NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 18, 2000

3:06 p.m.

REGULAR SESSION

SENATOR RAYMOND MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

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

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT MEIER: In the absence of clergy, may we bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, January 17th, the Senate met pursuant to adjournment. The Journal of Saturday, January 15th, 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 Volker, from the Committee on Codes, reports:

Senate Print 130, by Senator Skelos, an act to amend the Criminal Procedure Law;

145, by Senator Volker, an act to amend the Criminal Procedure Law;

548, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

650, by Senator Maziarz, an act to amend the Criminal Procedure Law;

676A, by Senator Rath, an act to amend the Penal Law;

725, by Senator Volker, an act to amend the Penal Law;

726, by Senator Volker, an act to amend the Criminal Procedure Law and others;

2085, by Senator Libous, an act to amend the Penal Law;

2191A, by Senator Maltese, an act to amend the Penal Law;

2352, by Senator Velella, an act to

amend the Criminal Procedure Law;

3421, by Senator Volker, an act to amend the Criminal Procedure Law;

3537, by Senator Volker, an act to amend the Criminal Procedure Law;

3719, by Senator Bonacic, an act to amend the Criminal Procedure Law;

5583, by Senator Saland, an act to amend the Criminal Procedure Law and the Executive Law.

Senator Seward, from the Committee on Insurance, reports:

Senate Print 968, by Senator Skelos, an act to amend the Insurance Law;

3516, by Senator Seward, an act to amend the Insurance Law;

And 5740, by the Senate Committee on Rules, an act to amend the Insurance Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All bills will be reported directly to third reading.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Volker, on page 7 I offer the following amendments to Calendar Number 22, Senate Print Number 103, and ask that the said 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 Dollinger.

SENATOR DOLLINGER: Mr. President, I move, on behalf of Senator Santiago, that the following bill be discharged from its committee and then be recommitted with instructions to strike the enacting clause: Senate 1461.

Thank you.

ACTING PRESIDENT MEIER: So ordered.

Senator McGee, for a motion.

SENATOR McGEE: Mr. President, on behalf of Senator Maltese, I move to amend Senate Bill Number 1638A by striking out the amendments made on 12/14/99 and restoring it to its original print number, 1638.

ACTING PRESIDENT MEIER: So ordered.

SENATOR McGEE: Mr. President, on behalf of Senator Saland, on page number 10 I offer the following amendments to Calendar Number 57, Senate Print Number 1031C, and ask that said 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, I believe there's a privilege resolution by Senator McGee at the desk. May we please have it read in its entirety, and I move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator McGee, legislative resolution honoring the memory and celebrating the life of the late New York State Senator Jess J. Present.

"WHEREAS, State Senator Jess J. Present, a member of the New York State Legislature since 1965, unexpectedly passed away at his Bemus Point home on August 8, 1998; and

"WHEREAS, A life-long resident of Western New York, Senator Present graduated from Jamestown High School in 1939 and attended Allegheny College before serving with the Eighth Air Force during World War II. Upon completion of his tour of duty, he received an honorable military discharge and returned home a disabled war veteran; and

"WHEREAS, The death of Senator Jess J. Present, a deeply respected and highly regarded public servant who served under five Governors and four Senate Majority Leaders, leaves a tremendous void in the New York State Legislature and in the communities he served with such passion and devotion.

"Senator Jess J. Present

distinguished himself by his sincere dedication and substantial contributions to the welfare of those he so diligently represented for nearly 40 years. His unprecedented record of service to the people of Western New York leaves an enduring legacy that few will surpass, yet many will emulate.

"Senator Jess J. Present was elected to the Jamestown City Council in 1960 and served as City Council President from 1962 to 1963. He was elected to the New York State Assembly in 1965 and to the New York State Senate in 1968. At the time of his passing, Senator Jess J. Present represented the 56th State Senate District, which is comprised of all of Allegany, Cattaraugus and Chautauqua Counties and the Livingston County towns of North Dansville, Nunda, Ossian, Portage, Sparta, Springwater and West Sparta; and

"WHEREAS, Senator Jess J. Present was a gentleman and a true gentle man who was dedicated to his constituency and to the belief that government can be a positive force for improving people's lives.

"Senator Jess J. Present played a

role in shaping every major State law that has been enacted over the last 33 years by serving as a member of several Senate Standing Committees, as well as Chairman of the Senate Committees on National Defense and Military Affairs; Agriculture and Consumer Protection; Local Government; Corporations, Authorities and Commissions; Ethics; Education; and Commerce, Economic Development and Small Business; and

"WHEREAS, Throughout his distinguished legislative career, Senator Jess J. Present proudly served in many influential leadership positions, including Senate Majority Conference Chairman, Assistant Senate Majority Whip, Senate Majority Program Development Committee Chairman, Senate Deputy Majority Leader for Legislative Operations, and Senate Deputy Majority Leader for Administration.

"In addition to the many committee and leadership responsibilities he so proudly fulfilled, Senator Jess J. Present was a member of several important policy-making groups, including the Temporary State

Commission on Living Costs and the Economy, the Temporary State Commission to Revise the Social Services Law, the Temporary State Commission on State-Local Relations, and the New York State Commission on Child Support. He also served as Co-Chairman of the Legislative Ethics Committee, Vice-Chairman of the Special Committee on Casino Gambling, and the first Co-Chairman of the Administrative Regulations Review Commission.

"Senator Jess J. Present used the vast knowledge and experience he acquired as proprietor of his family's retail jewelry store and as past director of the Jamestown Chamber of Commerce to stimulate New York State's economy. In his most recent position as Chairman of the Senate Commerce, Economic Development and Small Business Committee, and as a member of the Legislature's first Joint Budget Subconference Committee on Taxes and Economic Development, Senator Present worked diligently to improve New York State's business climate by fighting for major tax cuts, regulatory reform, and incentives to help businesses expand and create new jobs.

"In addition to his well-deserved reputation as a staunch champion for economic development, Senator Jess J. Present was also a compassionate advocate for the needs of children, families, and the elderly; and

"WHEREAS, A loving father and grandfather, Senator Jess J. Present believed a strong family unit is crucial to a child's development and success in school. As a member and former Chairman of the Senate Education Committee, he worked tirelessly to enhance educational opportunities for students throughout New York State; secure additional State aid for public schools and libraries; initiate the Youth-At-Risk and Community Partnership Program to encourage students to finish high school; expand pre-kindergarten and all-day kindergarten programs; augment services offered through area BOCES; and create the Permanent State Task Force on School/Community Collaboration to coordinate the delivery of services for children and families.

"Senator Jess J. Present's sponsorship of laws that created the Tuition

Assistance Program, the Liberty Scholarship/Partnership Program, the College Choice Tuition Savings Program, and the Jamestown Community College Region has kept the cost of a quality college education affordable for more families. His commitment to higher education opportunities was reflected in his strong support of the public and private colleges and universities throughout his Senate District, including the State University of New York Colleges at Fredonia and Alfred, the New York State College of Ceramics at Alfred University, Jamestown Community College, St. Bonaventure University, Houghton College, and Alfred University; and

"WHEREAS, A quiet but effective lawmaker, Senator Jess J. Present sponsored numerous laws, including those which established the STAR School Tax Relief program, the Farmers Protection and Farmland Preservation Act, and the E-911 emergency system. Other important laws he authored have strengthened the State's wine and grape industry, provided special education to

preschoolers with disabilities, expanded insurance coverage for mammography services, expanded access to rural health services, created agricultural districts, abolished New York's clothing sales tax, designated New York State's POW/MIA Recognition Day, established the Legislative Administrative Regulations Review Commission, and reformed New York's juvenile offender statutes.

"Senator Jess J. Present worked just as hard in his district as he did in Albany, and always made the needs and concerns of the people he represented his first priority -- whether that meant leading the successful battle against turning West Valley into a national nuclear waste dump or cutting through layers of bureaucratic red tape to resolve a State government problem on behalf of a constituent.

"Senator Present demonstrated his strong commitment to enhancing the quality of life in his district through his creation and continuing support of the Southern Tier Drug Task Force, establishment of the world-famous Roger Tory Peterson Institute, completion of

the Southern Tier Expressway, and initiation of a dry-hydrant fire-protection program in rural communities. And

"WHEREAS, Year after year, Senator Jess J. Present supported an array of projects, programs, and services throughout his Senate district and provided special funding for such educational initiatives as Drug Abuse Resistance Education (DARE) programs in local schools, Chautauqua County School Board Association's Youth Summer Enrichment Program, Cattaraugus-Allegany BOCES' Kaleidoscope program, Olean High School's STAR program, Bolivar/Richburg Central School's Youth-At-Risk program, the Chautauqua-Cattaraugus Public Library System, the Southern Tier Public Library System, and the International Museum of Ceramic Art at the New York State College of Ceramics at Alfred University.

"To hold the line on local taxes, Senator Jess J. Present continually provided support for public projects that would otherwise be financed by property taxes, including municipal building renovations, road

and bridge repairs, emergency equipment purchases, water treatment services, and construction of the interactive Veterans' Memorial at Jamestown City Hall; and

"WHEREAS, In honor of his extraordinary career in public service, Commissioner Bernadette Castro of the New York State Office of Parks, Recreation and Historic Preservation dedicated the Old Quaker Store Museum in Allegany State Park in Senator Jess J. Present's name. A bronze plaque erected in tribute to Senator Present reads: 'His untiring efforts to enhance the State Parks within the Allegany Region will be appreciated by visitors for many generations.'

"An esteemed pillar of his community, Senator Jess J. Present was a former director of the Jamestown YMCA, a former Cub Scoutmaster, and a member of the American Legion, Veterans of Foreign Wars, and Lakewood Rod and Gun Club. His impressive conviction, dedication, and commitment to his fellow man was further reflected in his service in the Masonic Fraternity as past Master and 50-year member of Mt. Moriah Lodge

Number 145, F.& A.M., 50-year and charter member of Carroll Lodge Number 1147, F.& A.M., 32nd degree Mason, Valley of Jamestown, AASR, and member of Kharram Grotto; and

"WHEREAS, Senator Jess J. Present is survived by his wife, Elaine, his sons, Jeffrey and Randall, his brothers, William and Leonard, his sister, Anna Rae, and his grandchildren, Julie and Leanne and Patrick; and

"WHEREAS, Loyal friend, trusted advisor and ardent fighter for the causes in which he so strongly believed, the accomplishments of Senator Jess J. Present are legend; he will be deeply missed and truly merits the grateful tribute of this Legislative Body; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor the memory and celebrate the life and extraordinary achievements of Senator Jess J. Present, recognizing the significance of his exemplary record of public service and dedicating ourselves anew to the causes and people he served; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to the family of Senator Jess J. Present with the deepest condolences of this Legislative Body."

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

Mr. President, it's the custom of this legislative body to honor our colleagues who have through the years served proudly in this distinguished chamber. Knowing this, I am pleased to offer a resolution honoring the memory and celebrating the life of the late Jess Present, my predecessor, a friend, and a fine public servant.

It's important to note that, with the late date of Senator Present's memorialization, this tribute was scheduled and postponed a number of times in an effort to allow his family to travel to Albany to attend. Coupling the long distance that would need to be traveled and the health problems of his wife, Elaine, the prospects of an event at

an even later date in 2000 were great.

After discussing the memorialization with the family, it was deemed appropriate to hold our memorialization today. Knowing this, I am requesting the Secretary of the Senate to provide transcripts to the immediate family detailing our thoughts on the man that touched the lives of countless people.

As tradition dictates, I encourage everyone in this chamber to offer their thoughts on Senator Present and how his public work and life that spanned over three decades has helped the citizens of the state of New York.

As his successor, I can attest that every town, every village, and every community in the 56th Senatorial District felt his work in Albany. His knowledge of the region and his ability to work with the constituents and the constructs of state government served the 56th District well.

Senator Present is widely credited with shaping the policy now in place that repeals the state's onerous sales tax on

clothing.

He of course was also instrumental in bringing to the fore the importance of establishing public accountability and legislative oversight for the state agencies' rule-making process. His work, of course, created the Administrative Regulation Review Commission. Senator Present served as the co-chairman of this esteemed legislative body for many years.

Early in my career with the State Assembly, Senator Present in many ways served as my mentor. Jess, John Hasper, and I in fact would meet on Mondays to discuss the issues of the day as well as to address the concerns of the constituents we both shared. For his input, advice, and friendship, I am grateful.

Senator Present is survived by his wife, Elaine, as well as his brothers, William and Leonard, a sister, Anna Rae, two sons, Jeffrey and Randall, and three grandchildren, Julie, Leanne, and Patrick.

To close out my remarks, I would like to read a passage in the resolution

offered today that struck me as a perfect synopsis of his life and work in this chamber. It reads: "Senator Jess J. Present was a gentleman and a true gentle man who was dedicated to his constituency and to the belief that government can be a positive force for improving people's lives."

Joining us today in the balcony, Senator Present's brother Bill. And I know that he feels the same as we.

And I thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Goodman.

SENATOR GOODMAN: Mr. President, I had the high privilege of knowing Jess Present intimately during his years in this great body. And indeed, as I stand here today, I'm reminded very much of the fact that he and I sat together in this chamber during virtually every one of his years of service here. We entered together, we were classmates, and we became very close and good friends through his years of very high and distinguished service to the State of New York.

You've heard a great litany of his remarkable accomplishments, and it's truly encyclopedic overview of the work of a true statesman. I would like to take a moment to reflect on some of his personal qualities which I found extraordinarily meaningful and memorable.

Jess Present, if you could conjure in your mind the picture of what a perfect Senator should look like, was that perfect Senator. Tall, distinguished, with a shock of white hair, handsome features, and a very, very dignified manner always, he nonetheless had a great twinkle and a marvelous sense of humor. Often when I'd sit down and join him in the chamber, he'd say, "Oh, what's the joke of the day?" And we would have a moment of chuckling before getting down to the serious business of the Senate.

Jess was a warm and delightful human being in every way, a companion who had good judgment, real mature thought, and an understanding of how this body should function at its best. He believed deeply in the Senate as an institution. And, as you've heard a few

moments ago, he held many of the most responsible positions of leadership in the Senate itself.

Above and beyond that, however, Jess Present was truly a gentleman, as my colleague has commented upon a moment ago. He was a man whose behavior I think set a fine example for this body in every respect. He was someone who, when he entered a room, immediately attracted attention as a person of stature and great dignity and great good judgment.

And I'd like to say a word about his legislative judgment. Together we sat through some very turbulent times in the 1970s when rioting occurred in the streets, when there were some very serious budgetary problems. And throughout all of that, Jess was sort of a gyroscope. He understood the difficulties of being a Senator, and at the same time he rose to its challenges with great effect.

Jess never allowed the circumstances or the hysteria of any moment to shake him up. He always had both feet on the

ground and at the same time his eyes on the stars, if I may say so, which is a very rare quality among Senators.

Jess Present was the best of a great -- I think a very great and important group of people who have been entrusted with the responsibility of stewardship for this state. Having known him as well as I did and having shared in his wisdom was to me one of the great privileges of my service during 30 years in this body.

I'll miss Jess more than I can say, and I take this moment to salute him from the bottom of my heart, with the deepest esteem and affection. He will linger in my thoughts for many, many more years to come as one of the true Senator's Senators of all of the history of this great body.

Mr. Chairman, and Jess's brother in particular, you have something to be very proud of indeed in Jess. He showed us the way on so many issues, and in his entire demeanor he was the best of our breed and I think someone who can certainly rise to the occasion in our memories at this moment as one who was

the very outstanding prototype of a true Senatorial excellence.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I rise to salute the life of Jess Present. When I first came here 24 years ago, he was my neighbor and mentor and advised and helped me throughout my career, the entire time I was here.

Jess was really a quiet, gentle man, there's no question about it, but somebody that could cut through all of the chaff and so forth and arrive at the issue. I know that for a fact he was perhaps one of Senator Anderson's closest advisors, somebody that he truly respected. As a matter of fact, Senator Anderson once said to me the one person with the greatest political judgment is Jess Present.

He wasn't a person that made a lot of noise. But I'll tell you, he cut through and served in some of the highest levels of

this chamber. We all think we do such important things. Jess Present actually did those things. Deputy Majority Leader, Chairman of Education.

And, you know, he chaired Local Government for many, many years. And this was a man that read those many, many bills that are there, made judgments on all of them. That's a very difficult committee, and he had that for a lot of years and was very, very knowledgeable in so many, many areas.

And I can often recall asking Jess what he thought about a particular area of expertise that I was lacking in, and he always had a cogent answer that really cut right to the chase.

Jess Present was a dear friend of mine, somebody that I was shocked to see his passing. He was a terrific asset to this Senate chamber, a colleague that so many people here will miss and somebody that truly served this state so well.

He often said, as do you, Senator McGee, how he was closer to the capital of Ohio than he was to the capital of New York,

Columbus. But I'll tell you, he did an awful lot for New York State, and New York State is going to miss him, as all of us are.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: I've known Senator Present for more than twenty years. And when I made the transition to becoming a Senator, his attitude and demeanor toward me never changed.

I think I have to commend Senator Goodman on his recitation of the attributes of our good colleague, Senator Present. Certainly he included every attribute that the Senator possessed. I think he especially, by including the fact that Senator Present was a Senator's Senator -- I think you couldn't help but see him, whether it was in these chambers or anywhere in Albany, and not realize he was a Senator.

I had occasion to visit his district a number of times during his occupation of the office, and the esteem was matched only by the affection of the people in

the district. It's something that you don't see very often, the respect and esteem that's held by a public official. I think it was evidenced in the funeral, it was evidenced here in the chamber in his relationship with his comrades and his colleagues. I know myself I relied on his advice and counsel many times, and his dry wit, his humor.

But above all, he was a gentleman and everything that the word "Senator" - every good thing that the word "Senator" means. I was proud to know him, and he will be sorely missed.

ACTING PRESIDENT MEIER: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I was fortunate enough to have met Jess before I arrived in the Senate. I was a City Councillor in Syracuse, and occasionally we would have meetings in different parts of the state. And I remember how deeply impressed I was with the stature and the knowledge of Senator Present when I met him in the early '80s, someplace out -- I think it

was in Jamestown or someplace else in his district. He was there with his lovely wife, Elaine.

And he was interested enough in what we were doing at local government to have taken time out of a busy schedule to sit and visit with us. And by "visit" I mean he was willing to find out what was happening in each of our city councils or county legislatures, what our dreams and visions were. And he had a helpful word for everybody, based on his own experience at local government and state government.

Many of us receive such invitations, and sometimes we attend. But not often do we sit and relax and really engage in the conversation the way Senator Present was able to. It was as though he could shut out all the rest of the world and give his undivided attention and really provide some genuine assistance to anybody else in elective office who cared about their constituency.

And he had the ability to discern whether people cared or they were just going through the motions. And anybody who knew him

well knew that he would not hesitate to make a comment about somebody who appeared a little disingenuous. But somebody who was sincere would have his undying respect and support, and he would even find ways to reach across the aisle to offer a gentle assist or a word of encouragement to somebody for whom the job was new or the burdens would seem very difficult.

The very first day that I arrived in Albany as a Senator was in December of 1984 -- I guess it was January 2nd. We didn't have a special session. I had just been sworn in in my district and was arriving here. I stayed down at what was then the Hilton, two or three name changes ago. And I walked up to the Capitol and came rushing in here all by myself, not sure where I was to go or what would happen next.

And I saw the sign on the door out there that said "Senators Only." And I walked in and thought this might be a good place where I could leave my coat and then walk into the chamber. And I walked in, and there were three very distinguished, gray-haired

gentlemen, who were clearly Senators, seated in the Senate lounge. That was Senator Present, Senator Knorr, and Senator Floss.

I stood there in the door for just a second, not sure what I was going to do, and I said, "Is there a place where I can leave my coat?" And they looked at me, and it was Jess who said, "Oh, you must be Senator Hoffmann. It can go right over here." And it was a very warm greeting.

And from that day forward, I counted Jess as one of my special friends in this chamber. I will miss him. I'm fortunate that several of the people who were trained on his staff have joined my office. I know they're here in the chamber today.

And I'd like to remind everybody that it's the families and the members of the staffs who enjoy this type of eulogy, and they understand that we appreciate the hard work that they put in to make their bosses do the job successfully. Let us not forget that this truly is a family, and that we represent all of the people in this state.

And it takes more than one or two

good speeches or a couple of great elections; it's day in and day out, hard work without a lot of glamor. And that's what Senator Present was really all about.

I'm fortunate, and I know everybody else in this chamber feels fortunate to have had the opportunity to have served with Jess.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you.

As my colleagues have pointed out -- particularly, I think, Senator Farley, when he spoke about Senator Present's activities with the Local Government committee -- of course I keep running into them and remembering so many of the things that he talked with me about when I first had the opportunity to be the chairman of this committee.

And the ARRC, the Administrative Regulations Review Commission, my first opportunity to serve in a position of responsibility here in the Senate. He talked with me at great length about that because I was a very new Senator. And I was from

western New York, so he took me under his wing, as others have said that he did for them when they came to this chamber.

But let me say a few other things that many of you, I'm sure, would not know about him, or you weren't there that day. Senator McGee, you might have been there this particular day. And let me draw a picture about Jess Present in Allegany State Park.

If you've never been there, you should visit. It's a huge, beautiful, wild state park in the southwest corner of the state of New York, Senator McGee's district, formerly Senator Present's district. The memorial at the Quaker -- formerly the Quaker Store, when I was a little girl growing up and we would go to the park -- of course, that was so fitting and so wonderful that it is there for Jess.

How he loved the park. And one of my lasting memories of Senator Present will be on a day when there was a celebration at the Red House Lake, and we stood outside the administration building and Jess was outlined, with the shock of white hair, and looking very

senatorial, as he always did, with that beautiful lake and the mountain in the background. That will always be my recollection of Jess Present, physically standing there -- in his district, with his friends, in that park that he had come to protect and known so much about, more than most people will ever know.

But speaking of protection, that part of the state has a wonderful saying that comes from the Indians who are so much a part of our lifestyle in western New York. And the Iroquois had a thing that they said about the Senecas, and the Iroquois Confederacy and all of the tribes and all of the nations that made up the Iroquois Confederacy: the far western end of the state, the Senecas were the keepers of the Western Door. And Jess Present for many years was in this Senate the keeper of the Western Door of the state of New York.

The torch has passed to Senator McGee as the keeper of the Western Door. Jess would be proud of you.

And we thank Jess and his family and all the people that helped make the

Western Door of the state of New York safe and a wonderful place.

Thank you.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: I guess that probably among the members here, other than possibly John Marchi, I've probably -- well, maybe Roy. Although I knew Jess Present long before I was in the Senate -- or the Assembly, for that matter -- because Jess served with my father in the Assembly before he came over to the Senate, which is something I think that most people know.

I always said that Jess Present - and a lot of people have said that over the years -- was that somehow he always looked like a Senator. I mean, he had that stature about him and that dignity. And yet he was soft-spoken, a gentleman, who I also found out over the years could be a tough guy when he had to be, both on the floor and -- although he could be tough and yet he always had the ability to solve the -- or to assuage people who sometimes came at him pretty strongly.

I think in later years Jess and I spent a lot more time together talking about joint district problems and our own, you know, personal problems, by the way, because I think it was no secret that he had some -- his family had some health problems. And he himself, I think, struggled with a number of things over the years with his district. And myself, with some health problems myself, and he helped me out a great deal over those years.

It's still hard to believe, frankly, that the area doesn't have Jessie around, because from the time that, as I say, I was a small boy until his late death, Jess was always there, a symbol, I think, of that area. And a man, by the way, who not only represented the area but -- and I know Pat would agree with this -- but also really represented the state of New York in a very real way, because he understood the differences between areas and yet also that we that come from western New York or central New York, or even New York City or Long Island, recognize that this is a state -

and I tell people that they just don't realize that there's no state in the Union as complex as New York.

And I could go through the whole spiel. And Jess used to go through that, and Jay Rolison, by the way, who was his great friend. And there was a short period of time there, a brief couple of years or so towards the end of Senator Anderson's career, when Warren had Jess Present and Jay Rolison and myself and several others who were doing a great deal, let's just say, together in running the Senate.

And we were always -- we had great admiration for Jess's judgment and his ability to understand where the state was going -- not only where his region was going, but where the state was going and what was the best direction to go in.

I miss him very much. I think the -- as I'm sure John Marchi would say, the longer you're here, the longer you realize that there are wonderful people that pass through this place. And although it's sad to think that they're gone, but Jess's memory

really will never, as long as we that knew him -- will never leave this place, because he remains a part of the tradition of this house. And he certainly will as long as I'm here. And I think we should all, I think, admire the way in which he handled himself.

And to his wife and brothers and family and children, I guess I can only say we do miss him, but we were much the better for having had him here for all those years. Not only was the Senate much the better, but so was the Assembly and obviously the whole state of New York.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, it's with some pain that I speak to this subject. I've been here a number of years, and -- going back to the days of Arthur Wicks and Senator Mahoney. I don't know if anybody here can remember that far back. And the institutional giants that we have had and are still -- are still flowering in this house, on both sides of the aisle, have fascinated me tremendously and many times fills me with

nostalgia and sadness.

I see it on a generational basis. I saw it in Senator Paterson's father and now, I see it now. You heard from Senator Volker. I remember his father very well -- not in this house, but he was -- along with Joe Carlino, Malcolm Wilson, Gene Bannigan, and a few others were great people in their own house.

And we have had these institutional giants coming across the years, the Walt Mahoneys and the Earl Brydges, the Warren Andersons. So many marvelous people.

Every day that Jess was here -- of course, I preceded him by a number of years. But he was a valued colleague, and I drew great comfort from his wisdom. It goes beyond intelligence, beyond knowledge of a subject. But innate wisdom, where he would go immediately to the heart of a problem, whether it was legislative or in life's experience, and he would go to it very quickly and accurately.

And I remember the fact that he would mention that Columbus, Ohio, was just a few miles away, compared to Albany.

And I remember one day he was chewed out -- and happily I won't mention by whom, since that member is not here -- but on the question of whether you could drive to Albany and not exhaust your -- at least the short -- the petroleum or gasoline that was in short supply. And he was berated at one point because he stopped off in Syracuse and then made an exchange at a -- some sort of a depot and then continued on. But driving all the way from Jamestown -- can you imagine that, Senator? -- all the way from there, in those days, and then being berated for it as having taken some unholy advantage.

But he was not complaining. He was very tolerant and very understanding of human nature. And we all learned valuable lessons of life from him.

So you should indeed feel comforted by the fact that he was such a comfort and such a reliably good friend and someone whom we trusted so completely and had earned our affection and esteem over the years that he served with us.

So I join my colleagues -- and

they're doing it with greater acuity than I could possibly muster at this stage, late stage in life, but they're doing it with the acuity of contemporaneous judgment on events and a person that they actually knew right up until recently.

And so it's a painful exercise, but one which I willingly embrace because it's meant so much to me in terms of my own satisfaction that I draw from my experience in the Senate. Those giants, the likes of Jess Present, have enriched my life beyond measure.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

I know a lot has been said. I heard some of it on the speaker in the office. And it's hard to just add to so many good things that are said about Senator Jess Present.

But I was reflecting on the first times that I met Jess, and it was long before I came to the Senate. When I was on the staff of Perry Duryea, as his administrative

assistant, I would hear the name Senator Jess Present -- Senator Jess Present was doing this, Jess Present was doing that -- from the Assembly people there, talking about the leadership that he was taking. And I don't believe at that time he had been in the Senate for five or six years.

He immediately accounted for himself in such a way that others looked to him as the leader. They did there in the other house, and at that time it was controlled by the Republicans -- amen -- and they worked very closely together with the Senate.

And I thought, when I met Jess, we were talking about some things, how knowledgeable he was, how concerned he was, how committed he was, how dedicated he was. And I thought -- and I remember it so distinctly, and it was probably 27 or 28 years ago -- he, it's been said, looked like a Senator, he talked like a Senator, he acted like a Senator. He acted like someone that really cared about himself and what he was doing and how he was relating to people.

You know, all of us that are in this chamber and many that are in government can just look to someone like Jess, who served with such distinction for so many years. And I have heard the litany of all the good things that he did. And here we are, with Jess gone, and he is now a memory to us. But he is not a memory in that district. He is part of all the life in that community, in that part of the state, and he will always be remembered here as part of the life in the Senate.

So his family -- I know his brother Bill is here. I know Elaine couldn't be here, she's ill. I know his children and his grandchildren, his brother, everyone wants to be part of the legacy of Senator Jess Present. I, for one, have been fortunate and feel blessed that I had an occasion to serve so many years with Senator Jess Present.

And to his family, we can only keep extending our condolences. But when we all of us go on to play in that bigger Legislature that's up there, we'll all want people to remember us in our communities as they today remember Senator Jess Present.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: You know, it's sort of an amazing phenomenon when you listen to everybody speak and so many people have said "I remember the first time I met Jess Present."

Think about how many people you could say that about. Most people you meet you forget, you work with you forget, you deal with you forget. But everyone here that's talked said, "I remember the first time I really got to speak with and I met Jess Present." That says volumes about the man he was. Not only that he looked like a Senator and acted like a Senator, but he really and truly cared for everybody he dealt with.

I sometimes have occasion to get exercised about issues, if no one has noticed. And I remember the first time I spoke on the Senate floor, I was exercised about something that probably was insignificant. And no one seemed to raise to the issue and join my plea for whatever it was. And I was sort of

disappointed, and I walked out of the session -- one of -- my first session, I think it was, session day, or maybe second.

Jess came up to me and said, "John, you're right." He says, "But it will be okay." Just calmly, "It will be okay. And it will work out." And it was his way of telling me that, you know, maybe I should calm down a bit, maybe I should handle it in a different fashion, but that he had confidence in what I was saying, that I was saying the right thing. And that's the type of man he was.

And many occasions I would look back at him and he would smile at me, and I know what he was thinking: It will be all right. And that's the calming influence that he had on everybody, I think, in the Senate.

A wonderful man, someone we were all proud to serve with, and someone whose memory will never be forgotten.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: I too would like to join in the voices about Jess Present.

I had the good fortune when I first

got here, and for quite a few years, to have an office right next door to Jess Present. And it was always interesting to have the chance to chat with him in his office. The people were wonderful, as he was. He usually had good people around him.

When I first got here, also I was on Local Government and Agriculture, and I used to look to Jess -- because when I first got here, I didn't know a whole lot about agriculture. And Jess, I would -- I would vote with him most of the time. And, you know, it's kind of strange for a Democrat to say. But I knew that the one thing Jess Present did in those two areas was do what was best for the local people. And since his district was out in western New York and very similar to mine at the time, with the exception of the piece of Buffalo that I had, that I had no trouble following along his lead, for the most part.

So it was good to have somebody like Senator Present to rely on, that you know he would give you good advice. And for those things, you can never thank him enough.

And the fact is, like everybody else said, he just looked senatorial. I mean, you know, when you first met him, as everybody said, you just had the impression, here's somebody that walks, talks, and looks like a Senator. I wish he hadn't smoked so much, but then again, I wish Olga didn't smoke so much. But you can't have everything.

I just join with everybody else in passing along to his family that we miss him. He has obviously left his mark not only in his district but throughout the state, and he's certainly left his mark in all of our hearts.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Senator McGee would like to open up this resolution for co-sponsorship.

I'm sure everybody would like to be on the resolution for our good friend Jess. If you wish not to be on the resolution, please notify the desk.

ACTING PRESIDENT MEIER: Thank you, Senator Skelos.

As is our custom, notify the desk

if you wish not to be 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 unanimously adopted.

Senator Skelos.

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

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, Senate Bill 6231, by Senator Volker, an act to amend the Tax Law.

Senate bill reported direct to third reading.

ACTING PRESIDENT MEIER: Without objection, the bill will be reported directly

to third reading.

Senator Skelos.

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

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

THE SECRETARY: Calendar Number 3, by Senator LaValle, Senate Print 1197, an act to amend the Executive Law, in relation to population requirements.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 14, by Senator Marcellino, Senate Print 5401, an act to amend the Environmental Conservation

Law, in relation to increasing the penalties.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 15, by Senator Johnson, Senate Print 5916A, an act to amend the Environmental Conservation Law, in relation to extending the expiration of the authority.

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, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 17, by Senator Kuhl, Senate Print 2765, an act to amend the Highway Law, in relation to the temporary discontinuance.

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, 55.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I could interrupt just for a moment, there will be a meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: There

will be a meeting of the Crime Victims, Crime and Corrections Committee immediately in the Senate Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 18, by Senator Rath, Senate Print 2948, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspension.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 26, by Senator Volker, Senate Print 809, an act to amend the Penal Law, in relation to aggravated harassment.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 28, by Senator Wright, Senate Print 1232A, an

act to amend the Penal Law, in relation to including possession.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 30, by Senator Padavan, Senate Print 2005, an act to amend the Penal Law, in relation to the disposal of allegedly stolen motor vehicles.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 45, by Senator Alesi, Senate Print 4367, an act to amend the State Administrative Procedure Act, in relation to job impact statements.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 56, by Senator Skelos, Senate Print 587B, an act to amend the Domestic Relations Law, the Family Court Act, and the Judiciary Law, in relation to aiding parents.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR SKELOS: If we could take up the controversial calendar, please.

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

THE SECRETARY: Calendar Number 18, by Senator Rath, Senate Print 2948, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspension.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 26, by Senator Volker, Senate Print 809, an act to amend the Penal Law, in relation to aggravated harassment.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: I believe Senator Duane is at a committee meeting right now, and he's asked if we could temporarily lay aside Senator Volker's bill and my bill until he returns so he can debate the bills. So we certainly will extend him that courtesy.

ACTING PRESIDENT MEIER: All right.

Senator Skelos, that is the entire controversial calendar, if we temporarily lay those aside.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there is not.

SENATOR SKELOS: Well, then, we'll stand at ease pending the return of Senator Duane.

ACTING PRESIDENT MEIER: All right.

Both bills will be temporarily laid aside, and the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:02 p.m.)

(Whereupon, the Senate reconvened at 4:16 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If we could return to the controversial calendar now - Senator Duane is back from the committee meeting -- and call up Calendar Number 26, Senate 809, by Senator Volker.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 26.

THE SECRETARY: Calendar Number 26, by Senator Volker, Senate Print 809, an act to amend the Penal Law, in relation to aggravated harassment.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Explanation,

please.

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

SENATOR VOLKER: Certainly.

Mr. President, this is a rather simple bill. It adds to a legislation that was passed in the last couple of years and signed into law which would set up a class E felony for aggravated harassment of an employee by an inmate or employee of the Parole Department and the Office of Mental Health. It would add the Probation Department to those provisions.

And currently, if an inmate, with intent to harass, annoy, threaten or alarm an employee of the Division of Parole or Office of Mental Health, caused the employee to come into contact with blood, seminal fluid, urine, or feces by throwing this material, then that person could be subject to a class E felony, which is the lowest-level felony.

And as I say, this would add the Probation Department to that group.

SENATOR DUANE: Would the sponsor yield to some questions?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator Volker, do you yield for some questions?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much. Through you, Mr. President.

In this legislation, are we looking into the thoughts of the inmate in terms of what he's -- what the plan of his action is in throwing feces?

SENATOR VOLKER: No, we're not. It doesn't matter what -- really what his thought is. It's -- the intent when material is thrown at a person really is the criteria.

And let me point out, in keeping with last year's debate on this, Senator, that this is the lowest-level felony there is. And these are inmates. And one of the things that's been said is that maybe we should make it a misdemeanor.

The problem with making felons subject to misdemeanors is it doesn't work very well. If you're going to charge or give

a crime to a person who's already convicted of a felony, you almost have to have a felony. And this is the lowest-level felony.

The reason I'm pointing that out to you is I know that was part of the discussion last year. One of the things about New York City that we learned is if you charge a misdemeanor in New York City, that's like - it just doesn't work, because people don't pay attention until you make it a felony.

So the answer is no, it's not a matter of thought, it's a matter of action. And the intent is shown by the action.

SENATOR DUANE: If the sponsor would continue to yield.

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm going to put out a scenario and ask what would happen under this legislation.

If an inmate threw his feces and

hit either just a member of the public who happened to be in the probation office or another inmate, the penalty would be less; is that correct?

SENATOR VOLKER: That's true. It would probably be considered to be harassment, which would be a violation. But the chances of that happening are very slim.

Maybe another inmate, that's possible. Although the penalty for that might be even greater than a class E felony, if you know what I mean.

But what we're trying to do here is deal with people that come in contact with inmates on a regular basis. I almost got into this category myself on several occasions. Once I did duck, in fact, and -- and avoided the embarrassment of that when I was in a security cell.

But the answer is yes, generally I suppose if it would happen, it would be simple harassment. What we're trying to do is to deal with this kind of a situation and make it a more severe punishment to avoid it from happening.

SENATOR DUANE: If the sponsor would continue to yield, Mr. President.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: We are saying, though, through this legislation that certain classes of people do need special protection -- for instance, people who work as probation officers.

SENATOR VOLKER: Special protection? I think what we're saying is that people that are likely to come in contact with the types of people we're classifying -- not thought, by the way. We're classifying actual actions and trying to deter their actions. And that's what -- because the other people are not likely to even come in contact with them. And that's why we're doing this.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: But we are creating a special penalty for a special category of crime to a special group of people.

SENATOR VOLKER: Not a special category of crime. We're creating a special penalty for people who are likely to come in contact with people who are already felons and who may create a problem that -- you might, by the way, say that if there were people of any different groups that came to the prison system. That doesn't happen. We're talking about people that actually come in contact with these people.

And I know what you're getting at, Senator, but it's an entirely different issue.

But the answer is yeah, they're a special class, all right. They're the class that actually goes into these types of situations and is compelled, in a sense, by law to do it. And therefore, we're trying to protect them from this kind of harassment.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, are you asking Senator Volker to continue to yield?

SENATOR DUANE: Yes, please.

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

SENATOR VOLKER: Sure. Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

I acknowledge that what may look like apples to me may look like oranges to the sponsor. But if we can create a special category protecting probation officers, then I'm wondering how the sponsor feels about the situation I'm about to put out.

Just this past year, at Skidmore College, there was a hate crime incident in which feces were smeared on the car of a student who was perceived to be a lesbian. And I'm wondering why it is that we are not protecting them from this kind of incident.

SENATOR VOLKER: Senator, I don't think that you can categorize -- and I don't think you should categorize graffiti -- and

that's part of the problem with the so-called hate crimes, is the federal people use graffiti as a hate crime, which is why the numbers on hate crimes look bigger than they really are.

Senator, I think everyone should be protected. But unfortunately, there are some people that have been involved in the bias-crime issue that don't believe that. And I think that's -- that's a problem.

But, Senator, it's a big difference between actually throwing something that could be very harmful to somebody and indicating something that may even be a joke, by the way. Although I don't think it is a joke, but some people think it is. Because as you know, graffiti in certain places is used for all sorts of things. To harass, annoy, yeah, maybe. But also to, in many ways -- and that's where the thought comes in, because in that case I suppose you would have to use thought.

Throwing stuff directly at a person is not -- it doesn't take any thought. It is a -- and it can be a serious problem, in any

case.

So I think the answer is it is a different situation. And I think, frankly, you could argue that maybe there should be a higher penalty for anybody that's in that kind of situation that you talk about.

But we have had some difficulty in getting people in the other chamber to raise the penalty for graffiti for years. This house has passed legislation for years and have had great difficulty with that, just as we've had great difficulty with assault, with upgrade of assault and a whole series of other areas. That could be used, by the way, and you could argue, to protect some of the very individuals that you would like to protect.

SENATOR DUANE: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Thank you very much.

I believe that throughout the session this year we'll just have a -- you know, a huge number of feces and urine bills.

And I've raised the issue of trying to combine them all into one big omnibus feces and urine bill so that we don't have to go through them bill by bill. That's not really under my control, so we'll just have to see them come forward as they come forward.

But in a legislative body where we debate issues like the throwing of feces - which I also believe is a mental health issue and not a criminal justice issue and should be looked at in a mental health light and not a criminal justice light, that we debate those issues. And last year we debated the issue of Buster's Law, which I was for, because I think it's a terrible thing to torture animals.

But I also think that it's a terrible thing to commit hate crimes against human beings based on their religion, ethnicity, sexual orientation, et cetera, and that if we can debate throwing of feces and urine at different categories of employees, we could certainly have a debate on this floor about a bias-crimes, hate-crimes bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I would like to ask if the sponsor would yield for a couple of questions.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Thank you, Senator Volker.

I just wanted to ask you, one, how many cases are we talking about? Do we have some record of how frequently this occurs in the 69 or 70 facilities throughout the state?

SENATOR VOLKER: I really don't, Senator. But I do know, and from personal experience, that it happens. And I think there are several Senators here, by the way, who can attest to that, because we've been witness to it.

We are told that, unfortunately - and quite a bit of it, by the way, is in the secured areas; that is, the locked - keep-locked areas. But it happens occasionally, and it's just something that has created some concern.

And this bill didn't come, obviously, just from me. It came because the Probation Department has asked for it and because some of their people apparently have been subjected to it.

I don't think it's in epidemic proportions, but I think it's something which is common enough to create a problem, and that we're trying to deal with that problem.

SENATOR MONTGOMERY: And it does not happen in the context of an inmate or an inmate who is now on parole, it happens only in the facilities?

SENATOR VOLKER: This is only a facility bill. It has nothing to do with -

SENATOR MONTGOMERY: So these are probation people who go into the facilities.

SENATOR VOLKER: Yes. Exactly.

SENATOR MONTGOMERY: Last year, I think last session, I believe it was, or probably a number of sessions prior, we did legislation which in fact extended the time of a person who was already incarcerated if there was another charge against them.

How would that -- what would that

mean to -- based on this bill, to an inmate is charged with this particular -

SENATOR VOLKER: Well, Senator, actually, that legislation, whether we did that or not, it wouldn't matter. This -- if you are convicted of a class E felony, whatever your -- the charge is against you, whatever, you know, your sentence is, that would be added on to your sentence.

Of course, the judge could -- I suppose the judge could run it concurrently. And the reason for that, by the way, would be -- I don't have to tell you that that would impact on your parole.

The previous legislation would not really matter. This bill is what matters. If this became law, then a person who is convicted of this action would be subject to an additional sentence which could be run concurrently, depending on the judge, or could actually be run consecutively, which would mean, obviously, that that would extend the prison term of that person who was in jail.

SENATOR MONTGOMERY: Mr. President, I have to accept Senator Volker's

explanation. However, it was my understanding that it could not run concurrently, based on the legislation that we passed. But I'm not going to question that.

I have another kind of question, however -

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: Senator Volker yields.

SENATOR MONTGOMERY: Thank you.

Senator Duane asked about what the inmate might be thinking. It's my understanding, based on the statistics of the DOCS commissioners, that somewhere between 20, 25 percent of the inmates in our facilities could be classified as mentally ill. If that is in fact the case -- and we have also included in your -- in this bill it includes inmates or respondents -- which, as defined in this bill, means a juvenile in a secure facility.

SENATOR VOLKER: Mm-hmm.

SENATOR MONTGOMERY: So we're

talking about teens as well as older adults who are in those facilities. Many of whom may, very possibly, be mentally ill.

SENATOR VOLKER: Mm-hmm.

SENATOR MONTGOMERY: So the legislation is not, in fact, to try to -- to provide some sense of a way of treatment for mental illness but, rather, simply to add on an additional number of years of incarceration; is that -

SENATOR VOLKER: No. If the person is actually mentally ill -- although if they're officially mentally ill, I don't think that's what Corrections is saying. Corrections is saying if they have some mental illness, that doesn't necessarily mean - because if they're actually mentally ill, they shouldn't be in the corrections facility to start with.

But you cannot convict someone - this is statute. If the person is found to be mentally incompetent or mentally ill, you can't convict them of anything in this state. So this bill, although it's a class E felony -- I'll be the first to admit to you, I

guess it's one of the problems. If somebody is arrested for this, obviously in prison, and it's found that the person is mentally ill, you can't convict them. Because our law would take care of that.

So we're not talking about people who, if they're declared to be mentally ill, then they'll have to have mental treatment. And I'll be the first to admit to you that that's a problem. Because we do have mental facilities connected with our prisons now, and in fact people are treated as part of those facilities.

So -- and the question was asked of me, what happens if some of those people throw something? Well, it's a big problem, because I don't know how -- you probably couldn't convict them. But at least you have the threat of it there.

But for those people who are either -- I wouldn't say mentally ill, because if they're mentally ill, officially mentally ill, they probably shouldn't be in that prison to start with. But even mentally deficient people, or with some sort of mental illness,

in all honesty the likelihood of ever convicting them is virtually nil, because certainly that would be a defense.

SENATOR MONTGOMERY: Thank you.

Mr. President, briefly, on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I want to thank Senator Volker for his patience.

I just want to say that I think Senator Volker's vision of the criminal justice system and the prison system is the ideal situation which we would all hope that exists, but we all, on the other hand, know that it does not exist. And unfortunately, there are a large number -- there's a large percentage of inmates who are in fact mentally ill -- though they may be criminally mentally ill, they are. And especially as it relates to young people.

And we know that we are seeing more and more young people, young men and women, going into prison at the age of 16, 17, 18, faced with possible life imprisonment or very

long prison terms. And obviously it must be very difficult to maintain sanity and to maintain self-control and discipline if you are a 17-year-old, young, primarily African-American or Latino male faced with an extended sentence based on a bad judgment that you made when you were out.

And so certainly I don't want Senator Volker or any other person to be confronted with having feces or urine or anything else thrown in their face. But I certainly -- I don't want to -- I cannot support this legislation because it doesn't, in my mind, speak to what the problem really is that drives this kind of behavior. And until we do that, this bill really is not going to help us.

So -- and I would urge that my colleagues who have any sense of consciousness about what is happening in the penal system in our state and across the nation, I would urge them to join me in voting no on this legislation.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Through you, I have a comment for the sponsor, if he'll yield graciously to one more thing.

ACTING PRESIDENT MEIER: Senator Volker, will you yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I mean, I support this legislation. I was very concerned in your colloquy with Senator Duane, though, about -- because I do believe we are going to address the issue of bias-related violence this session. I hope we will. I believe we will.

And I just hope that -- I don't know that I heard you correctly, but I think that vandalism generally and graffiti in particular are among the worst kinds of hate crimes, because the punishment is so light. And I would urge you to look at the situation we're faced with in New York City, in Brooklyn and Queens, where we have Catholic statues,

statues of saints being decapitated and defaced. It's a completely different kind of crime from having a fraternity prank where you go do something to the statue of Horace Greeley or Teddy Roosevelt, to decapitate a statue of a saint and leave a note saying "The Pope is Satan."

And I'd urge you that vandalism and graffiti are -- do belong in a bias-related-violence bill, and I hope that you will bring that through the committee and to the floor this year, and I hope that will be in it.

SENATOR VOLKER: Mr. President, can I just respond to that?

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, very quickly, I don't think we need a bias-related crime bill to do that.

The point I was trying to make is that, on behalf of Senator Maltese, Senator Padavan, myself, and a number of people who have been sponsoring graffiti bills here for years, you know, whether it's bias or whatever

the real reason for it is, it's outrageous.

And I agree with you, I think it's time that we did something about that. The problem is not then -- and I don't -- you know, I'm not one of those people that points around and plays games with issues. But the fact is the fact. And that is, I agree with you 100 percent that I think it's outrageous what is going on with certain of the vandalism that's going on and the graffiti. And I think we should upgrade the penalties for that in general, because I think that's the way to deal with it.

The problem is -- the problem with bias crime always has been and remains the thought-police kind of thing, and you're going to get into all kinds of problems. But I don't want to argue that issue.

But I'm going to say to you that I totally agree with you. I'm not going to tell you that the graffiti -- and those bills, by the way, are coming. I'll guarantee you. Because we pass them every year, but we have a devil of a problem with getting them through the Assembly.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 2. Senators Duane and Montgomery recorded in the negative.

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

SENATOR DUANE: Thank you, Mr. President.

I was wondering if I could be recorded in the negative on S2948 and S4367. I was out of the chamber when they came up. Due to the largesse of this body, I was permitted to do that, so -

ACTING PRESIDENT MEIER: Senator Duane, we have Senate 2948. What was the other, please? 43 -

SENATOR DUANE: 4367.

ACTING PRESIDENT MEIER: Thank

you, Senator.

Without objection, Senator Duane will be recorded in the negative on Senate Bills 2948 and 4367.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 56, by Senator Skelos, Senate Print 587B, an act to amend the Domestic Relations Law, the Family Court Act, and the Judiciary Law.

SENATOR PATERSON: Explanation, please.

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

SENATOR SKELOS: Thank you, Mr. President.

This bill, which passed the Senate on the noncontroversial calendar in 1998, and with one negative vote -- Senator Duane -- in 1999, is introduced at the request of the Office of Court Administration, to create a statewide program to permit -- and I underline the word "permit" -- trial judges to provide parents with information and education, as they proceed through their separation and

divorce, on how it may impact children and also what they can do to help their children through this process.

A board will be set up to develop curricula for parental education and awareness programs, to certify such programs, and to assure their continuing quality and effectiveness.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Skelos would yield for a few questions.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Thank you, Mr. President.

The Parental Education Awareness Board which has been set up includes members of the -- it has an appointment by the Speaker, the Majority Leader, the presiding judge of the Court of Appeals, but does not have any provision for appointments by either

of the Minorities in the Legislature.

I wonder if Senator Skelos would kind of think that over before the bill finally gets passed.

SENATOR SKELOS: Well, this was -- I guess the Office of Court Administration felt that 13 board members would be sufficient.

SENATOR PATERSON: Thank you, Mr. President. If the Senator would continue to yield.

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Well, one point I would make, Senator, is right now it probably would -- of the 13 board members, it would provide for equal representation, since the two major parties in New York State are in the majorities in the two houses.

But if there were ever to be a change and you had one party controlling both

houses, then the 13 board members wouldn't really in any way reflect the opinions that might be felt at least by voters around the entire state. And so that's why we thought that -

SENATOR SKELOS: I think the - if you read the legislation in terms of the type of individuals that we're looking to have on this board, I think their desire would be to come up with a curriculum that would be positive in terms of educating children as they go through the very difficult process of their parents getting divorced.

SENATOR PATERSON: Very good, Senator.

A question that I have related to the actual choice that one might have to make about these mandatory classes. For instance, if the person is also mandated federally to attend classes or to work as, say, part of a workfare program, a number of these individuals that would qualify could theoretically be in that situation.

How do they make the choice between the classes that the court is mandating that

they take and the fact that they could lose basically their jobs if they don't go to them under the workfare program?

SENATOR SKELOS: I think what we're missing with this legislation is the fact that discretion is given to the judge. There's a great deal of discretion provided to judges when we deal with child custody, with -- during a separation or a divorce proceeding.

And I believe that the judges that we have in this state would use this discretion wisely, not to hurt any one individual, but rather to look at what is in the best interests of the children that we're all trying to protect.

SENATOR PATERSON: Thank you, Senator.

Mr. President, if Senator Skelos would continue to yield.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Related to the

judicial discretion that you just mentioned, how far-reaching is the discretion when it comes to the parental education classes where -- particularly in cases of domestic violence, there might be some apprehension on the part of the victim -- who we would presume to be the woman -- about attending the same class with the victimizer, who in many respects, because of their losses in other court proceedings, according to a number of statistics that have been garnered through study of these types of situations, that it's the contact and the counseling that the perpetrator is actually seeking by even wanting to come to some of these classes, whereas the individual who was previously victimized is in a sense being further subjected to confrontation with the same individual that they escaped from by divorcing.

SENATOR SKELOS: Well, on page 2 of the legislation I think it does handle that by saying they would not necessarily be required to attend these courses. And again, we're using the discretion of the judge.

SENATOR PATERSON: Thank you.

Final question, if Senator Skelos would be willing to yield.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: But it's exactly the judicial discretion that I'm somewhat worried about, Senator. Because in these particular cases, what we have installed into the legislation is a punitive action, one that actually seeks to diminish the opportunity of one of the parties if they don't attend these classes.

And I wondered that giving that kind of teeth to this legislation -- in other words, if you wanted to leave it to the judge's discretion exactly what to do, that's one thing. But here there's a deliberate attempt to install an action that would inure to the detriment of one of the parties if they don't attend the classes, when the reason that they might not attend the classes is the exact same reason why they sought a divorce.

SENATOR SKELOS: Again, this is discretionary on the part of the judge.

SENATOR PATERSON: Thank you, Senator Skelos.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: The best interests of the child is probably an expression most used in a variety of jurisdictions -- and one that's even being played out on our national scene right now - that often accommodates the needs, even on both sides, of the agendas of individuals, more so than really what the actual best interests of the child is. And sometimes it's hard to determine what the best interests are.

And last year Senator Duane was the only member of this chamber to vote against the bill, but he pointed out and really made me think about this whole situation where we impose certain actions on parties who have already been through a very, very difficult period in their lives. Putting them under this kind of stress and tension might in many

ways move to the detriment of the same children whose benefit it is that we seek to protect.

And so I really am just admonishing all of my colleagues that by voting for this legislation, our intention may be to actually heal the situation, but in many respects, and if you talk to the National Organization of Women and talk to some of the women that have been involved in these types of situations, it often further subjects them to really some of the same mistreatment that put them in the position of having to break up their marriages in the first place.

Children certainly -- are certainly in need of a functioning relationship between their parents when their parents separate. Those are always the best situations. The most desirous would be that the parents not separate at all. But if the circumstances of life come to pass that that is the best end to a particular situation, then we hope that as a government that we would display the same type of sensitivity toward these individuals that we ask of them when it applies to their

children.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I have similar problems with this bill. I guess maybe I wasn't in the chamber when it came up last year, because I think I probably would have voted against it at that time.

I also have a concern about having a board that has 13 members, seven of which are appointed by the Governor. I think there could be a more even distribution between the courts and the Legislature and the Executive.

The discretion of the judge is also of concern to me. It's not that I don't believe that the intentions are probably good, to try and alleviate the fear of children in a divorce setting. But it's -- the possibility that there would be punitive measures against one party because they couldn't appear and the judge is the sole discretion here, it's -- it is a concern.

And it is a concern also that people who are seeking a divorce, they really haven't done anything against society.

They've not commited a crime. I mean, for them to be told that they must participate in something, court-ordered, it makes it sound like there's been a crime committed here. I think it's punitive even though, as I said, I think the alleviating of children's fears is good.

If this was offered as some kind of a community service rather than a court-appointed -- I think it would be much more acceptable to me. But I'll be voting no, even though I do understand that there are certain values that you are trying to uphold here that are good.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would just like to ask the sponsor if you would yield for a couple of -

ACTING PRESIDENT MEIER: Senator Skelos, do you yield for a question?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Yes, thank

you.

Senator Skelos, on this -- on page 2 of the bill, line -- starting at line 33, it states "In the event that a person who is required to attend a parental education and awareness program fails to do so or fails to complete such a program, the court may consider that as a relevant factor when determining whether the person is acting in the best interests of the children, or (B) may stay any relief to which such a person may otherwise be entitled in the underlying action or proceeding until such time as the person completes the program, or (C) takes such other action as may be authorized by law."

My question to you is, what does it mean to stay any relief to which the person may otherwise be entitled, and what are the other possible actions authorized by law that a judge may take against a person who is unable to complete or participate in this awareness program? Is this not mandatory?

Does this -- do these -- does this section of the legislation indicate that it is in fact mandatory? And, if so, if a person

does not do it, what do they lose and what other actions are authorized by law?

SENATOR SKELOS: Well, again, this is in the discretion of the judge. And there will be a curriculum that's established by the board. If the judge feels that that is the best interests of the children, to have the parents attend this course, then, for example, if a father who has visitation rights refuses to attend, the judge can say, "You lose your visitation rights until you attend this course."

And it could be taken into account, as so many things can be taken into account, as to what is the best interests of the child.

SENATOR MONTGOMERY: What does it say to any financial issues related to the underlying case, which is the divorce?

SENATOR SKELOS: Number one, it wouldn't be child support. But it could be temporary alimony or temporary support.

SENATOR MONTGOMERY: My assumption is the underlying action is a divorce. The divorce involves children.

SENATOR SKELOS: Right.

SENATOR MONTGOMERY: And the divorce also, since it involves children, would automatically -- my assumption is naturally would involve financial support for the children.

SENATOR SKELOS: Yes.

SENATOR MONTGOMERY: My question to you is, is that part of what is considered to be relief to which you would otherwise be eligible?

SENATOR SKELOS: No. And it's not the intent of OCA. It's certainly not the intent of the sponsor.

SENATOR MONTGOMERY: And other actions we're not -- these are -- this is solely at the discretion of the judge, making the decision?

SENATOR SKELOS: Yes.

SENATOR MONTGOMERY: My last question, Mr. President, through you -

ACTING PRESIDENT MEIER: Senator Montgomery, do you wish Senator Skelos to yield?

SENATOR MONTGOMERY: Yes. Yes, I do.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield for a question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Skelos, Senator Oppenheimer has talked about the Governor having seven appointees. I want to ask you -- and I raised this in the committee, I raise it again with you -- that the Governor has seven appointments, the Legislature has four appointments. So it occurs to me -- and the judges -- the Chief Judge has two.

SENATOR SKELOS: OCA has two appointments.

SENATOR MONTGOMERY: So we have only two representatives, two votes out of the 13, that reflect the people who are actually going to be involved in making these decisions. And the rest of them are basically political appointments.

SENATOR SKELOS: Well, I think that you're looking at this perhaps from a

partisan point of view.

SENATOR MONTGOMERY: Yes, I am.

SENATOR SKELOS: Whereas I don't think it should be looked at as a partisan point of view.

When it comes to the best interests of children and protecting children, I don't believe, whether in this house or in the other house, that it's a Republican or a Democrat issue. It's an issue of what's in the best interests of the children.

And I believe that no matter who the Governor is, who the Chief Judge is, presently having been appointed by Mario Cuomo, they will do, in establishing this board, what is in the best interests of the children.

SENATOR MONTGOMERY: All right. In relationship to that -

ACTING PRESIDENT MEIER: Senator Montgomery, do you wish the sponsor to continue to yield?

SENATOR MONTGOMERY: Yes, please, Mr. President.

ACTING PRESIDENT MEIER: Senator

Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: With this board that we have created here, with these appointments, notwithstanding the political aspect of that, what goes into the curriculum? What kind of curriculum are we talking about? Is there -- does the bill in any way establish some kind of standards as it relates to what we're going to see forthcoming from this board?

SENATOR SKELOS: The curriculum will be established by the board.

SENATOR MONTGOMERY: By the board, okay.

SENATOR SKELOS: By the board.

SENATOR MONTGOMERY: Okay. All right.

Thank you, Mr. President. Just briefly, on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I think there's a lot of -- I understand the intent of this, and obviously we all are very supportive of any measures that we can come up with to preserve families. And I know that that's what Senator Skelos' intent is, and to protect the interests of children when families are unable to continue as a unit.

However, I do have some concerns that there are some loopholes here where we could very well end up with a situation where, depending on the temperament of the particular judge, we could have financial support withheld. That's not exactly specified specifically in this legislation. And I'm just very uncomfortable with that.

The other issue that I'm very uncomfortable with, and as Senator Skelos has confirmed, we have a board that is essentially a politically appointed board. Because we have the Governor's appointees, over half, and basically most of the rest of the appointees are also political appointees, because they come out of either this house or the other house.

And so we can't back away from the fact this this is a politically appointed board. But in the hands of this board we have put the authority to develop a curriculum which is supposed to counsel families in very difficult situations. So I have a major problem with that.

And for those reasons primarily, I voted no in committee and I will vote no on the floor today.

Thank you.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: I have one question.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: On page 2, Section 3, lines 24 to -- well, 24 and beyond, it says "In determining whether to require persons to attend a Parental Education and

Awareness Program, a court shall consider all relevant factors."

What is there to determine -- what is there with a judge determining the relevant factors as compared to another judge making the same determination?

SENATOR SKELOS: Every determination a judge makes is different. So the judge, from his experience or her experience with this case, may say, "I feel it's in the best interests of the child that parents go to this course." I mean, it's what the judge thinks would be in their best interest.

SENATOR STAVISKY: Will that be the same in each jurisdiction?

SENATOR SKELOS: Well, the board is a statewide board which will establish the curricula for the entire state.

SENATOR STAVISKY: Mr. President, I have one more question.

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR STAVISKY: The memo says that the measure will "permit" trial judges. Could you tell us the difference between this permissive section and the requirement? I know what "permit" means, I -

SENATOR SKELOS: It allows them to do it in their discretion.

SENATOR STAVISKY: In other words, it does not have to be the same in other -- in all cases?

SENATOR SKELOS: No, it means that a judge in one case may decide it's appropriate and in another case may decide it's not appropriate.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, if the sponsor would yield to one question.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

My understanding under this bill is that the board will be empowered to establish a process for the certification of parental education and awareness programs.

My question is, would any preexisting program that may have been operating -- as is referenced by the memo of the Family Service Agencies, that some groups have been trying to start programs like this previously -- would these programs all have to get certified under the board under the system set up?

SENATOR SKELOS: The board would have to certify it.

SENATOR SCHNEIDERMAN: Okay. Thank you.

Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: We've been -- I've been somewhat conflicted about this legislation because I know the intent is

very good and I think there are programs, such as those supported by the Family Service Agencies, that provide a great service here.

My concern, though, is about moving from the level at which we have good community agencies setting up voluntary programs that judges recommend that people participate in to the situation where we all of a sudden have a Parental Education and Awareness Board that's kind of like the Big Brother of what you should do once you're divorced.

I mean, having gone through this difficult process myself, I assure you there's some very weird ideas some people have, from my point of view, about what you should do with your kids once you're divorced. And some of my ideas they may perceive as weird. Having a Big Brother agency that would essentially constrain the existing programs I think should be a big concern.

I would much rather see something to provide more resources and encourage the development of the programs referenced in the Family Service Agencies memo than have something that constricts the creative

abilities and the flexibility of this program.

Because the -- we keep talking about the discretion of the judge. The one thing the judge will lose discretion on under this legislation is you will not be able to go outside of the curriculum certified by this Big Brother board that will control our, you know, teaching about what it is to be a divorced parent in this state.

And I think that this is an area where there's sufficient differing points of view that that's something we should be very concerned about. And I know that, you know, those of us who are against Big Government dictating ideas and morals to people are often concerned about those sorts of issues.

So I'm constrained to vote no under those circumstances.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just -- would the sponsor yield to just one question? One thing occurred to me -

ACTING PRESIDENT MEIER: Senator

Skelos, do you yield for a question?

SENATOR DOLLINGER: -- during the course of the bill, and I just want to clarify it.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I think you told Senator Montgomery that nothing in this bill would interfere or be interpreted to interfere with the requirements of one parent to make their child support payments. If, for example, a spouse who had custody of the children and was the recipient of the child support, if they failed to attend this board program, the other spouse wouldn't be allowed to suspend their child support.

My concern is that -- and I'm not -- I know there are a lot of people troubled by the board and what this curriculum would be. That doesn't trouble me as much. My only concern is that I would hate to think that a noncompliant parent would be able - would in essence lose their child support,

which is for the benefit of their children, because they're noncompliant with going to these programs.

I'm just concerned -- I thought you told Senator Montgomery -

SENATOR SKELOS: They would not lose child support.

SENATOR DOLLINGER: Okay. I just want to make that clear.

Through you, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I voted for this last time. I understand the concern of my colleagues about the board. I'm not quite as concerned about who the Governor is and who they appoint. I assume we have to come up with some reasonable program.

I think the Family Service Agencies support this. And I think Senator Skelos - I'm going to vote for this, but I just wanted to be absolutely sure and he's given me his assurance that there's nothing that the noncompliant parent will do that will

interrupt the stream of child support payments. Because those payments, although they may be directed in the hands of a noncompliant parent, nonetheless, they are for the benefit of the children.

And the one thing I don't want is that if there's a dispute after a divorce and one of the parents who has custody of the children decides they're not going to attend the program even in the face of the court order, or they abscond or just are noncompliant, I don't want their children to be punished.

As I understand the bill, it won't allow that under those circumstances. I'm going to vote in favor of it.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 56 are

Senators Duane, Goodman, Meier, Montgomery, Oppenheimer, Paterson, Rosado, Schneiderman, Smith, and Stavisky. Ayes, 46. Nays, 10.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: The desk is clean, Senator Skelos.

SENATOR SKELOS: Mr. President, in name and in memory of Senator Jess J. Present, there being no further business to come before the Senate, I move we adjourn until Wednesday, January 19th, at 11:00 a.m.

ACTING PRESIDENT MEIER: In name and memory of Senator Jess J. Present, the Senate stands adjourned until Wednesday, January 19th, at 11:00 a.m.

(Whereupon, at 5:05 p.m., the Senate adjourned.)