections, but one thing we have to do is we can't allow the authorities to use the prejudices and the stereotypes against people who are here in this country.

There's a way to do it. The INS is trying to do it. Lord knows they need more resources. This bill, unfortunately, in my judgment, preys on stereotypes and won't accomplish the goal that you seek to achieve.

Unfortunately, it only does something to accentuate them against us and to quote Senator Waldon, I guess all of us are Americans and we were all once immigrants and this is not consistent with our immigrant past.

ACTING PRESIDENT MARCELLINO: Senator Lachman.

SENATOR LACHMAN: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Lachman on the bill.

SENATOR LACHMAN: And I'll try to be brief. When Ted Sorensen and John F. Kennedy co-wrote the book, A Nation of Immigrants, they spoke about a unique nation which is the United States whose people have come from all over the world, who speak different languages and are of different races and nationalities.

Now, I understand, Senator Padavan, what your objective and what your goal is, and I do not believe that this necessarily will reach that goal and objective. I for one believe that we should not countenance anything from those who are illegal immigrants but at the same time I am fearful that this bill blurs the line between legal immigrants and illegal immigrants.

Now, I happen to be the son of one legal immigrant and one American citizen, and I know the fears that legal immigrants

have, not necessarily or only because they are a different race but because they cannot speak the language of the land. Their mother tongue is Greek. Their mother tongue is Italian. Their mother tongue is Russian. Their mother tongue is Polish. Their mother tongue is Arabic. Their mother tongue is Hebrew. Their mother tongue is Japanese.

Now, the differentiation might be that an illegal immigrant is able to speak English better than a legal immigrant and this bill could lead to a situation where the rights of legal immigrants are diminished without in any way hurting or diminishing the rights of illegal immigrants.

Now, I am not going to say that this bill opens up a flood for witch hunts, but I am going to say it does not achieve its objectives. It has states meddling in federal affairs and it can lead to dangerous consequences for legal aliens who live in America and have the rights of Americans.

Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Please record the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 319 are Senators Connor, Dollinger, Gonzalez, Kruger, Lachman, Leichter, Markowitz, Mendez, Montgomery, Paterson, Rosado, Santiago, Smith, Stavisky and Waldon. Ayes 43, nays 15.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I would just like us to pause in our deliberations for a moment to recognize the newly elected Borough President of the borough of Manhattan in the city of New York, former City Council member from my district on

the upper west side of Manhattan and a long fighter for social justice in our state, the Honorable C. Virginia Fields has joined us today.

ACTING PRESIDENT MARCELLINO: Ms. Fields, welcome.

(Applause)

Senator Kruger, why do you rise?

SENATOR KRUGER: Yes, Mr. President. I would ask for unanimous consent to be recorded in the negative on Calendar Number 273.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Senator Nanula.

SENATOR NANULA: Thank you, Mr. President.

On Calendar Number 273, I'm also requesting unanimous consent to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

SENATOR NANULA: Thank you.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Waldon.

SENATOR WALDON: I happened to be out of the room when we dealt with Calendar 273 and request unanimous consent to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Senator Lachman.

SENATOR LACHMAN: I was out of the chamber at that time, 273, consent to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: So ordered, without objection.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, yesterday there were votes on Senate 2351, Calendar 241. I would have been recorded in the negative on that vote.

There was also a vote on Calendar 465, Senate 4595. I wish the record to reflect that I would have voted in the negative on that and finally yesterday, Senate Calendar 545, Senate 1955, I wish the record to reflect that I would have voted in the

negative on that.

ACTING PRESIDENT MARCELLINO: The record will so show, Senator.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Gonzalez.

SENATOR GONZALEZ: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator Gonzalez.

Ladies and gentlemen, please.

Senator.

SENATOR GONZALEZ: Yes. I would like to be recorded in the negative on Calendar 273.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Senator Santiago.

SENATOR SANTIAGO: Mr. President, unanimous consent to be recorded in the negative on Calendar 273.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Senator Gold.

SENATOR GOLD: Thank you, Mr.

President.

I would ask unanimous consent to be voted in the negative on Calendar Number 273 and also Calendar 319.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

SENATOR GOLD: Thank you so much.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 361, by Senator Saland, Senate Print 665, an act to amend the Criminal Procedure Law, the Family Court Act, the Penal Law and the Public Health Law.

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

SENATOR PATERSON: Mr. President, this is a bill that has very good merit. It would test the perpetrators of certain crimes after arrest if the victim of the crime feels that he or she has been exposed to transmittable diseases of a life-threatening proportion. However -- and we certainly understand the sponsor's desire

to protect the victims.

What this bill does is really to ignore most of the prescriptions that have been lended to us by the AIDS Advisory Committee and also the Center for Disease Control, which really compel us to understand that testing the alleged perpetrator of a crime, or at least testing the person that may have transmitted the disease, does not ensure anything to the victim. There are certain protocols that are described for the victim by the Center for Disease Control, a four-week program of medical intervention hopefully starting two to four hours after the alleged transmission and yet if a 24- to 36-hour period elapses, it may be impossible for the actual protocol or the prescribed medical procedure to be effective.

It seems unlikely that we would be able to make application and have the test of the perpetrator at that particular time. So the safest medical procedure is to test the victim and if necessary as a precaution to treat the victim. We would not want to be unnecessarily punishing the accused out of a

feeling that the crime was actually committed and at the same time if our real interests is that of the victim and protecting the health and welfare of the victim, what I would certainly suggest to the sponsor what we might consider is a prophylaxis or perhaps state-sponsored testing of victims for these types of crimes and -- I mean, state-sponsored testing the victim when exposed to these types of diseases and also and very importantly the counseling and the education that would be necessary so that the victim would know what his or her options would be.

In this period of new diseases and the inability at times of our treatments to cure an individual who may be exposed, certainly that rise -- that rise in climate of public anxiety over the subject makes us very sensitive to the desire to protect victims of crimes and to protect people from being exposed to life- threatening diseases.

However, it's our position that this legislation would not bring us any closer to that ideal and that if anything it might confuse the issue by focusing too much

attention on the accused. If they committed the crime, hopefully they will be punished to the full extent of the law but their culpability for exposing the victim to the disease is another issue related more to the crime and that the safest way to protect the victim is to test the victim or begin immediate intervention of a medical nature as a precautionary procedure immediately.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President, to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yeah. We've had this bill before, as I guess we have had just about every other bill that seems to be debated on this floor. The real objection of

this bill is that it does absolutely nothing for the victim. I mean, it's a hoax to say that any assistance is being given to the victim because it doesn't do it.

All of the knowledgeable people who deal in the area of AIDS will tell you that this bill does nothing, that you've got to test the victim, and this really does harm because it may lead victims not to be tested because the alleged perpetrator isn't, and it's for that reason it's opposed by the NYCLU, the New York State Bar Association, the New York State AIDS Coalition, GMHC, Empire State Pride in Gender, and it's opposed by me.

I vote in the negative.

ACTING PRESIDENT MARCELLINO: Please announce the results.

Senator Saland, do you wish to explain your vote?

SENATOR SALAND: Yes. Thank you, Mr. President.

I don't wish to engage in a debate that will exacerbate anything here, but I did take particularly unkindly to the -- to the statement that this, in fact, represented

a hoax. I know we have differences of opinion on this. Certainly Senator Leichter has been clear and outspoken in his opposition.

I would just request that before he so blithely puts out comments such as condemning a bill as being a hoax, that he might like to look at those parts of the bill, in case he hasn't read it in its entirety, that basically requires the very acknowledgment of counseling in the victim's testing, but also particularly if you would indulge me just very briefly, I would like to read from -- without bothering to identify all the groups that support this -- Governor Cuomo's Task Force on Rape and Sexual Assault report of April of 1990 as contained in Recommendation 16.

"An efficient process should be developed by which a victim of rape and sexual assault can easily access the civil court system to seek a court order to require HIV testing of an alleged sex offender to obtain the defendant's HIV antibody status.

"While this information will not necessarily answer the question of whether

the victim has been infected, it might assist the victim in making difficult health care decisions" -- and I am skipping sections here.

"While the result alone may not be determined if some victims after consultation with their physician or an HIV counselor may want to begin immediate treatment with prophylactic drugs. Where the assailant's first test is positive, the victim may want to make immediate -- want to begin immediate drug therapy even though she or he might not have actually been infected.

"Even if the offender's first test turns out to be negative, the victim may nevertheless want to proceed with drug therapy since she or he may have been exposed.

"The question of how and when to test the alleged sex offender remains. The Task Force considered and rejected waiting until an accused is convicted.

"While a convicted defendant is no longer presumed innocent and has fewer procedural rights, there are two problems with waiting for conviction. One, extensive delay

is inevitable because it can takes weeks for conviction by plea and months for conviction by verdict and two, there are a number of acquittals and dismissals where the defendant may have nevertheless infected the victim. In either case, conviction is not an adequate triggering event."

It goes on to say, "For similar reasons, indictment is not a good marker. Indictments can be delayed, particularly where a defendant is at liberty. Furthermore, a prosecutor may be unable to obtain an indictment for reasons unrelated to the accused as the true perpetrator."

This bill uses the filing of an information or the laying of an indictment and certainly is perhaps less -- more generous than was proposed by Governor Cuomo's task force.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 361 are Senators Abate, Breslin, Connor, Dollinger,

Gonzalez, Goodman, Leichter, Markowitz, Montgomery, Nanula, Paterson, Rosado, Santiago, Smith, Waldon. Also, Senator Mendez. Ayes 42, nays 16.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Also, Senator Stavisky. Ayes 41, nays 17.

ACTING PRESIDENT MARCELLINO: The bill is still passed.

The Secretary will read.

THE SECRETARY: Calendar Number 461, by Senator Padavan, Senate Print 2223, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 461 are

Senators Abate, Gonzalez, Leichter, Markowitz, Mendez, Montgomery, Paterson, Santiago, Smith, Stavisky and Waldon.

ACTING PRESIDENT MARCELLINO: Senator Santiago, do you wish to be recorded?

She wishes to be recorded in the negative.

THE SECRETARY: Ayes 47, nays 11.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 471, by member of the Assembly Hill, Assembly Print 21-A, an act authorizing the county of Nassau.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR DOLLINGER: Is this the Hannon bill?

ACTING PRESIDENT MARCELLINO: Yes, it is, Senator Dollinger.

SENATOR DOLLINGER: Record me in the negative, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you. Senator Dollinger in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 471 are Senators Cook, Dollinger and Paterson. Ayes 55, nays 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 553, by Senator Rath, Senate Print 4408-A, an act to amend the General Municipal Law, the Public Housing Law and the State Finance Law.

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

SENATOR PATERSON: Mr. President, as much as I researched this bill, I fail to see the distinction between this piece of legislation and the one we passed in this chamber by Senator Holland just last

week. So I'm going to stand on my argument for last week and anyone that would like to hear it can look it up, or I have it available on CDs for 19.95.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Record the negatives and announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 553 are Senators Connor, DeFrancisco, Dollinger, Leichter and Paterson. Ayes 53, nays 5.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin, why do you rise?

SENATOR LARKIN: Mr. President, may we return to reports of standing

committees? I believe there's a report of the Cities Committee at the desk.

ACTING PRESIDENT MARCELLINO: We will report -- return to the report of standing committees.

The Secretary will read.

THE SECRETARY: Senator Padavan, from the Committee on Cities, reports:

Senate Print 6059-C, by Senator Breslin, an act authorizing the city of Albany to appoint additional members to its board of assessment review.

ACTING PRESIDENT MARCELLINO: Without objection, the bill is reported to third reading.

SENATOR LARKIN: Mr. President, let's return to motions and resolutions. I believe there's a privileged resolution there for Senator Leibell, and I ask that it be read and moved for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution, honoring

Chief Gregory J. Amato, upon the occasion of his retirement from the town of Carmel Police Department, to be celebrated May 9th, 1998.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Larkin.

SENATOR LARKIN: Is there any housekeeping at the desk?

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

SENATOR LARKIN: Then, there being no further business, I move we adjourn until Wednesday, May the 6th, at 11:00 a.m., and I would like to remind everybody that tomorrow is West Point Day, and those of you who have cadets who will be here, you have received a notice and you're invited to have coffee with them before session.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned until

Wednesday, May 6th, at 11:00 a.m. sharp.

(Whereupon, at 4:51 p.m., the Senate adjourned.)