NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 24, 2000

11:08 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask 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 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, Tuesday, May 23rd, the Senate met pursuant to adjournment. The Journal of Monday, May 22nd, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Kuhl, on page number 15 I offer the following amendments to Calendar Number 481, Senate Print Number 7002, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Thank you, Madam President.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk by Senator Dollinger. I ask that the title be read and move for its immediate

adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Dollinger, Legislative Resolution 4368 celebrating the life and accomplishments of Martha Matilda Harper upon the occasion of an exhibit sponsored by the Rochester Museum and Science Center to portray her courageous and pioneering role in international business.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. On the resolution.

First, I'd like to thank the Deputy Majority Leader and the staff for bringing this resolution forward today. There is an exhibit in honor of Martha Matilda Harper, who was the Ray Kroc of her time. This was a woman who did for hairdressing and women's fashion what Ray Kroc did for hamburgers, except she did it about 75 years before he did.

This is a pioneer of entrepreneurial spirit who started in

Rochester, New York. Her life, too often ignored, is now being celebrated in a book that's being published that's being signed off on this week. This is really a remarkable woman who long before her time brought the concept of franchising to modern women's style -- hairstyling and cosmetics. It was really well before its time. It's a fascinating story.

This resolution celebrates her life and celebrates the opening of an exhibit acknowledging her contribution to American ingenuity and entrepreneurship long before its time. It's a wonderful celebration of Rochester, New York.

I would open the resolution to anyone in the chamber who would like to be on it. It comes relatively late in the process, and therefore I'm going to make a special offer to my colleagues from Monroe County to join with me on the resolution as well.

Thank you, Madam President.

THE PRESIDENT: The question is on the resolution. 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, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 233, by the Senate Committee on Rules, Senate Print Number 5752A, an act to amend the Insurance Law, in relation to salaries paid.

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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

467, by Senator Bonacic, Senate Print 4499A, an act to amend the General Business Law, in relation to advertising.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 527, by Member of the Assembly Weisenberg, Assembly Print Number 10112, an act to amend Chapter 640 of the Laws of 1990 amending the Public Health Law.

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, 37.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 687, by Senator Leibell, Senate Print 6543, an act to amend the Retirement and Social Security Law, in relation to benefit calculations.

THE PRESIDENT: There is a home rule message at the desk.

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, 38.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 688, by Senator Leibell, Senate Print 7067, an act to amend the Retirement and Social Security Law, in relation to granting members.

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, 38.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: No.

THE PRESIDENT: All right. The Secretary will continue to read.

THE SECRETARY: Calendar Number 768, by Senator Leibell, Senate Print 7546, an act to amend the Administrative Code of the City of New York, in relation to the investment power.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1001, by Senator Stachowski, Senate Print 4173, an act to amend the Penal Law, in relation to the definition of assault in the second degree.

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 PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Yes, thank you, Madam President.

I'd just like to point out that there are those who believe, or at least they say they believe, that an assault is just an assault and a crime is just a crime. But here we have a bill which increases penalties for assaulting public health inspectors and building inspection officials.

And I'm going to vote for this bill. I think it's a terrific bill. But I do want to point out that we still haven't passed hate crimes legislation in this body, which would increase penalties for crimes committed against people because of who they are.

So I'll be voting yes on this, with the hope that we'll be voting on hate crimes before this legislative session is over.

Thank you, Madam President.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1016, by Senator Lack, Senate Print 7652, an act to amend the Criminal Procedure Law, in relation to authorizing electronic court appearances in the state.

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 PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you very much, Madam President.

I'm going to vote against this piece of legislation. I think it's interesting that we have before us an extension of a pilot program, but the pilot program, as most of the pilot programs we see

when we pass legislation in this body, has no results.

So in the absence of having any results of what the original pilot program showed us, I'm going to vote no on this and hope that someday we'll actually get the results of a pilot program here.

THE PRESIDENT: You will be so recorded as voting in the negative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 39. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1049, by Senator Seward, Senate Print 7381, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to requirements.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1054, by Senator Stafford, Senate Print 1932A, an act to amend the Alcoholic Beverage Control Law, in relation to consumer tastings.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1056, by Senator Goodman, Senate Print 4037, an act to amend the Alcoholic Beverage Control Law, in relation to giving the Division of Alcoholic Beverage Control the power to seize.

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, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1057, by Senator Goodman, Senate Print 4038, an act to amend the Alcoholic Beverage Control Law, in relation to the issuance of temporary permits.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: I'm going to vote against this legislation.

And I do want to point out that I have legislation pending which would eliminate

the ability to serve liquor while a license is being transferred pending approval of a new licensee. This has become an enormous problem in the district I represent, where a lot of renegade activity goes on during these in-between times.

So I think we should be going in the other direction and absolutely not allow these liquor licenses to be used during these transfers. I'll be voting no.

Thank you, Madam President.

THE PRESIDENT: Senator Duane, you will so recorded as voting in the negative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 41. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1069, by Senator Goodman, Senate Print 7115, an act to amend the Public Officers Law and the General Construction Law, in relation to the use of videoconferencing.

SENATOR STACHOWSKI: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1097, by Senator DeFrancisco, Senate Print 7404, an act to amend the Executive Law and the Parks, Recreation and Historic Preservation Law, in relation to historic maritime communities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1150, by Senator Farley, Senate Print 4541, an act to amend the Banking Law, in relation to the regulation of agents and subagents.

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, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1154, by Senator Farley, Senate Print 7692, an act to amend the Banking Law, in relation to the definition of traveler's checks.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1157, by Senator Maziarz, Senate Print 5372B, an act to reopen the special retirement plan available to certain police officers employed by the Town of Gates.

THE PRESIDENT: There is a home rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1160, by Senator Larkin, Senate Print 175, an act to amend the Education Law, in relation to expanding student aid programs for Vietnam and Persian Gulf veterans.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1170, by Member of the Assembly Eve, Assembly Print Number 9951, an act to amend Chapter 31 of the Laws of 1985 amending the Education Law.

SENATOR DOLLINGER: Lay that bill aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1171, by Senator Stafford, Senate Print 7074A, an act to amend the Education Law, in relation to the abolition of citizenship requirements.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1175, by Senator LaValle, Senate Print 7509, an act to amend the Education Law, in relation to the requirements of certification.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1178, by Senator Rath, Senate Print 1290, concurrent resolution of the Senate and Assembly proposing amendments to Article 9 of the Constitution.

SENATOR DOLLINGER: Lay it aside, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1179, by Senator Volker, Senate Print 1912A, an act to enact the Criminal Procedure Law Reform Act of 2000.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1180, by Senator Libous, Senate Print 2094B, an act to amend the Vehicle and Traffic Law, in relation to authorizing the maximum speed limit.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Wright, Senate Print 3652B, an act to amend the Vehicle and Traffic Law, in relation to the maximum speed limit for certain portions of highway.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1184, by Senator Volker, Senate Print 5877A, an act to amend the Banking Law, the Civil Practice Law and Rules, and the Criminal Procedure Law, in relation to civil forfeiture.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Lay the bill aside, Madam President.

THE PRESIDENT: The bill is laid aside.

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

SENATOR McGEE: Thank you, Madam President. Is there any housekeeping at the desk?

THE PRESIDENT: Senator DeFrancisco first.

SENATOR McGEE: Would you recognize Senator DeFrancisco, please.

THE PRESIDENT: Thank you,

Senator McGee.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. Madam President, I would request, with unanimous consent, to be recorded in the negative on Calendar Number 1001, Senate Print 4173.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative.

Senator McGee.

SENATOR McGEE: Madam President, thank you. May we now have the controversial reading of the calendar.

THE PRESIDENT: Thank you, Senator.

The Secretary will read.

THE SECRETARY: Calendar Number 768, by Senator Leibell, Senate Print 7546, an act to amend the Administrative Code of the City of New York, in relation to investment power of the Board of Trustees.

SENATOR DOLLINGER: Read the last section.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1069, by Senator Goodman, Senate Print 7115, an act to amend the Public Officers Law and the General Construction Law, in relation to the use of videoconferencing.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Explanation, Madam President.

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

SENATOR GOODMAN: Madam President, would the bill number be read again, please? I'm sorry.

THE PRESIDENT: The bill is 7115, Calendar Number 1069, Senator Goodman.

SENATOR GOODMAN: Madam President, this bill permits an agency to use

videoconferencing for attendance and participation by members of a public body as well as authorizing teleconferencing for open meetings of state agencies.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield just to a couple of quick questions, Madam President?

SENATOR GOODMAN: Certainly, Madam President.

THE PRESIDENT: The sponsor yields. You may proceed, Senator Dollinger.

SENATOR DOLLINGER: What is the intended scope of this bill as applies to agencies? Would this include all agencies that function in New York State?

SENATOR GOODMAN: Yes, it would. This basically is a bill that recognizes the advance of technology and the feasibility of having people have distance meetings so that it is the equivalent, really, of being present if you have an opportunity to see them through a television screen with a clear image and an adequate sound system. It's permissive,

therefore, to get business done even though an individual may not be present in the room where the meeting would otherwise transpire.

SENATOR DOLLINGER: Through you, Madam President, if Senator Goodman will continue to yield.

SENATOR GOODMAN: Yes, of course.

THE PRESIDENT: You have the floor, Senator Dollinger.

SENATOR DOLLINGER: Would this apply to meetings of the Public Authorities Control Board? Which is, as you know, a somewhat unique public agency in that it is comprised of elected officials who would participate in this meeting.

SENATOR GOODMAN: Senator, as far as I'm concerned, it should be universally applicable. I think that's the desire and certainly the necessity.

It would be extremely useful, it seems to me, to permit this type of conferencing. It in no way diminishes the responsibility of public servants to their constituencies in any way by having a televised presence rather than an actual

physical presence.

SENATOR DOLLINGER: Through you, Madam President, if Senator Goodman would just continue to yield for one final question.

THE PRESIDENT: Does the Senator yield for a final question?

SENATOR GOODMAN: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: The Open Meetings Law which requires that these agencies meet in public, to what extent will this bill, videoconferencing, change that rule, in that a member will not -- several members may choose not to attend and it may be difficult for the public who attend the meeting to figure out what the person who's at the videoconferencing center is doing?

For example, he or she could be sitting in the same room with lobbyists or constituents that could influence the process, and the public present at the meeting place wouldn't know what those influences are because they couldn't see them or observe

them.

Senator Goodman, do you think -- is that a problem? And if so, how does this bill address that?

SENATOR GOODMAN: I find your hypothetical suggestion rather too conspiratorial to be realistic.

Essentially what this does is to create a situation in which you have a meeting of several people in different locations.

But, what, you're saying that a lobbyist could be seated next to the individual and perhaps doing some physical arm-twisting?

SENATOR DOLLINGER: No. Well, maybe not physical arm-twisting, Senator Goodman.

But one of the advantages of the Public Meetings Law and the Open Meetings Law is that all these agencies have to meet in public. And a constituent, one of mine or one of yours, can walk in the room and see who's in the room at the same time, who's sitting at the sidelines, who's whispering, who's talking, all those things that happen in the

public dynamics of a meeting.

Much like here. Someone could sit in this chamber and see those who are filtering in and out, those who are sitting in the audience.

Do we lose some of that public involvement through videoconferencing?

SENATOR GOODMAN: Senator, it seems to me if you put on one pan of the scale your rather bizarre and exotic concern and on the other pan the realities of the efficiency which this produces in a technological age where you really do have almost total visual awareness of what's going on, that the pan of the scale I suggest is the one that will weigh down the heaviest is the latter, not the former.

SENATOR DOLLINGER: Through you, Madam President, just briefly on the bill.

I appreciate Senator Goodman's explanation. I think I voted for this bill in the past. I generally believe that this is well-intentioned and will produce a public benefit.

However, I would just caution

everyone that whenever we have public meetings and we allow videoconferencing, there's going to be something missed by the camera's eye that could be seen by an eye of a person in the room.

And if we really believe that public participation means you not only get to see someone's face, listen to their words, but you get to see them in the milieu in which they're making their decisions, this bill may -- as well-intentioned as it is, this bill may detract from that public understanding.

And I hope, Senator Goodman, if my bizarre and exotic, as you describe it, hypothetical never comes to pass, this is a great idea. If it does, we've got more work to do.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. Will the sponsor yield?

THE PRESIDENT: Does the sponsor yield?

SENATOR GOODMAN: Yes, Senator.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I'm wondering if the sponsor has experienced videoconferencing.

SENATOR GOODMAN: Yes, I have experienced it in a rather personal way. We've created a videoconferencing room at Teachers College at Columbia University which permits the conferencing to occur on educational matters with various institutions all around the world.

I very deeply believe that technology now is something which permits this type of action to occur, and it's exceedingly beneficial in many ways.

I think you'll find, for example - if I may just go on for a moment more and answer your question -- that in an age of exceedingly high tuitions and in fact unaffordable tuitions, that distance learning will now become a very significant factor in the whole American educational system.

Since what we're dealing with here is essentially an exchange of information, the effectiveness of that exchange will in no way

be diminished by the fact that we're using modern video technology to enable people to communicate, and we'll have sufficient opportunity to see them in action and to respond in a two-way sense. Both their statements as well as potential questions from the floor will be permissible.

And this is exceedingly efficient and much to be encouraged, in my judgment, Senator.

SENATOR DUANE: Through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Is the sponsor suggesting that the technology he speaks of that's being used at Columbia University is the exact same technology that's being used by state agencies?

SENATOR GOODMAN: I would say to you that it's probably not, because state

agencies would not require satellite transmission. Whereas the thing I've described to you is even more exciting, since it permits intercontinental exchanges of ideas in a very lively and direct fashion.

I merely mention that to show you the extent to which this kind of technology has advanced.

And for us to hold back on this I think would be a great mistake. Because what's at stake here is a chance for government to function far more efficiently and effectively, to achieve quorums with people in different locations attending to various significant pieces of state business without actually having to disrupt their schedules to go to a given place at a given time when it may interfere with more important duties.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

SENATOR GOODMAN: I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering, though, then if the sponsor has experienced meeting use with a state agency in an official capacity using -

SENATOR GOODMAN: I could not have done that, because at the moment -

SENATOR DUANE: I'm sorry, I didn't -- can I finish my question?

SENATOR GOODMAN: Oh, I'm sorry. Please go ahead, Senator. I thought you were finished.

SENATOR DUANE: -- that using the state agency's videoconferencing technology?

SENATOR GOODMAN: I'm sorry, but you were inaudible, Senator. Would you repeat the question, please?

THE PRESIDENT: Senator, could you repeat your question, please?

SENATOR DUANE: Yes, Madam President. I'm wondering if the sponsor has experienced, in an official capacity, using videoconferencing using the state's videoconferencing technology which is used by a specific state agency.

SENATOR GOODMAN: That would not

have been feasible, because at the moment such a conference would be illegal, Senator. The purpose of this bill is to make this procedure legal and permissible.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR GOODMAN: Yes, I do.

THE PRESIDENT: Senator Duane, you may proceed.

SENATOR DUANE: Is it the sponsor's contention that the videoconferencing that would be used by state agencies is the same -- I can't hear. I can't hear myself.

SENATOR GOODMAN: Senator Duane, you may proceed with your question.

SENATOR DUANE: I'm having trouble hearing myself, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I'm wondering if the sponsor would say that the videoconferencing that would be used by various state agencies is the same videoconferencing or same type of videoconferencing equipment that's used by the Department of Health for, for instance, the AIDS Advisory Committee.

SENATOR GOODMAN: I'm not familiar with that procedure. I'm sorry, I can't respond, Senator.

SENATOR DUANE: Thank you, Madam President. If the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor continue to yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Does the sponsor believe that part of the responsibility of someone who's been appointed to a state commission, whether it's with pay or without compensation, should have as part of their duties traveling to different parts of the state?

SENATOR GOODMAN: Let's take the AIDS Advisory Council to which you just referred. I happen to be familiar with the agency generically, since I created it through legislation that I sponsored.

If there is a doctor who is involved in extensive treatment regimens with respect to AIDS patients in a given city - let us say a consultant who's called to Omaha for the purpose of consulting on some technique for assisting an AIDS patient, and there is a meeting that requires his presence in New York -- it would be a meeting that might be of one hour's duration, and his presence is required for a quorum -- the teleconferencing proposal that I've suggested we pass today is one which would permit him to consider being available for the quorum as well as performing this vital life-saving function.

That's just one example in an area which I know is of mutual concern to both of us.

SENATOR DUANE: Through you, Madam President, if the sponsor would yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR GOODMAN: I'll continue to yield on an open-ended basis until the inexhaustible fountain of questions finds its source dried up.

(Laughter.)

THE PRESIDENT: You may proceed with your questions, Senator Duane.

SENATOR DUANE: Madam President, I hope the sponsor is not tempting me.

(Laughter.)

SENATOR DUANE: Just to repeat my question, I'm wondering if the sponsor believes that part of the responsibility of a person that's been appointed to a state commission, whether it's compensated or not compensated, is in part to travel to different parts of the state for meetings and as a way to get better knowledge of different parts of the state.

SENATOR GOODMAN: Senator, I think I just answered that. And I'll try to answer it again to see if I can make my answer a little clearer and more penetrating to your

awareness.

Specifically, I said to you that in my judgment, it's extremely beneficial and in the public interest. If an individual may have an obligation that involves, in the example I gave you, the treatment of a sick patient in another area which prevents his being present if he were a physician and a member of, say, the AIDS Advisory Council - he could not physically be present at the meeting of the council, but his presence was desirable in terms of either creating a quorum or having the benefit of his input -- to enable him to continue his performing his treatment skills at the same time as he could take a few moments out to participate in this meeting I think is eminently beneficial.

In short, this type of an arrangement would permit a busy public official to be in two places at once, if you will, or virtually at once. Thus, the public would benefit significantly.

SENATOR DUANE: Through you, Madam President, I apologize for reasking the question. I misunderstood when Omaha was

raised, as that's not part of New York State.

But my final question is whether or not the sponsor believes that Parole Board hearings are well served by using videoconferencing.

SENATOR GOODMAN: My response remains the same. I think virtually any type of hearing that I could imagine in the State of New York's government would be amply served by this type of teleconferencing. Parole Board hearings would be included in my response.

And you say this is your final question. That's my final answer. And I'm going to go for it. I don't think I'll use any of my tools. I will not call any relatives, and I will not ask for an audience vote.

(Laughter.)

SENATOR DUANE: Thank you.

Madam President, on the bill. Though I feel like I'm not dressed appropriately for the final answer. Although some days, I am dressed appropriately for it.

I do want to, though -- despite

several requests, I have not been able to experience Parole Board -- the technology which the Parole Board uses for videoconferencing.

I have experienced the AIDS Advisory Commission's videoconferencing, which is really incredibly inadequate. And I say that having experienced it for the times that it works, although it doesn't always work. And you often can't see the person on the other end, and I know that they can't see what's happening around the conference table.

I believe that if people are appointed to serve on government commissions and bodies which have a statewide focus, which most of them do, and particularly if they're being compensated for being on these commissions, that they have a responsibility to travel to different parts of the state so that they can experience that part of the state.

I don't believe that videoconferencing is in any way equal to the actual human contact. If videoconferencing is so wonderful, then I don't know why it is that

we don't just phone it in here in this body. Why do we even bother to come to Albany? Except for, I suppose, Senator Breslin would be able to be here. But we could all just sit in front of our TVs and meet that way.

But, you see, I think that there's a tremendous difference made in the actual personal contact which people have with each other. It's not just about our faces and what our mouths are saying, it's also what happens in the actual physical interaction that we have with each other that makes a big difference.

The last person which we appointed to the Parole Board is someone who is a certified social worker and family therapist who worked in the field of addiction. And I asked her the question, when she's working with a client, whether she thought that having a videoconferenced session with that client was as good as having an actual one-on-one, in-person session with a client. And she said, "Of course, the one-on-one session is much preferable."

I believe the same is true for the

way that commissions should operate. And I also believe that there's an enormous advantage to be had by people actually appearing in public in different parts of the state, so that people who are interested in the topic that's being discussed can actually go and be in the presence of people who will be voting or making decisions which might have an enormous impact on them.

I'll tell you honestly, there are several Senators on the other side of the aisle, that from their television presence, I have a completely different view of them than what it's been like to actually be in person with them and to interact with them in person.

And I actually think that's what makes government work better, I believe that's what makes commissions work better, is the actual interaction which people have with each other -- which is not only about business but sometimes about banter and social things that come up.

So I disagree with the philosophy of using videoconferencing. I think there is no substitute for the real thing. And I would

encourage my colleagues to vote against this, because otherwise we'll all just be sitting around in our district offices chatting to television screens instead of actually being here and interacting with each other and having an impact on each others' points of view.

I'll be voting no on this, Madam President.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator.

Senator Stavisky.

SENATOR STAVISKY: Yes. Will the sponsor yield? Through you, Madam President.

THE PRESIDENT: Does the sponsor yield?

SENATOR GOODMAN: Yes.

SENATOR STAVISKY: One very simple question, which Senator Duane alluded to. Madam President, in committee I raised this issue. And that is, will this apply to the State Legislature?

SENATOR GOODMAN: What, please?

SENATOR STAVISKY: Will the legislation apply to the State Legislature?

SENATOR GOODMAN: No, it does not. It does not.

SENATOR STAVISKY: In other words, can I stay home in Flushing and not have to come to Albany?

SENATOR GOODMAN: I think that would be an admirable result. If you wish to stay home in Flushing and participate remotely, I have no objection to that.

SENATOR STAVISKY: So it would apply?

SENATOR GOODMAN: No, it would not apply.

SENATOR STAVISKY: It would or would not?

SENATOR GOODMAN: It would not. Unless the State Legislature sought to have it apply, in which case we're at liberty to pass a law that would permit that to occur. Which I don't imagine is in prospect, although it might not be a bad idea.

In fact, let me take it one step further and say to you I've long been an advocate of televising these proceedings so that the public can sense the full depth and

perceptiveness of the members who are presently involved in debates such as this. You get a real feeling for how things work if you can televise these proceedings.

In short, new technology offers great new opportunities, and I think this is just one area of such opportunity.

SENATOR STAVISKY: Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed -- the Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 1069, those recorded in the negative are Senators Duane, Meier, and Saland. Ayes, 53. Nays, 3.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1170, by Member of the Assembly Eve, Assembly Print Number 9951, an act to amend Chapter 31 of the Laws of 1985 amending the Education Law.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. I think there's an amendment at the desk.

THE PRESIDENT: Yes, there is, Senator.

SENATOR DUANE: And I would waive its reading and ask to be heard on the bill. On the amendment, rather.

ACTING PRESIDENT MORAHAN: Senator Duane, on the amendment.

SENATOR DUANE: Thank you.

My amendment is actually my bill, S7370, which establishes a criminal justice loan assistance program. This fund would be derived from a portion of the attorney's biannual registration fee, and the fund would go toward public defenders' and legal aid attorneys' law school loans.

An attorney would have to devote at

least 12 or more months in the field of criminal defense before being considered for the fund.

I think it's laudable that we do loan forgiveness for medical doctors who are willing to work in areas which sorely need this sort of healthcare assistance. And I also believe that we should provide an incentive for people who are willing to defend those who can't afford a lawyer in a criminal defense proceeding.

Just as an aside, I also believe that we should cover DAs in this. I just don't have a piece of legislation -- another member does -- on that.

But I think that this is a trend, providing loan forgiveness, which we should build upon. And I would therefore request favorable consideration of adding loan forgiveness for people who go into criminal defense of the indigent.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: On the amendment, all in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MORAHAN: The amendment is defeated.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1178, by Senator Rath, Senate Print 1290, concurrent resolution of the Senate and Assembly proposing amendments to Article 9 of the Constitution.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Rath, an explanation has been asked for.

SENATOR RATH: Thank you, Mr.

President.

This bill would put in place an opportunity for an amendment to the Constitution of the State of New York in relation to unfunded mandates. The bill would help determine what an unfunded mandate was and make it possible to be voluntary for local governments, school districts, special districts, et cetera.

We, I think, all have agreed that unfunded mandates in the State of New York onto the local governments are something we want to avoid. And this would put this into law and make it possible for a council -- that is also one of the provisions of the bill - to determine what an unfunded mandate was.

ACTING PRESIDENT MORAHAN: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield just for a couple of quick questions?

ACTING PRESIDENT MORAHAN: Senator Rath, do you yield?

SENATOR RATH: Surely.

SENATOR DOLLINGER: Senator Rath,

is this the same mandate-relief constitutional amendment that we've debated in the past on the floor?

SENATOR RATH: Right here. Would you like to read it?

SENATOR DOLLINGER: Same one? I think I've probably got last year's edition.

SENATOR RATH: I do. We need a new one. Could it be a little thicker, please, take up some time?

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MORAHAN: Do you continue to yield, Senator Rath?

SENATOR RATH: Surely.

SENATOR DOLLINGER: This bill would have prevented us from passing the HCRA bill we passed last December which put an $800 million cash mandate on the counties; is that correct?

SENATOR RATH: That's right.

SENATOR DOLLINGER: And I think -- through you, Mr. President, if the sponsor will continue to yield -- you and I

both voted in favor of that bill, didn't we?

SENATOR RATH: That's right.

SENATOR DOLLINGER: Okay. Just on the bill, briefly, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This is bumper-sticker legislation, Mr. President. This is a wonderful idea. This is a fabulous idea. This is the idea that I think Senator Rath and I have talked about a number of times and said wouldn't it be absolutely great if we could ever come up with a way that we in essence decided that we would no longer pass huge cost mandates on other levels of government.

Where we would actually do things like when people send us a home rule message from the City of New York that says they don't want changes in their pistol permit process, we would actually abide by that home rule mandate. We wouldn't tell them what to do. We would say to them, No, we're not going to pass it over your objection.

There's a bill that we did in the

Codes Committee yesterday which says that officers in the hospital system -- the City of New York says, We don't want them to have guns. The hospital system says, We don't want them to have guns. And we're going to give them guns.

All those things in which we tell other levels of government that we're going to -- we know what's right, we're going to tell them what to do.

Senator Rath, I appreciate your leadership on this. I know where this is going to end up. I know it's going to be in the newsletters of every member of this house. Lord knows it will end up in my newsletter, because I want to be against unfunded mandates.

But as a very practical matter, we're like those terrible addicts who say, I know I'm addicted to alcohol, but I can't pass up one more drink. And every time that drink comes across our table, whether it's in the HCRA bill or the gun bills or in all those little bills -- I look at Senator Marchi, who's probably voted for more unfunded

mandates than any man in the history of this Legislature. I don't think he's necessarily done anything wrong.

But I would also suggest that when you vote for unfunded mandates, as we go all the time, and then we stand here and say we're going to do a constitutional amendment that will prohibit us from doing something in the future, what we're really doing is we're walking through the looking glass and we're in that space that Lewis Carroll created, we're in that wonderland where we're all voting for something that deep in our hearts we really know doesn't mean what it says.

And frankly, the reason why I've voted for it in the past, and I encourage all my colleagues on this side of the aisle to vote for it, is because it's a wonderful thing if we someday get to a campaign or if we're someday asked something in public whether we believe in unfunded mandates, if we vote for this bill, you can always say, "I've always voted for a constitutional amendment to stop unfunded mandates."

But I would suggest everybody in

this chamber has done it in the past, we're all going to do it again in the future. I can see the bills rolling off the presses as we speak where we are going to oppose unfunded mandates on other levels of government.

It's wonderful to be in wonderland. I'm going to cast my vote with that wonderland spirit. Much like standing in front of the Red Queen, I'm going to say, "Oh, yes, I vote aye." But it's really just an illusion.

ACTING PRESIDENT MORAHAN: Senator Duane, on the resolution.

SENATOR DUANE: Thank you, Madam -- Mr. President. Sir.

SENATOR RATH: Point of order, Mr. President. If I might respond to Senator Dollinger before Senator Duane and I take up the issue, because I think I have some things that I know you're doing to ask me about.

But, Senator Dollinger, if you would join me going through the looking glass, if you will, into wonderland, you will vote for this because in your heart you know it's right.

I believe someone said that once,

only they said, "In your heart, you know he's right." If you can remember back.

The point I wanted to make to you, Senator, is that in this year's budget there is an amount of money earmarked for work on finding out what the relationship is and will be not only with the state and its counties, but between the federal government and the state. And we're going to try to find out who pays for what, who says it needs to be done, and who takes credit for the program.

I think in this wonderful wonderland that we live in that's a marriage of the political and the government, the people that we work for expect us to be able to explain that marriage to them. And the marriage that's been a problem for 25 years in this state was the Medicaid marriage that started out all that long time ago and has escalated into a program of huge -- I don't want to say unmanageable, because it depends on where you're sitting and who you're talking to in relation to this.

I don't think you and I have any argument about what the goal is or how we get

it done -- let me put it this way, what the goal is. How we get it done, I think you and I might debate and have some fun with. But I think it's important that we hold ourselves up to a higher level. And this is the level that a constitutional amendment would hold this issue up to.

Not yeah, it's a press release; yeah, it's going to show up in our newsletters. But yes, we're asking the people of the State of New York to be our partners in this decision. Because they're the ones who pay the property tax, and that's the ultimate bottom line of what happens when we're dealing with these issues.

Thank you for the courtesy, Senator Duane.

ACTING PRESIDENT MORAHAN: Senator Duane, on the resolution.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield, please.

ACTING PRESIDENT MORAHAN: Senator Rath, will you yield?

SENATOR RATH: Surely.

SENATOR DUANE: The legislation which we discussed either yesterday or the day before which would include persons eligible for PINS between 16 and 18 years old, would that -- under this legislation, would that mean that a county could refuse to provide that service if the state doesn't provide the funding?

SENATOR RATH: Senator Duane, I am not disappointed. I knew you'd have that question. And it's absolutely right. If I were sitting in your chair, I'd be asking the exact same question.

Let me go back to the bill and say that this is voluntary for local governments. Now, I come from a local government. And although we discussed at some length how we're going to pay for the costs, if there are indeed additional costs for the program that would include the 16-year-olds through the 18-year-olds, the question here is -- a couple of things.

You've got a 25-year history of a law we're out of step with in New York State. We've been trying to pass PINS legislation for

25 years. Senator Volker had the best comment. He said, "This is a law whose time has come 25 years ago," raising that age.

Second of all, we have no guarantee that it's going to pass the Assembly, nor that the Governor is going to pass it. So what we're talking about is something that may or may not happen, yes -- and I believe you couched your comments to me that way. But we're also saying that there's something here that's voluntary.

And if a local government decided to take that issue up and pay for whatever additional costs there might be, what would happen then is they would either have to give up something else or they'd have to raise their property taxes. You know, it's a teeter-totter.

ACTING PRESIDENT MORAHAN: Excuse me, Senator.

Can we have a little order in the house. Please take your conversations outside the chamber. Thank you.

Senator Rath.

SENATOR DUANE: Through you, Mr.

President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

SENATOR DUANE: In the scenario that the other side passes the same PINS legislation and the Governor signs it into law, does that then mean, again, that a municipality or a county would not have to provide this service if they so decided?

SENATOR RATH: And, you know, your point is well-taken, Senator Duane.

As we said the other day, we see dollars in the budget that will go to the immediate question of the cost of PINS. The implementation date, if it all goes through this year, would be November 1st. So we'd have two months' experience in this year's budget.

The study bill that will provide the demographic information that we're going to need in order to get an idea of what it may cost so that in next year's budget we can be realistic in anticipating what the counties'

needs may be, that's in place. That's going to go forward. But there is money in the budget for the PINS bill this year.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

SENATOR DUANE: Is that that - I'm sorry, I don't remember whether it's $36 million or $38 million which the sponsor mentioned the other day.

SENATOR RATH: I think it was 24.

SENATOR DUANE: Twenty-four.

SENATOR RATH: Twenty-three or 24, Senator.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Rath, do you yield?

SENATOR RATH: Surely.

SENATOR DUANE: So it's the sponsor's contention that that $24 million

would cover the cost of covering the extension of the PINS program to 18-year-olds?

SENATOR RATH: I believe, Senator, that we would consider that that money could be applied towards it.

But in my experience with counties, if we don't up-front something, they pay for it and they tell us how much it costs. And then if we pass legislation that says we can cover their costs on that -- this is a give-and-take thing. There's a free flow back and forth.

And if we say we want to cover what their additional costs will be this year, yes, I wouldn't think that the -- first of all, it will take them a while to start to implement. So the costs that might be incurred during this year's budget I think would be very small.

SENATOR DUANE: If the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

SENATOR DUANE: Has any other

program spoken for the $24 million or a part of the $24 million?

SENATOR RATH: No.

SENATOR DUANE: Through you, Mr. President. Then that money is only earmarked for the -

SENATOR RATH: No, it's not earmarked, it's in a broad general category.

SENATOR DUANE: Through you, Mr. President. What is that general category called?

SENATOR RATH: Let me check with counsel. I had those papers on my desk the other day.

That is in the family assistance portion of the budget. We can give you page and line if you want, if you check my office.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Rath, do you -

SENATOR RATH: Surely.

SENATOR DUANE: Would that cover probation and home schooling, home education?

SENATOR RATH: I am not exactly sure. As I said to you the other day, we were investigating this because it had just come to our attention when it looked to us like the Assembly was going to be willing to move this budget out without a lot of up-front costs.

And I think the first time you and I debated this -- maybe, oh, a month and a half ago -- the question was the additional, the large dollars up front that the Assembly had assumed would be necessary for programs.

And again, I don't think you and I disagree on what we're trying to have happen here. I think the way to get to the solution is what we're talking about.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Duane, on the resolution.

SENATOR DUANE: I'm going to vote in opposition to this, not because I support the imposition of unfunded mandates but because I believe that we should fund mandates that we put forward.

So I believe that we have a

responsibility both to all the people of the State of New York and to be able to provide the resources for the counties and municipalities to provide those services, that we should put our money where our mouth and our policies are and fund mandates which we are handing down to local governments.

I think we're looking at this issue in the wrong way. I certainly understand why it's wrong to dump unfunded mandates onto municipalities. But I think we would be within our rights to provide for mandates, provided that we also back it up with resources to fulfill those mandates.

So I'll be voting no on it, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Meier.

SENATOR MEIER: Thank you, Mr. President.

I spent six years as a county executive, some during the present administration in this town and some during the previous one. I speak, therefore, with some authority. I know from mandates. And I

certainly know from unfunded mandates.

And I'm going to vote for this resolution, because I think what Senator Rath has very perceptively done here is to go to the fundamental question about what mandates are unfunded mandates and how they arise.

Mark Twain once said that a politician's dream is to be able to extract money from the taxpayers without disturbing the voters. And that's exactly what unfunded mandates do. When you can pass a program or a requirement in Washington or in Albany and compel them to tax to fund it in New York City, in Utica, in Watertown, in Batavia, you have realized Mark Twain's dream.

And the other thing that you have done -- and this is why Senator Rath again has very perceptively attacked this through a constitutional amendment to put a framework around this issue. The other thing you have done with unfunded mandates is committed a direct assault against the underlying, fundamental bedrock of representative government, and that's accountability.

The voters ought to know every time

we pass a bill or a program here who to be angry at or grateful to, depending upon what their point of view is. We take apart that fundamental of accountability when we separate the ability to confer benefits from the responsibility to tax people to pay for it.

Now, what Senator Rath is doing does not deny that this body does on occasion -- and has, as we've sat here -- pass unfunded mandates. But what she is trying to do is to institutionally and constitutionally put a framework and some discipline on that process.

And the other thing that I would suggest to you here is this. One of the things that this body does from time to time -- it has done on this side of the aisle, it has most capably done on the other side of the aisle -- is sometimes I think it is useful for us to discuss the fundamentals of our form of government, to discuss some of the principles that go into it.

It is not a trip through the looking glass, my good friend and colleague Senator Dollinger. It is a discussion about

what makes our form of representative government work.

And I think Senator Rath is to be commended for this measure. Thank you, my colleagues. And thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Through you, if the sponsor would yield to a couple of questions.

ACTING PRESIDENT MORAHAN: Senator Rath, would you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MORAHAN: She yields.

SENATOR SCHNEIDERMAN: Through you, Mr. President.

If we passed a civil rights bill that provided that local governments, governments, private entities could no longer discriminate against people based on sexual orientation, and then local governments, through their Divisions of Human Rights and other agencies, were required to spend money

to enforce that bill, would your resolution allow them to opt out of that civil rights law?

SENATOR RATH: It would go to the council for a determination. And no, it would not allow it to opt out. If there was a dispute as to whether they could or could not, it would go to the council. And it would be subject to judicial review.

SENATOR SCHNEIDERMAN: Through you, Mr. President.

But if this required -- I've read the legislation, and I assume that the council has to be guided by what's in it. This would require a local government to spend money. I don't understand why they couldn't opt out of that any more than any other legislation passed by this body.

If there's some distinction, I'd like to understand it, because I don't really.

SENATOR RATH: I think we're talking about apples and oranges here, Senator. If we're talking about federal law, we're talking about something they would have to abide by because it was federal law, not

state law.

SENATOR SCHNEIDERMAN: Well, no, I'm -- through you, Mr. President, I'm referring to a state law. If we passed a nondiscrimination law -- say, for example, we passed a law imposing severer penalties and creating new crimes for domestic violence. And that would require local governments to expend money and resources; their police officers would have to work more. Why is that exempt from this provision? Why wouldn't every local government in the state have an option to opt out of that law?

ACTING PRESIDENT MORAHAN: Senator Rath.

SENATOR RATH: The bill that you see in front of you and the power that would rest in the council for resolving disputes that would be brought to it would, I believe, as it became familiar with its work, would take a look at just the kind of scenario you are pointing to and find through judicial review what the answer would be.

SENATOR SCHNEIDERMAN: Thank you. Mr. President, on the bill. On the

resolution, excuse me.

ACTING PRESIDENT MORAHAN: On the resolution.

SENATOR SCHNEIDERMAN: I appreciate the good intent behind this. I understand the dilemma of those in local government. But the questions I've raised reflect my own very real concern that we have a little bit of a situation here where we may be throwing out the baby with the bathwater.

I'm concerned that this has such broad application that it essentially would hamstring the power of this Legislature to take action in a broad variety of areas. Virtually everything we do requires local governments to spend money to enforce the laws that we pass.

And I think that that's a major problem with this, and I will voting against it, although it does address a very real problem.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Marchi.

SENATOR MARCHI: Mr. President,

this is not an easy question. And simply because there have been so many abuses, we have this legislation before us. On the other hand, I do remember -- and I must say that out of my respect for the sponsor, I'd like to see it get a chance.

But I'd like to point out that many, many years ago, I remember when Governor Dewey proposed a minimum wage for teachers of $2,000 a year. Now, there are minimal requirements that perhaps government may call for, that budgetary appropriations and considerations undergird the new and novel way this problem arises. But there were a great many complaints, I can guarantee you -- I remember them -- that this violated rights, because many districts could get teachers for far less than $2,000 a year.

So I just wonder -- and I -- it's a profession of faith in you, Senator. But I just wonder a little bit if we get into areas that are shadowy and not that easily defined and require minimal compliance for good and sufficient reasons for public policy, I think you generate by that also a responsibility to

meet a mathematical equation between every nickel that you spend more or less.

We don't know how problems will present themselves. And I can tell you over, well, 44 years, almost, of membership in the Senate -- and four years before that as counsel -- that to determine with exactness the nature and quality is not easy. There are circumstances that, as I believe you suggested, raise some problems for any conscientious legislator.

On the other hand, Senator Meier attests to the fact that the -- there has - we have observed cavalier requirements -- not cavalier in terms of what was sought to be attained, but not enough sensitivity to the cost implications, that unless there is a very genuine address to that problem, are we requiring something that exceeds revenue expectations by reasons of our actions alone.

So I throw this out, and I hope that at least it's grist for the mill in the future. But my professional faith in the Senator compels me to say yes, I vote for it. But I'm voting for it with all these caveats.

And if anybody asks me, I can say, "Sure, I believe I have." And in some cases I believe I was right. And you go from one situation to another.

ACTING PRESIDENT MORAHAN: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I'm speaking for the second time on this bill, so I'll be extraordinarily brief.

What I can't understand, with all due respect to my colleague Senator Meier in his period as the county executive of Oneida County, where he railed against unfunded mandates -- why, Senator Meier, would you come to a body that has approved every single unfunded mandate for the last 35 years in this state, from Medicaid to HCRA, putting hundreds of millions of dollars of pressure on property-tax payers in Oneida County and Monroe County and Nassau County and Suffolk County?

Guess what, there's a secret. They were all approved by the Majority in this house.

Senator Marchi, to his credit, talked about balancing these fine decisions between who pays for what, whether we should use our property taxes or sales taxes or broad-based taxes. Those are critical issues. I assume that every time one of those bills like HCRA, like the Medicaid pick-up, like the long-term care contribution, every time those bills came up, this Legislature and the Senate Majority, for 35 years, has conferenced that issue and said, Boy, this is a real tough call. Do we raise property taxes, force the counties to raise them in the cities and the towns, or do we pay for them with our broad-based taxes?

Now, I would just tell you that this part of the house has not had that debate in its conferences. Give us the power. If the voters someday give us the power to do it, we'll have that debate.

SENATOR MEIER: Mr. President -

ACTING PRESIDENT MORAHAN: Senator Meier.

SENATOR MEIER: Will Senator Dollinger yield?

SENATOR DOLLINGER: When I'm finished, Mr. President, I'd be glad to.

Give us that power, and none of us will ever stand up and say that we abused the power the people gave us.

Which is what I believe both Senator Rath and Senator Meier said, there have been abuses of unfunded mandates. The Senate Majority has been abusing its power? Is that the confession I hear today on this floor in this bill?

I would just suggest that everybody in this state ought to know that, that you've abused your power by passing unfunded mandates down to the people of this state. That seems to me to be a horrible thing to have done.

But for some reason, this is almost like an amnesia bill. You do it time and time again and then you forget about it. There's that old line from the guy who runs the infomercial about the rotary oven. Remember his line? "Set it and forget it."

Well, obviously, you put the bill in place and then you forget it. And then you say to the people of this state, Please stop

us from abusing our power by passing on unfunded mandates.

I would suggest to everybody in this house, the power to stop unfunded mandates lies with 31 members of this house. We can cut them off dead. We can stop them every single time.

It may take a little political courage to do it. It may mean that we have to spend more money and raise more taxes, because it's going to be far more expensive for us to use our sales and our income taxes to pay for all the things that we think are in the public interest. But if that's what we're going to do, the power to do it rests right here. Right here.

I would suggest to my colleagues in the Republican Majority, you've had the power for 35 years, you've suggested you've abused it somehow by passing all these unfunded mandates on. Maybe it's time for the people of this state to give this party the power. And I'll guarantee one thing. We won't abuse that power in the eyes of our voters or the people of this state.

Now, Mr. President, I'll be glad to yield to Senator Meier.

ACTING PRESIDENT MORAHAN: Senator Meier.

SENATOR MEIER: Mr. President, as he usually does, Senator Dollinger took me long past the point where I could remember my point. And I'll reserve my comments to explain my vote.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Meier.

SENATOR MEIER: Mr. President, I'm going to vote in favor of this measure.

And I'm going to say this in response to no one in particular. But I came here because this is the place, this town is the place where these mandates are formulated. And the last time I checked -- and you can check my record as county executive -- there was no particular political party or person

who had a mandate on -- or who had a monopoly on forming them. An awful lot of these happened with broad bipartisan support.

I vote for this because Senator Rath's attempt is one to put discipline on the process, to put discipline on all of us. To put discipline on all of us. That's why I came here.

And you can look at examples where this conference has supported relief of mandates with regard to revenue-sharing, to correct the local share in HCRA, with regard to many welfare reform measures, with regard to other measures that have given localities more flexibility in relief from mandates.

I'm proud of my service in county government. I'm proud to serve here and proud to be part of this conference. And I proudly vote aye.

ACTING PRESIDENT MORAHAN: Senator Rath.

SENATOR RATH: To explain my vote, and to finish the conversation this year, if you will.

I thank you, Senator Marchi, for

your vote of confidence. And it is complicated. And you, of all of us, have seen it from the beginning, from the time when Medicaid was just going to be a small program and it was going to be fine for the counties to pick up the costs. We know the rest of the story.

But you made a comment that sticks in my mind, and it's really where I'm coming from. And I thank my colleague Senator Meier for pointing out that what we're talking about here is discipline. It's not only our discipline, it's the discipline of the constituents that we represent. What do they want? They want police, they want fire, they want highways, they want roads, they want social programs, they want education, they want everything.

And who does it? The school boards, the town boards, the county, the state? Who pays for it? Who takes credit for it? Who puts it in their newsletter, if you will, if that's the basis of the bottom lines that we're going to draw.

But, Senator Marchi, you said we

need a genuine look at this and we need a genuine opportunity to address the problem. And frankly, I think if this rises to the level of a discussion of a constitutional amendment, we will be in that discussion with our colleagues. And we'll say to them, Do you want us to pay for it, or do you want the local control to pay for it? And do you want us to mandate it so you don't have to be responsible for it?

This has not been happening just for a short time. I look at my colleague Senator Pat McGee, who would drive up from Cattaraugus County every Saturday morning for months on end in the bipartisan Alliance of County Legislators in the 8th Judicial District, to talk about welfare and Medicaid reform. We've been doing this for the better part of 20 years.

I am hopeful. And again, I don't think there's anyone in this room who voted against this who's against what we hope the end result will be. I think you disagree with the manner and the method that we're trying to get to the end result.

But on that note, I thank you all for your patience today.

ACTING PRESIDENT MORAHAN: Thank you, Senator Rath.

Senator Coppola.

SENATOR COPPOLA: Yes, Mr. President, I'd like to explain my support for this bill.

I came here to this body for one of these reasons, for one of these reasons, and this is one of them: What mandate has done to Buffalo, New York, and Erie County. It's severely hurt us. We are in an economic crisis in that end of the state. And with the legislation that's been passed in Albany over the years, that had a definite impact on our economy.

And I hope that this is a sincere push to alleviate those type of restrictions on the residents of Western New York. And I personally will remind everyone here in the future, when mandates do come up: Hey, what did we do today? I will remind you of that.

And that's so important. It's so important that we're sensitive to the areas

that are hurting economically. Niagara Falls and Buffalo, New York, are hurting economically.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1178 are Senators Connor, Dollinger, Duane, Hevesi, Lachman, Onorato, Rosado, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, and Senator Stavisky. Ayes, 43. Nays, 13.

ACTING PRESIDENT MORAHAN: The resolution is adopted.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

We have a distinguished visitor with us today in Wayne Jackson, the sergeant-at-arms over there in the Assembly. He's been standing here patiently, listening to this debate.

He has asked that I recognize a

number of my constituents who are in the gallery, the Mohonasen class of Mr. Cupas. I guess Sergeant Jackson visits that class and tells them war stories about Vietnam, et cetera, et cetera.

But we're very, very proud of Mohonasen and the group that is here with us today. So if you'd give them the warmth of this house, I'd appreciate it.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Farley.

Welcome to our chambers. We wish you a good time here in Albany, and we're glad to have you here.

Senator Stachowski.

SENATOR STACHOWSKI: I'd just like to commend Senator Farley on recognizing all these people and point out to him, as Senator Kuhl did a couple of weeks ago to Senator Montgomery, that we're glad that you recognize those people, but it is against the rules.

Thank you.

ACTING PRESIDENT MORAHAN: Thank

you, Senator.

The Secretary will read.

THE SECRETARY: Calendar Number 1179, by Senator Volker, Senate Print 1912A, an act to enact the Criminal Procedure Law Reform Act of 2000.

SENATOR DOLLINGER: Explanation, please, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Volker.

We'll wait a moment or two until Senator Volker returns to the chamber.

Senator Volker, an explanation has been requested on your bill, 1179.

SENATOR VOLKER: Okay, 1179. Which one is this?

Mr. President, this is a bill which has passed this house on a number of occasions. And I don't have the vote from last year. It has about four components to it.

The first component -- and these, by the way, are essentially statutes that modify Court of Appeals cases. And I have to say, very honestly, that whether you agree or

disagree with some of the issues that are contained in this bill, I really do believe that the so-called O'Doherty case and the Ranghelle case and so forth do represent some pretty hairy -- what's the word I want to use? -- some pretty strange decisions by the Court of Appeals from this perspective.

As opposed to the individual defendant, of course they would agree with one defendant, for instance, who never objected to him being in every part of the trial and then once the trial was over was able to use that to get his conviction thrown out even though his attorney never objected and he was given the opportunity during the whole trial to be there.

There's some other, I think, decisions that really -- one of the others here is a change so that, for instance -- and as a law enforcement officer, I remember having this happen, where you do a lineup and you identify the person at the lineup and then months, maybe years later, when the trial finally comes up, the guy maybe has put on 150 pounds, wears a beard and so forth, and

you can't identify him.

What this statute would say is that although the court has thrown out an identification based on the fact that at the trial the person couldn't positively identify the defendant that he or she had already identified at a lineup and had identified him in an affidavit and so forth, because they couldn't identify him at the trial.

And basically what this statute would do is to say that the prior identification, the evidence of the prior identification obviously from the lineup and other evidence, could be used at the trial even though the victim couldn't positively identify that person at the trial since the person may have radically changed their appearance or whatever.

And I know for a fact that defendants have done that. We've seen it, I've seen it. And when you think about it, it presents a rather odd look at the law to think that because a person is -- his identity has changed -- and keep in mind that this may be several years later.

That's in relation to identification testimony. The defendant, as I said, has the right to be present at all stages of the proceeding. But where the defendant chooses not to be -- and sometimes the defense attorney would rather not have the defendant there, for one reason or another.

And what has happened is that there have been Court of Appeals cases that basically have said if the defendant wasn't there for something, that maybe he would have impacted on the case, while he wasn't there, they've thrown -- after the conviction, after trial, then the Court of Appeals has said that in a couple of cases -- in one case in particular we're talking about here, the case can be thrown out because the defendant, by not being there, was prejudiced, even though his attorney didn't object.

There is several other parts of this bill that deal with the suppression of evidence. One in particular is the issue of statements that are produced at a trial. There is a provision of the law that says that within 15 days of the arraignment, the

defendant must be shown any identification evidence or any testimonial evidence from witnesses that will be produced at the trial.

The problem obviously is that if, as the trial is going on, a witness should come up, as sometimes happens -- what this bill basically says is that if the trial has to be adjourned to give that person the 15 days, then that will be allowed. But you can't use that later as a way of getting the whole trial thrown out, because the prosecutor -- for instance, if the prosecutor had no knowledge that there was another statement someplace or another witness, then it's what's called so-called technical harmless error.

So I think what this bill attempts to do is to deal with a series of procedural issues that have come up because of technical -- a technical reading of the statutes in this state. And they deal with a series of Court of Appeals cases.

So that's basically what this bill does. As I say, it makes a change in identification, it makes some changes in the

issue of the defendant being there at all proceedings of a trial. It actually does not change the rules directly. All it does is deal with the way in which the Court of Appeals has interpreted those rules.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Dollinger.

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

ACTING PRESIDENT MORAHAN: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Volker and I, I think, have discussed this a number of times. And there are parts of it that I do support. For example, the clarification of the witness identification, I think that's reasonable and fair.

I also think it's fair to allow the prosecutor to appeal preclusion orders. As Senator Volker knows, you practically win the case, you can win the case for a defendant right at the start through the preclusion order, and you end up with a -- in some cases, no court adjudication at all, because the case

is thrown out right then and there and the prosecution is virtually over.

I'm not opposed to the notion that a prosecutor can go back and appeal a preclusion order to see whether he can get the government's evidence in, whether it meets constitutional standards.

The other piece that I'm not really opposed to is the harmless error rule with respect to the defendant's attendance in certain phases of the criminal proceeding. I know that there's an enormous push to have the defendant present every single time. I also know that that's an enormous, if not headache, nightmare for governments, for local communities that are constantly shuttling people in and out of jails for appearances that can sometimes be as short as 45 seconds or a minute.

But the piece that I am most aggrieved by is the piece that talks about the Ranghelle rule. Because as Senator Volker knows, the production of evidence that's in the hands of the government of witnesses that they're presenting at trial should -- they

should be required to disclose all the statements that they have of those witnesses, because it's the only opportunity that the defense gets to question the veracity of the witness that appears on behalf of the prosecution, to see whether there are inconsistent statements, much less whether there is exculpatory evidence in those statements.

I believe the Ranghelle rule was the basis for the overturning of the conviction of Betty Tyson in Rochester, New York. Because in 1972, she was convicted of murder, and one of the witnesses who testified at the trial had given a statement to the police which was never revealed at the time of trial.

It seems to me that while this bill has several aspects to it that I believe represent a rebalancing -- it's consistent with our legislative duties to rebalance the scales of justice in our criminal justice system. I'm not opposed to doing that. I think we've got the power to do that. I think it's right for us to do that.

But the Ranghelle piece of this, in my opinion, makes this bill objectionable. I'm going to vote against it. Senator Volker, if you bring the bill back with that piece in it, you may get my vote. But I believe that anyone who is accused of a crime, when we're going to take away their liberty interests, they ought to be able to get all the statements from the witnesses that are going to testify against them.

And whether they're exculpatory or inculpatory, whatever the nature of those statements, the defense ought to have them at the time the witness appears for trial.

ACTING PRESIDENT MORAHAN: Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

I actually want to take this opportunity to congratulate Senator Volker on this piece of legislation. We've done it over several years.

My experience in the criminal justice system as a prosecutor leads me to support these efforts of Senator Volker. And

certainly, certainly my experience has been, particularly with identification testimony at trial, a frustrating experience, particularly with trials that do not commence until a year or more after the actual crime become committed. And having witnesses who over that period of time may be elderly or infirm or disabled in some way that they cannot make an identification in the courtroom a year to a year and a half after the actual incident occurred.

However, that identification taking place at a lineup shortly thereafter the incident occurring, the crime occurring, and the witness correctly identifying the defendant at a lineup, with the police officer present at the time of the identification at the lineup, it is fair, I believe, fair, for the police officer then at trial, in the event of the witness not being able at that point to identify the defendant -- particularly given the kinds of trials we have and the delays we have in New York City, particularly -- for the police officer to testify in court that at the time of the lineup, this witness, this victim,

identified Number 2 in the lineup, for example, and have the police officer testify that Number 2 in the lineup is indeed the defendant sitting in the defendant's chair.

I believe that's a fair rendition of the facts as they happened. And I believe it's fair for the jury to consider that, given the fact that a witness a year, a year and a half later has -- cannot, for whatever reason, cannot identify the defendant in court.

Particularly also I point out the right for prosecutors to appeal pretrial orders precluding evidence. It is a frustrating experience, ladies and gentlemen, from the prosecutor's viewpoint that it is the defense that has appeal rights on pretrial orders and not the prosecution, particularly where -- particularly where it's a close call in a weighed hearing, identification hearing, or a suppression hearing on statements, if it is a very close call, the prosecutor could make or break the case.

And prosecutors are limited, limited only to the trial court's, the trial court's decision on a pretrial order. That, I

believe, is unfair, particularly in the close calls on those pretrial orders. So I would definitely believe that's a fair provision in this bill.

Lastly, in terms of the Ranghelle decision -- and I appreciate what my colleague Senator Dollinger has mentioned in that regard. But what we have to understand here is that the Ranghelle decision is a per se reversal, a per se reversal on a conviction.

In the event -- in the event that a statement is discovered after -- after trial or after the period in which statements are to be turned over, and even if that statement is a duplicative equivalent, a duplicative equivalent of what has already been handed over to the defense, even if it is that equivalent, the Ranghelle rule is a per se reversal.

And from a fairness viewpoint, I do not believe that a per se rule is the proper rule here, particularly if the defense actually gets a similar statement or a statement that is a duplicative equivalent of the statement that is discovered later on.

Particularly where a phone number -- and it could be as simple as this, a phone number written down by a police officer on the back of a matchbook cover, and that matchbook cover is not discovered or not remembered by the police officer until months later, that that was written down.

Under the Ranghelle rule, if that phone number is then brought to the attention, brought to the court, under Ranghelle, that's a per se reversal on that conviction.

That, I believe, is an unfair standard, particularly when you have U.S. v. Brady, which indicates that should -- a piece of evidence like that discovered later on is exculpatory to the degree of maybe reversing a conviction, U.S. v. Brady requires the prosecutor to bring that evidence to the attention of the court. That is a -- that is a rule that every prosecutor in every state must follow.

Given U.S. v. Brady, I think the Ranghelle rule and the per se reversal is far too harsh and unfair in this state.

So, Senator Volker, again, I

congratulate you on this piece of legislation, and I urge my colleagues to see the distinctions that you're trying to make.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1179 are Senators Connor, Dollinger, Duane, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, and Senator Stavisky. Ayes, 47. Nays, 9.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1184, by Senator Volker, Senate Print 5877A, an act to amend the Banking Law, the Civil Practice Law and Rules, and the Criminal Procedure Law, in relation to civil forfeiture.

SENATOR DUANE: Explanation.

SENATOR VOLKER: Mr. President -

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

SENATOR VOLKER: -- this is a small bill with 71 pages in it. One of the key elements in the change from 1999 to 2000 is it was renamed. It was formerly the Omnibus Crime Act of '99. It is now the Sentencing Reform Act of 2000.

That, I believe, is the prime changes that -- I mean, there's some changes in -- I believe in amendments which I don't believe are central to anything that's in the bill. But I think many of you will remember that we did pass this bill last year.

It is primarily -- the issue that has primarily been involved in this bill is the -- this is the definite sentencing bill, essentially. What it means is that if a judge sentences a person in a felony case, essentially that person is subject to the 6/7ths rule. That is, that individual will serve 6/7ths of his or her sentence, and the

final year of that would be on parole, what would amount to a noncustodial parole.

That is one of the prime -- there's also provisions in here that would allow for, for instance, violations of that parole so that you would have to continue on parole and could be remanded back for several years. It sets up a different concept of parole than is presently being done.

Also in here is amendments that relate to juveniles. It upgrades the penalties for youthful offenders for all the major crimes. It would provide for minimum sentencing for juveniles in felony cases - that is, cases that if that person were an adult, that person would be subject to even more severe penalties.

It provides for the appeal by the prosecutor of what the prosecutor considers lenient sentences, just as the defendant has the ability to appeal now. It also provides for the appeal of low bail.

So it is a lot of things in here, including some changes in the structure of drug sentencing. It is a huge bill, and I'm

the first to admit it. And as I say, that's, I think, the central provisions that are in this bill.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

SENATOR VOLKER: Sure.

SENATOR DUANE: Thank you.

Isn't it true, under this legislation, that the bill eliminates discretionary parole for nonviolent felony offenders and requires them to serve 6/7ths of their determinate sentences?

SENATOR VOLKER: It doesn't eliminate it altogether. But it eliminates it to a great extent.

Of course, one thing I think that you should understand is that in this bill, the way it is structured, the judge would know before he ever gives a sentence what the actual time is going to be. And one of the things that we've learned under Jenna's Law, which has already been passed -- and that's for violent felonies -- what judges are doing

is where before maybe they would sentence to five to ten, now what they're doing is they're sentencing to four, maybe four or five, whatever.

In other words, they have the latitude in some cases to do that. In other words, even though there's no possibility or what amounts to no possibility of parole in certain cases, they're -- actually the sentences are a little bit below in some cases what they would normally sentence because of the latitude that would have been allowed before for indeterminate sentencing. So it is true this will dramatically limit discretionary parole.

SENATOR DUANE: And isn't it also true that although some have said that this is part of reform of the Rockefeller Drug Laws, that in fact the only change under this legislation is that now in some -- or I should say in a few instances, an appellate review of certain sentences is permitted?

SENATOR VOLKER: It is really not reform of the Rockefeller Drug Laws. But it does deal with some latitude in sentencing and

drug laws, yes. But I wouldn't say that this has any major implications as far as -- but it does have some amendments in here that would impact on drug sentencing, yes, that's true.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes, I do.

SENATOR DUANE: I'm going to respond to that in two ways. But actually, this bill limits even further judicial discretion in sentencing.

SENATOR VOLKER: Well, it would -- what you're saying, I think, is that in certain cases it would limit discretion, and in other cases it would actually broaden discretion. But in some cases that's true, it would limit discretion for certain violations of drug laws. It would also provide some additional discretion in others.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes.

SENATOR DUANE: Well, certainly judicial discretion, you know, by allowing mitigating and aggravating factors, is decreased or certainly not increased in this legislation. So generally, this is a further limitation of judicial discretion; isn't that correct?

SENATOR VOLKER: Well, I think I would probably disagree with that. I think you are -- there is still some additional discretion here. But I think what you're saying is that you're not providing some things that would lead to the judge's decision.

But in fact, the judge still in certain cases -- or judges would have some additional discretion under this bill. And particularly at the appellate division level, as been pointed out by my counsel, which is not available now.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN:

Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes, I do.

SENATOR DUANE: But in fact, even with this legislation, some of the people sentenced under the Rockefeller Drug Laws, and here, would be given longer sentences than those served by rapists and in some cases even murderers.

SENATOR VOLKER: Absolutely not. Senator, I don't know where that came from.

If you're talking about coupled with -- part of the problem, I think here, is this myth about these huge numbers of drug felons that are going to jail under the Rockefeller Drug Laws. There's only a few hundred every year now that are going. Most of them are going under persistent violent felony offenders and under second felony offender statutes.

Some of those do involve drugs, and that's true. But they also are coupled, generally speaking, with something else besides drugs.

But this would broaden discretion

in certain cases. But I don't know how it would provide -- certainly not murder. There's no -- I mean, the provisions now for murder are much stringenter than any of the Rockefeller Drug Laws would provide, in virtually every case.

SENATOR DUANE: Just to go back to an earlier -

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

SENATOR VOLKER: Yes, I yield.

SENATOR DUANE: To go back to an earlier question. But really, the only real reform of the Rockefeller Drug Laws is the permission for the appellate division to review certain sentences imposed under the Rockefeller Drug Laws.

SENATOR VOLKER: Essentially, that's true. This is not the bill that the Governor put forth, in fact, or the bill that has been sponsored through the Chief Judge of the Court of Appeals that deals with Rockefeller Drug Law issues.

So it's true, this is not that bill. But it does provide some additional

latitude for the appellate division to make decisions on cases involving drugs.

SENATOR DUANE: Thank you. Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes.

SENATOR DUANE: I'm wondering if the sponsor is familiar with federal judges who have been burdened with the lack of flexibility in sentencing and many of whom now complain bitterly about that lack of flexibility in sentencing.

SENATOR VOLKER: Yeah, I'm familiar with some federal judges that are saying that. It's always fascinating to me. I must tell you, yeah, there are -- I think federal judges have incredible flexibility. I mean, if you know anything about how federal judges operate -- in fact I had said at one time I would like to be God and the way to be God is to be a federal district court judge.

I think they have a lot more flexibility than they would admit. I've heard

some of the complaints. I think that they're being a little bit -- I think they're being a little bit out of bounds. If you see an injustice, any judge that sees an injustice can deal with that. In fact, even -- that's even true, by the way, on a state level with mandatory -- if a prosecutor and a judge decide that they think that a sentence is harsh or whatever, there are ways to deal with it.

I think the problem is -- and I understand the politics of it, and the difficulties involved and that most judges don't want to deal with those kinds of issues, particularly because they're not sure who they're dealing with sometimes. But federal judges, some of it I think maybe they protesteth too much. But yeah, I've heard some of the complaining by federal judges.

But remember, most people that are sentenced in this country are sentenced -- in major crimes and in drugs are sentenced by state judges. And as I pointed out, that's one thing we should understand, that -- is that we're dealing with the real criminal

justice issues here on a state level. And I don't mean just us, I'm talking about nationwide.

And it seems to me that sometimes, however, some of the judges that are complaining are some of the same judges who would like to give very lenient sentences. And it's true that we have restricted them and made it more difficult.

And that is especially true, by the way, unfortunately in your city, where very lenient sentences is one of the things that brought on the so-called Rockefeller Drug Laws, because judges in the city were sentencing to one-third of what judges upstate were sentencing. And New York City had the biggest drug problem at that time in the country.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT MORAHAN: The

Senator yields.

SENATOR DUANE: I'm wondering if the sponsor can tell me if there are any circumstances under which he believes that parole is a good thing and, if so, when.

SENATOR VOLKER: Well, parole, as you know, is still available here, it's just that it's much more limited.

By the way, as my counsel points out, in this bill is a codification of the DTAP program. And it would be the first time, I think, that we have actually put into permanent law the DTAP drug treatment program, which is one of the things I'm sure that you would probably agree is a good thing.

This does not eliminate parole altogether, but it does restrict the use of parole in a lot of cases, and that's true.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes.

SENATOR DUANE: At the risk of sounding like a broken record, I just want to repeat my question and ask whether the sponsor believes that there are any circumstances under which he believes parole is a good thing and, if so, what are those circumstances.

SENATOR VOLKER: Well, the circumstances are is the judge can determine -- because the judge determines the length and effect of parole in many cases, post-release parole. And that's basically what the bill says.

So there's still availability of parole, and it's a decision that the judge gets to make, generally speaking, rather than the Parole Board, as it is now.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes.

SENATOR DUANE: For an additional question. Not because I think the last

question was answered, but just because I feel it's time to move on.

I'm wondering if the sponsor believes that, for instance, correction officers will have a harder job now if incarcerated people believe that they have less hope of being released.

SENATOR VOLKER: I think the answer to that is no. I don't think parole officers are -- or, rather, correctional officers will have a tougher job. These people will, generally speaking, know that they'll be released.

One of the things that is interesting and that was a problem was when we were proposing, many were proposing to avoid the death penalty, life without parole, that presented a very serious problem and always presents a serious problem for people in our correction system.

But there is obviously always hope, and even -- and I think in this case we do not say that these people will not get out. They eventually will get out. And although in many cases they'll be subject to post-release

supervision, which amounts to parole, but they will get out. And I don't think that's going to create any more problems for correction officers than is already the case.

I think the best thing for correction officers, if you ask them, is they want fewer people in the system. And they would hope that the new prison that we're building, and hopefully one more, will stop all the double-bunking that is going on in the prisons and make it easier for them to handle the numbers of inmates.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Yes.

SENATOR DUANE: Am I correct in that I heard the sponsor put on the table the possibility that he thinks it's a good idea to eliminate the Parole Board?

SENATOR VOLKER: You're asking me whether I think it's a good idea to eliminate the Parole Board? No, I don't think it's a

good idea. And I'm not aware that the Governor thinks it's a good idea either. And we don't do that in this bill.

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

ACTING PRESIDENT MORAHAN: Senator Duane, on the bill.

SENATOR DUANE: I think that in the way that I asked my questions, my position on this bill is pretty clear. So I'm just going to add a couple of other points.

And one is just generally I think that flexibility, including the possibility of improved drug treatment both in and out of correctional facilities, would be of great help.

And I also -- if the Rockefeller Drug Laws and the harsh sentences that have been -- were mandated by the Rockefeller Drug Laws are alleged to have in any way helped solve the drug problem in New York City, I think that that is an erroneous conclusion to be drawn. As far as I can tell, the imposition of harsher penalties has not had a mitigating effect on drug addiction or, for

that matter, drug trafficking.

And I think that to -- again, to limit even further judicial discretion in cases is not at all helpful towards our winning the war on drugs or, for that matter, to win the war on the increases of violent felonies that are committed.

So I would urge my colleagues to vote no on this and to explore other means to actually solve the problem of crime and drugs across our state.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill. I just have two brief comments.

I appreciate the good intention behind this bill. One of the things that concerns me very much, though, and this is a debate that's gone on a long time -- I wrote a paper on determinate sentencing in law school, and I think we were having the same debate then. That was a long time ago.

But one of the things that concerns me is there's always discretion in the system. And the more you take it away from judges and juries, the more the discretion shifts to prosecutors, who always -- we can't -- we don't limit their discretion on what to charge.

And for that reason, amongst some of the others Senator Duane articulated, I am going to vote no.

But I am very excited about Senator Volker's interest in becoming a federal judge, and I have relayed that to Senator Schumer and Senator Moynihan, and I look forward to supporting his confirmation.

Thank you.

(Laughter.)

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

THE SECRETARY: Section 114. This act shall take effect January 1, 2001.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in negative on Calendar Number 1184 are Senators Duane, Sampson, Schneiderman, and M. Smith. Ayes, 52. Nays, 4.

ACTING PRESIDENT MORAHAN: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: If we could take up the supplemental active list, noncontroversial.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 584, by Member of the Assembly Silver, Assembly Print Number 10096, an act prohibiting the recovery of costs in connection with a radiation leak.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 694, by Senator Goodman, Senate Print 7148A, an act to amend the Local Finance Law, in

relation to the sale of bonds and notes.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 827, by Senator Volker, Senate Print 3524A, an act to amend the Civil Practice Law and Rules, in relation to conducting depositions.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays,

2. Senators Duane and Sampson recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1089, by Senator Skelos, Senate Print 6367, an act to amend the Tax Law, in relation to promotional materials.

ACTING PRESIDENT MORAHAN: There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1092, by Senator Stafford, Senate Print 6988, an act to amend the Executive Law, in relation to simplifying execution requirements.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos, that completes the reading of the noncontroversial calendar.

SENATOR SKELOS: If we could then go to the controversial and take up Calendar Number 584.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 584, by Member of the Assembly Silver, Assembly Print Number 10096, an act prohibiting the recovery of costs in connection with a radiation leak at the Indian Point 2 nuclear facility.

SENATOR DOLLINGER: Explanation,

Mr. President.

ACTING PRESIDENT MORAHAN: Senator Velella, an explanation has been requested.

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

As a matter of fact, the Speaker has had a lot of things on his mind in the last few days, and one of the things he had on his mind was pushing to get this legislation passed, which we have agreed to do in a bipartisan attempt to put a handle on the practices of Con Edison.

As many know, on February 15th there was a radiation leak in from the Indian Point 2 facility. As a result of that, the cost for replacing power, the power that would be lost because of that facility being taken off-line, was estimated in an Assembly public hearing on March 3rd to be $600,000 more per day. That's what it would cost Con Ed to replace the power per day that was a result of Indian Point 2 shutting down because of the leak.

Now, it would be one thing if that

particular accident happened without any notice. However, Con Edison really acted in an imprudent manner in connection with this leak. The company could have replaced the leaking steam generator and -- as other nuclear operators had done.

Back in 1981, Con Edison sued the manufacturer of that facility and of that particular generator and said, You've sold me a defective product. This is a generator that leaks and cracks occur in this generator, and you sold me a bad product. We're suing you for the cost of selling us a defective product.

As a matter of fact, the case was settled and several other companies also joined in and the manufacturer of that particular generator decided to offer to Con Edison the generator to be replaced, a new generator, and they would install it.

Seven other utility companies installed the generators and replaced the defective ones. Con Edison never replaced them. They kept those generators on the side and said, It's going to cost us an awful lot

of money for labor to install those new generators. We'll keep patching the ones that are there.

Well, they patched and they patched and they patched. And then finally, on February 15, 2000, the patching didn't work anymore, and there was a major release - well, not a major, but there was a release of nuclear energy into the atmosphere. As a result of that, they shut down the plant and their costs incurred are $600,000 per day to the ratepayers that they want to pass on.

I don't believe it's fair. The Speaker of the Assembly doesn't believe it's fair. And many members of the house that have joined in sponsoring this bill don't believe that we ought to let Con Edison profit from their own negligence and total lack of sensitivity.

They knew this was happening, they had defective equipment, they had a replacement for the defective equipment supplied by the manufacturer, and they still chose to take the chance and not act in a prudent and reasonable way.

We've entrusted them with the obligation and with the right to provide power to us in a safe way. But they choose to do it any way they want. They got away with what they did in Washington Heights last year. We had legislation to penalize them for it. They promised they were going to be more responsible, don't do this, don't overreact, don't let the Legislature step in where we should be doing these things, it should be the Public Service Commission.

And the Public Service Commission is looking into it and studying it, but they really haven't gotten the message.

This bill gives them the message loud and clear that you cannot do as you please. You may have a monopoly on giving utilities services to our communities, but you don't have a right to do as you please any which way. You have to be responsible, you have to be prudent, and you have to use probably judgment to provide the safety to the people of our communities and not back-charge them for your negligence.

And that's what this bill prevents,

and that's what we're trying to do. The Speaker and I have joined forces, and I hope that the members of this house will support it.

ACTING PRESIDENT MORAHAN: Thank you, Senator Velella.

Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield for a couple of questions, Mr. President?

ACTING PRESIDENT MORAHAN: Senator Velella, will you yield?

SENATOR VELELLA: Certainly.

SENATOR DOLLINGER: Senator Velella, what is the factual basis produced by sworn testimony under oath in support of the declaration of a legislative finding that Con Edison failed to exercise reasonable care on behalf of the health, safety and economic interests of its customers?

SENATOR VELELLA: A series of hearings that were held by the Assembly which the Speaker assures me have been substantiated both through, I believe, Assemblywoman Galef and Assemblyman Brodsky. All of whom have

been very, very active in this and were very instrumental in helping to draft this and are part of a legal petition to have the Public Service Commission also act on this matter in the same way that the Legislature is.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MORAHAN: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Does Consolidated Edison concede, as this bill says, that it failed to exercise reasonable care on behalf of the health, safety and economic interests of its customers? Do they admit that?

SENATOR VELELLA: I don't believe that they would admit to anything. I don't know. They haven't talked to me on it.

They only came up here to tell me that this would be a terrible bill to pass, it would be the wrong message to send, and that they would prefer to deal with this at the Public Service Commission level. That's the

only thing they've told me. They admit nothing, deny nothing.

SENATOR DOLLINGER: Okay. Again through you, Mr. President. What I'm trying to find out -

ACTING PRESIDENT MORAHAN: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Is there sworn testimony from Consolidated Edison in which they say they agree with the legislative declaration in this bill?

SENATOR VELELLA: Is that in the bill, it says that in the bill, that's sworn testimony?

SENATOR DOLLINGER: No, is there sworn -

SENATOR VELELLA: I cannot say that -- most of our committees, as you know, serving on them, don't take sworn testimony under oath. So I would think that they probably did not.

However, I rely on my colleagues in the Assembly and the Speaker when he says that they have admitted as to what they've done and

what happened, and I think Assemblyman Brodsky and Assemblywoman Galef and the Speaker would not mislead us down a path to say that people did not admit in terms of a hearing when in fact they are saying that they did. So I would rely on them as colleagues.

But was it under oath? I doubt that seriously. We rarely take testimony under oath.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Velella will continue to yield.

ACTING PRESIDENT MORAHAN: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: So is it fair to say that we have no evidence under oath in this Legislature, either before the Assembly or before the Senate, in which we can state as a fact that Consolidated Edison failed to exercise reasonable care?

SENATOR VELELLA: No. I think the facts speak for themselves. It may be res ipsa loquitur, if that's what you want. The facts that will control the instrumentality,

the facts speak for themselves. And I believe the Speaker acted prudently, and I believe that the members of the Assembly acted prudently.

And, you know, if it walks like a duck, it waddles like a duck, and it quacks like a duck, it's a duck. And they messed up -

SENATOR DOLLINGER: Except when it's in Latin, and then you're not sure what it is.

SENATOR VELELLA: That's Bronx logic.

(Laughter.)

SENATOR DOLLINGER: Through you, Mr. President, if Senator Velella would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Isn't it in fact the case that that's what the Public Service Commission does, is it decides whether or not the utility has exercised reasonable care and whether the charges that stem from

its conduct can then be passed on as a legitimate cost to its ratepayers? Isn't that what we set up the Public Service Commission to do?

SENATOR VELELLA: That is one of the functions that they perform, yes.

And sometimes they need a guiding hand. And I want to provide that guiding hand to make sure and ensure that they act properly, they act expeditiously. If they do, great. If they don't, we've got a law to protect our people.

And that law is going to be the Silver-Velella Law to save the ratepayers money.

(Laughter.)

SENATOR DOLLINGER: Through you, Mr. President, has Senator Velella put down his megaphone yet? And I'll ask the next question.

SENATOR VELELLA: Oh, you'll hear more of this. As the time goes on, you'll hear more.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Velella would

continue to yield.

ACTING PRESIDENT FUSCHILLO: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT FUSCHILLO: Senator Velella yields.

SENATOR DOLLINGER: So can I assume from that that Consolidated Edison does not only not agree with this statement but that we have no sworn evidence upon which in base this conclusion as we sit here today, nothing before the Legislature which a witness, sworn under oath, has said that they agree with this statement?

SENATOR VELELLA: Senator, there may not be sworn testimony, or there may be. However, we don't need to have sworn testimony and have people come in here and raise their right hand every time we do something.

Con Edison has done a terrible thing here. They have negligently performed their function as a utility company. They failed to install a generator that was given to them, to replace a defective one. And they put lives at risk.

Now, nobody wants to come in and swear to the fact, yes, we did that. I doubt very seriously if anybody from Con Ed ever will swear to the fact that they did it. But they did it. And Velella's Law is going to stop them and punish them.

SENATOR DOLLINGER: Mr. President, on the bill. On the bill, Mr. President.

ACTING PRESIDENT FUSCHILLO: On the bill, Senator Dollinger.

SENATOR DOLLINGER: I greatly appreciate Senator Velella's exuberance in support of this bill and his -- oh, I'd say it but it will up in a piece of literature somewhere -

SENATOR VELELLA: Absolutely.

SENATOR DOLLINGER: -- his seemingly tireless work.

But I would suggest, I would suggest that this bill is exactly the problem that I debated an hour ago with Senator Meier and Senator Rath. This is a mandate.

This is us telling another agency we've found all the facts, you don't need to

worry about the facts, we've found them. We don't have any proof of that, but we're going to exercise our legislative power to tell the Public Service Commission how a determination ought to be made. And if it isn't enough that we're going to tell the Public Service Commission, my gosh, we're going to tell me the Nuclear Regulatory Commission what the facts are.

All without a shred of proof that would be acceptable to a lawyer like Senator Velella, proof that he could rely on, sworn testimony under oath, that old fact-gathering procedure we use when we've got disputes where we put people under oath and say you swear to tell the truth, the whole truth, and nothing but the truth.

No, we don't have any of that. And yet we're making a legislative finding that somebody failed to exercise reasonable care.

I go back. This Legislature for the last 35 years has had that side of the aisle decide everything, all the unfunded mandates. Now we're doing what we've hired judges to do. When does this Legislature,

this body, stop doing everything on behalf of everybody else? Why do we set up a Public Service Commission procedure and then say, You can't do it, we're not going to let you find the facts, we're not going to let you disagree with us, the almighty Legislature?

I would just suggest, Mr. President, that this bill is horrible public policy. This is a usurpation of fact finding that we've have created other agencies to do. This may make a great billboard, a fabulous billboard, but it is terrible public policy.

Let's let the Public Service Commission find the facts. Let's let the Nuclear Regulatory Commission find the facts. If they are as Senator Velella and the Speaker suggest, let the Nuclear Regulatory Commission fine Con Ed. Let the Public Service Commission say you can't pass the costs on. We've got a whole process set up for doing this.

Why we should let politics intervene and try to usurp the power that we've given to the agencies created by the federal and state government to do it -- the

procedure is already there. It may be great politics; it's horrible policy.

I vote no, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I'd like to speak on the bill.

ACTING PRESIDENT FUSCHILLO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I find this sort of fascinating, that I will be supporting Senator Velella, the great environmentalist, against Senator Dollinger, the great spokesperson for major industry.

(Laughter.)

SENATOR OPPENHEIMER: It does seem a bit bizarre. Maybe it's the land of Oz.

But the fact is that we do have support for this issue, strong support from the Environmental Planning Lobby and from NYPIRG. So our environmental community does feel that this is an important issue.

There is a lot of information out there, and I don't know if it has been

determined by some agency or court that would appeal to Senator Dollinger. But the fact is there was a Governor's task force that did look into this issue and found that Con Ed was at fault.

The fact is that there is another plant right nearby, a matter of steps away, called Indian Point 3. And that is owned by our New York State Power Authority. They had the same problem with the same steam generators, because the manufacturer gave them faulty products. They were told about it, and in 1989 our New York State Power Authority removed those steam generators, at the cost of $110 million. And that's the plant -- really, it's not even a ball throw away from the plant we're talking about.

The fact is, these generators were faulty. And in, I think, 1980, new generators were supplied to the Con Ed plant, and they are sitting there. And that is what we in Westchester have been appealing to Con Edison, to take them out of this storage room and install them.

And the reason they haven't done

that is because it is costly, the labor is expensive, and Con Ed is trying to sell these plants. So they see it as a major cost factor when they want to be rid of it.

So I feel that they should not be held harmless, that they should certainly be penalized for taking our health and toying with it, because they knew the generators were not good. They have been sitting there for twenty years, and they have not replaced them. And it's only because they didn't want to pay the cost of labor.

I think Con Ed can afford to pay the cost of the labor. And therefore, I'm very strongly supporting this bill.

ACTING PRESIDENT FUSCHILLO: Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President.

We're talking about who's at fault, who's not at fault. It seems to me it's hard to hide that if a corporation is producing electricity, if a corporation is doing some activity, if something goes wrong, it's their fault. Whose fault could it be? The

ratepayers? The neighbors? The corporation stands responsible for what happens.

I happened to visit -- now, whether it's gross negligence or mere negligence, that's arguable. I visited this plant after this leak as a result of this leak, and I interviewed the plant management. I inspected the generator that was in trouble. I looked in the well to see the reactor.

And simply put, they alleged that they tested the core and the pipe, if you will, that contained the liquid, and the tests revealed nothing.

However, shortly after the tests, they determined that there was a significant crack. But they made that discovery after, after the leak had occurred.

As a result of that leak, there was another question on how they handled the information discussion with local municipalities and emergency people.

As a result of that leak and a result of that investigation, there is now a communal effort by all the municipalities and Con Edison to update, to review and improve

the notification process.

They have their generators not for a week or a month, but for several years. And they continue to repair this particular generator. And currently at this time they're now making another decision, whether they should replace it at this time or just replace the pipe.

I visited there with two members of the Assembly, my colleagues from my county. And we urged them now to make a decision to replace that generator. It's only a matter of time. And yet they stand to obstruct any constructive dialogue to replace those generators.

I support Senator Velella's bill wholeheartedly. Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FUSCHILLO:

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Just to explain my vote, Mr. President.

I'm going to vote no. And -- oh, my gosh, there's a fly buzzing around.

Mr. President, everything that Senator Velella said and everything that Senator Oppenheimer said and everything that Senator Morahan said may be true, absolutely may be true. And under those circumstances, I would be the first to stand up and say if the Public Service Commission decides that not one penny of this can be passed on to ratepayers, I'd stand up and say, "I support you a thousand percent."

Number two, if the Nuclear Regulatory Commission says, "Wait a second, you've exposed the people to a radiation leak because you failed to repair a generator that should have been repaired" -- and Lord knows, if Senator Oppenheimer's theory for that is correct, that they did it because they were attempting to reduce their costs in an attempt to sell the plant, that is reprehensible corporate behavior. If it's true.

And under those circumstances, if the Nuclear Regulatory Commission fines Con Ed, I'll stand up with Senator Oppenheimer and say, "That's exactly what should have happened. That's the way our system works."

But I would suggest -- we go back to it -- we are not a fact-finding agency in this case. We should not preempt other fact-finding agencies. This is great headlines. It's a wonderful political thing for the Speaker and others, for anyone. But it's no substitute for a fact-finding process that we established and we ought to respect. We're mandating something that is not in our competence to mandate.

And I would suggest that all those who don't like those unfunded mandates, let's stop mandating that the Public Service Commission find a certain set of facts. Let's let them do it, let's let the Nuclear Regulatory Commission do it.

And when both of those things happen and they're fined and they can't pass it on, I'll join Senator Oppenheimer and say the system worked, it worked the right way.

This is the wrong way to do it.

ACTING PRESIDENT FUSCHILLO: Senator Velella, to explain his vote.

SENATOR VELELLA: Mr. President, I think that we see here a very, very big difference between Senator Dollinger and myself and I think by far the majority of this house.

When Senator Oppenheimer takes the floor and makes statements, when Senator Morahan takes the floor and makes statements, I believe them. I think they tell us the truth. I don't think they come in here and make up stories and deliberately lie to us. I think when they make statements, I take them as statements of fact.

And I believe my colleagues, unless I have reason otherwise. And I would bring it forth.

This bill passed the Assembly 137 to 10. And I believe of those 137 votes, they were all members of the Democratic Party supporting their Speaker, and a good number of the Republican members supported this bill.

I think the issue is very clear.

For too many times we blame agencies for doing things. The ultimate authority is here. We give them their authority. We delegate authority to those agencies. And when something like this happens, we have to stand up as responsible people, take the bull by the horns and act affirmatively.

And that's what we're doing here. We're telling the agency that they must follow our lead, we're not going to wait for them to lead us. We're the leaders in this state.

I vote in the affirmative.

ACTING PRESIDENT FUSCHILLO: Announce the results.

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

ACTING PRESIDENT FUSCHILLO: The bill is passed.

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

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

ACTING PRESIDENT FUSCHILLO: Yes, there is.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

On behalf of Senator Rath, on page number 36 I offer the following amendments to Calendar Number 945, Senate Print Number 4947C, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator McGee.

SENATOR McGEE: Have a good holiday weekend.

ACTING PRESIDENT FUSCHILLO: You too. Thank you, Senator McGee.

Senator Bonacic.

SENATOR BONACIC: Mr. President, there being no further business to come before the Senate, I move we adjourn until Wednesday, May 31st, at 2:30 p.m.

ACTING PRESIDENT FUSCHILLO: On

motion, the Senate stands adjourned until Wednesday, May 31st, at 2:30 p.m.

(Whereupon, at 1:20 p.m., the Senate adjourned.)