NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:05 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask that everyone present please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: The invocation today will be given by Reverend Ronald Winley from the Church of the Evangel in Brooklyn.

REVEREND WINLEY: Let us pray. Creative God, Lord of the universe, we come acknowledging that You are our creator and because of You we live and move and have our being. We thank You, almighty God.

We come this morning on behalf of our political leaders and the political institutions of this great State with a request that You grant each one a double portion of knowledge, wisdom, compassion, understanding and courage. We ask this of You so that we may use the power entrusted to us to create the space for the good life that we all seek.

Renew in all of us, O magnificent God, that sense of awe and wonder and reverence and respect for this creation in which we are privileged to live and let that awareness be reproduced in our actions on behalf of all the people of this wonderful State. Move us in our thinking towards a new bottom line that incorporates our sense of morality and essence that these qualities and virtues have equal weight with our concerns for economics and politics; that, like You, we not be willing to allow any to perish, that all can flourish in this good life that we are permitted to create.

As we close out this millennium and this 222nd Legislature, prepare us to enter the next one. We are indeed posed to do great works, but it will take solidarity and trust, reconciliation and judgement, wisdom and courage, and goodwill for each other to make it a reality.

Grant us these blessings, O God. Help us to respect the diversity in Your creation and help us to advance the people of this State, where we have a history of using

our differences to dominate each other. Let us use our differences now to enhance each other.

Thank you, God, for allowing us to be co-creators with You in this grand project of life and continue to shape us through Your precious Holy Spirit. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, January 19th. The Senate met pursuant to adjournment. The Journal of Saturday, January 16th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BALBONI: Witho ut objection, the Journal stands approved as read.

Presentation of petitions.

Messages from Assembly.

Messages from the Governor.

Reports of standing committee.

The Secretary will read.

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

As a judge of the Chemung County Court, James T. Hayden of Elmira.

ACTING PRESIDENT BALBONI: The Chair recognizes Senator Lack to move the nomination.

SENATOR LACK: Thank you, Mr. President.

With pleasure, I rise to move the nomination, the confirmation of James T. Hayden, of Elmira, as a judge of the Chemung County Court.

Mr. Hayden, who is in our gallery with his wife, Jackie, has appeared before the Committee, his credentials have been examined by the staff of the Committee. Today he appeared before a meeting of the Judiciary Committee and was unanimously recommended by the Committee to the floor of the Senate.

And it is with great pleasure that I yield to a gravelly voice, but nonetheless-here Senator Kuhl, for purposes of a second.

ACTING PRESIDENT BALBONI: Chair recognizes Senator Kuhl.

SENATOR KUHL: Thank you, Mr.

President.

I was prepared to talk at length, but it appears as though, in all of your benefit, that my voice has disappeared. So leave it to say, it be said very quickly.

Jim Hayden brings a great deal of experience to the bench and I rise to second his nomination.

Thank you.

Sorry, Jim.

ACTING PRESIDENT BALBONI: The question is on the confirmation of James T. Hayden as judge of the Chemung County Court. All in favor, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Oppos ed, nay.

(No response.)

ACTING PRESIDENT BALBONI: James T. Hayden is hereby confirmed as judge of the Chemung County Court.

Congratulations, Judge Hayden, and Godspeed in your tenure. And to your wife, Jackie, too. Congratulations.

(Applause.)

ACTING PRESIDENT BALBONI: Secretary, will read.

THE SECRETARY: Also Senator Lack from the Committee on Judiciary reports:

Senate Prints 497, by Senator Seward, concurrent resolution of the Senate and Assembly;

709, by Senator DeFrancisco, an act to amend the Surrogates Court Procedure Act;

907, by Senator Skelos, an act to amend the General Obligations Law.

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

Senate Print 1031, by Senator Saland, an act to amend the Education Law.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 456, by Senator Volker, an act to amend the Tax Law.

All bills directly for third reading.

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

Reports of select committees.

Communications or reports from State offices.

Motions and resolutions.

SENATOR BRUNO: Mr. President, I believe that there is a privileged resolution at the desk by Senator Maltese. I would ask that the title be read and moved for its immediate adoption.

ACTING PRESIDENT BALBONI: Se cretary will read.

THE SECRETARY: By Senator Maltese, Senate Reso -- Legislative Resolution 139, mourning the death of Robert E. Cornell of Ridgewood, New York.

ACTING PRESIDENT BALBONI: All in favor of adopting the resolution, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Oppos ed, nay.

(No response.)

ACTING PRESIDENT BALBONI: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: I ask that we, at this time, adopt the Resolution Calendar, Mr. President.

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

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Opp osed, nay.

(No response.)

ACTING PRESIDENT BALBONI: The Resolution Calendar is adopted.

SENATOR BRUNO: Can we at this time take up the non-controversial reading of the calendar, Mr. President?

ACTING PRESIDENT BALBONI: Secre tary will read.

THE SECRETARY: Calendar Number 6, by Senator Volker, Senate Print 100, an act to amend the penal law in relation to criminal possession.

ACTING PRESIDENT BALBONI: Lay that bill aside.

THE SECRETARY: Calendar Number 9, by Senator Skelos, Senate Print 130, an act

to amend the criminal procedure law.

ACTING PRESIDENT BALBONI: Lay that bill aside, please.

THE SECRETARY: Calendar Number 11, by Senator Holland, Senate Print 256, an act to amend the penal law.

ACTING PRESIDENT BALBONI: That bill is laid aside.

THE SECRETARY: Calendar Number 15, by Senator Nozzolio, Senate Print 636, an act to amend the panel law.

ACTING PRESIDENT BALBONI: That bill is laid aside.

THE SECRETARY: Calendar Number 16, by Senator Maziarz, Senate Print 650, an act to amend the criminal procedure law.

ACTING PRESIDENT BALBONI: That bill is laid aside.

That completes the reading of the non-controversial calendar.

Senator Bruno.

SENATOR BRUNO: Can we at this time have the controversial reading of the calendar?

ACTING PRESIDENT BALBONI: Secre

tary shall read.

THE SECRETARY: Calendar Number 6, by Senator Volker, Senate Print 100, an act to amend the penal law.

SENATOR VOLKER: Mr. President -

ACTING PRESIDENT BALBONI: Senator Volker.

SENATOR VOLKER: Mr. President, first of all, this is a bill that passed last year by a vote of 57 to 3, and it involves an anomaly in the law that there has been a few number of articles about over the years, the difference between the sale of crack cocaine and marijuana.

The anomaly in the law is that a person can be -- can have in his possession, or in her possession, a considerable amount of marijuana with intent to sell, but because of the anomaly in the law, the penalty remains the low penalty of possession.

What this bill basically does is, is that it says that, if a person is in, has in its possession two ounces of marijuana and you can prove that there was an intent to sell, it moves the penalty up to a class E

felony. Technically, the possession could be just a misdemeanor. If you could prove possession with intent to sell, you move it up to a class E felony, which is the lowest felony with a potential sentence of 1 to 4.

Some of the New York City D.A.s have said that when, until you get to a felony, when you have an intent to sell, you have little control, frankly, over the cases. And, normally, they're just washed out. What this does is, is give the district attorney at least a handle on two ounces, for instance, plus of marijuana when it's an intent to sell.

ACTING PRESIDENT BALBONI: S enator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President, I would like to know if the sponsor would yield.

SENATOR VOLKER: Sure.

SENATOR MONTGOMERY: Senator Volker, the idea here, I presume, is to raise the criminality in relationship to the possession of marijuana.

Now, given the fact that we already have a problem with overcrowding in our

system -- and it seems to me that this goes in the opposite direction of where everybody else in the country or at least in a number of states are moving, and that is to move away from criminalizing the possession of marijuana and treating it as a hard, hard drug.

So do you, do you see that this is going to cause us, in the long run, more problems and is this not going in the opposite direction of where we would like to go, and that is changing the Rockefeller Laws to make more sense of our criminal justice system?

SENATOR VOLKER: First of all, this has nothing to do with the Rockefeller drug laws. This was never part of the Rockefeller drug laws. And, in fact, you could make an argument that, in effect, this works in reverse of what you just said. This is not possession. This is actual -- these are sellers. You could have people with large packages of marijuana in, you know, two-ounce bags or whatever, that clearly the intent is, is to sell, but because of the anomaly in the law, you can't charge them with a felony.

What this is designed to do is,

frankly, equate -- and the criticism, by the way, has been, if you have the same situation with crack cocaine, you can charge them with a B felony, not an E felony, a B felony, which is a much more severe felony charge.

What happens with most of these cases, in reality, by the way, is that they're pled out, if this person is not a major seller.

We do not have an overcrowding of minor offenders in our prison system. The ironic twist of it is that we have been driven to check our prison system over a little more closely. We are having a devil of a time finding all these non-violent felon people. There are in California and they are in a number of states, but we are having a difficult time. Remember, we have a Shock Incarceration System. We have a lot of things that we're doing to try to get people out of our system. We're having difficulty, though, filling our Shock incarceration classes because we don't have enough non-violent people to fill them. We're having great difficulties. There's this perception out

there that somehow there's this huge number of people.

But this bill is really designed to develop a process, a more rational process. This was kind of a -- the possession of marijuana, no one is trying to raise the penalty for the possession of marijuana. This is where you have somebody who is, in effect, a seller of marijuana. You've got to prove it, by the way. Just the fact that you possess it, doesn't mean that you can charge them with a, with a higher penalty. You have to prove it. You have to prove that there was an intent to sell. And the mere fact that you possessed two ounces or above does not generate the intent to sell. You still have to prove it. And that's what the charge is about.

So this does not have anything to do with Rockefeller drug laws. Rockefeller drug laws pertain to people in the higher categories. This, this situation here has nothing to do with Rockefeller drug laws.

ACTING PRESIDENT BALBONI: S enator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I want to thank Senator Volker for his explanation. However, I don't, do not accept it as valid in relationship to the issue that I'm raising, and that is that we are now going down this path to look at the possession and/or the intent to sell marijuana as a reason to incarcerate people, eventually, for long periods of time in our criminal, in our penal system. And we all know and we all now understand that this, this kind of statute has, essentially, wrecked our criminal justice system. We have tremendous overcrowding, we have tremendous inequity in sentencing and the number of years people spend for, because of these kind of statutes.

So I want to warn my colleagues on both side of the aisle that, certainly, we don't want to, to encourage people to use and sell drugs, but we also, certainly, don't want to put ourselves in a position where we have these kinds of statutes, these kinds of laws which, in fact, hurt us as it relates to fighting drugs and crime related to drugs as opposed to helping.

So I'm voting no on this, on this bill, Mr. President.

ACTING PRESIDENT BALBONI: Thank you, Senator Montgomery.

Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, I would ask if the sponsor would yield to a couple of other questions.

SENATOR VOLKER: Sure.

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR DUANE: Thank you.

Is there anything in the legislation which would enable a person to have a better opportunity to get into a treatment program as an alternative?

SENATOR VOLKER: Senator, I'm sure you're aware that legislation doesn't, in itself, provide treatment. But there's an interesting part of this. There is a theory, and I think a pretty good one, that, for some people, the only place they can get treatment is in jail, because these people won't really seek treatment outside.

We have some pretty good programs

in our prisons now. Not as many as we would like. And we would like to improve that and we're going to try to improve that. And, hopefully, when the conference committee process this year, we may well do that. But the truth is, for some people, the only place they'll get any real treatment is if they're incarcerated for a period of time.

By the way, I was just talking with my colleagues here, the sentence here is 1 to 4. If it's a pure 1-to-4 sentence, they would probably be out in about 6 or 7 months, or could be out, depending on the situation. Could be worse. This is a very low charge. In New York City, in particular, for instance, if this were a first-time offender, it would be an automatic, we call it a wash out, virtually, to a misdemeanor and would probably end up attempting to get somebody into some sort of treatment. This -- you have to be a multiple offender in the City before anybody pays much attention to you, for the most part.

One of the reasons they want to make this intent to sell a class E felony is because there are some people that believe

that you really can't force somebody to get some help unless you make it a felony and, and allow the system to deal with these kinds of people. And there's one argument that this actually may help to provide fewer people in the long haul into the system, if you're able to get people who are selling marijuana, but are only arrested for possession, off the streets and maybe getting some help for themselves also.

SENATOR DUANE: If I may make a comment before I ask my second question?

ACTING PRESIDENT BALBONI: Sure, Senator.

SENATOR DUANE: I bring -- I don't entirely disagree with your point on the encouraging of people to go into treatment. But my experience showed that due to, frankly, state budget cuts, that there was a severe diminution of availability of slots and alternative to incarceration programs in the City of New York. And, in fact, the City Council had to restore an enormous amount of money to replace the money which had been taken away by the State. And I feel that we

need to pay equal attention to alternatives to incarceration as we do to the potential to incarcerate people.

And if I may just ask my final question?

ACTING PRESIDENT BALBONI: Sena tor Volker, do you yield?

SENATOR DUANE: I'm also concerned because of the impact that this legislation would have on buyers clubs for marijuana, which, as you know, there is certainly a very compelling discussion taking place about the effectiveness of marijuana in treating certain diseases, like cancer and AIDS.

There has been a -

ACTING PRESIDENT BALBONI: Sena tor, Senator, may I just interrupt for a second now?

Would you please do me a favor? Would you address the Chair -

SENATOR DUANE: Yes.

ACTING PRESIDENT BALBONI: -- the stenographer is having difficulty recording your words of wisdom.

SENATOR DUANE: There is an increase in the number of buyers clubs in the State of New York to provide people who are suffering from, for instance, cancer or AIDS. And I'm very concerned about the impact of this legislation on the ability of those organizations which, whose intent is in no way a criminal intent to operate. And I think because of the, that reason and the reason I previously stated before about our need to also focus on alternatives to incarceration, I intend on voting no on this matter.

ACTING PRESIDENT BALBONI: Read the last section.

SENATOR VOLKER: Can I answer that?

I'll answer the question. The answer to the question is buyers clubs in New York of that nature are illegal. And so the only way that -- the impact, I think, would probably be negligible because they're illegal now, and if a person is arrested and is actually selling marijuana and they are subject to incarceration at the present time. And, in fact, if these buyers clubs have large

amounts of marijuana, this legislation will have little impact on them because they're already subject to even stiffer penalties. But I suppose it could have some impact if you have somebody in possession illegally who is intending to sell it, even though they claim that they're doing it for a legal, medical purposes, that's true, they could be subject to incarceration. But let me make it clear, there are buyers clubs, and I know there are some, they're illegal in this State, because we do not have any legislation that allows that type of activity to be legal.

ACTING PRESIDENT BALBONI: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, just briefly to comment on the bill.

I wanted to just follow up something Senator Volker said. I voted for this bill in the past. I'm going to vote for it again today.

But, Senator, you do point out one thing that is critically important for everybody to understand. And that is that it

is unfortunate, but some people, the only way they get treatment, is through the incarceration system. And the great danger, however -- and this comes from a study that was done by the Monroe County Bar Association in 1994, was that, unfortunately, that has a disproportionate impact of people of color, because what actually happens is, the treatment slots for people with addition, even though the drug use is about common among everyone in this country, everyone in this community, and certainly in the community of Rochester, what the study found was that, of available treatment slots, about 90 percent of those slots go to whites and 10 percent of them go to people of color. And the danger is that what's happening, Senator, is that our incarceration system is becoming the only source of treatment for a major portion of our State.

And I support this bill. I think that in some cases it may be the only way to get treatment. But underlying this is a serious question about access to treatment on demand for people that need it. And I would

hope that if we were going to attack the problem of addiction, we do it by recognizing that what we need is treatment on demand that can be uniformly applied to everyone, that everyone will have access for, to before they get in the criminal justice system. That's a much better way to deal with this problem in the long run, rather than rely on incarceration as the only hope for drug treatment for a major portion of our population.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 1st day of November.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53. Nays 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number

9, by Senator Skelos, Senate Print 130, an act to amend the criminal procedure law.

SENATOR SKELOS: Mr. President, this legislation would allow witnesses to testify out-of-court identifications of defendants by photographs.

ACTING PRESIDENT BALBONI: Read the last section. Oops.

Senator Sampson, why do you rise?

SENATOR SAMPSON: I'd like the sponsor to yield for a couple of questions.

ACTING PRESIDENT BALBONI: Se nator Skelos.

SENATOR SKELOS: Absolutely.

SENATOR SAMPSON: Do you, Mr. President, does this bill in any effect circumvent the weight hearing that takes place before pretrial?

SENATOR SKELOS: This is presently allowed in the federal government and also in 49 other states, weight hearings would be available plus notice to the, to the defendants' attorneys that they intend to use this type of identification.

ACTING PRESIDENT BALBONI: Read

the last section.

THE SECRETARY: Section 5, this act should take effect on the 1st day of November.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: Bill is passed.

THE SECRETARY: Calendar number 11, by Senator Holland, Senate Print 256, an act to amend the penal law.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT BALBONI: Sen ator Holland.

SENATOR HOLLAND: Yes, Mr. President.

This bill amends the penal law to require a person who is out of prison on parole and who subsequently is convicted of another felony while still on parole be required to serve out the maximum sentence of the original felony before beginning to serve

the sentence for the second felony.

ACTING PRESIDENT BALBONI: Sena tor Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, I'd just like to ask a clarification question.

ACTING PRESIDENT BALBONI: Se nator Holland.

SENATOR HOLLAND: Yes, sir.

SENATOR MONTGOMERY: Senator Holland, what is the lowest level of felony that could trigger the re-incarceration of a person?

SENATOR HOLLAND: The bill does not break it down by levels of felony. It just says a felony.

SENATOR MONTGOMERY: So it's absolutely any level.

Mr. President, one other question.

Could you explain now, specifically, what is the extent of lengthening of time that this bill would, would require?

SENATOR HOLLAND: Extent?

SENATOR MONTGOMERY: Yeah. How much more time?

Can you give me an example of -

SENATOR HOLLAND: I cannot. I'm sorry. I cannot, Senator. It depends on how much time is left on the sentence, what the Parole Board decides.

SENATOR MONTGOMERY: So, in other words, the, the, the person would serve out the balance of their time -

SENATOR HOLLAND: Yes, first parole.

SENATOR MONTGOMERY: -- from the first offense -

SENATOR HOLLAND: Right.

SENATOR MONTGOMERY: -- and then begin at that point a new time for -

SENATOR HOLLAND: The second felony.

SENATOR MONTGOMERY: -- the second felony?

SENATOR HOLLAND: Yes, that's true.

SENATOR MONTGOMERY: All right. Thank you for that clarification.

ACTING PRESIDENT BALBONI: Se nator Duane, why do you rise?

SENATOR DUANE: Mr. President, I would ask if the sponsor would yield to another question.

ACTING PRESIDENT BALBONI: Senator Holland.

SENATOR HOLLAND: Yes, Mr. President.

SENATOR DUANE: Am I right in assuming that this bill takes away some of the discretion which a judge could have in sentencing?

SENATOR HOLLAND: Yes. If someone has been paroled and has been out on parole and commits another felony, the judge would not have the right to eliminate the remainder of the first sentence.

SENATOR DUANE: Thank you. That's of concern to me, Senator, but thank you.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 6, this act shall take effect on the 1st day of November.

ACTING PRESIDENT BALBONI: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53. Nays 2. Senator Duane and Montgomery recorded in the negative.

ACTING PRESIDENT BALBONI: Bill is passed.

THE SECRETARY: Calendar Number 15, by Senator Nozzolio, Senate Print 636, an act to amend the penal law.

ACTING PRESIDENT BALBONI: The bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 16, by Senator Maziarz, Senate Print, 650 an act to amend the criminal procedure law.

ACTING PRESIDENT BALBONI: Se nator Maziarz, an explanation has been requested.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, this legislation expands the statute of limitations for prosecutions of class B violent felonies from 5 to 10 years.

Presently, there is a 5-year

limitation within which charges must be filed against a suspect accused of a class B violent felony. Class B violent felonies include rape in the first degree, sodomy in the first degree, kidnapping in the first and second degrees, attempted murder in the first and second degrees and criminal use of a weapon in the first degree.

The current law ties the hands of law enforcement officials, who, after years of trying to solve a crime, may not get a break in the case until after the 5-year statute runs out.

In Western New York, there is currently a very horrific example of an individual who has raped, the same individual who has raped at least eight women. And through recent news articles, Senator Volker Senator Rath and myself were extremely disturbed that this individual could not, if he were caught today, could not be prosecuted for six of those eight rapes because the statute of limitations has run out. And yet DNA testing proves, beyond any reasonable doubt, that the same individual is responsible

for all eight of these particular crimes.

This bill was first introduced by myself in 1995. It passed the Senate at that time with 14 negative votes. Subsequent to that, we made some changes, working with the District Attorneys Association of New York State, particularly two district attorneys, Frank Clark, of Erie County, and Matt Murphy, of Niagara County, and we amended this bill, which, during the debate in 1996, Senator Paterson commented that he thought that the bill looked excellent now.

So, I mean, even, it even has Senator Paterson's endorsement. What more could you ask for?

ACTING PRESIDENT BALBONI: S enator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes. Mr. President, I just want to thank the sponsor for a very good explanation. I understand it now and I'll be voting for the legislation.

ACTING PRESIDENT BALBONI: Nice job, Senator Maziarz.

Read the last -

SENATOR MAZIARZ: I think it was

Senator Paterson's endorsement that won them over, though. I really do.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2, this action will take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT BALBONI: Bill is passed.

SENATOR VELELLA: Can we return to Number 15 now, Senator Nozzolio's bill?

ACTING PRESIDENT BALBONI: Secre tary will read.

THE SECRETARY: Calendar Number 15, by Senator Nozzolio, Senate Print 636, an act to amend the penal law.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 1st day of November.

ACTING PRESIDENT BALBONI: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53. Nays 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT BALBONI: Bill is passed.

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

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

ACTING PRESIDENT BALBONI: Senat or Stachowski, why do you rise?

SENATOR STACHOWSKI: Mr. President, even though you didn't show up for tennis this morning, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enabling clause:

Senate 370, for Senator Krueger.

ACTING PRESIDENT BALBONI: Enabl ing clause?

SENATOR STACHOWSKI: Enacting clause.

Sorry. I cannot read anymore.

ACTING PRESIDENT BALBONI: Okay.

SENATOR STACHOWSKI: That's because I'm tired from getting up for tennis.

ACTING PRESIDENT BALBONI: I was prepping on the right words this morning for you.

So ordered.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping at the desk?

ACTING PRESIDENT BALBONI: No, there is not.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, in consultation with the Minority Leader, I hand up the following minority committee assignments and leadership position and ask that they be filed in the Journal.

ACTING PRESIDENT BALBONI: It will be filed in the Journal.

SENATOR SKELOS: There being no further business, I move we adjourn until Monday, January 25th, at 3 p.m., intervening days being legislative days.

ACTING PRESIDENT BALBONI: The

Senate stands adjourned until January 21st at -- 23rd at 3 p.m, intervening, intervening days being legislative days.

(Whereupon, at 11:40 a.m., the Senate adjourned.)