NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 4, 1999

3:04 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 join with me in the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation today will be given by Bishop Muriel Grant of the Mt. Olivet Discipleship in Christ Church in Brooklyn.

Bishop Grant.

BISHOP GRANT: Let us pray.

Almighty God, our hope in ages past, Who hast been with us from the formation of this nation, Thou Who gave us this good land for our heritage, this sweet land of liberty, land of the pilgrims' pride, may we also prove to be a people mindful of Thy favor, glad to do Thy will.

Bless our land, O God, with honorable industries, sound learning, and pure manners. Save us from violence, discord, and confusion, from pride and arrogance, and from

every evil way. Defend our liberties and fashion us into one united people, the multitudes of many kindreds and tongues, yet may we be one nation, indivisible.

Most gracious God, I have humbly beseeched Thee as for the people of these United States in general. Now also guide and bless their President. Protect him in his every walk.

But now, O God, I beseech you so especially for our Senate here assembled, Republicans and Democrats. Heal their infirmities. Bless them. Enable them to partake from Your fountain of wisdom. Thou whose law is truth, guide and bless them. I pray that Thou wouldest be pleased to direct and prosper all their consultations.

May the Senate chambers, with its rays of Your light, continue to elevate their minds, that laws passed here will be to the advancement of Thy church, the safety, honor and welfare of Thy people. May all things ordered here and settled by their endeavor be upon the surest foundation, that peace and happiness, truth and justice, religion and

piety may be established amongst us for all generations, young and aged alike.

This I beg in the name -- in Thy name and meditation of Jesus Christ, my Savior. Amen.

By the power of God vested in me, may the blessings of God the Father, the Son, and the Holy Spirit remain with you now and ever. Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 3rd, the Senate met pursuant to adjournment. The Journal of Sunday, May 2nd, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, offers up the following nominations:

As a member of the State Liquor Authority, Edward F. Kelly, of Holmes.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR SKELOS: Mr. President, if we could just wait one moment before we take up the confirmation.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR STAFFORD: It's a pleasure to yield to Senator Leibell for this very fine nomination. Thank you.

SENATOR LEIBELL: Thank you very much, Mr. President, and my colleague, Senator Stafford.

If I may very briefly commend to this body the renomination of Edward F. Kelly as a member of the State Liquor Authority.

I have had the good fortune and the pleasure to know Ed Kelly and his family for over a couple of decades now. He brings to this position a career of accomplishment. That career has spanned working for one of our

very largest corporations, International Business Machines, for close to thirty years, as well as running his own family business. Add to this experience in business, both on the large-corporation and the small-business side, his many, many years of experience in local government, and then top that off with a lifetime of activities within our communities.

Over the course of years, the Governor has sent to us many fine appointments. I can assure this body from personal knowledge that in this renomination of Edward F. Kelly we have someone of the finest character, someone who can -- is well equipped to handle this position and will bring great credit to the SLA as well as to all state appointees.

With this in mind, Mr. President, I'd like to move this nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Edward F. Kelly as a member of the State Liquor Authority. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is hereby confirmed.

Mr. Kelly is present with us today in the gallery. Would you please rise, sir?

And he is accompanied by his wife, Nancy, his four sons -- Edward, Michael, Thomas, and David -- and also his grandchildren, Michael and Amber.

Mr. Kelly, we extend to you and your family the courtesies of the Senate. We welcome you, and we congratulate you and wish you well with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a member of the State Liquor Authority, Lawrence J. Gedda, of Lynbrook.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, again we have a very fine group of nominees,

the entire slate.

And it is a pleasure to yield to the Senator from Nassau.

SENATOR SKELOS: Thank you very much, Senator Stafford.

Mr. President, I'm delighted, as I did not too long ago, although the days and the years seem to be running together quickly now, to move the confirmation of Larry Gedda for his position as a member of the State Liquor Authority.

I've had the pleasure of knowing Mr. Gedda -- Larry -- for a number of years, where he's earned this opportunity to, number one, having been appointed and now reappointed, serving on the -- or working for the State Liquor Authority for over thirty years.

With Larry you always know where you stand. If something can be done to help a constituent properly, it will be done. The SLA has become, as we heard at the hearing this morning of the Finance Committee, that it is becoming more user-friendly. Which I think is proper, and proper for all agencies of the

state.

Larry is dedicated to his profession. He's a fine, fine human being, a family man. And I'm delighted to, with Senator Stafford's approval, move the confirmation of Lawrence J. Gedda as a member of the State Liquor Authority.

ACTING PRESIDENT MEIER: The question is on the confirmation of Lawrence J. Gedda as a member of the New York State Liquor Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Gedda is with us in the gallery today.

Mr. Gedda, welcome to the Senate, and congratulations. Good luck with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The

Secretary will read.

THE SECRETARY: As a member of the New York State Employment Relations Board, Anthony C. Imbarrato, of Garden City.

SENATOR STAFFORD: At this time it's a pleasure to yield to Senator Hannon.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: Thank you, Senator Stafford.

It's with a great deal of pleasure that I rise on this nomination for reappointment to the New York State Employment Relations Board. It seems that it was only months ago -- in the beginning months of the Pataki administration, however -- that Mr. Imbarrato was first proposed for nomination to this board.

Tony Imbarrato has been a wise lawyer, a person to whom everybody would turn for advice in sticky situations in Nassau County for a number of years, and along the way had been a counsel here to the Legislature when he was a young attorney.

In the intervening years on the

board, he has served with distinction. He has helped establish a firm basis of policy for the state. And it's with great pride that I can move, again with Senator Stafford's permission, his reappointment to this board, where I am confident he will continue to benefit the citizens of all of this state for a full term.

And I so move, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, I just echo all the thoughts of Senator Hannon.

I've had the pleasure of knowing Tony Imbarrato and his wife Vicky probably for 20, 25 years. And again, those years have moved quickly.

Tony, we salute you. We thank you for the fine job that you're doing on the behalf of the people of the State of New York.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: I also rise to second the nomination of Tony Imbarrato's reappointment. It was a fine appointment by

Governor Pataki, and I congratulate him for seeking to reappoint Tony, who has served the people of this state with distinction and honor.

He's a personal friend, and I wish him well, and good luck to him and his family.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I just want to rise and concur with the statements from my colleagues from Nassau County.

I have known Tony Imbarrato for the better part of my life, and my life certainly been enriched by his friendship. He is certainly an asset to the Employment Relations Board, and I commend the Governor on the appointment.

ACTING PRESIDENT MEIER: The question is on the confirmation of Anthony C. Imbarrato as a member of the New York State Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Imbarrato, congratulations. Welcome to the Senate, sir, and good luck with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a member of the Workers' Compensation Board, Leslie J. Botta, of Scotia.

SENATOR STAFFORD: It's a pleasure to yield to Senator Farley.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Senator Stafford. I wish to nominate Dr. Leslie Botta of Scotia, New York. She's in the private practice of chiropractic at the Shannon Chiropractic at 127 Mohawk Avenue in Scotia, New York.

Dr. Botta was an honored graduate of Lincoln High School, and she was among

Who's Who of High School Scholars. She's a graduate of the University of Illinois with a Bachelor of Science in biology and is a graduate of the National College of Chiropractic, with a Bachelor of Science in human biology and a Doctor of Chiropractic.

She has been well trained in the area of chiropractics. And let me say that I think it's so important in this day and age that the Workmen's Compensation Board has a knowledgeable chiropractor on that board, because so many of the injuries and so forth of workmen's compensation involve injuries to the spine and so forth.

She has had a great deal of experience working with injured people from - on workmen's compensation, and I think she'll be an asset to the board. And I'd like to move her nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Leslie J. Botta as a member of the Workers' Compensation Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Dr. Botta, welcome to the Senate. Congratulations.

Dr. Botta is accompanied today by her husband, Dr. David Cerniglia; her daughter, Brenna, and also her father-in-law and mother-in-law, Abe and Carmella Cerniglia.

Welcome to the Senate, and good luck and congratulations.

(Applause.)

ACTING PRESIDENT MEIER: Senator Saland.

SENATOR SALAND: Thank you, Mr. President. I appreciate you recognizing me.

I was detained in getting to the chamber here this afternoon. And perhaps it's fortunate that I was, because I wouldn't have wanted to prejudice the ability of a friend of mine and a long-standing shining light of Dutchess County, Ed Kelly.

It's after the fact at this point, but I had an opportunity to speak on his behalf earlier in the Finance Committee. He certainly has performed exceptionally well since his appointment and certainly is deserving of the reappointment that the Governor has afforded him the opportunity to complete.

He has, I think, distinguished himself in a very, very difficult situation, serving as a member of the board and as the chairman, and dealing in a very, very difficult area, at times being challenged resource-wise.

My hat's off to you and to the SLA. We appreciate everything you've done in your capacity. Thank you.

(Applause.)

SENATOR SALAND: Continue the best.

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the Board of Trustees of the State University of New York, Patricia A. Stevens, of

Rochester.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure to yield to the Senators from the west. We have, from Rochester, New York, Senator Alesi.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: Thank you, Senator Stafford. Thank you, Mr. President.

I'm very honored to be able to look up into the balcony today, with as weak a voice as I have, but with very strong sentiments of joy at this nomination of Patricia Stevens.

I know Patricia is someone who will bring excellence to any endeavor which she undertakes. And it is with the greatest pride that I support this nomination.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Maziarz.

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

As another Senator from the west, although I'm not personally acquainted with Patricia Stevens, I certainly want to congratulate her on her appointment. I have reviewed her resume provided by the chair of the Senate Finance Committee. She seems an outstanding candidate for this position.

And I think that -- I congratulate the Governor for reaching out to Monroe County and to western New York for this appointment.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Mr. President, I rise to second this nomination and just congratulate the Governor on this excellent appointment.

Ms. Stevens appeared before the Higher Education Committee, as she did this morning before the Finance Committee. But I must tell you that the committee was very, very enthusiastic after hearing about her accomplishments and the things that she would like to do as a member of the SUNY board.

She is truly a SUNY alum, having

begun her education at Monroe Community College, then going to Brockport. And she is now finishing her Ph.D. at the University of Buffalo. So certainly she has a vast experience as a student. She has worked within the SUNY system and understands the needs of its students.

So I am sure -- and I look forward to working with Ms. Stevens as a member of the SUNY Board of Trustees.

ACTING PRESIDENT MEIER: The question is on the confirmation of Patricia A. Stevens as a member of the Board of Trustees of the State University of New York. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Ms. Stevens is with us today in the gallery.

Congratulations. Welcome to the Senate, and best wishes with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a member of the Rochester-Genesee Regional Transportation Authority, Joseph A. Errigo, of Conesus.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Senator Volker.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, I want to commend the Governor on the nomination of Joe Errigo, who I've known for many, many years.

Joe, for the information of the stenographer here, was probably one of the leading court reporters in the state of New York for many years -- in fact, I think was the head of the association -- and was the chief court reporter in Geneseo, in Livingston County, where the Supreme Court sits and the County Court and so forth. And he retired here a few years ago and has been active in a

company that does highway work and so forth.

And he'll make an excellent member of the commission, and I commend the Governor for choosing him. And I wish Joe the very best of luck.

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President and my colleagues.

I rise to second the nomination of Joe Errigo to the Rochester-Genesee Regional Transportation Authority with a great deal of pride and enthusiasm for this appointment.

I have had the privilege of knowing Joe for a number of years. And as Senator Volker so eloquently said, Joe has been just an outstanding individual in the community, very active in business, active in his community, a wonderful family man.

And he also has a sense of the entire Rochester region; not coming from Monroe County, has the perspective of seeing -- but working in Monroe County, has the perspective of seeing both the rural areas and the urban areas served by the greater

Rochester-Genesee Transportation Authority.

That I am extremely pleased that he has volunteered of his time to take up this very important cause of transportation, and that I certainly look forward to working with he and other members of the board as they're working hard to ensure transportation is of utmost consideration in our region.

Congratulations to Joe. And I thank him for his service and thank the Senate for confirming this nomination.

Mr. President.

ACTING PRESIDENT MEIER: The question is on the confirmation of Joseph Errigo as a member of the Rochester-Genesee Regional Transportation Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Errigo, would you please rise, sir, and receive the recognition of the body?

And good luck with your important duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As members of the Metropolitan Transportation Authority, Barry Feinstein, of Scarsdale, and Edward Vrooman, of Garrison.

SENATOR STAFFORD: Senator Marchi.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, these are reappointments. I would like to speak to the reappointment of Barry Feinstein, who was appointed by Governor Cuomo. And I was delighted when Governor Pataki - recognizing the fact that one good turn deserves another.

And Barry Feinstein has been an enlightened member of the stability in labor relations and has brought this unique quality to a fine art in his role as a member of the commission. And certainly the Governor is to be congratulated on his renomination.

I move that in confirmation.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

I'd like to just comment, if I may, on Edward Vrooman, who lives in my home county, who has served with great distinction on the MTA board and is up now for reappointment. He brings a great background in the business community to his talents to bear from that -- his experience. He will be a great appointee again, and I congratulate the Governor for this nomination.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question is on the confirmation of Barry Feinstein and Edward Vrooman as members of the Metropolitan Transportation Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

nominees are confirmed.

The Secretary will read.

THE SECRETARY: As member and chairman of the New York State Thruway Authority, Louis R. Tomson, of Voorheesville.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of Louis R. Tomson as a member of the New York State Thruway Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nomination is confirmed.

The Secretary will read.

THE SECRETARY: As director of the Municipal Assistance Corporation for the City of New York, Joel B. Mounty, of Scarsdale.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of Joel B. Mounty as director of the Municipal Assistance Corporation for the City of New York. All those in favor signify by saying aye.

ACTING PRESIDENT MEIER:

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

The Secretary will read.

THE SECRETARY: As members of the Medical Advisory Committee, Ruben P. Cowart, of Syracuse, and Louis Goldberg, of Buffalo.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Ruben P. Cowart and Dr. Louis Goldberg as members of the Medical Advisory Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Minority Health Council, Maggie Blackburn, of Harpersfield.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of Maggie Blackburn as a member of the Minority Health Council. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

The Secretary will read.

THE SECRETARY: As members of the New York State Hospital Review and Planning Council, Richard S. Aronson, of New York City,

and Barry Bruce Perlman, of New York City.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Richard Aronson and Barry Bruce Perlman as members of the New York State Hospital Review and Planning Council. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

The Secretary will read.

THE SECRETARY: As members of the Council on Human Blood and Transfusion Services, Alicia Elena G. Garcia, of Staten Island, and Lazaro Generoso Rosales, of Fayetteville.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Alicia

Elena Garcia and Lazaro Generoso Rosales, as members of the Council on Human Blood and Transfusion Services. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, say nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: As a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at St. Albans, Elizabeth R. Carr, of Glen Oaks.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Elizabeth R. Carr as a member of the Board of Visitors of the New York State Home for Veterans. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Motions, thank you. I've got to pay attention here.

Mr. President, on behalf of Senator Seward, who sits next to me here, on page 37 I offer the following amendments to Calendar 660, Senate Print 4381, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: On behalf of Senator Alesi, who's not here, on page 47 I offer the following amendments to Calendar Number 775, Senate Print 4554, and I ask that

that bill retain its place.

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

SENATOR FARLEY: Mr. President, on behalf of Senator Wright, on page 49 I offer the following amendments to Calendar 792, Senate Print 4258, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could at this time adopt the Resolution Calendar, with the exceptions of Resolutions 1198, 1199, 1202, and 1239.

And Resolution 1197 is open for sponsorship at the suggestion of Senator Trunzo, and 1260 at the -- with the consent of Senator Sampson.

ACTING PRESIDENT MEIER: All in

favor of adopting the Resolution Calendar, with the exception of Resolutions 1198, 1199, 1202, and 1239, signify saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 1198, by Senator Maziarz, I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1198, memorializing the Honorable George E. Pataki, Governor of the State of New York, to proclaim May 4, 1999, as Senior Citizen Day in the State of New York.

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 Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 1199, also by Senator Maziarz, I 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 Maziarz, Legislative Resolution Number 1199, honoring Annette Bettinger upon the occasion of her designation as the recipient of the 1999 "Senior Citizen of the Year" Award by the County of Orleans Office for the Aging.

"WHEREAS, Senior citizens bring a wealth of experience and knowledge to the increasingly active roles they play in today's society, their past contributions and future participation a vital part of and valuable asset to the fabric of community life and

activity;

"WHEREAS, This Legislative Body is justly proud to honor Annette Bettinger upon the occasion of her designation as recipient of the 1999 "Senior Citizen of the Year" Award by the County of Orleans Office for the Aging;

"This prestigious award is bestowed upon a senior citizen who has tirelessly advocated on behalf of seniors within their communities. The Senior Citizen of the Year has assisted in providing needed support services and activities which have enhanced the lives of senior citizens;

"Annette Bettinger is one of the most active seniors in Orleans County. She serves on the Office for the Aging Advisory Council and the Nutrition Program Advisory Council. She has been involved with Orleans County Hospice, the United Way of Western Orleans County, and served on her local school board. Her spare time is spent working with her horses;

"Annette Bettinger, as a past teacher of the blind, is constantly looking for ways to incorporate the lives of seniors

with those of students. One of her initiatives was to have the high school students teach the seniors how to use computers. It was a success for both generations;

"However, her crowning glory of this past year was being the first and only representative from New York State to attend the Silver Haired Congress in Washington, D.C. She spent weeks studying the issues they would be dealing with before attending. Now she is speaking to senior groups in the Western New York area in the hopes of generating more interest in the Silver Haired Congress. She also speaks on the issues that were brought before the Congress;

"Throughout her impressive lifetime and distinguished career, Annette Bettinger, a very active, energetic and industrious woman, has inspired and enriched the lives of her family, friends and colleagues through her love and respect for others, and the wisdom which comes from many years of experiencing life to its fullest;

"It is the intent of this

Legislative Body to publicly recognize those who have reached such a significant milestone in their lives, and who have witnessed and contributed to the developments and achievements of our Country, State and individual localities during a most fascinating period in history. Now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor the exceptional person, Annette Bettinger, upon the occasion of her designation as recipient of the 1999 "Senior Citizen of the Year" Award by the County of Orleans Office for the Aging; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to Annette Bettinger."

ACTING PRESIDENT MEIER: Senator Maziarz.

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

Mr. President, I just would like to start off by welcoming my colleague from the New York State Assembly, the chairperson of

the Assembly Aging Committee, Assemblywoman Barbara Clark.

And also, representing Annette Bettinger from Orleans County in the State Assembly is my colleague, Assemblyman Dave Seaman.

Mr. President, you outlined very well all of Annette's work on behalf of seniors. And I think, most importantly, in the resolution you read not just about Annette's work with seniors but her work with young people and interaction with the seniors, teaching them computer skills, teaching them nutrition skills, working with the United Way of Orleans County, all of the good deeds that you outlined.

Today is a great day in New York State. It was a day that was started by my colleague, the first chair of the Senate Aging Committee, Senator Farley, on Senior Citizens Day.

I told Annette and the people that are joining her today from Orleans County that two of the things we would do a lot of today is eat and get our picture taken. And I think

that we did not disappoint her. We had lunch at the Governor's Mansion, along with seniors that were being honored from across the state of New York.

Annette has done great work with the Silver Haired Congress in Washington, D.C., and asked me on our way over here if we would take the recommendations made from the Silver Haired Congress and push that agenda here in the State of New York. And I know that Assemblywoman Clark and myself are going to do that.

Joining Annette today, and having nominated her for this very prestigious award of Senior Citizen of the Year in the State of New York, is Grace Denniston, the director of the Orleans Office of the Aging, and Ann Neilans and Pamela Canham from the Office of the Aging.

We also have one of the people who was honored, as a "Mature Worker" in the State of New York from Orleans County, at noon at the Governor's Mansion, Mary Brumbaugh.

And we have Annette's very good friend, Sarah Brinsmaid, who joined Annette in

coming to Albany today and has taken part in all of the festivities, including a joint meeting of the Senate and Assembly Aging Committees.

In fact, someone was -- made the remark that if the entire Assembly and the entire Senate got along as good as the Assembly and Senate Aging Committees do, we would have had a budget out by March 1st. And we'd be getting paid today, Mr. President.

So I certainly want to add my congratulations to Annette, welcome her here to Albany, congratulate her for all the good work that she does year-round with individuals that are blind in Orleans County, with the seniors, with the young people of Orleans County.

And I know that Senator Breslin is going to speak on behalf of Clara Johnston, who is receiving an award for the "Outstanding Contribution by a Senior" this year. This is a great program started by Senator Farley recognizing some really great New Yorkers.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Breslin.

SENATOR BRESLIN: Mr. President, I rise to salute Clara Johnston from Albany.

As many of you know, Albany has a rather significant elder population. And Clara is more significant than the others in terms of her volunteer service, in particular to the Westview Apartments.

And Clara, from my experience and from what others have told me, downplays her role. She volunteers there on a daily basis, contributing much to the seniors, and does it without any look towards praise.

So this is a particularly pleasurable task for me to stand and honor Clara Johnston as an outstanding senior citizen.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, I want to compliment Senator Maziarz and Senator Breslin for speaking up for this splendid group, because I'm a member of your group. I am a senior citizen. And you are an exemplary

example of what senior citizens can contribute and can continue contributing to this state.

In fact, Mr. President, our motto is: "The past is prologue. You ain't seen nothing yet." And they're proving it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I also rise to salute Annette Bettinger as Senior Citizen of the Year, and Clara Johnston. My congratulations to you both.

Let me just say that one of the thrills of my Senate career was chairing the Committee on Aging. I know that Senator Skelos, who succeeded me, did an outstanding job as chairman of the Aging Committee. It has truly been a bipartisan, nonpartisan labor of love for anybody that has served there. And I'm sure that Assemblywoman Clark, you would tend to agree with that.

And we've had a lot of great people that have served on that committee. Senator

Maziarz, you're doing a fine job. We are very proud of you.

But so many things have happened in New York State and have been done for the seniors. We are an exciting state. So much of the legislation that has happened in New York State has been landmark legislation for the rest of the nation. We're very proud of our seniors. And this -- the Senior Citizen of the Year is one of the highest honors that this Legislature can bestow.

And Clara Johnston, generally speaking for the "Outstanding Contribution," that is truly a significant award also.

And let me just offer my congratulations to both of you, and particularly to the people that you represent. And thank you.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Our distinguished guests mentioned in the resolution are seated here to the left of the chair. And we welcome you to the Senate and extend to you our courtesy and our congratulations.

(Applause.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: On behalf of Senator Bruno, we want to congratulate both honorees.

But I think we still have to take up Resolution Number 1239, by Senator Breslin. So I ask that it be read in its entirety and move for its adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Breslin, Legislative Resolution Number 1239, honoring Clara Johnston upon the occasion of her designation as recipient of the 1999 "Outstanding Contribution by a Senior Citizen"

Award.

"WHEREAS, Senior citizens bring their special wisdom, experience and enthusiasm to countless endeavors, helping to shape and strength the character of the communities of the State of New York and the quality of our lives;

"WHEREAS, It is the sense of this Assembled Body to recognize and honor the senior citizens of New York State for their diverse talents and generous service on behalf of others;

"In conjunction with the celebration of Senior Citizen Day in New York State on May 4, 1999, this Assembled Body takes great pleasure in honoring Clara Johnston for the 1999 'Outstanding Contribution By A Senior Citizen' Award;

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

"Clara Johnston of Albany, New

York, truly exemplifies these qualities;

"As a member of the Westview Senior Center, Clara Johnston works tirelessly 'behind the scenes' receiving little or no recognition for her volunteer efforts;

"In 1998, Clara Johnston was recognized by the Retired Senior Volunteer Program for her many years of dedicated service;

"In a time of limited resources, it is only through volunteers such as Clara Johnston that our senior citizen programs continue to flourish;

"Through her endeavors, Clara Johnston has demonstrated an unflagging commitment to improvement of the quality of life of senior citizens; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to joyously recognize the significance of Clara Johnston's contributions with its 1999 "Outstanding Contribution by a Senior Citizen" Award; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted

to Clara Johnston."

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 Skelos.

SENATOR SKELOS: Mr. President, at this time could we please -- oh, I'm sorry, we have one more resolution.

May we please have the title read on Resolution 1202, by Senator Marchi, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title of Resolution 1202.

THE SECRETARY: By Senator Marchi, Legislative Resolution Number 1202, honoring the memory of the late Dominick L. DiCarlo, Senior Judge of the U.S. Court of International Trade and former New York State

Assemblyman.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, this is indeed a tragic loss that not only - for not only those who knew him through the years and were in his circle of friendship but the people of the State of New York and indeed the people of the United States.

He was chairman of the -- he was president of the Court of International Trade and was known worldwide. He served with great distinction as counsel to the New York City Council after his -- after his successful career as a prosecutor in the Eastern District of New York -

ACTING PRESIDENT MEIER: Excuse me, Senator Marchi.

Could we have some order in the house, please, particularly in light of the subject matter of the resolution before the house.

SENATOR MARCHI: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Marchi.

SENATOR MARCHI: Judge DiCarlo was a prosecutor for the -- in the federal courts before he was counsel to the minority in the City Council and before he came to the Assembly of the State of New York.

And, to anyone who has had the privilege of listening to him, one of the most brilliant, persuasive, endowed orators of our time. He was a splendid champion of his point of view and greatly respected.

He was Deputy Minority Leader and Chairman of the Codes Committee at one point, and then went on to serve on the International Court of Trade, when he was appointed by President Reagan, and was appointed chairman by George Bush, President George Bush. And he served there until -- he still serves as a member, but he had reached the retirement age of 70.

A brilliant, brilliant speaker. Wonderful insights. Anyone who has ever associated with him or served with him can attest to his acumen, his mastery of the law, his dedication to public service, not only in

his local sphere and state sphere but also in the national and international arena, where his voice was, until his last moments, a respected and valued voice.

So it is with great sadness that I submit this resolution. And there are members here -- Senator Velella, who is a cosponsor. But I'm sure that we would all -- anyone that wants to join, or if it's open for membership unless they indicate to the contrary. I know that there will be others that will want to join in that sponsorship.

So I yield to Senator Velella, who also has had hands-on experience and knowledge of this great, distinguished public servant who passed away.

ACTING PRESIDENT MEIER: Senator Velella.

SENATOR VELELLA: Thank you, Senator Marchi, Mr. President.

From 1973 to 1981, it was my privilege to serve in the State Assembly with Assemblyman DiCarlo. And even to his final days, when I last saw him just several months ago, he still cherished the title of

"Assemblyman" and the days he served as our Minority Leader -- Deputy Minority Leader in the Assembly.

Those of us who served with him remember the great debates in the Assembly where Dom DiCarlo was on one side and Al Blumenthal on the other. And let me tell you, if you are any student of government, to have listened to those debates in those days, two people from absolutely opposite ends of the spectrum debating the critical issues of the time -- the criminal justice system, where we're going, all the issues that we still debate today -- it was really an experience that I consider something that I will always cherish.

They were both great men, both very vicious debaters on the floor but good, close personal friends. And both Al Blumenthal and Dom DiCarlo did a great service for the people of this state in their service in the Assembly.

Dom was the man who trained our present cochairman. When Dale and I were freshmen together, Dom DiCarlo was the

Chairman of the Codes Committee, and we served with him on that committee. And he was very inspirational to all of us.

Of course, he chaired another committee, which the Republican -- there are not many of them today, but in those days there were probably about 14 of us, Republican New York City assemblymen. There were 14 of us. And we used to meet. And my great friend here and colleague, Senator Padavan, gave us the name "F Troop."

And Dom DiCarlo was the leader. And we had a great time together, and we did a lot of good things for the people of this state. And certainly those of us who served with him realize the contribution he made. And we'll miss him.

Thank you.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Of course, listening to my good colleague, Senator Marchi, extol the virtues and enshrine the memory of Dom DiCarlo brings to mind many, many pleasant memories.

Among those, working side by side with Dom DiCarlo in John Marchi's mayoral campaign in 1969, and working out of various Brooklyn clubs. I remember the Ed Sergi club was one. That's when there were a great many more Republicans, I guess, in Kings County than there are right now.

And the -- his good colleague, Guy Velella and my good colleague, Guy Velella, spoke about "F Troop." And I remember at the time that the 14 assemblymen, seven of them were from Queens County, counting Vito Battista, who was half in Brooklyn, half in Queens, and all over the place.

(Laughter.)

SENATOR MALTESE: But those were the times -- I think many of us look back nostalgically on "F Troop" and the collegial atmosphere in the Assembly and the collegial atmosphere across the aisles and reaching to this house.

Dom was part of all that, as were some others that have since passed on -- Vito Battista and Rosemary Gunning.

And looking back, though,

remembering some of the debates that Guy Velella spoke about, we realize that Dom was in fact a -- had no peer in his debating skills. And his debates were the talk of the Legislature for weeks after.

And he was not afraid to take an unpopular position. I recall his opposition to the Rockefeller Drug Laws. And I know when speaking to Bob, his son recalled that he received a standing ovation and then I believe was the only vote in the Republican Majority for -- I think that was the Majority at that time -- for his position. So it was a testament not only to his debating skills but a testament to Dom.

Certainly as an eminent jurist and as a preeminent legislator, he will be sorely, sorely missed.

ACTING PRESIDENT MEIER: Senator Gentile.

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

I too knew Judge Dominick DiCarlo as a judge and also as an assemblyman, although I didn't have the pleasure or the

honor to serve with Dom DiCarlo in the Legislature.

I recall as a young teenager being -- having the opportunity to go visit Assemblyman Dom DiCarlo in his district office and speak to him about educational policy. And quite impressed -- I believe I was about 15 years old at the time, quite impressed with just his presence and his ability to know the issues that I was concerned about.

Indeed, I recall during our conversation in his office he received a fax from his Albany office. And I think that was the first time I actually saw a fax machine in operation, that he would get something from Albany. And he -- I was quite impressed with that.

And I must say that he was, as has been told, a great debater. He was also a great politician, a great community leader in Dyker Heights and in Bensonhurst. Indeed, I was told by his son last week at his wake that when they first installed microphones in the Assembly, because of his booming voice and the advantage he's always had with that booming

voice, he refused to use the microphones for many years after they were installed in the Assembly.

So he indeed was a leader in my community. He was a leader here in the State Legislature. And he was a leader on the bench. So my condolences to the family, to the DiCarlo family, also to those he served with.

So it is my pleasure to join this resolution, Senator Marchi.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, as Guy Velella said, it is rather difficult to talk about now in many ways.

I knew Dom extremely well. We - for about a year for various reasons, we were together a great deal. I have to be a little careful with some of the things I say here, because it may sound strange. But we went through a great deal together. We had our lines tapped together, we had some threats made against us and all sorts of things in those days.

They were pretty wild days. You know, it is real ironic that I am tabbed as a defender of the Rockefeller Drug Laws, since Dom DiCarlo and I were the two guys who fought the Rockefeller Drug Laws.

In fact, I was just looking the other day and I remembered the initial Rockefeller -- you have to understand something. Friends of Nelson Rockefeller have told me that Nelson Rockefeller felt that the amendments to the Rockefeller Drug Laws represented the greatest legislative defeat that he suffered in Albany. I don't think - you think that the drug laws as they are now are draconian? You ain't seen nothing yet.

In fact, I was looking -- the other day my counsel went over to the library because I couldn't remember any -- he pulled out the old laws. By the way, under the initial Rockefeller Drug Laws, every single seller went to prison for life without parole.

What had happened is Dom DiCarlo was Chairman of Codes, and a young whippersnapper named Dale Volker came off the streets of Depew, was taking a leave of

absence as a police officer. What had happened is when the Rockefeller Drug Laws came, I was a member of the committee and somewhat active, and Guy and I were both very much involved.

The largest freshman class in the history of the New York State Legislature at that time, 43 people, Republicans and Democrats, was our group. And we had a tendency, both Republicans and Democrats, by the way, to get together sometimes, and we could stop just about anything. I mean, and it really irritated some people, particularly in the Governor's office. And on this one, they got especially irritated.

But Dominick, who, as was said by I think John and Guy, in my opinion -- and I, having been around the Legislature since I was four years old -- my father was here 22 years, before me -- and I saw all the great orators. And I want to tell you, there were some great orators around here. And there are still some very good speakers.

But Dom DiCarlo was, in my opinion, the best debater. Now, he may not have had

the polish, say, of a Joe Gallagher -- that is, with the intonation and all that sort of stuff. But for a guy that you would not want to debate with who could just chop you apart point after point, Dom was the guy that you didn't want to face. Because he was good, he was tough.

And yet he was really a gentle man who felt very strongly -- the real reason that in the end he could not bring himself to vote for the amended Rockefeller Drug Laws was - and I know it, because I sat with him -- was that he felt so strongly about everything that had happened. And although he didn't think that it was that terrible, he felt that there were still some refinements that should have been made. I -- in all honesty, I happen to agree with him.

But the decision was made that he was going to move ahead. He gave a speech on the floor of the Assembly. And remember, virtually everybody else was voting for this bill. And yet he gave a speech, basically went through for, about 25 or 30 minutes, point by point the original bill, point by

point the new bill. And just -- it was a devastating speech. People were just mesmerized.

The place -- the Assembly at the time, as Guy will tell you, was a pretty crazy place. I mean, there were actually -- I don't want to say some assaults on the floor, but there was some pretty nasty stuff in that place. It was pretty wild in those days.

But the place quieted down, and when Dom spoke, you could hear a pin drop. Everybody just sat and watched. And when it was done, he sat down and there was quiet for about 20 seconds. And all of a sudden, everybody just got up -- and remember, these people were all going to vote the other way from him, all of us -- we got up and we gave him a standing ovation for about five minutes. Because it was such a principled and such a brilliant speech that you had to just admire it.

Dominick through his entire life I think was one of the most principled and genuine men that I have ever met. As was said before, he went on the bench, on the, what is

it, the International Court of World Trade or whatever it was.

I was in his court several times, by the way, and saw him. Boy, I'll tell you, that's the way to live, as the saying goes. It's a beautiful courtroom, a very important courtroom that most Americans have no idea even exists, which is kind of sad. I'll admit to you that I hardly knew much about it until I went to New York City and was in that courtroom.

But if you asked me who were -- who were the most towering legislators around this place since I've been here, certainly Dom DiCarlo would be at the top of the list, would be one of the top people. His loss is certainly difficult, although, you know, I've seen him on and off over the years, not really as much as maybe I would have liked to. But he was a super man.

And while I'm on the subject, just let me just finish and do a little pitch here, as I said I would do for Dean. Tomorrow morning at 8 o'clock at St. Mary's Church - it's ironic we're having this resolution

today -- we're having a memorial service for deceased legislators. We'll have an ecumenical service.

For those of you that are new, we have a service for the -- an ecumenical service with a rabbi, a priest, and a minister there. And we do various tributes to the Legislature and to the people who are deceased from the Legislature during the past year. And several members do readings.

We would like anyone that would like to come to please come. And then we have a little breakfast afterwards downstairs in the LOB. So that will be at 8 o'clock tomorrow at St. Mary's Church.

Thank you.

ACTING PRESIDENT MEIER: The question is on the resolution.

Senator Skelos.

SENATOR SKELOS: I want to thank Senator Marchi for, number one, presenting this resolution, opening it up for sponsorship.

I had the opportunity, as did Senator Kuhl -- we were elected to the

Assembly in 1980. That explains why we look a lot better than Senator Velella.

(Laughter.)

SENATOR SKELOS: But I had the pleasure of serving one year with Dominick DiCarlo in 1981 before he resigned from the Assembly.

And he would be taken aback by today, and he would say "Stop the B.S." in his gruff way. But he would be thankful to this chamber for having this resolution brought up.

What an incredible debater. I've never seen to this day anybody that could cut apart his opponent, dissect his opponent. In fact -- in a respectful way, because he respected the institution of the Assembly and the Senate. In fact, once in a while when he'd come into chambers I'd say, "Dominick, did you have lunch?" And he'd say, "I'm going to have lunch now." And, you know, God forbid the person that debated him that day.

He was a very, very special person. He always did his homework. He was a good family man and loved, loved being in the Assembly.

So, Senator Marchi, again, thank you for this resolution. And I know on behalf of Senator Marchi and Senator Bruno, I'd like to have the resolution open for sponsorship by the entire Senate body.

ACTING PRESIDENT MEIER: Senator Skelos, shall we follow our usual custom and include everyone unless they specifically ask to be excluded?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the resolution?

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 Skelos, also before I believe you mentioned Resolution 1197, by Senator Trunzo, and 1260, by Senator Sampson. Shall we do the same on that?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: All right. All members will be included on those two unless they specifically direct the desk otherwise.

Senator Skelos.

SENATOR SKELOS: On behalf of Senator Maziarz, there will be an immediate meeting of the Aging Committee in the Majority Conference Room.

And I believe there are now some substitutions to be made.

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

The Secretary will read the substitutions.

THE SECRETARY: On page 7, Senator McGee moves to discharge, from the Committee on Agriculture, Assembly Bill 6547 and substitute it for the identical first report, 824.

On page 7, Senator Hoffmann moves

to discharge, from the Committee on Agriculture, Assembly Bill 6546 and substitute it for the identical first report, 825.

On page 7, Senator Balboni moves to discharge, from the Committee on Environmental Conservation, Assembly Bill 5590 and substitute for the identical first report, 830.

ACTING PRESIDENT MEIER: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 44, by Senator Johnson, Senate Print 977A, an act to amend the Vehicle and Traffic Law and the Education Law, in relation to the receiving and discharging of passengers.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect September 1, 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator Balboni, Senate Print 1241A, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 128, by Senator Alesi, Senate Print 87A, an act to amend the Vehicle and Traffic Law, in relation to prohibiting.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 267, by Senator Trunzo, Senate Print 3278, an act in relation to requiring the commissioners of motor vehicles.

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, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 322, by Senator McGee, Senate Print 3319, an act to amend the Vehicle and Traffic Law, in relation to the operation of school buses.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 518, by Senator LaValle, Senate Print 1745, an act to amend Chapter 554 of the Laws of 1996.

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, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 588, by Senator Volker, Senate Print 3601, an act to amend the Tax Law, in relation to extending the sales and use taxes.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Dollinger and Gentile recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Nothing, Mr. President.

ACTING PRESIDENT MEIER: Just stretching your legs, huh? Okay.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 619, by Senator Alesi, Senate Print 3965, an act to amend the Economic Development Law, in relation to allowing the Commissioner of Economic Development to sell advertising.

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, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 678, by Senator Wright, Senate Print 4161, an act in relation to authorizing the conveyance of certain real property of the State of New York.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 683, by Senator Saland, Senate Print 3362.

SENATOR SKELOS: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 736, by Senator Padavan, Senate Print 1803 -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 770, by Senator Seward, Senate Print 4305, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that concludes the noncontroversial calendar.

SENATOR SKELOS: Mr. President,

if we could take up the controversial calendar, please.

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

THE SECRETARY: Calendar Number 80, by Senator Balboni, Senate Print 1241A, an act to amend the Criminal Procedure Law, the Family Court Act and the Penal Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Balboni, an explanation has been requested of your bill by Senator Dollinger.

SENATOR BALBONI: Thank you, Mr. President.

My colleagues, this bill before us is an amended version of a bill that we have already passed. And the issue that makes this bill different today is that this bill comes before you representing the support of the victims, the DAs Association, the Senate Majority, and the Governor of the State.

This is significant in that this is the first time any piece of legislation on the issue of stalking has enjoyed that support.

The negotiations that were conducted in order to arrive at this bill print version included extensive analysis of not only the statutory provisions but the victim's perspective. I refer to this version of the bill as putting a face on stalking.

This bill before us is a difficult bill because it takes on a difficult topic. Stalking is the act of repeatedly following another individual with the intent, with the design, and with the effect of placing that individual in reasonable fear that the stalker is going to do some harm to them. That is not a statutory definition, that's a practical definition.

Today at the press conference that was held earlier, the head of the District Attorneys Association spoke about a case where a woman, after breaking up with her lover, received flowers for 45 days straight. And when she went to the police, she said, "I'm receiving flowers. I am fearful of this behavior." And this is back in 1987. And the police officer's response was, "How do we put somebody away for sending you flowers?" On

the 46th day, the stalker strangled the woman with her own terry cloth robe.

And this is the type of behavior that permeates so many different lives in our society. Case in point, when we debated this bill a month and a half ago and I concluded my remarks, my debate, I had five people in this chamber come up to me and say, "You know, I was stalked, but I didn't know what to do about it." You don't know if you're being hysterical; you don't know if you're imagining things.

And so the amendment that is before us is so significant in that for the first time it takes into account the needs of the victims and their perspective, the needs of the prosecutors and their perspective on how to prosecute these crimes, as well as an agreement between the Senate and the Governor.

Let me for a moment just go down some of the different language changes. For the first time, we would define the word "distress," for the purposes of this measure, to mean, in addition to the normal meaning, "fear that the actor will cause material harm

to the health, safety, business, career, education, financial condition or property of a person or of a third person."

Why is that significant? Today the head of the Statewide Coalition Against Domestic Violence spoke about a woman whose ex, when he learned that she was attending classes at school, enrolled in every single one of her classes, never having previously expressed any interest in pursuing an education.

Now, if you go to the police and you say "Help me, this is not natural," the police look at you and say "What's the problem?"

The enactment of this statute will give law enforcement as well as prosecutors the ability to identify and target this type of behavior and intercede, perhaps not necessarily with an arrest or an indictment, but with a warning: "Your behavior signals a disturbing pattern of behavior for us in the law enforcement community. We are now enabled by the Legislature to view this as a crime. And if you do not desist in your behavior, we

will arrest and prosecute you."

That's a part of the legislation you don't really see. That's the practical world, ladies and gentlemen, the practical realities of being a victim.

In addition to which, the bill talks about stalking in the fourth degree, which is a B misdemeanor, less than a year of jail time. And that is essentially knowingly engaging in a course of conduct likely to cause substantial distress to a reasonable person under the circumstances. We put ourselves in the shoes of the victim.

Stalking in the third would become an A misdemeanor. And it would be a repetition of the stalking fourth; in other words, you do the stalking fourth again. And then, if you had -- committed stalking fourth within a ten-year time period, then you'd be guilty of the third degree. If you committed the act of stalking more than five times against one person, that would be a third-degree act, or against two or more people in separate instances.

And lastly, that if you commit acts

directed at a specific person likely to cause physical injury or serious physical injury - this doesn't talk so much about following individuals, but rather about doing something like sending dead roses, that is intended to cause a reasonable fear and in fact does cause a reasonable fear -- we move to the felony statute -- the felony penalty.

And for purposes of felony, now we get into a minimum of one year in jail. And it's basically one to three years for an E felony. And that would be stalking in the second. Stalking in the second would be a prior assault conviction where the victim is the same or a member of an immediate family; possession of a dangerous instrument, deadly weapon, firearm, imitation pistol or inseparable firearm; or against an individual who's under the age of 17, as long as the defendant is over the age of 21; or a repetition of stalking in the third degree.

And lastly, a D felony for stalking in the first degree. And a D felony, three to five years, this is serious time. This is the first time we've taken this step. And this

would be stalking in the first degree. You commit stalking in the third degree against another person within the preceding ten years and have a prior felony conviction where the victim of that felony was of the same family as the individual being stalked now. Or in the course and furtherance of the stalking in the third degree, the individual commits a crime involving physical injury, serious physical injury, or death.

I have memos in support which are, like I said, very telling -- the New York State District Attorneys Association, the Victims Services, the Statewide Coalition Against Domestic Violence, the Nassau County Coalition Against Domestic Violence, and the New York State Coalition Against Sexual Assault. These memos in support are not lukewarm. They are insistent and passionate in their support for this bill.

Mr. President, I hope that our actions today and hopefully the passage of this measure will provide a clarion call for the State Assembly and Assemblyman Scott Stringer, who's carrying the bill in that

House, to be able to move this issue forward for eventual passage and signature by the Governor.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: I'm sorry, Senator Schneiderman.

SENATOR SCHNEIDERMAN: That's all right. Thank you, Mr. President.

Will the sponsor yield to a question?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield to a question?

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I'd like to ask the sponsor, at the time the earlier version of this bill was introduced -- and I note that I'm very pleased with the fact the Governor has now caught up to the Senate, and I join you in hoping that the Assembly, led by Assemblyman Stringer, will follow on the issue of stalking.

At the time that your earlier version of this bill was introduced, there was discussion of the relationship, if any, between this stalking legislation and the clinic antiviolence legislation, of which I'm one of the sponsors in this house. I'm wondering if any of the amendments made since then incorporate anything that was in the hostile amendment offered to add the clinic antiviolence bill to the stalking bill.

SENATOR BALBONI: I do not believe so.

But allow me to inform you that during the press conference there was a question about whether or not this has anything to do with clinic access, and it was made to one of the advocates. The advocate specifically said, "This should not be linked. This is a separate issue. This is what we want to see. This is a new approach. Let's focus on the terms of this particular bill."

SENATOR SCHNEIDERMAN: Thank you.

If the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator

Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

Actually, I don't have another question, I could just make my comment on the bill. Although it's a pleasure to exchange questions with Senator Balboni.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: On the bill.

I am pleased to hear that. I think that has certainly been my position all along, and I think the position of most in our conference, that these two positions should not be linked.

At an earlier stage in this session, Senator Bruno wrote to some constituents of mine, and I shared this correspondence with Senator Balboni, suggesting that the stalking bill should cover the issues addressed in the clinic antiviolence legislation. I do not believe

these are overlapping bills. I believe they reflect similar innovative approaches to updating the criminal law to reflect the real problems we are facing today, and also to provide law enforcement authorities the ability to intervene at an early stage of the cycle of violence, to prevent greater tragedies from occurring.

I would -- I strongly support this legislation. I look forward to seeing it pass, with Senator Balboni and Assemblyman Stringer's leadership. But I also look forward in the near future to consideration of the other part of this equation, which is the clinic antiviolence legislation.

I note that we have just ended a period in which violent demonstration was threatened in Buffalo and Rochester. It ended very peacefully, in large part due to the fact that the federal Clinic Antiviolence Bill, the face law, was in effect, an injunction was obtained by the Attorney General's office, and peace was maintained. That was because in Buffalo and Rochester it's easy to get to federal court and invoke the powers of the

federal authorities.

We want, through our state Clinic Access Bill, to make that same relief available in State Supreme Court and to all the people of this state, not just those in the large metropolitan areas.

Once again, I commend Senator Balboni for his work on this. I plan to support the bill and hope that we'll also see the clinic antiviolence bill in the near future.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Will the sponsor yield to one question?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: If you could turn to page 5 of the bill, lines 12 through

14, I'd just like an explanation and I have a question about the -- there's a unique juxtaposition about -- I understand your attempt here is to increase the penalties depending on what prior crimes someone has committed.

But it says with the sentence - term of imprisonment in excess of one year or a sentence of death was authorized. I'm not sure I understand what that means. Could you tell me what that means?

SENATOR BALBONI: Well, that means that focuses on the initial charge, as opposed to the actual final resolution, whether it be by plea bargaining or conviction.

SENATOR DOLLINGER: Would that apply -- again through you, Mr. President, if Senator -

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

SENATOR DOLLINGER: Would that apply -

ACTING PRESIDENT MEIER: Wait, wait, wait.

Do you continue to yield, Senator?

SENATOR BALBONI: Yes, I do, Mr. President. Sorry about that.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Would that apply to crimes committed here in the State of New York?

SENATOR BALBONI: I believe so.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Balboni would continue to yield.

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

SENATOR BALBONI: Yes.

SENATOR DOLLINGER: My question is, how can you have authorized the death penalty and be a death penalty case, yet someone would be free to go do something else under the stalking statute, when at least my recollection is if you're charged with the death penalty in this state, you can't plead to anything else other than life imprisonment without parole?

SENATOR BALBONI: Senator

Dollinger, I'll be candid with you. This was at the suggestion of the DAs Association. I am not a district attorney. I'm not a prosecutor. They wanted this really bad. I said okay.

SENATOR DOLLINGER: The death penalty language?

SENATOR BALBONI: That's their language.

SENATOR DOLLINGER: Okay. Thank you.

SENATOR BALBONI: However, Mr. President, in all candor, if a suggestion is made, if you have language that you'd like to -- for us to consider, I'd be happy to do that.

SENATOR DOLLINGER: Mr. Preside nt, I appreciate Senator Balboni's offer.

I'm not sure I do, I just couldn't understand why we would refer to the death penalty as a prior statute or a prior activity that someone has been engaged in and they were somehow back out on the street stalking someone. At least to my recollection in this state, I mean if you're charged with the death

penalty in this state, the rule is you can't plead to anything other than life imprisonment. Maybe I'm -- I've missed some piece of it.

Mr. President, I'll just -- I want to thank Senator Balboni, both for the offer and for responding to my questions. I do have one suggestion for him that I would just like to make as a proposal. I'm not going to make it as an amendment. But if this does go to negotiations with the Assembly, I would hope that he considers it.

And that is the specific problem of child stalking. The bill deals with the problem of what I would call teenaged stalking. That is, it references the victim being less than 17 years old and the perpetrator being more than 21 years old. I would just suggest there's a problem with teenage stalking, and that is the 18-year-old, 19-year-old boyfriend who stalks the 15-, 16-, 17-year-old girl.

And I would suggest that what we do is look solely at the age of the victim of the stalking and take the penalties and make it a

second-degree offense -- or, excuse me, a third-degree offense if the victim is under the age of 17 but over the age of 12, and that you increase the penalty for stalking even younger children.

The reason why I mention this, Mr. President, is because there was an incident in my community about three years ago in which the same white automobile showed up at elementary schools in the vicinity -- in the suburbs of the city of Rochester. And the same white automobile was stalking little children, threatening them, following them, following them home. Whoever the perpetrator was, he never got out of the car, never had the whatever it was to get out of the car. But he was enticing them to get into the car, and he harassed them all the way home.

I would just suggest that to really make the child-stalking portion of this, if we could increase the penalties for that conduct, we would go a long way to making this bill an even more powerful deterrent against those who would prey on younger children.

So with that in mind, Mr.

President, I'd just suggest that to Senator Balboni. I've carried a bill similar to that that affects the harassment statute. It just seems to me that as we do with many other offenses, where we grade them up as the child gets younger, I would just suggest that we do it here as well.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 11. 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 Balboni, to explain his vote.

SENATOR BALBONI: Thank you, Mr. President. Just briefly.

I appreciate the comments made today. I also appreciate the vote. But let me say this to the body. This is an issue that we spent a great deal of time, and it's not done yet, in terms of there's going to be more negotiations with the Assembly.

Senator Dollinger has raised two very good points. I will find out what they are. And I would just offer all of you, in a very bipartisan way, let's try to make this proposal the proposal that will help the most people. So keep the suggestions coming. They're very, very good. And I'd like to thank the body for its consideration.

I vote in the affirmative, Mr. President.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 128, by Senator Alesi, Senate Print 87A, an act to amend the Vehicle and Traffic Law, in relation to prohibiting the placement of advertising on school buses.

SENATOR MONTGOMERY: Explanation.

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

Calendar Number 128 by Senator Montgomery.

SENATOR ALESI: Thank you, Mr. President.

Very simply, this bill would prohibit advertising except advertising that is already allowed by DMV on any school buses of seven seats or larger anywhere in the state, with the exception of the City of New York.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Mr. Presid ent, that explanation is satisfactory.

I just want to make a comment on the legislation, if I may.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Briefly.

I'm happy -- very happy to see that Senator Alesi is addressing this issue of commercial advertising to children in and around vehicles and their schools.

I would -- I have a bill that would also prohibit commercial advertising in schools. And just to alert my colleagues and

Senator Alesi -- hopefully we can even go further than this -- that I have been looking at textbooks in schools, in school districts -- in my district, my Senate district. And there is extensive, extensive commercial advertising that is basically unrelated to a lesson that the textbook is dealing with. Math books and other books are full of commercial advertising.

And obviously it's a captive audience. And if it does not add to the subject and the lesson, it certainly, I think, should be banned by this Legislature.

So I just wanted to say I'm happy to see that Senator Alesi is addressing this issue. And I hope that we can go even further than this in making commercial advertising illegal in terms of school classes and -- as well as textbooks.

Thank you.

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, 57. Nays, 1. Senator Hevesi recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 736, by Senator Padavan, Senate Print 1803, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PADAVAN: Mr. President, I believe an explanation was asked for by Senator Paterson.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I would like an explanation. But I'd like the chamber to know that I actually didn't say that.

But Senator Padavan seems to know what I'm thinking. So if he would give an explanation and answer my first three questions, I would like him to go ahead.

(Laughter.)

SENATOR PADAVAN: I had suggested to Senator Paterson that we take the debate two years ago, simply enter it into the record and call it a day. But he wouldn't bite on that, being the dedicated, conscientious Deputy Minority Leader that he is, and so we will have to do it again.

There is a great deal of dissatisfaction with the insanity defense in New York State and has been so for many, many years. Those of you I'm sure -- particularly those who are attorneys I'm sure studied the so-called M'Naghten Rule, the M'Naghten case that took place in England in 1843 that first established the concept that someone could be acquitted, not held accountable for his act, by reason of insanity.

Modern psychiatry, of course, has evolved over that period of time. And today we find much many, many instances where that use -- the use of that particular option in criminal cases has been abused.

What we have before us is a proposal that is not unique in terms of the law of the land. But actually it was first

suggested as a result of a public hearing I had in 1977, 22 years ago, when we became aware of the fact that the insanity defense was increasing in terms of magnitude.

Now, I hasten to say that if you take the entire universe of criminal cases that are dealt with in the State of New York, the number of pleas that involve the insanity defense are relatively small in percentage terms. Yet, however, that number has steadily increased. Go back to the '60s, there was a five-year period where there were 50-some-odd. And then you go up to the '70s, in a similar period, there were 200-and-some-odd. And many of those cases, many of them high-profile cases, do occupy a great deal of the time and energy of our prosecutors and the courts.

So while they are, if you take the 60-some-odd-thousand cases every year that deal with serious crimes of violence that are prosecuted in this state, a small percentage, yet they are significant.

But more importantly, I think, we want to address the issue of what is appropriate, both in terms of the law and its

fairness and equity and also the public safety. And that's what this bill does.

What it says, very simply, is that when you have an insanity defense offered where judges or juries deal with what are sometimes referred to as dueling psychiatrists, and where the definition, which is a matter of law as to whether or not a person is conscious of the consequences of his act or not, is not clear, or where a judge or jury will feel quite certainly that there is a level of mental illness and yet that person still knew the consequences of his or her act, that a third option should be available.

And currently we have two: acquittal by reason of insanity, or guilty, without any reference whatsoever to the issue of mental illness.

By providing a third alternative, guilty but mentally ill, we accomplish a number of objectives. First, the level of mental illness is acknowledged in the courts in terms of diminishing capacity and other prerogatives that are available to the courts, and prosecutors will take that into

consideration in sentencing. And obviously the courts have the benefit of psychiatric guidance in all of these cases.

However, the person will be incarcerated in a state prison -- and we have seven that have mental health satellites within the confines of those institutions - and his mental illness will be dealt with and treated. Should that person be subject or eligible for parole, a condition of parole would be a continuation of that treatment to the extent necessary.

So we deal and acknowledge the mental illness, and at the same time we provide a level of security to the public in terms of where that individual is.

Now, there have been many high-profile cases. It seems every couple of years one pops up that is particularly significant. I remember a number of years ago we had one involving a police officer that killed a very young, young boy. He was acquitted by reason of insanity. He was placed in a psychiatric center of my county, Creedmoor. Seven months later, the

psychiatrist said "He's cured," and he left. And in my view, that was a -- certainly not adequate and proper justice, and I think a misuse of the insanity defense.

More recently, we had one you may have read about, an individual who killed and then cannibalized his victim who currently is about to be released from a psychiatric facility, having been deemed cured. Just two weeks ago we had a 3.30.20 -- that's the body of law that covers these individuals -- a patient at Creedmoor who had slit his aunt's throat, acquitted by reason of insanity, who decided to leave the institution, and he's still at large.

So we have a lot of problems with this particular statute that I think this act, this proposal would resolve.

Now, I said it's not unique, because there are 19 states that have adopted this legislation. And in law, many of them go back quite a number of years, back to the early '80s.

The bill is supported broadly by a number of individuals as well as institutions:

The New York State Law Enforcement Council, which is all of our district attorneys in the state of New York; the New York State Association of Chiefs of Police; the New York State Sheriffs Association; the Criminal Justice Coordinator of the City of New York; the Citizens Crime Commission; as well as the previous three Attorney Generals of the State of New York -- Mr. Abrams, Mr. Koppell, and Mr. Vacco, all of whom supported this legislation. In my conversations with the Deputy Commissioner and Chief Counsel for the Office of Mental Health, they too support this legislation. The Governor supports this legislation.

So we have broad-based support. It's sponsored in the Assembly by Assemblyman McLaughlin.

This is the seventh time I will have presented it to this body for consideration, and hopefully it will be the seventh time it passes. And perhaps we will get some action in the Assembly to move in the right direction.

Without going into much more

detail, that is the essence of this proposal. And I'd be happy to answer any questions you might have.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Padavan has given an excellent explanation. He also answered my first three questions. If he would yield for my fourth question.

ACTING PRESIDENT MEIER: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes, I certainly will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, I have a great deal of admiration for your work in this particular field. And you have really stayed on this for a very long time. I've admired your work not only sitting in front of you here in the New York State Senate but when I was in the Queens District Attorney's office, and was actually happy when you introduced this whole concept some years ago.

Now, upon further reflection, there are some issues that I'd like to raise with you. And they specifically relate to your description of the definition of this legislation. While the bill says "guilty but mentally ill," the fact is that an individual who is convicted of a crime is being convicted, even under the language of this legislation, because they were able to know that the act that they committed was wrong and that they knew the nature and the consequences of their act.

That's correct, isn't it?

SENATOR PADAVAN: Insanity, Senator, as I indicated earlier, is a legal definition. It's not a clinical term. It means that a defendant's mental disease is so extreme that he cannot appreciate either the nature and consequences of his conduct or that such conduct was wrong.

Now, that's the law. Its application, however, is far more complex, in determining where the specific case falls within the framework of that definition.

And so, Senator, juries and

jurists, many of whom I've talked to - many -- tell us that we need an option that has served other jurisdictions. Here, as an example, right now there are 159 people in the corrections system in the state of Illinois who were found guilty but mentally ill. We need that option.

When and whether it will be used or how it will be used would depend on the individual case. We do not eliminate acquittal by reason of insanity, we do not eliminate the option of incompetency to stand trial, both of which must remain. Although, by the way, several states have eliminated them entirely. They deal only with diminished capacity and nothing else. But that's another issue.

But, Senator, yes, guilty but mentally ill will mean, in effect, that that person did have a level of knowledge of the consequence of his or her act, but yes, also, mental illness was a factor and cannot be eliminated from any consideration.

Keep in mind, if the decision is guilty and the insanity defense is rejected by

a court or jury, there is no mandate -- no mandate for mental health care in the correction system. There is no mandate for follow-up mental health care upon parole or early release.

So by doing this we not only benefit the society at large, but I think we also benefit the individual, in ensuring that mental health care will be made available even within the correction system as it's now currently provided for.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: So, Senator, when we have a situation now -- because we already have the plea of not responsible by reason of mental disease or defect. Since we already have that defense, and we're saying

that the jury or trier of the case has rejected that -- they've now said that the defendant is guilty, and under the definition the person does understand the nature and the consequences of their act and they know that the act was wrong, so they could not be insane -- we are now not really dealing with the mental illness being a factor in this trial. I don't understand how you can say that -

SENATOR PADAVAN: But we are, Senator. First, the plea could be guilty but mentally ill. That could be the plea. That could be a charge.

SENATOR PATERSON: Well, that's if we make this law.

SENATOR PADAVAN: If this were law.

SENATOR PATERSON: Right.

SENATOR PADAVAN: Now, if you're saying without this as law, you're absolutely right.

But with this as law, you provide that opportunity both to prosecutors, defense attorneys, and jurists. And you do all the

things that I mentioned before in the course of doing that, accomplishing that fact. I think that's a move forward, Senator, in terms of both the public's protection as well as the individual who's incarcerated.

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

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, what I'm saying is that what we are now doing is curing a problem that I see as one that should be handled administratively, by asking the trier of fact or even jurors to determine what the level of mental disease was, even though we're admitting in this legislation that the mental illness was not of such consequence that it really changed the guilt or innocence of this particular defendant.

In other words, what I'm saying is that this person was guilty. They knew what they did, they were wrong, they knew they were

wrong, they're guilty. Also, ancillary to that, they have a mental illness.

And what I'm saying is if a person has a mental illness, why do we have to bring that into the trial, since the trier of fact has already determined that it did not influence the individual's capacity to know the nature -

SENATOR PADAVAN: But it did, Senator. You're familiar with the term "diminished capacity."

SENATOR PATERSON: Yes. And we have that in the law.

SENATOR PADAVAN: We do have that in law. That's the point I'm making.

So obviously, when someone is deemed guilty but mentally ill, that part of the law has effect. And when sentencing - and where sentencing and where incarcerated - not all prisons have this mental health capacity, treatment facility -- where placed, all become significant factors within the total universe of what we're doing.

And so it is important, and it is a fact. Now, if you're going to take the two

extremes that you just articulated, then it is not relevant. But when an insanity defense is presented and the numbers -- even though again, I repeat, within the total sphere of things, they're a small percentage. But those cases have become greater and greater in number. And we're seeing some real abuses of our system by virtue of them.

And we're seeing the public endangered by virtue of them. That individual is roaming around, presumably in Queens, although he may be out in Manhattan now, for all I know. He walked out of a psychiatric center that's certainly not a secure place.

ACTING PRESIDENT MEIER: Senator DeFrancisco, why -

SENATOR PADAVAN: -- that you're talking about.

ACTING PRESIDENT MEIER: One moment, Senator Paterson.

Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I'd request the opportunity to ask a question along a different line, but I think what Senator

Paterson is getting at, if he would yield and if Senator Padavan would yield.

SENATOR PADAVAN: Are you going to yield to him?

SENATOR PATERSON: I've yielded to you. Why can't I yield to him?

(Laughter.)

SENATOR DeFRANCISCO: Thank you.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: I have the same concern, because the reasoning sounds circular. And let me just read from the bill.

In order to be guilty but mentally ill -- that's the extra category you're asking for -

SENATOR PADAVAN: The third option, yes.

SENATOR DeFRANCISCO: The third option. The third option gives the introductory language. And Section A says the first thing the jury's got to find to find guilty but mentally ill is that the defendant is guilty of the crime.

SENATOR PADAVAN: Did the act.

SENATOR DeFRANCISCO: Okay. No, no, this says -

SENATOR PADAVAN: Guilty of the crime, yes.

SENATOR DeFRANCISCO: No - well -

SENATOR PADAVAN: Well, use your terms. I'll use mine.

SENATOR DeFRANCISCO: No, no, no, no.

SENATOR PADAVAN: My answer to your question is yes, Senator. Go ahead.

SENATOR DeFRANCISCO: But will you agree that it's not my terms, it's your term in the bill -

SENATOR PADAVAN: Correct. You're reading it properly.

SENATOR DeFRANCISCO: -- that the defendant is guilty of a crime. Correct?

SENATOR PADAVAN: Correct.

SENATOR DeFRANCISCO: So my point is, if the jury gets to that point where the defendant is guilty of the crime, they have already found him guilty, the second section is meaningless. They've found him guilty,

therefore he's guilty of a murder.

SENATOR PADAVAN: Senator, let me answer your question. Is that a question?

SENATOR DeFRANCISCO: Yes.

SENATOR PADAVAN: You're right, he is guilty of having committed a crime within the context of a degree of knowledge of the result of his actions.

However, mental illness, as all the prosecutors that I've talked to, many of the judges -- including psychiatrists, such as the Son of Sam psychiatrist, with whom we met and spent practically an entire day, will tell you, this is not a precise -- this is more of an art than a science when you get to that second half.

Now, Berkowitz, the Son of Sam, was found guilty and incarcerated. However, it was a very, very iffy situation. He was very close to being acquitted by reason of insanity. That psychiatrist and many others who deal within the framework of our judicial system are saying there has to be an option where we guarantee mental health care when incarcerated.

And that's the part that you're overlooking, that when we say guilty but mentally ill, a number of other provisions here are triggered. I repeat again -- for the fourth time, I think -- when that person is placed in prison, it is mandated by this statute that he or she receive mental health care. And there are seven prisons that have satellites or components to provide that in the State of New York today. In addition, assuming parole or early release, mental health follow-up care is mandated.

Now, if you stop where you wanted to stop -- guilty -- those things would not trigger at all. And that's part of what we're talking about.

The second part of the question is, if you recall what I said earlier, you have juries who are dealing with dueling psychiatrists. And they're really torn. They look at this defendant and they say, "Well, obviously this person has some level of mental illness, but yet in my heart of hearts I know that when he stuck that knife into his victim or pulled the trigger, he knew that he was

going to kill him. But do we just say guilty and forget about the fact that he's somewhat mentally ill?" Or he is mentally ill, not somewhat.

And so this provides that option of their considering an alternative. Which, by the way, as I said to Senator Paterson, may be part of the very plea. It may be part of the prosecution. The district attorney might opt to proceed in this way from the very beginning, to facilitate whatever he feels is best within the framework of the given case.

So I don't know if I've answered your question. But you don't stop at guilty if you want to take all those other factors into consideration.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Yes, sir.

SENATOR PATERSON: I certainly understand what Senator Padavan is talking about. There was a time in this country, as

Senator Padavan described, around the time of the Supreme Court case Jackson versus Indiana, where we had people in this country who would be found not guilty by reason of insanity, known in New York as not responsible by means of a mental disease or defect, who would be converted to civil commitment, they would go into institutions, they would slip through the cracks, they would come right back out of the institution and in many cases would go out and commit other crimes.

Senator Padavan described one of those cases. It was an awful case. It happened on Thanksgiving Day of 1977, when a police officer named Torsney killed a 7-year-old child named Randolph Evans. And at that time, he in his defense pleaded not guilty by reason of insanity -- and his argument was that he was suffering from psychomotor epileptic syndrome, which was a diagnosis not accepted by the American Psychiatric Association -- and was acquitted.

So I understand what Senator Padavan is getting at. But what we're saying is since we're not really addressing that

issue in this legislation, we are now addressing what Senator Padavan describes as something that has to be decided upon at trial.

Now, interestingly enough, when I look at this bill and under the issue of fiscal impacts it says "none," Senator Padavan is describing what I think would be some substantial psychiatric treatment that some of these inmates would require. I don't see that as something that has to be resolved at trial. That would be something that perhaps we, as a part of the Department of Correctional Services and the Office of Mental Health, need to get together and decide what we want to do where there are clearly cases of inmates who are suffering from significant psychiatric illnesses. And in those cases I think there might be monitoring of them and certainly some of the conditions placed on the parole that Senator Padavan is describing.

But just in the pure discharge of criminal law, as it affects these particular trials, I don't see the need for the guilty-but-mentally-ill plea or finding that

as a possible alternative, because in my opinion it addresses issues more administrative than actually legal. We know that intent is the real aspect of culpability.

And when we review that further, we recognize that Senator Padavan concedes that these individuals are found to have intent, so therefore they are culpable. Now, to what degree their capacity was diminished by a mental illness does not affect this trial anymore because the trial is over, the person is already found guilty.

We're saying that in terms of treatment, we have that now. We have that treatment in these facilities. Senator Padavan is saying we don't have enough. I agree with him. And that's an issue I think that we can certainly address in our two agencies that deal with these types of problems.

I would not like for those legitimate cases where defendants are found not guilty by reason of mental disease or defect, under 3.30.20 of our Criminal Procedure Law, I would not like to have those

cases that are legitimate impacted upon by this third alternative that would make one think that because a crime was definitely committed, that the defendant is more responsible because the defendant did actually commit the act and was at the time mentally ill, didn't understand the nature of the charges.

In those situations, I think that it would cause juries to probably vote for not guilty but mentally ill, when actually, under the current circumstances -- and there's only 1/10 of 1 percent of cases that come into criminal court like this that are discharged this way -- it would create a great deal of confusion.

I don't think that the kind of "get out of jail free" card which Senator Padavan has described in the past is an issue that is going to be resolved by passage of the guilty-but-mentally-ill plea.

ACTING PRESIDENT MEIER: Senator Padavan.

SENATOR PADAVAN: Mr. President, taking what the Senator said as a question,

first, this will not solve all the problems. There will still be acquittals by reason of insanity where prudent individuals would feel that there was a miscarriage of justice. This bill is not going to solve that in one fell swoop.

But it will, in the case he talked about and that I talked about, the young boy being killed and the individual being released six months later, having been cured -- it will hopefully deal with that kind of situation. And I believe it could well have had it been law at that time. Can we say unequivocally? And the answer is no. There's a good possibility it could have been.

And I would suggest to Senator Paterson and anyone else who's listening that we have 19 states, including California, Illinois, Pennsylvania -- a recent case in Pennsylvania you may have read about, I think it was last year, one of the members of the DuPont family committing murder. The insanity defense was presented in that state. It was a major issue. It resolved itself; he was found guilty but mentally ill. He's in a state

prison in Pennsylvania receiving mental health care. We ought to have that option.

Now, all of our prior Attorney Generals -- the current one has not communicated, so I won't speak for him. But three Attorney Generals, two Democrats and one Republican, strongly endorse this bill. The Governor endorses this bill. The Deputy Commissioner and Chief Counsel of the Office of Mental Health of the State of New York endorses this bill.

Now, you know, I have to suggest to all of you that when every DA, through their own association in this state, comes together on an issue, we ought to consider the import of that conclusion on their part. When one district attorney after the other and when one Attorney General after the other comes forward and endorses this bill, I think we have to consider that.

And while I respect fully the points raised by Senator Paterson, I would have to disagree with him that this can be done on a civil-action basis. It can't be. Not in every instance. Not in every instance.

The person who cannibalized his victim is going to be released from a psychiatric center, apparently quite soon, having been deemed cured, even though Attorney General Spitzer is trying to stop it as we speak. But he probably won't be successful.

And when an individual takes a walk off the grounds of Creedmoor State Hospital, in my district, having been placed there after he killed his aunt -- and when I talked to the chief psychiatrist there and said, "Why weren't you guys watching him more carefully?" they said, "Well, we were just about to determine that he was cured, and so we were giving him more latitude."

I suggest to you that those are abuses that we have to address to the extent that we can. And will we address all of them? The answer is no. But I think we do owe to the people of this state the opportunity to have this option.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Yeah, I'm -- I understand the problem that Senator Padavan is

attempting to address, because we're not apparently responsive to the issues that he raised.

But there was one word that Senator Paterson mentioned, culpability. You cannot have guilt without being culpable, knowing the nature and quality of your act if you take a life, knowledgeably, and you know that you are culpable. Culpable in the sense that you can be punished because you had a criminal intent.

I find it difficult to see how maybe this resolves a problem when he mentioned California. I've been against the death penalty all my life. And I know the issue came up when the President of the United States was Governor of Arkansas, the issue arose about a person who was mentally ill and was convicted. And the plea was made that he was mentally ill at the time. I don't - probably -- maybe the reason -- reasons that the president had, because it didn't become a major issue during the campaign, was that he knew the nature and quality of his act. But he refused to grant pardon under those circumstances.

But for a person to plead, if you can answer that question or respond to it - if the person knowingly, at the time he pulled the trigger or plunged the knife or took the life, knew the quality of his act and what he was doing and that it was wrong, he was culpable. Culpable meaning -- culpa is the Latin, meaning fault. This is mea culpa, mea culpa, my fault. Then there is guilt.

There is no guilt if I shoot you and I -- I'm not guilty unless I know the nature and quality -- I don't mean you, Mr. President, of course. But if I shoot someone and I don't know the nature and quality of the act, am I guilty in any way? I'm not guilty in any way. And that's the problem.

On the other hand, Senator Paterson is -- Senator Padavan is attempting to deal with the question of what do you do with a person -- and I'm not quite sure just what you want to do with this person if they are guilty. Because my sense of the word "guilt" is culpability. Knowing the nature and quality of the act, I take a life, I'm guilty.

For which I don't believe he should be executed, in my personal opinion. Life imprisonment, but not executed.

But, I mean, do you understand the problem I'm having? Maybe it's because, you know, there are too many lawyers around here.

SENATOR PADAVAN: Well, Senator, if that's a question, I do understand the problem you're having. And it's not a unique problem. It's a problem that legislators have been wrestling with in this country for years.

As a matter of fact, going back as far as 1981, the United States Attorney General's Task Force on Violent Crime recommended the establishment of a guilty-but-mentally-ill provision. So this has been not in only individual states but at the federal level as well.

And as psychiatry has evolved - remember, I said earlier the number of these cases, while insignificant in terms of the whole, have increased significantly by virtue of their numbers, more than tripling every five years. So we, I think, have found it more and more necessary -- when I say "we" I

mean the country as a whole -- more and more necessary to protect the general public as well as the individual by doing this sort of thing. Which perhaps 30 years ago was not necessary. But in more recent times, in the last several decades, it's become so, because of the increased use of the insanity defense.

And I talked earlier in my dialogue with Senator Paterson about some high-profile cases, a couple of which any prudent individual could say was a gross miscarriage of justice. I mean, for someone to shoot a boy, a child, a young teenager, and then spend seven months in a psychiatric hospital and then be cured, like nothing happened, that had to be a miscarriage of justice.

And we have to provide this option for district attorneys to lead off with, for judges to resolve cases with, for juries to make determinations with.

And with all due respect to my colleague right behind you, a trial attorney with a great reputation, we -- and I'm not an attorney at all, I'm just an engineer trying to do something good. Trying to make a

living. And I'm not doing a very good job at that either.

(Laughter.)

SENATOR PADAVAN: So, Senator Marchi, I do understand fully the conflict that you feel. And this is a very complex area.

But if you had sat with me for an entire day on one occasion listening to judges, former district attorneys and district attorneys, and psychiatrists unveil their trials and tribulations in this area and make their recommendations, and read some of the reports that have been rendered by various individuals and organizations and listened to the Attorney General and the district attorneys and our mental health people and so on, I think you could come to the conclusion that while this is no panacea -- and very few things that we do are -- this is a positive move in the right direction.

ACTING PRESIDENT MEIER: Senator Dollinger. No?

SENATOR DOLLINGER: No.

ACTING PRESIDENT MEIER: Senator

Skelos.

SENATOR SKELOS: Time to read the last section.

ACTING PRESIDENT MEIER: Amen. Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I vote no, and I just wanted to explain the vote.

I understand the sincerity of Senator Padavan, and the problem. It's a very serious problem. But there has to be some logic in the system. If an individual -- one of the elements of the crime is that you have the intent to do something wrong, and that's an element of the crime.

And if the jury finds in that first paragraph of the definition of guilty but mentally ill that the person is guilty of that crime, has the intent, then that person should

be convicted. If not, that person is not mentally culpable, the elements of the crime have not been met. Therefore, it's not guilty. You have to have mens rea, or you have to have a mental intent as defined by the statute.

So I'm voting no for that reason. And there may be some other solution. But there's got to be some logic behind the system of mental culpability before you can have someone found guilty of a crime.

ACTING PRESIDENT MEIER: Senator Waldon -- I'm sorry. Senator DeFrancisco will be recorded in the negative.

Senator Waldon, to explain his vote.

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

I want to echo Senator DeFrancisco's statements, almost as if he was reading what I had written down mentally.

The entire criminal intent, historically, component of our law has been that one has to understand the nature of what he or she is doing at the moment that it's

committed in order for it to become a crime. So if this were to become a law in New York State, in essence we are overturning our entire structure in terms of what allowed us to have a law and a criminal intent of mens rea prior to this time.

And I just don't think that it flies. I just -- I just don't think that we should do that. So I'm going to agree with Senator DeFrancisco and other learned gentlemen and ladies in this chamber, and I also vote no.

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

Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I vote no. I basically echo the feelings that Senator DeFrancisco and Senator Waldon expressed.

I want to commend Senator Padavan, who is an engineer who seems to read the law much more carefully than those of us who received some training, and is well represented by counsel sitting next to him.

But, Senator, I wanted to tell you if you were looking for any other legal advice, you might look behind you, to my assistant, Jeanique Greene, who today was accepted to Albany Law School.

And with that, I close and thank all of you for coming here today.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Marchi -- I'm sorry, Senator Paterson will be recorded in the negative.

Senator Marchi, to explain his vote.

SENATOR MARCHI: Well, I have just iteration of the reasons I assigned before.

The assignment of guilt implies that there is a criminal intent. You can't establish -- I don't care how many states have done it. California has had a death penalty now since 1974 or '75, and I think they've had two executions. That shows you how much - and we passed a law, and there haven't been any. And I hope there never will be.

But the question of establishment

of guilt has to be tied very tightly to culpability. A fault, meaning a criminal intent. It's been iterated many times. I just find it difficult.

But there is a problem that we're not meeting, and I believe -- I certainly don't want to discourage the effort, because I think that we are not -- I think that we leave some matters dangling, and Senator Padavan properly attempts to address it.

I don't think that this legislation at this point does, so I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 736 are Senators Connor, DeFrancisco, Dollinger, Duane, Lachman, Marchi, Markowitz, Meier, Mendez, Montgomery, Paterson, Sampson, Schneiderman, Smith, Stavisky, and Waldon. Also Senator Onorato.

Ayes, 41. Nays, 17.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the controversial calendar.

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

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

I wish unanimous consent to be recorded in the affirmative on Calendar 128.

ACTING PRESIDENT MEIER: Without objection, Senator Hevesi will be recorded in the affirmative on Calendar Number 128.

SENATOR HEVESI: Thank you.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Wednesday, May 5th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, May 5th, at 11:00 a.m.

(Whereupon, at 5:18 p.m., the Senate adjourned.)