NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:11 p.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

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

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

ACTING PRESIDENT MORAHAN: The invocation today will be given by the Reverend Peter G. Young, Blessed Sacrament Church, Bolton Landing.

Reverend.

REVEREND YOUNG: Thank you, Senator.

May we take a moment first to have a moment of silence, as we prepare for this, for reflecting on those who have been killed in the armed forces.

Let us give recognition to the servicemen and the women of the 10th Mountain Division, located in Fort Drum, Watertown, as well as the many other members of the armed forces who are facing the dangers of war in Central Asia. They are in our thoughts and in

our prayers during this time of conflict.

We ask You to bless them, in Your name, now and forever. Amen.

ACTING PRESIDENT MORAHAN: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 4, the Senate met pursuant to adjournment. The Journal of Sunday, March 3, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following bills:

Senate Print 401, by Senator Skelos, an act to amend the General Obligations Law;

438, by Senator DeFrancisco, an act

to amend the Surrogates Court Procedure Act;

2934, by Senator Lack, an act to amend the New York City Civil Court Act;

4766, by Senator Kuhl, concurrent resolution of the Senate and Assembly.

And 5131, by Senator Saland, an act to amend the Family Court Act.

Senator Velella, from the Committee on Labor, reports:

Senate Print 128, by Senator Marcellino, an act to amend the Labor Law;

1472, by Senator Velella, an act to amend the Labor Law;

And Senate Print 3884, by Senator Volker, an act to amend the Labor Law.

Senator Spano, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 1088, by Senator Wright, an act to amend the Tax Law;

3839, by Senator Nozzolio, an act to amend the Arts and Cultural Affairs Law;

4106, by Senator Libous, an act to amend the Executive Law;

6077, by Senator Wright, an act to

amend the Public Officers Law;

And 6180, by Senator Nozzolio, an act to amend Chapter 533 of the Laws of 2001.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 706A, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

1219A, by Senator Padavan, an act to amend the Vehicle and Traffic Law.

3071A, by Senator Kuhl, an act to amend the Vehicle and Traffic Law.

5583, by Senator Seward, an act to amend the Vehicle and Traffic Law;

And Senate Print 6239, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 2651, by Senator Kuhl, an act to amend the Education Law;

3947, by Senator Kuhl, an act to amend the Education Law;

4767, by Senator Kuhl, an act to amend the Education Law;

6050, by Senator Rath, an act to

amend the Education Law;

Senate Print 6231, by Senator Velella, an act to amend the Education Law;

6236, by Senator Kuhl, an act to amend the Education Law;

And Senate Print 6312, by Senator Padavan, an act to amend Chapter 45 of the Laws of 1996.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN: Without objection, all bills directly to third reading.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nomination.

As a judge of the Court of Claims, Michael R. Ambrecht, of New York.

ACTING PRESIDENT MORAHAN: Senator Lack.

SENATOR LACK: Thank you, Mr. President. I rise to move the nomination of Michael R. Ambrecht, of New York City, as a judge of the Court of Claims.

Normally I would say that we've received the nomination and the nominee has been investigated by the staff of the committee. In this particular case, since the nominee at one time was part of the staff of the committee, I don't know if I can in all honesty say that even I would trust the staffwork of the committee.

So I have investigated the credentials of the nominee, and I'm happy to say that they are excellent. I'm very proud that a former staff member of the Committee on the Judiciary of the Senate has been nominated by the Governor.

Of course, the Governor didn't need his experience in the Senate Judiciary Committee, since he has also served as an assistant counsel to this Governor as well, and a lot of other positions. But I won't steal the thunder of the person who's going to rise to second the nomination.

Just to say that Mr. Ambrecht appeared before the committee this morning, he was unanimously moved to the floor for consideration at this time and confirmation of

his judgeship.

And I'm most proud to yield for purposes of a second to another former staff member of the Committee on the Judiciary, who in effect was Mr. Ambrecht's boss at the time that he became clerk of the committee, and one of the former counsels of the Senate Judiciary Committee, Senator Michael Balboni.

ACTING PRESIDENT MORAHAN: Senator Balboni.

Senator Kuhl.

SENATOR KUHL: Yes. Before we recognize Senator Balboni, could you please announce that there will be an immediate meeting of the Tourism, Recreation and Sports Development Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Tourism, Recreation and Sports Development Committee in the Majority Conference Room.

Senator Balboni.

SENATOR BALBONI: Thank you, Mr. President.

And thank you, Senator Lack, for

permitting me the opportunity to second this nomination.

It's hard sometimes, with the pace of life in this chamber and in this Legislature, to realize what we do here and how personal it gets. This afternoon we have the opportunity to launch a career, to take someone truly from our midst, who stood in the back of the chambers here, who worked for a very distinguished man who gave me my start, and many others, John Dunne. And today we give him the opportunity to achieve a dream to rise to the bench and to begin serving the people, a position he has always sought to do.

I first met Michael Ambrecht when he assumed the position of clerk of the Senate Judiciary Committee back in 1985. And as I mentioned in the Senate Judiciary Committee meeting, the thing which struck me about him then was he was meticulously dressed. His desk was perfect. He had the best blotter I'd ever seen, the nicest lamp. And I mistook him for a counsel, taking my job. So our first initial impression was not that good.

I then learned that he was the

clerk who would do anything you asked him to do. He took on any job with enthusiasm, confidence, and competence. He was somebody who was unabashedly enthusiastic about who he was, where he came from, and what he one day wanted to do.

And what a distinguished career he has had. I invite every member of this Legislature to take a look at this resume. And though he just turned 40 last week, he has had a variety of services and experiences that anybody would be proud and anyone who wants to take a look at the bench would see as a requirement.

After leaving the Senate Judiciary Committee, he became counsel to Robert Morgenthau. He's a Fordham Law graduate. And then he became counsel to the Governor in 1995. He was one of the lead counsels on the death penalty issue, reshaping one of the most complex issues and laws that this state has enacted in the last decade.

I spoke with him many times on that issue, as a member of the Assembly. His depth of knowledge was impressive. His passion was

inspiring. And his ability to translate all the intricate nuances of that legislation made me feel very comfortable with what the ultimate outcome was going to be.

And then he rose to become the counsel to the Long Island Railroad and the MTA, where I met him in a professional capacity and spoke to the people who worked under him. Nothing but praise came from their lips, and nothing but admiration from the people he worked with was said.

And finally he went back to private practice. And I think this is probably the most telling aspect about Mr. Ambrecht. He was making a lot of money at this law firm, but he yearned to come back to the public sector so that he could serve the people that he believes in, the government that he believes in, and for the principles he believes in.

Mr. President, this candidate before us brings many good things to this world. He will be an honor to the bench and he will serve New York proudly. I support his nomination.

ACTING PRESIDENT MORAHAN: Senator Stafford.

SENATOR STAFFORD: Mr. President, when you have to follow two or three articulate Senators, like I've just had to follow, it's almost impossible. And anything I would say would deserve little more than a footnote.

But I'd point out a couple of things about Michael. First, he always carries a Mont Blanc pen. I'm sure he has it with him -- exactly. And notice the pen I have.

And also, Michael also wears braces. And I'm sure he has them on today, as you can see.

(Laughter.)

SENATOR STAFFORD: Now, I don't have mine on today.

But on a very serious note, you know, I'm getting old, and I may be in error, but I believe he also worked for the senator from -- Senator Barclay. And that goes back, of course, a number of years.

I would only say, as has been said,

you know, we have quite a system. And we have people that criticize the system. But when you see a person like Michael who was in college, decided to go to law school after working here a number of years, then has had the responsible positions that he's had through his career, now being appointed to the Court of Claims, the Governor is to be complimented, he's to be complimented, the system is to be complimented, and the state will now be better because of the Governor's decision and Judge Ambrecht.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

I rise to also compliment Governor Pataki. But before I do, I just want to compliment Senator Dunne, who I --

ACTING PRESIDENT MORAHAN: Excuse me, Senator.

SENATOR FUSCHILLO: I have to start this over again?

ACTING PRESIDENT MORAHAN: Just

if you can suffer an interruption.

Senator Kuhl.

SENATOR KUHL: He's young enough. I think he can.

We'd like to call another committee meeting, Environmental Conservation, immediately, in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

SENATOR KUHL: Thank you, Senator Fuschillo.

ACTING PRESIDENT MORAHAN: Thank you, Senator Kuhl.

Senator Fuschillo.

SENATOR FUSCHILLO: Let me just compliment Senator Dunne. So many fine individuals, including Senator Balboni, have come out of that office. And I see him back there beaming with joy, and I know how proud you are of Michael.

But yesterday, where Michael is sitting right now, we had a 16-year-old girl who in such a short age became an Olympic

medal winner on the U.S. women's hockey team. And we complimented her on how much she has done in such a short period of time. And look at that fine gentleman who sits up there, at the age of 40 going to the bench with such distinguished public service and private experience.

Michael, I didn't know that Mike Balboni was your boss. My condolences to you. But I know you moved on very quickly from that profession.

But today we have another gold-medal nomination from Governor Pataki. I compliment you. I wish you the best. I wish your family the best. As you know, they are my neighbors, and they are terrific. And I know you are as well.

And you are embarking on a distinguished career on the bench, but, more important, you're continuing your public service to the residents of New York State.

Congratulations and best wishes to you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: Thank you, Mr. President.

I was just about to say that despite your past associations, I still think we should support you.

Let me just say seriously that I've known Michael for many years. In fact, for some reason I think we might have met at a convention, initially. Maybe a Republican convention a long time ago, when I think he was a Young Republican.

I may be wrong, but it is very hard for me to believe -- I have to tell you, Mike, when I first saw your name, you know, you -- I guess when you get to be my age, you start thinking everybody is a kid. But I really didn't realize you were 40 years old, I must tell you.

But at any rate, I have to say to you, as Jim said, we didn't need any staff to investigate you, because we've known you for so many years. And of course I've dealt with you for many, many years, and most recently we've worked on the death penalty and a number

of other things.

But I just want to say something that Senator Fuschillo I think stole my -- stole what I was about to say. You know, sometimes we don't realize the impact that we have on people, good people. And I want to say the same thing you did, Chuck, about John Dunne. The people that have been taught in the Dunne School of Law have turned out pretty darn good. And I mean that very sincerely.

We may have had our disputes sometimes, but all that aside, Mike Balboni, who sits to my left here, and a number of other people, and not the least of which, that's for sure, is Mike Ambrecht, who is -- I'm glad to say he's a Jesuit product also, which of course I happen to be also.

And I honestly say that there are few people that we have confirmed here as judges as competent as Mike Ambrecht.

ACTING PRESIDENT MORAHAN: Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

I wish I had come here earlier and

had served under the School of Dunne. I mean, he's been wonderful.

But for Michael, my experience with him was as a senator, when he worked in Albany. And I will not repeat all the accolades that my colleagues have spoken about him. His resume speaks for itself. But the one thing that impressed me immensely was his temperament. He always treated any person -- whether they were a person of high position, a person of power, a layman, he always treated them with respect and dignity.

And those qualities of judicial temperament that he will take to the bench will be -- he will always be an educator. And I thank him for continuing to serve the public and our state. And I wish him and his family good health and much success in your future endeavors, Mike.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, I rise with my colleagues to enthusiastically support this nomination, to again thank Governor Pataki for grooming a great cadre of judicial appointments. And that this is certainly no exception.

Although since -- I've had the opportunity of working with Mike very closely on a number of extremely important criminal justice issues, particularly during the early years of Governor Pataki's service. I can't tell you how helpful he had been to us. Although I am somewhat concerned that since he has left, the executive chamber has had difficulty keeping a position, gone from position to position to position.

But frankly, all kidding aside, that's just a testament to his talents and his acumen. And that now he's going to be landing in a position that he's extremely well suited for as a judge of the Court of Claims.

I just want to mention a little more specifically of how he helped us during those early years when our criminal justice system needed such help. Working with

Governor Pataki, putting together the rudiments and the fundamentals of bringing the justice component back into the criminal justice system, I for one thank Mike. I also know there are a lot of people out there in this state that have not been victimized by crime as a result of the policies that Mike helped us implement during those early years in Governor Pataki's administration.

That I certainly enthusiastically support this nomination. I wish Mike Ambrecht all the future success, that I know he will be a great contributor to the Court of Claims. And that certainly I know I have been proud to work with him in the past.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

The question on the nomination of Michael R. Ambrecht, of New York, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The nomination is carried. Michael R. Ambrecht is hereby confirmed as judge of the Court of Claims.

I would like to recognize Mr. Ambrecht, who's with us today, with his wife, Mary, his mother, Agnes, and family and friends. Congratulations.

(Applause.)

ACTING PRESIDENT MORAHAN: Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

I move to commit Senate Print Number 2670, Calendar Number 241 on third reading -- this is on behalf of Senator Nozzolio -- to the Committee on Finance.

ACTING PRESIDENT MORAHAN: So ordered.

SENATOR ESPADA: Also, Mr.

President, on page number 14 I offer the following amendments to Calendar 181, Senate Print Number 432. This is on behalf of Senator DeFrancisco. And we ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received, and the bill will remain on the Third Reading Calendar.

SENATOR ESPADA: And, Mr. President, I wish to call up Senate Print Number 5786, on behalf of Senator Stafford. Said bill was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 231, by the Senate Committee on Rules, Senate Print 5786, an act making an appropriation.

SENATOR ESPADA: Mr. President, I now move to reconsider the vote by which the bill was passed and ask that the bill be restored to the order of third reading.

ACTING PRESIDENT MORAHAN: The Secretary will call the roll on

reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

SENATOR ESPADA: Mr. President, I now move to discharge, from the Committee on Finance, Assembly Print 9431 and substitute it for the identical bill.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

SENATOR ESPADA: The Senate Bill on the first passage was voted unanimously. And I now move that the substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 231, by the Assembly Committee on Rules, Assembly Print Number 9431, an act making an appropriation.

ACTING PRESIDENT MORAHAN: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Is there a message of appropriation at the desk?

ACTING PRESIDENT MORAHAN: Yes,

there is.

SENATOR KUHL: Move we accept the message.

ACTING PRESIDENT MORAHAN: All those in favor of accepting the message of appropriation signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The message is accepted.

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.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. May we now adopt the Resolution Calendar, with the exception of Resolution

Number 4258.

ACTING PRESIDENT MORAHAN: All in favor of adopting the Resolution Calendar please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Resolution Calendar is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. May we now have the title to Resolution Number 4258, by Senator Wright, which is at the desk, read. And I move for its adoption.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Wright, Legislative Resolution Number 4258, honoring the Girl Scouts of the United States of America upon the occasion of National Girl Scout Week, March 10 through 16, 2002, as they celebrate their 90th anniversary.

ACTING PRESIDENT MORAHAN:

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. The sponsor of the resolution, Senator Wright, has indicated that he would like to offer the opportunity to all the members in the chamber for cosponsorship on this resolution.

So if we could leave that opportunity at the desk open for the members and have them indicate to the desk, then fine, that would be appropriate.

I move for the adoption of the resolution.

ACTING PRESIDENT MORAHAN: All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution will remain at the desk. All those Senators who want to be off will notify the desk.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Also previously, on February 26th, Resolution Number 4159 was adopted. I'd ask that it be read in its entirety at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Kuhl, Legislative Resolution Number 4159, commending the New York Association for Continuing/Community Education and the 2002 Students of the Year.

"WHEREAS, This Legislative Body is justly proud to welcome the New York Association for Continuing/Community Education and is pleased to commend the 2002 Students of the Year for their outstanding work as adult learners; and

"WHEREAS, Alice Blanks, Uurtsaikh Gangaatar, Francisca Gonzalez, Glenn Hines, Ricardo "Daniel" Juarez, Amelia King, Sonya M. King, Heng Leng, Felix Luna, Angela Mancuso, Brenda Melendez-Purdy, Rosette Pluviose, James Priset, and Rukija Subasic are all honored recipients of the 2002 Student of the Year Award, who have been selected to receive this

esteemed distinction because of their demonstrated outstanding perseverance and dedication; and

"WHEREAS, The 2002 Students of the Year worked hard and overcame a myriad of challenges and, in doing so, developed within themselves a strong sense of independence, self-reliance, and self-sufficiency which can never be taken away; and

"WHEREAS, The 2002 Students of the Year have confirmed, through their earnest commitment and will to succeed, that they should be looked upon as positive role models, not only for other adult learners but for their community as well; and

"WHEREAS, This Legislative Body also pays just tribute to the teachers, coordinators, administrators and trainers of these students for their selfless dedication to the students and for their work, which has brought hope into the lives of many -- an accomplishment that cannot be measured; and

"WHEREAS, This Legislative Body also honors the board members for their guidance of the New York Association for

Continuing/Community Education and for their continued dedication to education in New York, as well as all the individuals on the Awards Day Committee who worked diligently in order to ensure that these students receive the recognition they deserve; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commend the New York Association for Continuing/Community Education and the 2002 Students of the Year for their tenacity and remarkable accomplishments; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to each of the 2002 Students of the Year; Board President Susan McClean; and the Awards Day Cochairs, Allen Robinson and Louise A. Ebert."

ACTING PRESIDENT MORAHAN: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. As the resolution indicates, this is an appropriate time to honor some people who have made a significant contribution in

their own lives, certainly, and some people who have made a significant contribution to other people's lives.

Those people who we honor who have made that contribution to other people's lives are the adult education professionals who actually work with adults in furthering their education.

We're very, very honored to have several of the 13 recipients of the Student of the Year Award with us today. Those people are being honored by an association known as the New York Association for Continuing/Community Education. And we have done this -- this is their 19th year.

But these are people and individuals who in fact are trying and striving under very difficult circumstances to better the quality of their life. And they have been selected amongst thousands of students throughout this state who are going through the same kind of process of trying to better themselves. They're helped by these various educational professionals, but certainly the motivation comes from them

particularly, within themselves.

As I said on a number of cases -- and we won't go through the individual cases here at this time -- but this is a time when we pause, like we did the other day with Olympians, to recognize their dedication, their effort, and certainly the outcome of what they've done.

These individuals will never receive that gold medal at Salt Lake. But yet within themselves they know that they have done an outstanding kind of effort which is going to be rewarded by them and to them individually as they proceed through in their lives.

So I would like to have you acknowledge their presence, as President of this chamber, this body. They are seated to my right in the balcony, to your left. And their names were announced in the resolution by our clerk.

And just acknowledge and extend your sympathies to them for having to endure all of our time period here in waiting to be recognized. But certainly their recognition

is as big and as bold and as important, not only to them but to us, as anything else that we do in this chamber.

So, Mr. President, I acknowledge their presence. I offer my congratulations as chair of the Senate Education Committee and compliment them on the wonderful job that they've done.

ACTING PRESIDENT MORAHAN: Thank you, Senator Kuhl.

And we ask the students to rise and accept our congratulations of the Senate. We welcome you here today. We hope you enjoy your day in Albany. And we give you our wholehearted congratulations. Thank you.

(Applause.)

ACTING PRESIDENT MORAHAN: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm fortunate to be the senator who represents one of these very fine individuals. And I couldn't let the moment pass without acknowledging Angela Mancuso and singling her out for my appreciation and admiration.

She arrived in this country from Italy a number of years ago with an eighth-grade education in Italy and, while working as a seamstress at Learbury, kept little scraps of paper to translate words that she heard, and studied in between supporting her family at home until she could develop the ability to undertake a more formal education.

With the help of Literacy Volunteers, very well known and respected because they are headquartered in Syracuse, New York, Ms. Mancuso has continued this education. And today she takes advantage of not only the BOCES adult education and the Laubach Literacy Program, but also the UAW external diploma program.

We are blessed in this state to have dedicated people like the BOCES teachers who seek out students like Angela. And we are fortunate to have students like Angela Mancuso who serve as role models to many other people who will have a much less difficult time learning the English language and becoming good citizens.

And I believe they should all be

congratulated today.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hoffmann.

This resolution was previously adopted by the Senate on February 26th.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could we now announce that there will be an immediate meeting of the Banks Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will now be an immediate meeting of the Banks Committee in the Majority Conference Room.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. And also could we at this time have the noncontroversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 76, by Senator Rath, Senate Print 2617A, an act to amend the Penal Law, in relation to assaults.

SENATOR DOLLINGER: Lay it aside,

please.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 77, by Senator Wright, Senate Print 3499A, an act to amend the Criminal Procedure Law, in relation to statements at the time of sentencing.

SENATOR DOLLINGER: Lay it aside, please.

SENATOR KUHL: Lay that bill aside for the day.

ACTING PRESIDENT MORAHAN: That bill will be laid aside for the day.

THE SECRETARY: Calendar Number 79, by Senator Volker, Senate Print 4327, an act to amend the Criminal Procedure Law, in relation to waiver.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 116, by Senator Alesi, Senate Print 482, an act to amend the General Obligations Law, in relation to liability.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 127, by Senator Balboni, Senate Print 854, an act to amend the Penal Law, in relation to criminal street gang activity on school grounds.

SENATOR MONTGOMERY: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 131, by Senator Volker, Senate Print 3781, an act to amend the Civil Rights Law, in relation to the confidentiality of personnel records.

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, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 132, by Senator Skelos, Senate Print 5640, an act to amend the Criminal Procedure Law, in relation to eliminating.

SENATOR MONTGOMERY: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 150, by Senator Trunzo, Senate Print 5271, an act to amend the Vehicle and Traffic Law, in relation to school zone speed limits.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 152, by Senator Libous, Senate Print 5670, an act to amend the Highway Law, in relation to designating.

ACTING PRESIDENT MORAHAN: 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, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 154, by Senator Seward, Senate Print 3737, an act to amend the Insurance Law, in relation to risk-based capital requirements.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 212, by Senator Leibell, Senate Print 2540, an act in relation to maintaining the existence.

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, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 230, by Member of the Assembly Morelle, Assembly Print Number 871E, an act to amend the Executive Law and the Estates, Powers and Trusts Law, in relation to solicitation.

SENATOR KUHL: Lay the bill aside for the day, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside for the day.

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

SENATOR KUHL: Mr. President, could we now have the controversial reading of the calendar, please.

Before we do that, I understand there are a couple of substitutions at the desk. Could we take those up at the current time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 4, Senator Seward moves to discharge, from the Committee on Insurance, Assembly Bill Number 9159 and substitute it for the identical Senate Bill Number 5494, Third Reading Calendar 17.

And on page 12, Senator Seward moves to discharge, from the Committee on Insurance, Assembly Bill Number 9289 and substitute it for the identical Senate Bill Number 5586, Third Reading Calendar 157.

ACTING PRESIDENT MORAHAN: The substitutions are ordered.

Senator Kuhl.

SENATOR KUHL: May we now progress to the controversial reading of the calendar, Mr. President.

ACTING PRESIDENT MORAHAN: The Secretary will read.

SENATOR KUHL: Thank you.

THE SECRETARY: Calendar Number 76, by Senator Rath, Senate Print 2617A, an act to amend the Penal Law, in relation to assaults committed in the presence of certain children.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MORAHAN: We'll lay that bill aside temporarily. Is she here?

SENATOR RATH: I'm here.

ACTING PRESIDENT MORAHAN: Oh, I'm sorry. Sorry. New seats.

Senator Rath, an explanation has been requested.

SENATOR RATH: Certainly, Mr. President.

This bill amends the Penal Law to include within the Class D felony of assault in the second degree commission of assault in

the third degree in the presence of certain minor children and assault in the third degree when the defendant has previously been convicted of assaulting the same victim.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, through you, I would like to ask Senator Rath a question.

ACTING PRESIDENT MORAHAN: Senator Rath, will you yield?

SENATOR RATH: Surely.

SENATOR MONTGOMERY: Senator Rath, I believe that we had a discussion about this bill and its intent and outcome. And it seems to me that what you are -- what happens under this legislation is that any conflict that occurs in a home, whatever the level of assault is, this automatically raises it.

And the assumption that I make is that this would happen in every case, pretty much, because there is usually going to be a young person in the household other than the adults.

So in other words, the penalty for

essentially a domestic dispute or dispute that happens in a household becomes automatically, pretty much, covered under your legislation. It doesn't really make any distinctions. And because of the fact that there are -- there's some young people in the house.

SENATOR RATH: Yes, that's what this was addressing.

There was some preeminent studies done by the Journal of Consulting Psychology, and it showed a dramatic conclusion that children who were in families that had violent behavior, they scored two times higher on the measures for behavior problems and competency problems.

And so when there's domestic violence that happens, if it's two adults, that's one thing. But if there are children present, you've got a young life that's damaged and seriously damaged.

And there was a case where the New York State Court of Appeals held unanimously, finding that this was an appropriate kind of conclusion.

SENATOR MONTGOMERY: All right.

Thank you, Senator.

Mr. President, I certainly agree and I've known of research that has been done indicating that violence in the family is certainly cyclical. I mean, it goes from generation to generation. And we would like to be able to intervene and break that cycle.

But I believe that this legislation goes far, covers instances that may not really be appropriately deemed a Class D felony. It's quite a severe step up from an A misdemeanor to a D felony. And I think that we don't want to essentially throw a blanket so that it covers far too many instances, many of them not really fitting into this.

And we would not intend for certain situations to be covered by this. And if this legislation were to pass, surely enough we would have many more people ending up being charged with a felony that could be extremely detrimental to the possibility of that family surviving intact, even with intervention.

So I am going to continue to oppose this bill and hope that we can work together with Senator Rath in figuring out some ways to

address the issue of violence in the family. I'm voting no.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator. Does any other member wish to be heard on the bill?

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I'm going to vote in favor of this bill. I voted in favor of it in the past. I would suggest, however, to Senator Rath that your conclusion about the family and the effect of domestic violence on the family is, I think, well documented, but this bill in my opinion still doesn't go far enough, because the language in it is too restrictive.

What it says is that the child who observes the act of violence is the child, stepchild, or sibling of the victim. What happens if the child is the child of the perpetrator? What happens if it's a relationship, as oftentimes exists, where the mother and father are not married, the child is the child of the father but not the child

of the mother? It seems to me that in this instance, this bill does not apply.

In addition, it doesn't address the question of what happens, as oftentimes happens in these nuclear families, where the child in the house is not related to either one of the parents -- could be a nephew, could be a cousin, could be a child from a neighbor. But yet because of the restrictive language in this bill, it only applies when the child is the child, stepchild, or sibling of the victim or resides in the same household as the victim.

As we all know, in the nuclear family you can have children that reside for a period of time but don't permanently reside there; you may have children who are visiting for a period of time.

If your goal is to increase the penalty because of the understandable and justifiable additional damage that is foisted on the child who observes this violence, you ought to make the statute more encompassing so that it says anytime there's violence in the presence of anyone under the age of 18 years,

we're going to acknowledge that that has a serious social impact on the child, irrespective of their relationship to the perpetrator, the victim, or the happening, the chance happening that they're in the house purely as a visitor.

That form of domestic violence, horrifying as it can be to young children, shouldn't -- we shouldn't make the penalty contingent upon a blood relationship between the victim or simply the fact that they have to reside in the household.

Senator Rath, I think that your philosophical orientation is correct, your sociological evidence is very supportive. I think your statute doesn't go as far as your evidence justifies we should go.

I'll vote in favor of it, but I believe it should be expanded to make any violence in the presence of children in a home a more severe crime. When we get that bill, I'll vote for it with greater enthusiasm than I'm voting for this one.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on the bill?

Hearing none, read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 2. Senators Hassell-Thompson and Montgomery recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, could we announce that there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

SENATOR KUHL: And if we can continue in regular order.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 116, by Senator Alesi, Senate Print 482, an act to amend the General Obligations Law, in relation to liability.

SENATOR DOLLINGER: Explanation.

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

SENATOR ALESI: Thank you, Mr. President.

This bill would absolve from liability any telephone company or any other provider of similar service for the state sponsored or municipally sponsored "Call to Protect" program.

ACTING PRESIDENT MORAHAN: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will the sponsor yield just to one quick question?

ACTING PRESIDENT MORAHAN: Senator Alesi, will you yield to one quick question?

SENATOR ALESI: One quick question, yes, Mr. President.

SENATOR DOLLINGER: Through you, Mr. President, is this the same bill that we debated last year with the limitation of liability clause still in it?

SENATOR ALESI: This is the same bill that we debated that last year.

SENATOR DOLLINGER: Thank you, Mr. President.

I'll vote in the negative.

ACTING PRESIDENT MORAHAN: Thank you.

Any other Senator wish to be heard on the bill?

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.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 116 are

Senators Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, Mr. Kruger, Lachman, Onorato, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, and Senator Stavisky. Also Senator Gentile. Ayes, 44. Nays, 17.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 127, by Senator Balboni, Senate Print 854, an act to amend the Penal Law, in relation to criminal street gang activity on school grounds.

SENATOR MONTGOMERY: Explanation.

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

SENATOR BALBONI: By whom, Mr. President?

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR BALBONI: Senator Velmanette Montgomery? Excellent. Thank you.

This is a bill that has had a bit of an evolution. This bill initially was a

part of a bill that we passed several years ago that dealt with the gang violence issue from a broader perspective, one that encompassed the increasing of fees should a crime be perpetrated in furtherance of a gang initiative.

This bill has been culled from that measure and specifically targets the aspect of gang violence referring to gang recruitment or I should say relating to gang recruitment on school grounds.

This is an idea that came to me from Chief Russo of the Hempstead Village Police Department, where they had video surveillance tape of gang members going onto school grounds in Hempstead and intimidating students while they were about to go to class.

If anybody reads the newspaper articles, particularly from Long Island, you will see that there has been an alarming increase, not only in the number of gangs that are being formed, but in gang activities.

Initially this bill was developed as a result of a shooting that occurred in Mineola, at that time my home community.

Since then there have been a number of other gang incidents that highlight the violent nature of these gangs, one just two weekends ago at the Vanderbilt, which is an establishment in Plainview, where there was two biker gangs that got together. And the amount of weapons that were taken off of these members was unbelievable.

The bill essentially creates the crime of gang recruitment on school grounds. It amends Section 460.10 of the Penal Law. And it defines "criminal street gang" and then sets a first-degree and second-degree for criminal gang recruitment. Then it also sets up as a condition for release and parole that the individual be prohibited from associating with a gang.

This bill is complex because the nature of gang activity is complex. Traditional law enforcement is used to setting up the investigation based upon an activity, an action, a crime, and then trying to look for perpetrators. Well, gang violence is more complex than that. Gangs have what people know as colors, the clothing that they wear.

They have certain hand signals that identify them as a member of the gangs. And it's these characteristics that this bill addresses initially.

With that, I will yield to any further questions by Senator Velmanette Montgomery.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Senator Balboni has graciously agreed to yield to a question, through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Balboni, do you yield?

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

ACTING PRESIDENT MORAHAN: He yields to one question, yes.

SENATOR MONTGOMERY: Thank you.

Senator Balboni, I notice in your legislation that for the first time that a person is found to be engaged in criminal activity under your legislation, they will be charged with a Class D felony. Then the

second time they will be charged with a Class C felony, and the third time with a Class B felony. So you sort of -- you reduce the penalty as the number of times they are charged.

SENATOR BALBONI: It increases with each crime that's committed.

SENATOR MONTGOMERY: Okay. All right. And the --

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

SENATOR MONTGOMERY: Yes, Mr. President, can I --

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

SENATOR MONTGOMERY: So on the first charge, with a Class D felony, any activity within ten years, is that it --

SENATOR BALBONI: Mm-hmm.

SENATOR MONTGOMERY: -- that they will still be charged under this legislation with a Class C felony as a repeat person.

Is there any age limitation? I didn't see any. Maybe I just didn't read it, any age limitation.

SENATOR BALBONI: No, none in this provision of law, should this become law. But of course it follows the Penal Law structure as regards to juvenile offenders.

SENATOR MONTGOMERY: Yes. So, Mr. President, if I may ask one last question.

ACTING PRESIDENT MORAHAN: Senator Balboni, do you yield?

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

SENATOR MONTGOMERY: So, Senator Balboni, any juvenile charged under your legislation could be treated as an adult offender, essentially, of 16 and older?

SENATOR BALBONI: Mr. President, through you. Senator Montgomery, as you know, the discretion to charge is left in the hands of the district attorney.

SENATOR MONTGOMERY: Yes.

SENATOR BALBONI: And they will make a determination as to whether or not an individual should be treated as a juvenile or an adult. And I can't comment as to what circumstances would result in that determination by the district attorney.

SENATOR MONTGOMERY: Okay. Yes, I understand. Thank you, Senator Balboni.

ACTING PRESIDENT MORAHAN: Thank you, Senator Balboni.

SENATOR MONTGOMERY: Mr. President, just briefly.

ACTING PRESIDENT MORAHAN: On the bill?

SENATOR MONTGOMERY: Yes, on the bill.

I'm going to continue to oppose this legislation as well.

And I think the troublesome aspect of this legislation, as well as Senator Rath's bill and others that we've had that go in this vein, is that we are using the penal system, we're using punishment as an answer to all of the behaviors, many of them essentially juvenile indiscretions, juvenile behaviors, rather than trying to look for ways of early intervention, ways of deterring this kind of behavior and addressing it with a more affirmative and positive approach, especially as it relates to young people.

So we are filling our jails and

prisons with people who, if not for the fact that we have a society that is built around solutions related to the penal system, would have other ways of addressing and dealing with their issues.

So while certainly I understand the difficulty that we have with the gang activity and with gangs and recruitment and all of that, I believe, as I say to people that -- you know, who talk to me, including police officers in my district, who have become convinced that until we begin to deal with prevention and positive intervention we will not address affirmatively the problems that we have with this kind of activity.

So I'm going to oppose it on the basis of, you know, philosophically I just think it's the wrong way to go.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Does any other Senator wish to be heard on the bill?

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 6. This

act shall take effect on the first day of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Balboni, to explain his vote.

SENATOR BALBONI: Mr. President, this bill is designed to cut off the lifeblood of gangs. But the comments of my colleague Senator Montgomery are well taken. That is why I have supported programs in my district such as the PAL boxing league and am trying to work with the Big Brothers and Big Sisters, which has a wonderful mentoring program that can serve as an early intervention for this type of gang violence.

And I'm also working with a number of other groups from a Latino perspective to see if we couldn't get into groups where perhaps language is a barrier.

So we are not only adopting the approach of trying to put these people behind bars, we're trying to get them before they get into the gangs also.

I vote in the affirmative, Mr. President. Thank you.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 127 are Senators Duane and Montgomery. Ayes, 59. Nays, 2.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. My understanding is that Senator Hevesi would like to be recognized at this time to address his vote on Calendar Number 116. So could you recognize Senator Hevesi for purposes of changing a vote.

ACTING PRESIDENT MORAHAN: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. I rise to request unanimous consent to be recorded in the negative on Calendar 116, Senate Print 482.

ACTING PRESIDENT MORAHAN: Without objection.

SENATOR KUHL: No objection.

ACTING PRESIDENT MORAHAN: Senator DeFrancisco.

SENATOR DeFRANCISCO: I request unanimous consent to vote in the negative on Calendar Number 116, Senate Print 482.

ACTING PRESIDENT MORAHAN: Without objection.

SENATOR KUHL: No objection.

ACTING PRESIDENT MORAHAN: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could you now call up Calendar Number 150, out of order, please.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 150, by Senator Trunzo, Senate Print 5271, an act to amend the Vehicle and Traffic Law, in relation to school zone speed limits.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 8. This act shall take effect in one year.

SENATOR PATERSON: Explanation,

please.

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

SENATOR DOLLINGER: Explanation, please.

SENATOR TRUNZO: Thank you, Mr. President.

This bill would provide for school districts a greater flexibility in establishing the hours that school speed zones are in effect and tailoring the boundaries of the school speed zones to a school's needs.

Under the current law, speed limits are to be effective only on school days between the hours of 7:00 a.m. and 6:00 p.m. The law fails to recognize needs for slower speed limits during the evening hours or after-hour school activities.

And this piece of legislation would take care of that item and make it more flexible for school districts and make the determination as to when those lights should be blinking.

ACTING PRESIDENT MORAHAN:

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Trunzo yield to a question, please?

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

SENATOR TRUNZO: Yes.

SENATOR DOLLINGER: Senator, I think this is a very good bill. I just want to make sure I understand how it works and who pays for it.

Who pays for the flashing lights that go on the beacons that are in the school districts, the signs that demarcate a school zone?

SENATOR TRUNZO: I believe the school district does.

SENATOR DOLLINGER: Through you, Mr. President.

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

SENATOR TRUNZO: Yes.

SENATOR DOLLINGER: Do you know how much that's going to cost? And is there a fiscal note attached to this bill?

SENATOR TRUNZO: Excuse me?

SENATOR DOLLINGER: Do you know how much that's going to cost to put in the flashing yellow lights near schools in New York State's 20,000 public schools?

SENATOR TRUNZO: Senator, they don't have to put them in. It's up to the school district to decide to put those flashing lights in between the hours of 7:00 a.m. and 6:00 p.m. or the other hours.

Now, there is a cost, I guess with operation, that's in the bill. Where the heck is it? The cost of supplemental signs are estimated at $25 apiece. The cost would be borne by the municipality in which the school is located or by the state, depending on who's responsible for maintaining the highways. The cost to install and maintain a pair of flashing beacons, one at either end of the speed zone, is estimated between $5,000 and $10,000 per pair.

That's in the legislation.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Trunzo will continue to yield.

ACTING PRESIDENT MORAHAN:

Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DOLLINGER: Senator, is there any money in the current state budget for the installation of any of these flashing lights?

SENATOR TRUNZO: Not to my knowledge.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Trunzo will continue to yield.

ACTING PRESIDENT MORAHAN:

Senator, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: He does.

SENATOR DOLLINGER: Is there any money in the proposed Governor's budget to put in these flashing beacons?

SENATOR TRUNZO: Not specifically, no.

SENATOR DOLLINGER: Okay. Just

on the bill briefly, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Trunzo.

On the bill.

SENATOR DOLLINGER: I think this is an excellent bill. As I understand this bill, it says that for those school districts that have large volumes of off-peak-hours school traffic -- that is, you know, dance programs at night, basketball games -- where the same amount of pedestrian traffic is using our streets, we should be able to slow down the speed limit to the speed limit that's in effect when the school is in session.

I think that's a wonderful idea. I think it's a great idea. I think the fact that you put flashing lights there -- because as Senator Trunzo, I'm sure, knows, this is happening in the evening hours that the school districts are using -- the buildings are being used like this.

I would just suggest, Mr. President, however, that while it's a great bill, if it costs $5,000 to $10,000 per school to put these up at both ends like bookends,

Senator Trunzo, this is a tremendous idea with no money behind it.

And I would suggest, Senator, if we're ever going to make this bill a reality, we have to come up with a way to tuck a couple of million dollars more in the Transportation Department's coffers to both provide money so that it's done on state highways and, quite frankly, and perhaps even more importantly, if we're ever going to implement this bill in municipalities, my suggestion is, Senator, almost no municipality will spend $10,000 to put the flashing lights in. It's just not going to happen.

And I would suggest that to make this bill a reality, to take this very good idea and make it a very real law, it needs money to support it. I would vote in favor of amending the Governor's budget to put two or three million dollars in to make this thing work. It doesn't seem to me that the money is there currently, and this very good idea may be left waiting desperately for a decade or more before there's enough funds to pay for it.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

SENATOR TRUNZO: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Trunzo.

SENATOR TRUNZO: Senator Dollinger, many of the school districts already have these lights, beacon lights, at their current -- down on Long Island they do. I don't know about the rest of the state. But you see them all the time. Sometimes there aren't -- whether anything's going on or not, even after hours.

And this would at least give the schools the responsibility to go out and turn those lights off when they're not necessary, as well as letting them put it on when they have to put them on, but they have to keep them on between 7:00 a.m. and 6:00 p.m., because that's when the traffic is.

But as you said before, the after-school activities that require many students to travel or people to travel by the schools themselves, the schools then have the authority to put those flashing lights on to

control traffic and slow it down.

But from what I can understand, most schools already have those beacon lights up. I don't know about Rochester, but I assume they have them there too.

So that's why there's been no money discussed in this particular bill at this time, other than the history that -- the School Boards Association, by the way, has written a letter in support of the whole concept. And Assemblyman Gantt is carrying the bill in the Assembly.

So I just wanted to point that out, that they feel this is a very important, as you had stated as well, a very important piece of legislation.

ACTING PRESIDENT MORAHAN: Thank you, Senator Trunzo.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Senator Trunzo, I'm going to support this bill for the reasons I articulated earlier. But I would suggest that while the State School Boards Association

likes this bill, if you pass this bill with $5 million attached to it so that they can pay for the signs at state expense, they will love this bill.

And I would just suggest, in order to make it a reality quicker, sooner rather than later and waiting for them to come along, we should put a financial incentive in for them doing this. Because as your bill properly points out, as you've articulated, this is clearly the right thing to do to protect people who are assuming that when they leave a school after hours, parents and children are walking across streets, that the slower speed limits are in effect because they assume it's a school zone, they assume that drivers are slowing down.

I just suggest, Senator, this is one of those bills which is a good idea. With the right money, it will be a great idea.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on the bill?

Senator Lachman.

SENATOR LACHMAN: Mr. Chairman, through you. Would the distinguished Senator

from Suffolk County yield for a question?

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you yield?

SENATOR TRUNZO: Yes, sir.

SENATOR LACHMAN: Senator, will this bill be applicable only to school districts, or will it also include school zones?

SENATOR TRUNZO: It's within school zones, which the school districts then could establish the zones as well.

SENATOR LACHMAN: Will it include school zones -- through you, Mr. Chairman.

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

SENATOR TRUNZO: Yes.

SENATOR LACHMAN: Will it include school zones in the nonpublic school community as well as the public school community?

SENATOR TRUNZO: I don't think it affects the private schools at this time. I mean, other than public.

SENATOR LACHMAN: You don't think it affects the public or the nonpublic?

SENATOR TRUNZO: If they have

these lights currently, it would affect them, yes.

SENATOR LACHMAN: Okay, that's -- on the bill.

ACTING PRESIDENT MORAHAN: Senator Lachman, on the bill.

SENATOR LACHMAN: Senator Trunzo, they will love you in Brooklyn as in Suffolk County if this is applicable to school zones as well as school districts. Because in my district in Brooklyn we have numerous nonpublic schools, both yeshivas and Catholic parochial schools, that have different hours for their students than the public schools.

Also, in the public school community, especially in the alternative high school area, you have different hours as well.

And the staggering that this will bring to the fore will be helpful to the public school community, the yeshiva community, and to the Catholic parochial school community.

So it's as good as cherry pie. And I do like cherry pie, so I strongly support this bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator Lachman.

Any other Senator wish to be heard on the bill?

Hearing none, the debate is closed.

The Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect in one year.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Krueger for the purposes of changing a vote, I believe.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR KRUEGER: Thank you.

Mr. President, I request unanimous consent to be recorded in the negative on Calendar 116, Senate Bill 482.

ACTING PRESIDENT MORAHAN:

Without objection.

SENATOR SKELOS: Mr. President, please recognize Senator Andrews.

ACTING PRESIDENT MORAHAN:

Senator Andrews.

SENATOR ANDREWS: Yes, Mr. President. I request unanimous consent to be recorded in the negative on the following: On Calendar 76, Bill 2617A; Calendar 116, Bill 482; and Calendar 127, Bill 854.

ACTING PRESIDENT MORAHAN:

Without objection, so ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 132.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 132, by Senator Skelos, Senate Print 5640, an act to amend the Criminal Procedure Law, in relation to eliminating the statute of limitations.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN:

Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Thank you, Mr. President.

This legislation would remove the current five-year statute of limitations applicable to Class B violent felony offenses. It adds a new crime of aggravated perjury, provides convicted offenders, regardless of the date of conviction, with an opportunity to request DNA testing of evidence on a demonstration that the DNA test requested could not have been performed at the time of the original trial.

And there are many other technical aspects to the bill.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Skelos would yield for a question.

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The

Senator yields.

SENATOR PATERSON: Senator, let's start with the issue of the statute of limitations. Now, I think it's clear to all of us that we really wish that there was no statute of limitations for any type of crime, because if we could identify the actual perpetrator, we would like to bring them before justice.

The reason we have a statute of limitations relates really more to the availability of witnesses, the seasonable nature of evidence, and a number of other things that just make it almost impossible or improbable that we can reach conviction. And it puts a great stress on our prosecuting agencies if they're forced into these types of situations.

Now, the classifications that you want to widen this to seem pretty straightforward, because they are very serious crimes. They're Class B felonies. My question is --

SENATOR SKELOS: And I believe, Senator Paterson, if I could interrupt, that

several years ago when I had a different version of the bill, you indicated that you perhaps could be supportive of it if we limited it to violent felony offenses.

And we followed your suggestion, even though we felt that the other bill was appropriate. And we felt that this would give us a better opportunity to at least start and pass it in the other house.

So we listened to you, Senator Paterson.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Mr. President, being aware, as I am, that Senator Skelos and his staff and all those who worked on this bill listened to me, in this chamber, for all the times I've advocated for things and was never listened to, for me this moment is kind of like nirvana.

(Laughter.)

SENATOR SKELOS: I not only listened to you, I heard you.

ACTING PRESIDENT MORAHAN: Senator Skelos, I don't think he was asking

you to yield.

Is this on the bill, Senator Paterson?

SENATOR PATERSON: Yes. I'd like to know if the Senator would yield for another question.

ACTING PRESIDENT MORAHAN: Senator, will you yield?

SENATOR SKELOS: Yes, I do.

SENATOR PATERSON: Senator, the issue of DNA evidence, here we have no particular classification for the offense for which we would be requesting DNA evidence. It could be any type of conviction.

Can you explain why that would be the case on some of the lesser offenses? Because that's what's creating a little misunderstanding on our side.

SENATOR SKELOS: I think, you know, DNA is really the fingerprint of the 21st century. And in my opinion, people are fingerprinted for numerous-offense misdemeanors, low misdemeanors. And we think it's totally appropriate, especially as DNA science has advanced, that this type of

information should be in a DNA database.

SENATOR PATERSON: Mr. President, I have a myriad of other questions. But based on the way things have worked out, I think I'm just going to stop while I'm ahead. I was asked to sign onto a bill last week; my advice was taken this week. I may not even come back next week.

(Laughter.)

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President. I wonder if Senator Skelos would yield for a question for clarification.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Mr. President, I just note in the memorandum of support here that one of the aspects of the bill expands the definition of a designated offender to include all persons

sentenced or adjudicated a youth offender for any misdemeanor or felony defined in the Penal Law, and makes it a Class E felony to fail to provide such a sample.

So I'm just wondering if Senator Skelos intends to include youthful offenders who were sentenced or adjudicated as a misdemeanor, to force them to give their DNA samples under this legislation, and if they don't, they face an E felony conviction.

SENATOR SKELOS: The answer is if it's in the memo, yes.

SENATOR MONTGOMERY: If it's in the memo, it's the truth.

SENATOR SKELOS: Yes.

SENATOR MONTGOMERY: All right, thank you, Senator.

ACTING PRESIDENT MORAHAN: Thank you, Senator Montgomery.

Any other Senator wish to be heard on the bill?

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MORAHAN: On the

bill, Senator.

SENATOR HASSELL-THOMPSON: Last year when we debated this bill, I had some very serious concerns about my voting against the bill.

And I still do today, particularly because one of the cases that's cited in case law in this particular memo talks about a case that occurred in the city of Mount Vernon. And I happened to be the city council president at the time that this case was solved with the use of DNA. And if there had been a statute of limitations, this was a 21-year-old crime and we probably would not have been able to have solved it.

The problem that I continue to have, however, with this is the fact of youthful offenders and the same conditions -- if they refuse to be tested, that an E felony will then be added. And it makes me very concerned, because if the original crime was only a misdemeanor, for it to become an E felony because to refuse almost appears as though there's an assumption of guilt.

And I think that while the overall

intent -- and for every family who we are able to close cases, as we did the case in Mount Vernon, I am for supporting that kind of legislative action. But I am not anxious to have us continue to expand not only the law but expand the net that catches in it smaller fish that have absolutely no right to be included in such a legislative act.

Therefore, Mr. President, I cannot support this bill.

ACTING PRESIDENT MORAHAN: The Secretary will read the last section.

THE SECRETARY: Section 15. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Mr. President.

I find it very troubling that this bill eliminates the statute of limitations for Class B violent felonies. Over time, recollections of what happened become fuzzy.

Oftentimes, important evidence is lost or misplaced. I'm just -- let me continue and then I'll have another comment. Eyewitnesses may not be available. Other witnesses on the case may not be available. They may have died, they may have moved and it's hard to track them down.

So to eliminate the statute of limitations, there's a reason that our law contains statutes of limitations, and that is because -- exactly for the reason that the closer an indictment or a trial is to the actual committing of the crime, most likely the more accurate will be the testimony and the evidence at the trial. And our foreparents realized that, and that's why statutes of limitations were put into place.

In this case, even though the bill mentions DNA, what's really happening with this is the DNA is taken from people after they're convicted. The DNA has absolutely nothing to do with eliminating the statute of limitations.

This bill does not say that the statute of limitations will be eliminated only

in cases where we have DNA. If that were the case, I would probably vote for this bill.

But I think it's -- it's a Trojan horse that, again, the bill eliminates the statute of limitations but someone who is liable to go to trial for a crime they didn't commit would not have access to DNA, because most likely it doesn't exist. And even if it does exist, this doesn't call for its use. The DNA provision in here just says, like we're doing with everybody who's convicted of a crime, that they are forced to give a DNA sample.

So I don't want anyone to be confused that the DNA has anything to do with the elimination of the statute of limitations. Eliminating the statute of limitations is something that people should vote on. If they agree with eliminating the statute of limitations without DNA, then they should go ahead and vote for it.

But if they share the concerns that memories are fuzzy and evidence gets lost, which it often does, and people move or die, cops retire, then they should vote against it.

Because there's a reason we have a statute of limitations.

I'm also -- I have to mention this, because we're often getting chastised for being late to session, that here we are, the vote hasn't even been completed on the bill, and yet the sponsor is not even here to hear people's reasons for voting for and against it.

ACTING PRESIDENT MORAHAN: Senator, you've exceeded the two minutes allowed to --

SENATOR DUANE: No, I just wanted to make that point. And I want to make it clear that I'm also voting no.

Thank you.

ACTING PRESIDENT MORAHAN: Read the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 132 are Senators Andrews, Duane, Hassell-Thompson, and Montgomery. Ayes, 57. Nays, 4.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Kuhl, that completes the

reading of the controversial calendar.

SENATOR KUHL: Thank you, Mr. President. Outstanding job.

Could we return to the reports of standing committees. I believe that there are a couple of reports of committees at the desk. I ask that they be read.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Senator Farley, from the Committee on Banks, reports the following bills:

Senate Print 849, by Senator Balboni, an act to amend the Banking Law;

2839, by Senator Farley, an act to amend the Banking Law;

2964, by Senator Farley, an act to amend the Banking Law;

And Senate Print 6294, by Senator Farley, an act to amend Chapter 591 of the Laws of 2001.

Senator Leibell, from the Committee on Civil Service and Pensions, reports:

Senate Print 2137, by Senator Spano, an act to amend the Civil Service Law;

3251, by Senator Leibell, an act to amend the Education Law;

5259A, by Senator Leibell, an act to amend the Civil Service Law;

6243, by Senator Leibell, an act authorizing;

And Senate Print 6269, by Senator LaValle, an act to amend the Retirement and Social Security Law.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 743, by Senator Johnson, an act to amend the Environmental Conservation Law;

1994, by Senator Farley, an act to amend the Environmental Conservation Law;

5399, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 5574A, by Senator Stafford, an act to amend the Environmental Conservation Law.

Senator DeFrancisco, from the Committee on Tourism, Recreation and Sports Development, reports:

Senate Print 4754, by Senator Marcellino, an act to amend the Navigation Law;

And Senate Print 5094B, by Senator Libous, an act to amend Chapter 912 of the Laws of 1920.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN: Without objection, all bills are reported direct to third reading.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I would be remiss if I didn't correct something. The colloquialism that I was grasping for was "red herring," not "Trojan horse."

ACTING PRESIDENT MORAHAN: Thank you very much.

SENATOR DUANE: You're welcome, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Kuhl.

SENATOR KUHL: Mr. President, is there some housekeeping at the desk?

ACTING PRESIDENT MORAHAN: Yes, there is.

SENATOR KUHL: Can we return to the order of motions and resolutions and take care of that, then.

ACTING PRESIDENT MORAHAN: Yes.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President. On page 17 I offer the following amendments to Calendar 211, Senate Print Number 2405, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Kuhl.

SENATOR KUHL: Is there any further housekeeping at the desk?

ACTING PRESIDENT MORAHAN: No.

SENATOR KUHL: There being no further business, then, Mr. President, I move that the Senate stand adjourned until tomorrow, March 6th, at 11:00. Note the time, 11:00 a.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Wednesday, March 6th, at 11:00 a.m.

(Whereupon, at 4:37 p.m., the Senate adjourned.)