NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: In the absence of clergy, may we all God bless counsel and bow our heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 10th, the Senate met pursuant to adjournment. The Journal of Friday, April 7th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: 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 Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 143B, by Senator Nozzolio, an act to amend the General Business Law;

1091, by Senator Volker, an act to amend the General Business Law;

2016A, by Senator Bonacic, an act to amend the General Business Law;

2100, by Senator Libous, an act to amend the General Business Law;

2530, by Senator Velella, an act to amend the General Business Law;

3212, by Senator Johnson, an act to amend the General Business Law.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 3264, by Senator Maziarz, an act to amend the Real Property Tax Law.

Senator Spano, from the Committee

on Labor, reports:

Senate Print 4117A, by Senator Spano, an act to amend the Workers' Compensation Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 110, by Senator Volker, an act to amend the Penal Law;

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

789, by Senator Goodman, an act to amend the Penal Law;

966, by Senator Skelos, an act to amend the Penal Law;

1265A, by Senator Meier, an act to amend the Civil Rights Law;

1481B, by Senator Balboni, an act to amend the Civil Practice Law and Rules;

2059, by Senator Volker, an act to amend the Civil Practice Law and Rules;

2139, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure Law;

2795, by Senator Rath, an act to repeal Paragraph F of Subdivision 1 of Section

70.30;

2943, by Senator Rath, an act to amend the Penal Law;

3337, by Senator McGee, an act to amend the Criminal Procedure Law;

3419, by Senator Volker, an act to amend the Criminal Procedure Law;

3441, by Senator Volker, an act to amend the Criminal Procedure Law;

4276, by Senator Volker, an act to amend the Civil Rights Law;

4789A, by Senator Lack, an act to amend the Civil Practice Law and Rules;

6026B, by Senator Morahan, an act to amend the Penal Law and the Criminal Procedure Law;

6644, by Senator Volker, an act to amend the Criminal Procedure Law;

6647, by Senator Volker, an act to amend the Criminal Procedure Law;

6974, by Senator Volker, an act to amend the Criminal Procedure Law.

Senator Morahan, from the Committee on Veterans and Military Affairs, reports:

Senate Print 684, by Senator

Larkin, an act to amend the Real Property Tax Law;

1913A, by Senator Bonacic, an act to amend the Vehicle and Traffic Law;

6445A, by Senator Nozzolio, an act to amend the Highway Law;

And 6740, by Senator Kuhl, an act to amend the Highway Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Meier, on page number 8 I offer the following amendments to Calendar Number 185, Senate Print Number 6272, and ask that that bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolution 3696.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 3696, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution Number 3696, by Senator McGee, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator McGee, Legislative Resolution 3696, memorializing Governor George E. Pataki to proclaim April 2000 as Alcohol and Substance Abuse Awareness Month.

Senator Skelos.

SENATOR SKELOS: Madam President, Senator McGee has consented to the resolution being cosponsored by all the members. If there's no objection from the Minority, we'll put every member on the resolution unless somebody indicates to the desk otherwise.

THE PRESIDENT: All members will be put on the resolution, Senator. If any member does not wish to be put on this resolution, please notify the desk.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President. We just passed Resolution 3695, which we are -

THE PRESIDENT: We are anticipating passage, Senator.

SENATOR FARLEY: Yes. -

National Library Week, and I would also like to offer that up to anybody in the chamber - or to everybody unless they have an objection. It classically has been sponsored by everyone, and we didn't have time to circulate it.

So I'm offering that up if anybody wants to be on it -- does not want to be on it, notify the desk.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Makes sense to me, Madam President.

(Laughter.)

THE PRESIDENT: Thank you, Senator.

SENATOR SKELOS: Madam President.

THE PRESIDENT: The question is on Resolution 3696. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President,

earlier today you and I had the honor of meeting with a distinguished guest to our chamber today, Ambassador Erato Marcoullis of Cyprus.

Mrs. Marcoullis has been the Ambassador of the Republic of Cyprus to the United States since 1998. Currently, she is also accredited as the High Commissioner to Canada and the Cypriot Ambassador to Brazil.

Throughout her remarkable career, the Ambassador has served the people of Cyprus both within Cyprus's government and as their representative on the international stage. As an ambassador, Mrs. Marcoullis has represented the people and interests of Cyprus to several nations before nine sessions of the United Nations and at numerous world conferences.

We welcome the ambassador to New York State today as part of her ongoing effort to build international support for a just and viable resolution of the Cyprus problem, based on the relevant U.N. Security Council resolutions calling for a bizonal, bicommunal federation. And as you know, the nation of Cyprus has been separated since 1974.

I would like to urge the United States' continued support for the resolution of the Cyprus problem and the humanitarian, human rights, and cultural issues that it has created in its efforts to encourage all of the involved parties to engage in substantive talks leading to a solution.

I thank the Ambassador for including us in her plans and her commitment to the safety and the well-being of all Cypriots and the stability of the Republic of Cyprus.

Madam President, if you would, as you always do, welcome our distinguished guest to the chamber today.

THE PRESIDENT: Thank you, Senator Skelos.

And it was indeed my honor and privilege to meet with Your Excellency the Ambassador earlier this afternoon to discuss many issues of common concern to us, not only in New York State but on the Island of Cyprus.

Welcome. I extend to you every courtesy of the Senate, and we hope you have an enjoyable visit.

(Applause.)

THE PRESIDENT: Senator Bonacic.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Crime and Correction Committee at this time.

THE PRESIDENT: There will be an immediate meeting of the Crime and Correction Committee at this time.

SENATOR SCHNEIDERMAN: Where?

THE PRESIDENT: In the Majority Conference Room, 332.

Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I offer the following amendments to Calendar 187, Senate Print Number 6297, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR BONACIC: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President,

if we could take up the noncontroversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 339, by Senator Alesi, Senate Print 96B, an act to amend the General Business Law, in relation to altering mileage.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 469, by Senator Skelos, Senate Print 6242, an act to amend the General Business Law, in relation to possession, sale and use.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 479, by Senator Farley, Senate Print 6669A, an act in relation to adjusting certain state aid payments to the Schenectady City School District.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Padavan -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 542, by Senator Volker, Senate Print 3181, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the offense of bail jumping and failing to respond.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 563, by Senator Lack -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 570, by Senator Velella, Senate Print 5897A, an act to amend the Education Law, in relation to mandatory continuing education.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2001.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 571, by Senator LaValle, Senate Print -

SENATOR SKELOS: Lay it aside for the day, please.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 577, by Senator Marchi, Senate Print 6321, an act to amend Chapter 759 of the Laws of 1973.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 593, by Senator Larkin, Senate Print 6523, an act to amend Chapter 43 of the Laws of 1994, relating to establishing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 594, by Senator Wright, Senate Print 6576, an act to amend the Real Property Tax Law, in relation to the Tug Hill region.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could go to the controversial calendar, starting with Calendar Number 563.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 563, by Senator Lack, Senate Print 6975, an act to amend the Arts and Cultural Affairs Law, in relation to subpoenas.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Explanation, Madam President, if Senator Lack will -

THE PRESIDENT: Senator Lack, an explanation has been requested.

SENATOR LACK: I'm sorry, I can't hear, Madam President. There's too much talk around here.

What was the -

SENATOR DOLLINGER: Madam

President, I just asked for an explanation.

SENATOR LACK: Oh, thank you. I couldn't hear.

This is a very simple bill, Madam President. A few years ago the Museum of Modern Art in the City of New York received some paintings on loan in which questions were raised about whether or not they were indeed stolen from Jewish citizens in occupied countries of Europe during World War II by the Nazis. These people were later executed, and art that belonged to them might indeed have been transported to the United States and hung in the Museum of Modern Art.

The District Attorney of the County of New York, Robert Morgenthau, seized the paintings pending an establishment, by their provenance, of exactly who owned them. The Museum of Modern Art took the New York District Attorney to court.

The case went to the Court of Appeals of the State of New York, which decided in favor of the museum because of the extant statute, which is Section 12.03 of the Arts and Cultural Affairs Law -- which New

York has had on the books for a period of time -- to allow art which is received on loan from anyplace not to be seized for what we considered, many members of the Legislature, to be for civil purposes.

For example, if art that allegedly belongs to a husband who is engaged in a matrimonial proceeding -- you wouldn't want that taken off the wall by a spouse who says it's really part of the proceeds of the marriage and wants to take it off the wall of the museum and seize it while it's in New York State through some form of civil attachment.

The Court of Appeals held, nope, the law in and by itself, from what we can establish, as passed by the Legislature and signed by the Governor, applies whether or not it is civil or criminal in nature. Therefore, the New York County District Attorney has no power to seize this art.

This bill is very simple. It puts in the word "civil," makes it quite clear that what the Legislature and hopefully the Governor, if he signs it -- and this is sponsored by Speaker Silver -- meant is civil

seizure.

So that if District Attorney Morgenthau or indeed any of the 61 other district attorneys of this state has cause to believe that art hanging in any museum in this state is indeed art that was seized by the Nazis from Jewish or other citizens who were then later executed, that that art can be taken into possession of the state, its true ownership learned, and turned over to them.

Indeed, not long ago in Boston, "Portrait of a Man and a Woman in an Interior," a very famous Dutch painting by van der Neer, was taken off the walls of the Museum of Fine Arts in Boston and returned to its rightful owner -- the heirs of the rightful owner, the rightful owner having been executed during World War II.

The J. Paul Getty Museum in Los Angeles, the Chicago Art Institute, and indeed the Metropolitan Museum of Art itself have had to take paintings that are hanging on the wall -- legitimately bought, I might add, in many cases, but which provenance shows were really stolen art taken by Hitler and his

henchmen during the war.

In fact, the other jurisdiction that has a law similar to this one is Germany itself, which has now gone on the Internet putting paintings on display. So that if you can show the provenance and show that it belonged to your mother, your father, your grandfather, your grandmother, a great aunt, and you can show that there's a history that that could-be-very-famous picture indeed belongs to you and your family, it should be returned to you and your family.

That's all this bill does.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I appreciate Senator Lack's explanation. Would he just yield to a couple of questions, please.

THE PRESIDENT: Does the sponsor yield? Senator Lack, do you yield?

SENATOR LACK: Oh, yes, I'll yield, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, this is the first time I've seen this particular part of the Arts and Cultural Affairs Law, and I just have a couple of questions about its scope. Does this only apply to objects of fine art? Would it include rare books and rare jewels? Are those included within the scope of this?

SENATOR LACK: Sure, it's fine art.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Lack will continue to yield.

Does that include jewels? I mean, it would include, under the same scenario that you described of confiscation by the Nazis -

SENATOR LACK: No, there's a definition, I think, somewhere in that law of fine art. The answer is no. It includes the type of art that comes under the Arts and Cultural Affairs Law.

I don't have a definition right here.

SENATOR DOLLINGER: Okay. Through you, Madam President, if Senator Lack

will continue to yield.

SENATOR LACK: Yes.

SENATOR DOLLINGER: Does this apply only to prejudgment remedies, or does it apply to postjudgment remedies as well?

SENATOR LACK: It would apply to anything which we're now viewing, Madam President, in the criminal sense.

What we're doing, by inserting the word "civil" into this statute, is taking it completely -- and what I think, in my opinion, was the reason for the Legislature originally passing this, was to make sure that none of this art that comes into the state of New York is liable to civil seizure by the types of action, Madam President, that Senator Dollinger and I would both envision in which there is some type of private proceeding going on between parties in which the plaintiff or the defendant, as the case might be, might try to seize the art solely by virtue of the fact -- and attach it solely by virtue of the fact that it is located in the state of New York.

That type of action is not at all

what we're talking about, which is -- indeed would restore, again, what I consider to be the original intent of the statute. Leaving only the situation that came up that involved the District Attorney of the County of New York.

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

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Just so I make sure I understand it.

You're saying that for criminal purposes, if the allegation is theft and it's a prosecution by the district attorney, he would have the power to seize those paintings as part of a grand jury subpoena or a subpoena duces tecum to bring the paintings to the court until the criminal process resolves the ownership of that painting -- but if it were a civil remedy, that they would be immune from attachment or seizure. Is that correct?

SENATOR LACK: Madam President, that's absolutely correct. That, in my

opinion, was once again the original intention of the law that New York and other jurisdictions have passed as well.

It is only -- and I think it probably began with the Swiss gold situation of late, that it has been possible to trace the fact that in addition to gold, as in the Swiss gold situation, there has obviously also been hundreds of millions of dollars of valuable fine art that was also seized in the Holocaust.

And, by the way, this bill is general in nature. I use the Holocaust because that was the germinating situation that gave rise to this particular bill, and indeed the action that was before the Court of Appeals. But this not at all applies to events limited only by the years 1933 to 1945.

Indeed, it conceivably could pertain to a theft of fine art that took place six months ago. Although it's doubtful that it would, because a piece of fine art that was stolen six months ago would be fairly well known and you wouldn't expect to see it hanging in a museum. But a piece of art

expropriated by the Nazis 60 years ago conceivably would not be.

And therefore, if it comes into New York or indeed other jurisdictions that are now passing similar things, I think it is perfectly proper that the district attorneys of our state examine it, put it together, and if the provenance could be proved to the satisfaction of the court that would be hearing the question, that the art be turned over to the heirs.

As to -- to answer Senator Dollinger's question that it would be the termination of a criminal proceeding, if one could really find those who were involved in the Holocaust, I think -- it would be nice to think it would be the termination of a criminal proceeding. But since the only thing left is the property rights, for the most part, it would still be nice to see that even if it's two generations later that property that belonged to the family was indeed restored.

SENATOR DOLLINGER: But again, through you, Madam President, if Senator Lack

will continue to yield.

THE PRESIDENT: Does the sponsor continue to yield?

SENATOR LACK: Of course.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Senator Lack, you just made the point that I was trying to get up to make, which is that a criminal proceeding in this context, in the context you described, for art seized during the Holocaust or for rare books seized during the Holocaust, there really is no criminal proceeding. Because unless we were able to identify an 80-plus-year-old criminal, we're not going to have a particular defendant that will be charged with the crime.

In addition, it seems to me there's a huge jurisdictional question involved of whether the United States can prosecute a German citizen for a crime that occurs on German soil.

And so my question is, is this really -- by allowing the criminal equivalent of seizure, aren't we really, in essence,

creating a civil remedy that has the guise of a criminal proceeding that has a district attorney attached to it?

And again, I'm just trying to make sure I understand what this bill does. But isn't that what we're really doing? And if, for example, it were the theft of art from Van Gogh that even goes earlier than that, that goes to the latter part of the last century, aren't we really allowing the equivalent of a civil tort recovery for this art, and use this to seize it?

SENATOR LACK: Madam President, the answer to that is simple. There's already been a Court of Appeals action. In no way, shape or form was the form of the subpoena issued by the County of New York, through its district attorney, in question in the Court of Appeals action.

The Court of Appeals only interpreted the effect of the section that's in question in this legislation as to whether or not it applied not only to civil but to criminal as well.

The Court of Appeals did not see

that it was necessary to inquire as to whether or not the District Attorney of the County of New York had jurisdiction to issue the subpoena as the District Attorney of the County of New York.

And I'm sure, Madam President, Senator Dollinger will appreciate the district attorneys of this state have power only in criminal proceedings, and that neither in the underlying court, the First Department of the Appellate Division, or in the Court of Appeals was there a question as to whether or not it was germane for the County of New York, through its district attorney utilizing the grand jury's ability, to inquire into whether or not this was stolen art during the period known as the Holocaust.

That has always been accepted without question. What was not accepted was the applicability of this statute as to whether or not it extended not only to civil but criminal as well. The Court of Appeals held that it applies to criminal. And since it did apply to criminal, it bound the district attorney to follow it.

That's all we're trying to correct. To the extent that it protects a civil situation, we are restoring -- perfecting, as it were -- the Legislature's original intention. It is only bound to criminal matters.

If a district attorney issues a subpoena and a court determines that that district attorney operated ultra vires to the power inherent to the district attorney, so be it, and the subpoena will be thrown out.

That is not the question before us in the Legislature or involved in this particular bill. This bill, in my opinion, restores the original intention of the Legislature with respect to a civil situation.

District attorneys decide, in their own power, whether or not to issue subpoenas. Are those subpoenas valid? Become a judge, Senator Dollinger, and you'll find out and be able to make that determination yourself.

SENATOR DOLLINGER: As you know, Senator Lack, I tried, and the voters said no, so -

Madam President, just briefly -

SENATOR LACK: I wish I could be in Monroe County and be a voter, Senator Dollinger.

(Laughter.)

THE PRESIDENT: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Just briefly on the bill, Madam President.

I appreciate Senator Lack's explanation. My problem is I'm not sure I agree with the underlying basis for the statute in the first place.

It seems to me that when there's a dispute between owners of a particular object -- be it fine art or cash or whatever -- that there's a dispute, it might be in the state's best interests to say, okay, we will create a special category of fine art which is often loaned around the world, and we will make it immune from a prejudgment seizure or attachment.

But I would suggest, Madam President, that after judgment has been rendered and the painting has now been awarded by the courts of this state to Senator Lack,

the mere fact that it's posted in the Museum of Modern Art -- there's already been an enforceable court order from this state's courts that says he's entitled to the painting. I would suggest he should be able to sequester, replevin, attach, recover that no matter in whose possession it is.

I would point out -- Senator Lack, I'm sure, appreciates this -- that if there were a million dollars in New York State that was owned by me that the courts of this state concluded Senator Lack owned, that he had a right to that million dollars, he should be able to come in and attach it, replevin it, do whatever is necessary to prevent me from taking it away. It would be a normal part of our enforcement of judgments.

I guess I'm willing to go along with this, Madam President, but I would ask that someone rethink this whole statute. I understand that we want to be a mecca for art and we want to borrow it and loan it, take it on loan from other places. But I would just suggest it would be very frustrating to be a Holocaust victim or to be anyone and have an

adjudication from this state's courts that the particular piece of art on the wall is mine and be told that I couldn't use the normal judgment enforcement mechanisms to recover that piece of art.

And, Senator Lack, I'm going to vote in favor of the bill. This is a change. I understand why the Court of Appeals tossed it out. But I would ask everybody to go back and rethink this bill right from the start. Because it seems to me if it's your painting, no matter whose possession it is in, you ought to be able to use all of our recovery devices in this state to try to get it back.

And I'm not so sure I agree with the logic of this. And if we had a chance to overturn this whole statute, I think I'd take a serious look at doing it. I'm not opposed to Senator Lack's amendment, but I would suggest we rethink this whole idea.

SENATOR LACK: Madam President.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Madam President, I of course would like to thank Senator Dollinger for his input.

This bill is obviously of a limited nature, pertaining to criminal proceedings. It was introduced at the request of the New York County District Attorney, specifically to overrule a Court of Appeals decision in which many members of the Legislature, myself included, and including Speaker Silver, think is not the intention of the original law.

And I certainly appreciate Senator Dollinger's pointing out that perhaps he disagrees with the original law. That's a matter for another time and another place. There are many reasons why this law is on the books. This is no intention whatsoever, since we're trying to make legislative history here in case, just in case this goes before the Court of Appeals again and they can have a record, that this is not a repeal of the specific section.

It is, however, a legislative attempt to take a Court of Appeals decision and say for the purposes of which you decided that decision in re Museum of Modern Art, that was not the intention of the Legislature. This statute should be inapplicable to

criminal proceedings specifically, those brought for the types of things that I've talked about that occurred during the years commonly referred to as the time of the Holocaust.

THE PRESIDENT: Read the last section.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Madam President, briefly on the bill.

Madam President, though I have great appreciation for Senator Dollinger and his comments about the more global aspects of the original legislation, and maybe we should reexamine, I do want to commend Senator Lack for bringing this bill.

I believe that this is a solid piece of legislation and really recognizes that the situation that he outlined in terms of the situation with MOMA is going to happen again. Almost as sure as we're all in this chamber right now, that situation is going to happen again. And should it arise, the passage of this legislation will provide the

proper tool for the District Attorney -- or any district attorney in New York State, for that matter -- in order to do what is right.

So I commend him on bringing this piece of legislation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Local Government Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Local Government Committee in the Majority Conference Room.

SENATOR SKELOS: If we could take up Calendar Number 535 at this time.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 535, by Senator Padavan, Senate Print 1397, an act to amend the Penal Law, in relation to making citizenship document fraud.

THE PRESIDENT: Read the last section.

Senator Padavan, an explanation has been requested by Senator Paterson, I understand.

SENATOR PATERSON: No.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President,

if we could return to reports of standing committees, I believe there's a report at the desk. If we could have it read.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, reports:

Senate Print 1480B, by Senator Meier, an act to amend the Executive Law and the Social Services Law;

2402, by Senator Kuhl, an act to amend the Correction Law;

3105, by Senator Volker, an act to amend the Correction Law and the Education Law;

6807, by Senator Farley, an act to amend the Correction Law and the Executive Law;

6942, by Senator Morahan, an act to amend the Executive Law and the Penal Law;

7073, by Senator Nozzolio, an act to amend the Correction Law;

And 7087, by Senator Nozzolio, an

act to amend the Correction Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't, Senator.

SENATOR SKELOS: Please recognize Senator Smith.

THE PRESIDENT: Motions to discharge.

Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

I have a motion at the desk. I would like to have it called up at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 6786, by Senator Smith, an act to amend the Executive Law, in relation to granting the

Attorney General jurisdiction to investigate and prosecute police misconduct.

THE PRESIDENT: Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR ADA SMITH: This bill, which is the subject of this motion, authorizes the Attorney General, under limited circumstances, the right to investigate and prosecute when an alleged criminal offense has been committed by a police officer in connection with the performance of his or her regular duties.

It also allows the district - because the district attorneys have a close relationship with police officers and often they do not prosecute the charges brought against police officers as defendants, it would also take into consideration the conflict of interest that may exist.

And for the public, it would be helpful because often there is a perceived conflict, and they believe that the -- and it erodes the public confidence in the judicial

system.

Also, it would eliminate or possibly eliminate some of the public criticism, and the actions of the local district attorneys would be removed from the politics of the local area.

THE PRESIDENT: All in favor of accepting the motion to discharge -

Senator Paterson.

SENATOR PATERSON: Madam President, if I could just say a word on this motion for a second.

THE PRESIDENT: On the motion, Senator.

SENATOR PATERSON: I wanted to thank Senator Smith for bringing the motion.

I just wanted to remind my colleagues that the Attorney General was the primary source of criminal prosecution in this state from the inception of New York State as a government, and local district attorneys did not receive the opportunity to prosecute cases until 1846.

So when we do appoint special prosecutors under Article 4, Section 2 of the

Constitution, we do it because it is understood that the Attorney General has a prevailing state interest in any criminal activity that goes on, even within the jurisdiction of local district attorneys.

We already have in our Executive Law Sections 9 and 10 to Executive Law 63, which provides that the attorney generals come into these types of conflicts, such as what Senator Smith described, where we feel that there's a prevailing state interest.

And certainly the issue that Senator Smith has raised has had a widespread controversy around the state, and this would provide greater protection and also the perception of a much fairer and scrupulous prosecution to allow it.

And so I want to speak in support of Senator Smith's motion. And since I can think of no other member that has the greater support of her colleagues than Senator Smith, I predict that it will pass almost unanimously.

(Laughter.)

THE PRESIDENT: All those in

favor of accepting the motion to discharge signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 35. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Smith.

SENATOR ADA SMITH: Madam President, I have another motion at the desk that I would like to have called up at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 7244, by Senator Smith, an act to amend the General Municipal Law and the Civil Service Law, in relation to salary and civil service exam credits for police officers in

certain cities.

SENATOR ADA SMITH: Thank you, Madam President.

THE PRESIDENT: Senator Smith.

SENATOR ADA SMITH: This bill would authorize cities of 100,000 or more to enact various incentives to enhance police officer recruitment and local residency.

The bill provides certain municipalities with different options intended to encourage residency by police officers within those particular municipalities. It would be 5 percent or more of their base salary; it would be 5 points additional credit on a police officer's or a civil service exam for local candidates; $500 New York City income tax credit or a $100 Yonkers income tax credit; $500 state income tax credit or a $10,000 real property tax credit for resident police officers except in the City of New York; and a $12,000 loan-forgiveness award over a six-year period for those attending CUNY or SUNY graduate.

For two years, New York City has been struggling to attract police recruits.

In 1966 we had 31,000 applicants, down last year to 6,000 applicants. And in spite of all of the money that we've been spending in the recruitment campaign -- up to more than $10 million last year -- the city officers are at a lower pay scale than in other places. We have strained relationships with our police officers.

However, other cities like Los Angeles are coming into New York trying to steal away those good people that may become police officers.

And this would also encourage more African-Americans and Latinos to become police officers.

THE PRESIDENT: All in favor of accepting the motion to discharge -- Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I just want to rise to commend Senator Smith and to recommend this bill to all of the members of this house, because we're dealing with the issue of residency in New York City as a very creative approach. It

doesn't mandate a residency requirement, but it addresses a very, very real issue, which is the recruitment and retention of police officers in our city.

And I would urge that everyone should support this as a creative, market-oriented approach. And I predict that this will -- this one will pass, by very close to a majority.

Thank you, Madam President.

And I see Senator Balboni coming over to offer his support.

(Laughter.)

THE PRESIDENT: All in favor of accepting the motion to discharge signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: Moving right along, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 35. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR ADA SMITH: I have one last motion at the desk. I would like to have it called up at this time, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 7245, by Senator Smith, an act to amend the Executive Law, in relation to the creation of the Police Cadet Corps Program.

SENATOR ADA SMITH: Madam President -

THE PRESIDENT: Senator Smith.

SENATOR ADA SMITH: -- I would like to defer to my colleague Senator Seabrook to explain this bill.

THE PRESIDENT: Senator Seabrook.

SENATOR SEABROOK: Yes, Madam President.

This bill establishes a Police

Cadet Corps Program at John Jay College of Criminal Justice of the City University of New York. This bill directs the Commissioner of the Division of Criminal Justice Services to create, in consultation with the CUNY Chancellor, to create a new police recruitment program aimed at training over 1,000 new officers each year.

This program is designed to prepare police officer candidates for the complexities of modern police work in ethnically diverse communities. This combines college education with skill development training, law enforcement, victimization prevention, community-police relations, mental/physical skills development, and supervised internships in the New York City Police Department.

Enrollment targets will be 500 students this year, 1,000 students next year. The extension of a successful pilot program from 1993 to 1997 produced 213 new officers, and therefore it produced 65 percent who were minorities and 32 percent who were female. The CUNY students reflect the ethnic and gender distribution of the city's diverse

population.

The Police Cadet Program provides the New York City Police Department with excellent mechanisms to assess officer candidates' capabilities and character. This program has proven to be a success in the past, and it is our hope that we can allow this program to continue at John Jay College and be the success that it has been in the past.

So I would urge my colleagues to vote and accept this CUNY Police Cadet Program.

THE PRESIDENT: All in favor of accepting the motion to discharge signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 35. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I have a motion at the desk that I'd like to have called up at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 7275, by Senator Duane, an act to amend the Executive Law and the State Finance Law, in relation to police training.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If I may explain my legislation which is the subject of this motion to discharge.

As I've mentioned many times, both on motions to discharge as well as on other pieces of legislation, I'm a very strong advocate for the need of the Legislature to set policies and guidelines which reflect the diverse state we live in. And based on current events, tragic current events that we are all well aware of, I believe it's time

that we look at the issue of diversity in police departments across the state.

My bill would make grants to police departments to enhance police officer recruitment efforts to increase racial, ethnic, religious, and gender diversity in police departments. And the bill would also fund those initiatives by providing grants to groups in efforts to train existing police officers in awareness of racial, ethnic, religious, and gender issues.

The bill would also create a police training and diversity board, which would be part of the Division of Criminal Justice and which would oversee the diversity efforts of our municipal police departments.

I think that this bill, both by encouraging diversity and sensitivity and finding ways to fund those initiatives, is very important towards effective police activity in our state, and I urge my colleagues to vote for the motion to discharge.

Thank you.

THE PRESIDENT: All in favor of

accepting the motion to discharge signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative, Madam President.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 35. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like unanimous consent to be recorded in the negative on Calendar 542.

THE PRESIDENT: Without objection, Senator Montgomery, you will be recorded as voting in the negative on Calendar 542.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing

committees, I believe there's a report of the Local Governments Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Local Government, reports:

Senate Print 1856, by Senator LaValle, an act to amend the Town Law;

3717, by Senator Bonacic, an act to amend the County Law;

4313, by Senator McGee, an act to amend the General Municipal Law;

6093A, by Senator Volker, an act authorizing the Village of Lancaster;

6249, by Senator Trunzo, an act to amend the Town Law;

6510, by Senator Volker, an act to amend the General Municipal Law;

6707, by Senator Marcellino, an act authorizing the assessor of the County of Nassau;

6723, by Senator Fuschillo, an act authorizing the assessor of the County of

Nassau;

6820, by Senator Seward, an act making certain findings and determinations;

6836, by Senator Wright, an act to amend the Real Property Tax Law;

6864, by Senator Johnson, an act authorizing the assessor of the Town of Islip;

6929, by Senator Marcellino, an act in relation to authorizing the town boards;

7138, by Senator Johnson, an act to authorize the Trinity Evangelical Lutheran Church;

7158, by Senator Nozzolio, an act to amend Chapter 41 of the Laws of 1971;

And 7199, by Senator Wright, an act to amend the Volunteer Firefighters Benevolent Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before

the Senate, I move we adjourn until Wednesday, April 12th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Wednesday, April 12th, at 11:00 a.m.

(Whereupon, at 4:00 p.m., the Senate adjourned.)