NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 20, 1999

3:05 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

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

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

ACTING PRESIDENT MEIER: The invocation will be given by the Reverend Robert W. Dixon of the Mount Calvary Baptist Church in Albany.

Reverend Dixon.

REVEREND DIXON: Let us pray.

Eternal God, we thank Thee for this day and all of the many blessings Thou hast bestowed upon us as Your children. We thank You for the members of this Senate, their families and their constituency. We pray that as they assemble to do business of this state, You might help them to be compassionate, understanding and mindful of the citizens of New York and their needs.

There are those within our state that are in need of a sound educational

system, along with those who are less fortunate than we that are in need of support for their families and an opportunity to be a part of this society.

We pray that whatever these Senators do, they might be mindful of what You might desire them to do.

Bless their leadership, and bless each member that they look forward to this beautiful day that Thou hast given us. At the end of the day, may they be able to say "May the works I've done speak for me."

In His name we pray. Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 19th, the Senate met pursuant to adjournment. The Journal of Friday, April 16th, was read and approved. On motion, Senate adjourned.

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

Senator Bruno.

SENATOR BRUNO: Mr. President,

can we ask for an immediate meeting of the Racing and Wagering Committee in the conference room.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Johnson, please remove the sponsor star from Calendar Number 44.

ACTING PRESIDENT MEIER: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President,

on page number 36 I offer the following amendment to Calendar Number 36, Senate Print Number 1031B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendment is received, and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on page number 11, I offer the following amendments to Calendar Number 236, Senate Print Number 2475, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendment is received and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on page number 34, I offer the following amendments to Calendar Number 599, Senate Print Number 4266, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendment is received and the bill will retain its place on the Third Reading Calendar.

SENATOR BRUNO: Are there any substitutions there at the desk?

ACTING PRESIDENT MEIER: Yes, there are.

The Secretary will read.

SENATOR BRUNO: Can we please take them up at this time.

THE SECRETARY: On page 16, Senator Leibell moves to discharge from the Committee on Civil Service and Pensions Assembly Bill 4062 and substitute it for the identical third reading, 343.

On page 18, Senator Marcellino moves to discharge from the Committee on Consumer Protection Assembly Bill Number 1367A and substitute it for the identical third reading, 375.

On page 23, Senator Larkin moves to discharge from the Committee on Racing, Gaming and Wagering Assembly Bill Number 7503 and substitute it for the identical third reading, 452.

On page 33, Senator Meier moves to discharge from the Committee on Investigations, Taxation and Government Operations Assembly Bill 5843 and substitute it for the identical third reading, 587.

On page 34, Senator Farley moves to discharge from the Committee on Civil Service and Pensions Assembly Bill 3565 and substitute it for the identical third reading, 593.

On page 4, Senator DeFrancisco moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 1937 and substitute it for the identical Senate third reading, 601.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time adopt the Resolution Calendar, with the exception of Resolution 1061.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar, with the exception of Resolution 1061, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Resolution Number 1061, ask that it be read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 1061, memorializing Governor George E. Pataki to proclaim April 24, 1999, as "Armenian Martyrs' Day" in New York State.

WHEREAS, It is the sense of this Legislative Body to urge Governor George E. Pataki to proclaim April 24, 1999, "Armenian Martyrs' Day" in New York State; and

WHEREAS, This proclamation arises from a sense of human decency and respect for the Armenian people and their history;

Towards the end of the 19th century, the Turkish Government began to systematically persecute their citizens of Armenian heritage;

From 1894 to 1896, Sultan Abdu-Hamid II ordered the massacre of 300,000 Armenians living within the boundaries of the Turkish Empire;

In 1909, 30,000 more Armenian men, women and children were slaughtered by Turkish armies in the mountain village of Cilicia;

Nonetheless, by the onset of World War I, there still remained 2,500,000 Armenians who made their homes within the Ottoman Empire; of these, over 250,000 were faithful soldiers who loyally fought within the ranks of its armies in an effort to defend their homeland;

On April 24, 1915, hundreds of Armenian religious, political and intellectual leaders were rounded up, exiled and eventually murdered in secret death camps hidden in mountainsides;

Over the course of the next six months, the Armenian soldiers on active duty

in the army were disarmed and placed in forced labor battalions, whereupon many either starved or were executed behind the fences of these camps;

Deprived of their leaders and the young men who could defend these helpless communities, the remaining Armenians became an easy target for the government raids and found themselves at the mercy of cruel and often barbaric persecutors;

A total of 1,500,000 Armenian men, women and children were massacred, 500,000 more were exiled, and 500,000 were able to escape the reign of terror and establish themselves in new foreign lands; as a result, today there are only 100,000 people of Armenian heritage left residing within the borders of modern Turkey;

The Armenian people have been denied the right to self-determination on their ancestral lands; they have received no form of reparations for their tragic losses;

WHEREAS, Members of the Armenian community honor the memory of the victims of this genocide and emphasize that crimes

against humanity must be condemned and never be allowed; now, therefore, be it

RESOLVED, That this Legislative Body pause in its deliberations to urge Governor George E. Pataki to proclaim April 24, 1999, Armenian Martyrs' Day in New York State; and be it further

RESOLVED, That this Resolution is intended to counter the tide of revisionist history that purports that the Armenian genocide never took place; and it be further

RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to Rouben Shugarian, Armenian Ambassador to the United States, and to Movses Abelian, Armenian Mission to the United Nations, to the Chairman of the Board of the Armenian National Committee, to each member of the U.S. House of Representatives from the State of New York, to each U.S. Senator from the State of New York and to the President of the United States.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, I have the honor to introduce gentlemen who

are with us today representing the Armenian people.

First and foremost, the Very Reverend Anoushavan Danielian, the Vicar General of the Armenian Apostolic Church of the United States.

Dr. Ara Caprielian, of the Armenian National Committee of New York.

Mr. Henrig Boudakian, of the Armenian National Committee; and Deacon Shant Ardijian.

They are present with us today for this moment of memoriam. I would ask them to stand.

They have come here today to commemorate the passage of this resolution, which is a permanent part of the state's archives, and to bring further attention on the Armenian genocide. This commemoration of this day is something that has been done in prior years but has a significance completely relevant in today's history as we read our daily papers.

Had nations come forward on April 24th of 1915, perhaps no further

holocaust or genocide might have taken place.

The Armenian people cry out not for vengeance but for justice and for memorialization of the 1½ million Armenian people who perished in the years from 1905 to 1924.

This day is a particularly significant day for us here. I thank and welcome, on behalf of my colleagues in the Senate, Father Danielian and his representatives and ask for passage of the resolution.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, I want to congratulate Senator Maltese on this initiative. It couldn't be more timely. And it couldn't have more significance, not only in terms of their presence here today, but of what it signifies and exemplifies to the people of this world as we experience another episode of ethnic cleansing over in Yugoslavia of the Kosovars, this same mindless destruction of people.

The Papazian Pharmacy, the

proprietor of which is a good friend of mine, his grandfather and his grandmother managed to be one of those half million that did get away. But millions of them were massacred, massacred. It strikes resonance with what is happening over there today. And yet we hear from people occasionally, "Well, it doesn't affect us." There is no real personal interest.

But when anyone is harmed and when anyone suffers that kind of injustice and we can document it as dramatically as these gentlemen can, in a most exact way, it makes a big difference. And we can't be indifferent to it. It ought to teach us a very valuable lesson, that when those occasions do arise and we can identify it with precision, that we have a moral obligation there.

I think all of us here can identify with you, freshened as we are -- we ought to be reinforced by the suffering that you've endured. Yours is a very talented people. Some of our most prominent people in American public life are descendents of those who came and joined us, in academia and in other

enterprises.

But I'm -- I certainly feel that this is a very appropriate occasion to have this resolution before us. And know that you leave with the sentiments and the support of the people in this chamber and the people that we represent, that we can identify with your pain, with your difficulties, and those that your forebears endured.

And earnestly hope and pray and that we all should support, with our efforts, the avoidance of a repetition of that sorry chapter in history which manifested itself again in so many different ways, especially during World War II.

So again, Senator Maltese, you led the way for me, because you asked me if I would want to join you in the resolution. I'm very happy to do it, very happy to profess to you my sympathy for what has happened and our pleasure and honor that we feel for you, and we feel that there is a moral commitment that goes with it.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yes, Mr. President.

I also want to commend Senator Maltese and echo the sentiments of Senator Maltese and Senator Marchi. This resolution is an excellent resolution. It is a nonpartisan resolution, and I hope it will be opened up to every member of the Senate to participate.

Very briefly, when this ethnic cleansing took place in the first generation of the 20th century, there was no television, there wasn't even any radio, and newspaper reporters had great difficulty in searching out and finding what took place. It is only through historical analysis were we able to understand the dimensions of the great tragedy that took place to the Armenian people.

And I think it is indicative that if we had opened our eyes at that time, perhaps other tragedies would not have occurred.

So I would like to go on this resolution as a cosponsor. I think it is especially, as Senator Marchi and Senator

Maltese have said, most important because of what is taking place today in the world. And this is one of the most important nonpartisan resolutions that this chamber can adopt.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, in view of the remarks by my good colleagues Senator Lachman and Senator Marchi, and the wishes of many other members that have spoken to me, I would ask that it be opened up to all members of the Senate.

ACTING PRESIDENT MEIER: In keeping with our usual custom, the resolution is open to all members. Those who wish not to be on the resolution should notify the desk.

Sorry, Senator Dollinger.

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

I commend Senator Maltese, Senator Marchi, and Senator Lachman for their remarks, and to our friends from Armenia.

The 20th century will be known for many things. An era of tremendous technology. The brilliance of not only America's spirit

but the spirit of the entire world, a world of technological advances we could never have imagined.

What is so disappointing in remembering the massacre is that at the dawn of this century, the intolerance that one man has felt for another was a part of our culture, a part of our planet. And yet here we are at the end of this wonderful technological century, a century in which we've reached for the stars and actually gotten there, that we still have to deal with the issues tucked in the human heart of hate and intolerance.

And the unfortunate reminder of your experience is one that we should carry with us into the next century, when again we'll have that tremendous opportunity to perhaps reach the fullness of the human heart and still have to fight the issues of intolerance and hatred which have led not only to Armenia but to the killing fields of Cambodia, to the slaughter of the Kosovars and the slaughter of the Jews in World War II and all the other ignominies of this century.

It's one of the great conundrums, Mr. President, that we can't resolve today and may never resolve, that we can reach so high with our minds and produce such wonderful machines and such tremendous achievements and at the same time we can't eradicate that depravity in the hearts of some that leads them to mindless slaughter.

Your history is a reminder to us of the challenge of the future.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time have the noncontroversial reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial

calendar.

THE SECRETARY: Calendar Number 182, by Senator Volker, Senate Print 1912, an act to enact the Criminal Procedure Law Reform Act of 1999.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 231, by Senator Libous, Senate Print 2088, an act to amend the Real Property Tax Law, in relation to including.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 243, by Senator Spano, Senate Print 3315, an

act to amend the Workers' Compensation Law, in relation to premium payment plans.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I have no objection to this bill. I just rise because I think when the issue of the State Insurance Fund comes up, I would strongly recommend that at some future time in this chamber we look at the issue of privatizing the State Insurance Fund, get it off the books, look at it as unfortunately a system that was once utilized as an insurer of last resort but has now become a government-sponsored competitor of all kinds of insurance companies that are in the business of selling workers' compensation insurance.

I hope at some point we get to that point. I'll vote in favor of that bill. But I hope we look to that idea at some time in the future and we won't have to influence or pass bills affecting the State Insurance Fund because it will be a separately owned, privatized business.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 332, by Senator Bonacic, Senate Print 3661, an act to amend the Private Finance --

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 395, by Senator Skelos, Senate Print 969, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 454, by Senator Wright, Senate Print 3404, an act to amend the Vehicle and Traffic Law, in relation to the suspension.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you very much.

I'm rising to vote in the negative on this legislation. I'm very concerned that removing the registration from a family-owned car would impact a person that actually hadn't done something wrong -- for instance, the

spouse in a family -- and that this penalty is too harsh.

And while I understand you could appeal to the Commissioner to get the registration back, that's a long and cost-intensive process.

And I basically just believe that it's too harsh on the family in its entirety to have the whole family punished for the misdeed of one member of the family which would cause the registration to be pulled.

And therefore, I'm voting no.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 52; nays, 2. Senators Duane and Schneiderman recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 455, by Senator McGee, Senate Print 3874, an act to amend the Alcoholic Beverage Control Law --

SENATOR BRUNO: Lay it aside for

the day, please.

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

THE SECRETARY: Calendar Number 479, by Senator Maltese, Senate Print 794, an act to amend the Election Law, in relation to political committees.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 497, by Senator Balboni, Senate Print 4014, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 517, by Senator LaValle, Senate Print 1197, an act to amend the Executive Law, in relation to population requirements.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 521, by Senator Stafford, Senate Print 3647, an act to amend the Executive Law, in relation to reports by registered charitable organizations.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53; nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 522, by Senator Rath, Senate Print 3691, an act to amend the Executive Law, in relation to statewide computerized registry.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Volker, Senate Print 111A, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53; nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 556, by Senator Stavisky, Senate Print 3289, an act to amend the Penal Law in relation to increasing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno, that completes the

reading of the noncontroversial calendar.

SENATOR BRUNO: Thank you, Mr. President. Can we at this time take up the controversial calendar.

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

THE SECRETARY: Calendar Number 182, by Senator Volker, Senate Print 1912, an act to enact the Criminal Procedure Law Reform Act of 1999.

SENATOR DOLLINGER: Explanation, please, Madam President -- Mr. President.

ACTING PRESIDENT MEIER: Put your glasses on, Senator Dollinger.

Senator Volker, an explanation has been requested of Calendar Number 182 by the very nearsighted Senator Dollinger.

SENATOR VOLKER: Mr. President, this is a bill that -- which is known as the Criminal Procedure Reform Act of 1999. It passed in 1998 as the Criminal Reform Procedure Act of '98, '97, '96.

Just so that everybody knows, in '96 it passed by a vote of 47 to 10. In '97,

49 to 10. And then last year, we retreated a little bit and it passed by a vote of 47 to 14.

You know, whenever I look at this legislation, so that you understand it -- and I think for lawyers it is -- it is, I think, more understandable to us than it would be to the nonlawyers. It always, when I look at this, I think of the law, when I went to law school. And some of the people who were defense-oriented at the time said, "Well, you know, the law's a game. It's a game where the prosecution plays one hand and then the defense covers another hand and then the judges are sort of the referees. And then they come up with -- make sure that the rules of the game are played."

Fortunately, in this state, the rules of the game have been pretty well set out by this Legislature and by the Constitution -- the national Constitution, the U.S. Constitution, the state Constitution.

Unfortunately, for about the last ten years, the Court of Appeals of this state has been rewriting the rules as the cases

proceed. So that a number of cases have occurred where it simply appears that because of what could be termed untoward situations that do not directly affect the question of whether the person is guilty or innocent, have occurred that have allowed some very outrageous results to occur.

And as a staffer said to me last year, he pointed out, and he pointed out rightly that in one of the cases that involved an arrest in the street, that there was some genuine question that maybe you're unaware of when you read the case as it is reported, because there was something in that case that was different from the way it was reported and may have impacted on the judges.

The only problem with that theory is, the case then became a standard for future cases. And people who were clearly guilty of rather serious crimes were then able to escape justice because that case became the standard.

There is a series of changes in this bill that relate to the way in which prosecutions move forward. This is the, I think, rather famous -- many people, I think,

know about the famous Ranghelle case, the O'Doherty situation.

It seems to me, though, that the change -- that in one way this bill would change, which is -- may be the most outrageous, relates to the right to be present at any part of a trial. Which means, you know, the jury selection and all the rest of those sort of things.

One of the cases that's a standard for this in effect threw a case out because the defendant wasn't present in the robing room when it was testified to at the appeal the jurors discussed something that had to do with the case which had absolutely nothing to do with the conviction. But because in the robing room the defendant wasn't present, the Court of Appeals threw the conviction -- I believe it was for robbery -- out.

In another case where the defendant was actually present but walked out of the room -- to go to the men's room, if I'm not mistaken -- his attorney was present when there was a discussion. After the conviction, the attorney moved to have the case thrown out

because the defendant wasn't present, actually present at the time that there was some sort of discussion which admittedly, apparently, by the defense attorney probably had no impact on the case at all, since the two jurors were dismissed and weren't even part of the final case.

I mention that because those are the kind of things that have occurred here that have created, I think, enormous injustice in our system.

One other reform here that is not often talked about is the so-called Moquin case. And I hate to be quoting cases, but this is a case where the judge threw out a second-degree murder conviction -- or not conviction, a second-degree murder indictment case and left some minor charges on the case available. The district attorney immediately appealed and got the -- within a few days, got the dismissal restored to the calendar because the court looked at what had been done and said that was not correct.

The smart defense attorney, in the meantime, runs into court, pleads guilty to

the minor offenses, and gets sentenced to a nonjail term. And because of the issues of double jeopardy and the issues, the way the court -- the way the law stands, could not even move the much more serious matter, obviously, of murder. And the fellow was able to escape any prosecution on the issue of murder.

There's several other parts of this relating to O'Doherty. O'Doherty stands for the issue that the prosecution must notify the defense within 15 days of arraignment of its intent to offer any statements.

Well, that should stay. The only problem is, several cases have been thrown out because the prosecution later found out that there were statements that they weren't aware of, and when the -- in fact, the defendant even allowed the -- agreed to the statements and agreed to the timing.

The appeals court threw them out on the basis of the fact that they weren't produced or they weren't notified 15 days prior to the trial, even though the district attorney wasn't even aware that they were

available at that time.

And there was no evidence, by the way, that that delay caused undue problems for the defendant; that is, that it had anything to do with his ultimate conviction for the crime involved.

So a number of these provisions, by the way, it has been apparently admitted by several judges in the Court of Appeals, does something kind of fascinating, and that is says that the New York Constitution, which is identical in virtually every case to the federal Constitution in its wording, has stronger provisions in it than the federal Constitution has, and in fact does things which no other state in the union do as far as changes in the criminal law.

So basically, that's an outline. I mean, there's a series of provisions here that this bill provides. But I think in reality -- and I am not one of those people who believes that we should unduly burden defendants, because I think we have to give them every opportunity to make their case. But I really think that the game theory of criminal justice

has got to cease and that we've got to bring some sort of sanity back into the criminal justice system.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would the gentleman yield to a question or two?

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Absolutely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR WALDON: Senator Volker, when you began your explanation, most regrettably I was out of the room. So I just want to make sure that I'm on the same page with you.

The only change in what we're considering today and what we considered last year was the number switch?

SENATOR VOLKER: Exactly.

SENATOR WALDON: And so basically this is the same bill as we're revisiting from last year?

SENATOR VOLKER: Essentially there's -- I don't -- there may have been -- there's no substantive changes. If there's any changes, it would be if the law -- if there's some text changes or something. But there is no substantive changes. This is the same, identical bill as the bill that was passed here in '98 -- essentially in '97 and '96 -- yes.

SENATOR WALDON: It's a perennial.

SENATOR VOLKER: Yeah.

SENATOR WALDON: If I may continue, Mr. President, would the gentleman continue to yield?

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: He yields.

SENATOR WALDON: Thank you, Mr. President.

Senator, I'm intrigued by the ability of police officers to testify to identifications which historically, under our

system, have only been made by persons who are true witnesses to the accident.

Can you tell us how the police officer substantiates his continuing awareness of the identification? Is it by memo-book entries, is it by the UF40 forms, or just by his personal recollection?

SENATOR VOLKER: Well, the way -- Senator, I think what you're talking about is that there have been a number of cases that have been thrown out because the witness, and in several cases the police officer, was unable to identify the person at the trial because that person had changed their appearance or had done something that -- or the lapse of time, in certain cases.

But in every case, the -- there had to be a witness statement specifically identifying that person or that person had to have been previously identified.

In other words, there's no way that you could just say, "Well, that's the person, because I said it was the person before." You either had a lineup or something of that nature.

I think, Senator, you realize -- I know you do -- that -- and I dealt with defendants myself who deliberately changed their appearance or attempted to change their appearance, sometimes to escape prosecution but then, after prosecution, sometimes to escape identification.

And the problem then would become as to whether somebody who had already identified them would be in a position to -- you know, the defense attorney then attempts to say, "Is this the guy?" And the person, if he or she is truthful, may have to say "It doesn't really look like the fellow that I identified, but if that's who that is, I have previously identified him as the person. And the fact that he's changed his appearance and so forth, that's still -- I believe he's the person, and here's the evidence to show that I had previously identified him."

That's true, and that's what this bill would provide, even though what's happened is that a number of these cases have been thrown out because the witness could not later, at the trial, then say that was exactly

the same person because of the change of identity.

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: I apologize, Senator Volker. I'm still a bit confused -- not unusual for me, but still a bit.

I'm trying to understand specifically when and how the police officer, if that is the case, can step in and replace the actual witness to the event and say "Yes, I heard the witness say he's the one." If you can edify me in that regard, I can go on to the next point.

SENATOR VOLKER: The problem with that is you're talking about the potential for hearsay. Even under this bill, if the only identification to be used, I believe, was the police officer saying that that witness said verbally "Yes, that is the person who

committed the crime," and there's no written statement and no other potential identification, it would be very, very difficult to maintain -- in fact, virtually impossible, I think, even under this bill, to maintain a conviction.

Because you know the way lineups work. The person identifies someone in the lineup, and there's a procedure that's followed to specifically identify that person. Traditionally, there's a statement taken that that person was identified, and the description.

The problem that has occurred is where the person then later on, after making that identification, then cannot identify that person at the trial -- or in some cases I suppose it would be at pretrial -- as the same person that they identified in the lineup, because it may be that they changed their appearance, it may be a couple of years later. There's all sorts of things.

So I think -- at least that's my opinion -- I think what you're saying is -- is an evidentiary issue. But if it's just the

police officer saying that "This person told me that's him," I don't think that that's probably enough to -- for instance, under this bill, it would be an evidentiary issue anyway, because the judge would probably throw it out.

But I think that what the case that you're talking about represented was really something, at least in my recollection, is something more, where there was an absolute identification but the person later can't identify that person because they changed their appearance or whatever.

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

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Sure, yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Senator, this is the Criminal Procedure Law Reform Act of 1999.

SENATOR VOLKER: Mm-hmm. Yes.

SENATOR WALDON: "Reform," as I understand it, normally indicates that you're

really reforming something, you're changing it, making great change; all parties participating should have some benefit inured to themselves.

From what I see here, this is very one-sided. This is prosecutorial-friendly. Should not there have been some balance, if we're going to have a reform act in regard to our criminal procedure laws?

SENATOR VOLKER: Senator, I think the thing -- I think the problem here relates to this. We're not -- we're changing the law only in relation to how the Court of Appeals has interpreted the law.

It is my contention, and I think the contention of the Governor, that the Court of Appeals has reinterpreted the law that this Legislature passed.

Just as, for instance, several years ago we were late in one of our budgets because the Court of Appeals passed -- the court passed a case five days before we were ready to do the budget that -- called the Bankers Decision. It threw us into chaos. And we'd been doing budgets for a hundred

years the same way, and the Court of Appeals said, "No, that's the wrong way, and you've got to do it altogether different." We're still struggling with that, because it's created havoc. And this is another year where it's created havoc for us.

I think what this -- what the reform is -- and "reform" may be bad language, and I'll be the first to admit it to you. What we're trying to do is bring some sanity back into the criminal justice system.

We're not saying, by the way, that if something is wrong with the prosecutor's case, if they have made an error that impacts on the defendant and actually would allow a conviction that is unjust, that should -- that will continue -- the Court of Appeals will continue to be able to throw that case out.

But if the defects that are used have nothing to do with the actual conviction and in fact do form over substance, then what we're trying to do, I think, in this legislation is say this only makes sense.

What this does is to get the law back to what it's supposed to be. And that

is, a trial is a case where you make your proof, the defense brings in its side of the case, and a jury gets to decide based on real evidence, not on some questionable decision that somebody, for instance, in a robing room didn't stand there and listen to two jurors who were dismissed anyway.

SENATOR WALDON: Thank you, Senator.

If I may, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon on the bill.

SENATOR WALDON: When we look at this proposal from Senator Volker on behalf of the Governor, there's no normal nexus to what happened with Amadou Achmed Diallo. But when we look at the social indications of that act in the Bronx and a bill of this nature, they both are heavy-handed.

Obviously, when 41 shots are fired at someone who's unarmed, even if it's on a dark street in the Bronx, it is heavy-handed. When 19 of those shots hit the person, killing him, I'm sure, instantly, it's heavy-handed.

I think putting the law down on the side of the prosecutor so overwhelmingly as this would accomplish is heavy-handed. I think the signal that it sends to the community at large is that those who are in charge of the criminal justice system will be allowed to be even more efficient at establishing what they're doing now, which is the arrest, prosecution, and the incarceration of people and the explosion of our prison population in upstate New York.

I don't think we should support this. I don't think there's a need at this moment in our history to be so heavy-handed.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Madam President -- or Mr. President, again, would Senator Volker yield to one other question?

ACTING PRESIDENT MEIER: Senator Volker, do you yield to a question from Senator Dollinger?

SENATOR VOLKER: Absolutely.

SENATOR DOLLINGER: Senator, are

you familiar --

ACTING PRESIDENT MEIER: Wait, wait, Senator Dollinger.

Senator Volker, do you yield?

SENATOR VOLKER: Yes, I do. I do, I do.

ACTING PRESIDENT MEIER: Senator Volker yields, Senator Dollinger.

SENATOR VOLKER: I do, I do, I do, I do, yes. Go ahead.

SENATOR DOLLINGER: Senator, the Ranghelle rule, could you explain to me how that would affect it? Are you familiar with the circumstances of the Betty Tyson case in Rochester?

SENATOR VOLKER: Betty Tyson. I guess -- I guess I'm not familiar with the Betty Tyson case, no.

SENATOR DOLLINGER: Through you, Mr. President.

Betty Tyson is a woman who was just recently freed from prison after being in jail for 28 years because she had been convicted of a murder. And the reason why she was freed from prison is because, after 28 years, a

lawyer and an investigative reporter figured out that there was a statement that the prosecution had available from one of her accusers in a late-night murder -- as I'm sure Senator Volker can appreciate, one of those tough cases: a late-night murder, allegations of prostitution, a black woman charged with murder, murdering a white Kodak executive, a black man accused in 1972 of being her accomplice to that.

The statement that was withheld was a statement of identification of witnesses and others who were at the trial.

My only question is, Mr. President -- I've voted in favor of this bill in the past. But the way I read what happens here is that Betty Tyson would not go free if this rule were in place. And I'm just trying to find out whether that's the case, if the change that you're seeking, would it affect the decision that set her free 28 years later.

SENATOR VOLKER: If what I understand about the Tyson case is correct, and that that statement could have had an impact on the trial itself had it been entered

into evidence, and the question was was it known at the time that that statement existed, then I don't believe that this change would have any impact, because it could have had a substantial impact on the trial itself.

And therefore, nothing in this reform would change that, because it would still stand as a potential piece of evidence that could have changed the course of the trial.

And therefore, if it was withheld -- and especially, I guess if it was withheld with knowledge -- then that would be something that would still be -- even if this bill passed would still be, it seems to me, the basis for a new trial.

SENATOR DOLLINGER: Thank you, Mr. President.

And thank you, Senator Volker, for a candid explanation.

I have voted for this bill in the past. I'm not going to vote for it this year because of the potential in the Ranghelle decision and the potential that it would unfortunately lead to, I think, something that

Senator Volker has discussed, which is the potential for prosecutorial misconduct and for prosecutorial nondisclosure of information.

The Betty Tyson case involves a woman who spent 28 years in the state prison system. She was the longest-held prisoner in the state of New York. She was convicted in a very difficult case, in a very highly publicized case, in the kind of case that creates tremendous pressure on prosecutors to come up with a conviction. And what was not given to her defense counsel was a statement from a witness that would have questioned the identification of Betty Tyson at the scene.

And what happened in that case is that she was convicted. Her name is nowhere included in the cases that Senator Volker is trying to overrule. Her name is not in there because she never had a chance to contest that, because she didn't know.

And while some may look at all the cases that are cited here as instances of people who got away with something because of technicalities, I look at them and see people for whom the government either didn't comply

with the law or, in a stretched interpretation of our Constitutional rights, the government said -- the court said that the government had exceeded their power.

Today Betty Tyson is a free woman. But she can never, ever be given back the 28 years that she spent in prison. John Duval, who was also convicted of the same crime, is also a free man. He was another man, a black man charged with the murder of a white man in 1972.

And even as I say those words, it would be tempting to look back and say that was another time, that was a long time ago. You're right, it was a long time ago. It was a long time to be in prison falsely convicted or unlawfully convicted of a crime.

And I would just suggest, Mr. President, I appreciate what Senator Volker's tried to do. I voted for this in the past. There's portions of it that I agree with.

But today, as I stand here as a representative of a community that has just seen the impact of a failure to disclose

information in a heavily contested trial, in an emotional trial, in a trial with overtones of race and overtones of fairness attached, the great danger is that someone will say, "This little slip of paper with this little statement from a witness, we really don't have to disclose it. Wouldn't it be much better to get a conviction, even if it's not necessarily totally fair? Wouldn't it be better to get a conviction so the community would feel better about itself, but yet justice and fairness won't be done?"

I stand here today perhaps with my eyes a little bit -- looking at this a little bit different. I can't forget that two people spent the better part of more than half a century in jail, wrongfully convicted of a crime. They'll never make the reports from the New York Court of Appeals, but a great injustice was done to them.

And while, Senator Volker, I've voted for it in the past, and I agree with parts of it, I can't agree with that part of it today. The danger, the temptation is just too overwhelming.

The per se rule does have a reason. It's there designed to protect the constitutional rights of everyone. I daresay if anybody in this chamber were charged or indicted with a felony because we had taken a bribe or committed other crimes and the prosecutor said, "Well, we've got a statement in our portfolio of statements which questions whether the witness who provides the critical indicting testimony, whether they actually recognize that person," I daresay there isn't a person in this house who wouldn't say "I'm entitled to that statement, I want it, whether or not -- and I don't want someone else after the fact, 28 years later, to decide whether it was relevant at the time of trial." You'd want it then.

The per se rule in Ranghelle does serve a legitimate purpose in discouraging prosecutors, who do a great job, from that last little tiny temptation to just sacrifice justice in the name of expediency.

The message that we send here today is that that should not happen. It should never have happened to Betty Tyson or John

Duval.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Let me just repeat once more, this bill would categorically not change the per se rule in terms of what you just described.

And the reason is that -- and it has happened, in the case you're talking about. The evidence did not totally say that the person was not guilty. But what it said is that there was a statement that, if included, as it should have been, in the prosecution -- or the defense, really -- then that could have impacted on the identification in the case. Therefore, it could not possibly be considered harmless error and therefore was considered to be something that should have been included and therefore was the basis for the person to be released from jail.

This bill that reforms the issue of knee-jerk-reaction dismissals would not impact that, because clearly such a statement would be material and could impact and would not be considered to be harmless error. So

therefore, I cannot possibly see how this reform would have any impact on what you're talking about.

In fact, one of the arguments here is that because of the game theory and the theory that so many cases are being tossed out today for somewhat spurious means, there is a tendency to think that possibly you shouldn't be as careful, because the courts sometimes, and individuals and defense attorneys, are just looking for something to use even if the person is totally guilty.

Now, I'm not saying I agree with that theory. But I think the frustration that is shown by some people in the system, both victims and otherwise, I think we should be very careful of that. The system of justice should be even-handed.

We should give the defendant every possible opportunity, but not an opportunity to find the person not guilty who is guilty simply because of some improper -- or defect that has no impact on the case itself. If it is not harmless error, then, whether it's minor or not, it should be used.

And in my opinion, the case that you talk about, if it's what I understand, this bill would have absolutely no impact on that decision, and the same decision would be made under this legislation as the court made a decision in that case already.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

I stand in support of this measure, despite the warnings and concerns of my colleagues. I agree with Senator Volker that the provisions of this bill do not -- do not threaten the search for the truth here. Indeed, this bill would just allow a harmless error analysis on the Ranghelle rule, whereas right now we have a per se reversal on the Ranghelle rule.

And, Mr. President, what this means in practical terms is that if a police officer took down some information from a witness, a phone number on the back of a matchbook, and then later transferred that information to a police report and that matchbook were not

produced at trial, that's a per se reversal under the Ranghelle rule. Despite the fact that it's a duplicative equivalent of what was in the police report, that is a per se reversal under the Ranghelle rule.

That is outrageous. That is not the search for truth. And therefore, I agree that those types of situations should be given a harmless error analysis. Much as if there were evidence to suggest the innocence of a defendant is given a harmless error analysis, so should the requirement to produce documents be given that same kind of analysis.

So I think the change that the Senator's bill advocates is a good change, it's a change that does not affect the search for truth. In fact, it makes the whole system more relevant to the search for truth.

I believe also the other provisions, on the appeals of preclusion orders, on the ability of police officers in very narrow situations to testify about identifications, again, all do not affect the search for truth, but indeed, I believe, allow the court and the evidence to better reflect

the truth so that the jury can decide based on the best available evidence.

So, Senator, I support your legislation and I look forward to its passage.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 182 are Senators Connor, Dollinger, Duane, Markowitz, Mendez, Montgomery, Sampson, Santiago, Schneiderman, Seabrook, Smith, Stavisky, and Waldon. Ayes, 45; nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator Skelos, Senate Print 969, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, this bill amends the Correction Law and also the County Law to provide that inmates who are found to be nonindigent would be responsible for, during the time of their imprisonment, certain expenses that would be incumbent upon the county or the city jail normally to pay.

And while this is a good idea -- and in the past the sponsor, Senator Skelos, has mentioned the name Joey Buttafuoco as somebody who was incarcerated or imprisoned and certainly could have paid his expenses while he was there, because he owned a business -- many of my colleagues and I wonder how many, what percentage of inmates are actually in a position to pay for their own medical expenses.

And we wonder whether or not this would inure to the benefit of the municipality or whether it would cost more money to find out who's indigent and who's not indigent. We think there probably should be some research to make that determination.

Although it's a good idea, I'm going to vote in the negative, as I have in the past.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 395 are Senators Connor, Duane, Markowitz, Mendez, Montgomery, Paterson, Sampson, Santiago, Schneiderman, Seabrook, Smith, Stavisky, and Waldon. Ayes, 45; nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 479, by Senator Maltese, Senate Print 794, an act to amend the Election Law, in relation to political committees.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Maltese, an explanation has been requested of

Calendar Number 479 by Senator Dollinger.

SENATOR MALTESE: Mr. President, this bill reduces the number of filings required by certain political committees which do not make any expenditures during a campaign.

A summary of the provisions provides that a political committee which makes no expenditures to aid or take part in the election or defeat of a candidate, other than in the form of contributions, need not file after the July 15th report, other than in a sworn statement by the treasurer of the committee that no expenditures will be made on behalf of any candidate in that calendar year except those made prior to the submission of this -- of the report that the statement is made with.

There are three filings that would be thus eliminated: the 32-day pregeneral filing, the 11-day pregeneral campaign filing, and the 27-day postgeneral filing. If there are, in fact, expenditures made of any type, they would be picked up in the next January filing.

This is at the request of the State Board of Elections, to eliminate the burden of reports that would be not necessary, superfluous, and contain nothing other than "no contributions were made."

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Mr. President, would the sponsor yield to a few questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Senator Maltese --

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Maltese, my understanding is that the purported intention of the legislation is to reduce the amount of paperwork that comes into the Board of Elections. Is that the purpose?

SENATOR MALTESE: Mr. President, that's correct.

SENATOR HEVESI: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Maltese, do you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR HEVESI: Senator, it's my understanding that on July 15th of this year, pursuant to a chapter that was passed in 1998, that the Board of Elections will require -- not provide an option, but require every political committee to file electronically, thereby obviating the need for any paper submissions.

So in light of that, why is this legislation necessary?

SENATOR MALTESE: Mr. President, through you.

The fact that you have an electronic filing doesn't mean that there are, in fact -- that there aren't, in fact, checks that have to be made or that the Board of Elections simply takes the electronic filing and it disappears into limbo with no expenditure made.

There has to be somebody at the other end of the electronic filing, and there

has to be some record made by the Board that in fact the filing was made. And if a filing is not made or missed, then the steps have to be taken to bring the -- bring an order which would fine the miscreant for his omission.

SENATOR HEVESI: Mr. President, through you.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Senator, are you suggesting that the Board of Elections is required to, upon receiving an electronic filing, print it out?

SENATOR MALTESE: Mr. President, I'm not suggesting that they print it out. I believe that in response to queries, questions or requests, that they are prepared to print it out.

And that even any type of filing, there can't be a -- an electronic report that's simply received by a computer at the other end and simply lists that they have, in

fact, the report and then no use is made of it in any shape, manner or form.

If nothing else -- aside from the use that I indicated, that there has to be some check made as to whether or not a report is filed to determine whether the committee, the political committee, is in violation of the law -- these records have to be available, even if electronically, for requests as to -- Freedom of Information requests.

SENATOR HEVESI: Thank you, Mr. President.

If the sponsor will yield to two other brief questions.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR HEVESI: Senator, just for clarity, under this legislation transfers to other committees are permissible and could be made without triggering the requirement that a report be filed; is that correct?

SENATOR MALTESE: Mr. President,

I don't follow.

The transfer cannot be made. Any expenditure made on behalf of a candidate or to defeat a candidate would come under this legislation.

This legislation does not apply, as it's indicated, to party committees. It applies to what -- there's no definition of PACs. And this would be applying to PACs who have no other expenditures except making contributions to candidates or to defeat -- contributions to candidates.

SENATOR HEVESI: Thank you.

One final question, Mr. President, if the sponsor would yield.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator, what would be the penalty if my treasurer filed a statement, pursuant to this legislation, stating that no expenditures would be made from my committee for the remainder of the

calendar year and then expenditures were in fact made in the remainder of the calendar year?

SENATOR MALTESE: Mr. President, certainly it would be a sworn statement.

But I believe if that would happen, he would then be required -- or he or she would then be required to file the necessary reports, depending on the time the expenditure was made. So if it was during an election cycle and it was past the first two, he would then have to make the postgeneral report, to comply with the law.

SENATOR HEVESI: Without penalty.

SENATOR MALTESE: Without penalty, as long as that expenditure was made prior to the timing for the report. Sure.

SENATOR HEVESI: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi on the bill.

SENATOR HEVESI: Mr. President, this legislation, with all respect to my Senate colleague, whom I have the greatest respect for, is a flawed piece of legislation

in any variety of ways. Let me enumerate them for you.

First, my understanding is that expenditures and transfers are separately defined notions within the Election Law as they currently exist. And since this piece of legislation only refers to expenditures, that transfers, as a result, are not excluded.

And what does that mean? It means that under this legislation, if you were to file -- your treasurer was to file this statement saying that you're not going to make any other expenditures in the calendar year, it means, by definition, by default, that what is permissible are contributions coming into your committee and the ability to transfer to other committees. And that opens up a whole series of problems, including the following.

Number one, I could have several committees for myself. And I could have one committee file that statement saying we're not going to make any other additional expenditures. My other committee is an active committee, and that committee is both taking in and expending money. The committee that I

am taking in money on does not file after July 15th, according to the legislation that's in front of us.

But what am I doing? I am incurring liabilities. I am raising funds into that committee that the voters, who are being asked to pass judgment in this election, have no idea where it's coming from. And I am, as a result of the money coming into that committee, probably going out and incurring liabilities with vendors in my campaign that I could do two things from.

One is transfer at some point to another committee, my other committee, to then make expenditures. Perfectly permissible, and the epitome of a loophole, under this legislation.

Or, number two, is after the election, the committee that I filed the statement on saying I'm not going to make expenditures, if I went ahead and made expenditures, I'm not penalized, as Senator Maltese unfortunately just pointed out for us.

And so I'm afraid there are many candidates out there who might, in a fierce

political battle, decide it's better, in their own political judgment, that the voters don't know where the money's coming in from, they take in all that money, it cannot be used against them in a campaign.

And what happens is the voters then do not know. Subsequent to the election, regardless of the outcome, then the filing is put in, without penalty, and we've just created a situation where we've obviated the purpose of the law.

This is absolutely the wrong direction to head in.

Number one, there's electronic filing going to be required. And while I understand that there may have to be a record of who files electronically and that may produce some paper, the fact is that we're going to electronic filing so that we don't have to have a tremendous amount of paper. And as a result of that, there's no need for us to have this section of the law here placed onto the books. It's just simply not necessary. And it absolutely moves us in the wrong direction.

Here's why. There is nothing that makes contributions, the money that you take in, less important than the money that you expend on a race.

In fact, I would argue that it is more in the public interest to know where the money is coming in to finance a campaign or to potentially try and influence a candidate than what you are spending on a race.

So with this piece of legislation, we are putting blinders on the electorate, we are casting a shadow on this entire process. It absolutely moves us in the wrong direction.

So I would urge my colleagues to vote in the negative on this piece of legislation. It creates all kinds of opportunities for very clever individuals, more clever than myself, to subvert the intention of the law, which is to have maximum disclosure, to have maximum understanding of where money's coming in, and to not be put into a situation where the voters additionally question the process -- where I'm transferring money from one committee to another, to the state committee, they're sending it back to

me, or I'm deciding I'm not going to do my filing and actually make expenditures on it anyway.

Or I'm going to file late expenditures and, instead of me filing under current law -- if I fail to file under current law, bang, all of the requirements that currently exist trigger for my opponents red flags. They'll say, "Senator Hevesi missed the filing that comes 32 days before the primary. Senator Hevesi missed the filing that came 11 days before." They're going to be sending out mailing after mailing attacking me, that I'm not participating in this process with integrity.

And that's all gone if this legislation is enacted. So I don't mean to be dramatic, but this takes us 180 degrees in the opposite direction.

For those reasons, I urge all of my colleagues to vote in the negative on this bill, as I intend to do.

Thank you.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, in the past I've voted in favor of this bill. Last year, this bill passed 59 to 2. Only Senators Gold and Leichter voted in the negative.

However, Senator Hevesi, as clearly demonstrated, has put a lot of effort and time into really analyzing what that bill does, and so has Senator Connor, the Minority leader. And their urge for a negative vote on this bill I think is quite merited.

The standard of having a filing is one that is difficult at times, particularly when there's a campaign committee that's almost inoperable and it probably takes some extra time to file even though the filing doesn't reveal much information. And that is a difficulty for those who have committees that are not accruing any expenditures.

But what Senator Hevesi is describing, which is the other possibility, is very detrimental. It creates a lot of confusion. And with someone of the honesty and the integrity of Senator Hevesi's imagination, thinking up all the things that

goes wrong, let's just wonder what someone whose intent is to defraud the public, what they might be able to come up with.

I can't compliment Senator Hevesi enough for his research on this legislation. I think that everybody here recognizes that although what Senator Maltese was trying to cure is a problem, and often a problem for all of us, it's yet opening up really a Pandora's box to a lot of possible violations.

And so I couldn't urge my colleagues more than to heed Senator Hevesi's request and that all of us change our votes and defeat this legislation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 479 are Senators Connor, Dollinger, Duane, Gentile,

Hevesi, Montgomery, Onorato, Oppenheimer, Paterson, Schneiderman, Seabrook, Stachowski, and Stavisky.

Ayes, 46; nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Larkin, that concludes the reading of the controversial calendar.

SENATOR LARKIN: Is there any housekeeping?

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

SENATOR MONTGOMERY: Oh, yes.

SENATOR LARKIN: Please recognize Senator Montgomery.

ACTING PRESIDENT MEIER: Yes, I will.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you. I'm sorry.

Mr. President, I would like to be recorded -- consent to be recorded on the Calendar 535. I would like to be recorded in the negative.

ACTING PRESIDENT MEIER: Without

objection, Senator Montgomery will be recorded in the negative on Calendar Number 535.

Senator Larkin.

SENATOR LARKIN: Mr. President, I'd like to remind my colleagues here and those listening in their room that tomorrow, when session begins at 11 o'clock, we will be honoring the United States Military Academy.

And I would like, on behalf of the Majority Leader, to ask you to please be in attendance tomorrow.

We have -- many of these young cadets, within the next four months, will be in battle zones, as previous members of the corps have. I think out of respect to the entire corps, we owe them that respect.

And I would appreciate, on behalf of the Majority Leader, for all of us to be in the chamber tomorrow to give due respect to the United States Corps of Cadets.

We're now adjourned until 11:00 a.m. tomorrow morning.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, April 21, at 11:00 a.m.

(Whereupon, at 4:24 p.m., the Senate adjourned.)