NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 20, 2002

11:20 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

I ask everyone present to rise and repeat with me the Pledge of Allegiance. And the Pledge will be done by Cadet Andrew T. Blickhahn.

CADET BLICKHAHN: Please join me in the Pledge.

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

ACTING PRESIDENT McGEE: The invocation will be given today by Father Edson J. Wood, O.S.A., United States Corps of Cadets Chaplain, Most Holy Trinity Chapel, from West Point, New York.

Father.

CHAPLAIN WOOD: Thank you.

Would you bow with me in a moment of prayer as we enter into the silence of the heart.

Almighty God, we pray You guide this great state and those who lead it, defend always our liberties, preserve our unity, save us from violence and discord, from pride and

from arrogance. In the time of our prosperity, temper our self-confidence with thankfulness. And in the day of trouble, let our trust in You never fail.

Look, too, with Your generous bounty on West Point, which is to be honored here today. Let her remember that her mission of duty, honor, country is not a way of looking only at certain things, it is a certain way of looking at everything.

We pray You make all who are associated with her into men and women for whom duty, honor, and country becomes and remains a way of life.

Let this West Point Day be for all of us a happy reminder and a serious challenge, a reminder of past glories and a challenge to keep our motives pure, our goals high, and our vision clear.

Our prayer this day comes from hearts that are always open to You, Eternal God. And we ask these things in Your name, which is mighty.

May we all say amen.

ACTING PRESIDENT McGEE: Reading

of the Journal.

THE SECRETARY: In Senate, Tuesday, March 19, the Senate met pursuant to adjournment. The Journal of Monday, March 18, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: 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 Hannon, from the Committee on Health, reports the following bill:

Senate Print 4359A, by Senator Hannon, an act to amend the Public Health Law.

Senator LaValle, from the Committee on Higher Education, reports:

Senate Print 1564A, by Senator Trunzo, an act to amend the Education Law;

And Senate Print 3292A, by Senator LaValle, an act to amend the Education Law.

And Senator Volker, from the Committee on Codes, reports:

Senate Print 137, by Senator Volker, an act to amend the Penal Law;

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

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

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

392B, by Senator Marcellino, an act to amend the Penal Law;

861, by Senator Balboni, an act to amend the Penal Law;

1341, by Senator Saland, an act to amend the Criminal Procedure Law;

2271, by Senator Bonacic, an act to amend the Criminal Procedure Law;

2574, by Senator Padavan, an act to amend the Penal Law;

3558, by Senator Trunzo, an act to amend the Penal Law;

3583, by Senator Volker, an act to amend the Penal Law;

3794, by Senator Volker, an act to

amend the Banking Law and others;

3936, by Senator Nozzolio, an act to amend the Penal Law;

4234, by Senator Saland, an act to amend the Penal Law;

4235, by Senator Saland, an act to amend the Penal Law;

4283, by Senator Volker, an act to amend the Criminal Procedure Law;

5388, by Senator Balboni, an act to amend the Penal Law;

5425, by Senator Velella, an act to amend the Criminal Procedure Law;

5426, by Senator Volker, an act to enact the Criminal Procedure Law Reform Act of 2001;

5595, by Senator Morahan, an act to amend the Penal Law;

5596, by Senator Morahan, an act to amend the Penal Law;

And Senate Print 5656, by Senator Skelos, an act to amend Chapter 549 of the Laws of 2000.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Without objection, all bills are ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. On behalf of Senator Maziarz, please place a sponsor's star on Calendar Number 394.

ACTING PRESIDENT McGEE: So ordered.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And it's Senate Number 1629A.

ACTING PRESIDENT McGEE: So ordered.

Senator Marcellino.

SENATOR MARCELLINO: And, Madam

President, I offer the following amendments to Calendar Number 417, Senate Print Number 386, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Yes, Madam President, there's a privileged resolution at the desk by Senator Fuschillo. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read Resolution 4436.

THE SECRETARY: By Senator Fuschillo, Legislative Resolution Number 4436, commending Frank A. Nocerino upon the occasion of his installation as president of the Association of Fire Districts of the State of New York.

ACTING PRESIDENT McGEE: On the resolution, all in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is carried.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Hoffmann. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Hoffmann, Legislative Resolution Number 4501, memorializing Governor George E. Pataki to proclaim Wednesday, March 20, 2002, as Agriculture Day in New York State, in conjunction with National Agriculture Day.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Senator Bruno will be here momentarily.

So we just ask if we could start the noncontroversial calendar, and then we will move on to welcoming all of our cadets today.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 140, by Senator Skelos, Senate Print 385, an act to amend the General Business Law, in relation to the sale of laser pointing devices.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of September.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 178, by Senator Morahan, Senate Print 6036B, an act authorizing the increase in the number of town justices.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 198, by Senator Volker, Senate Print 6214, an act to amend the Penal Law, in relation to making murder in the first degree provisions -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

Senator Bruno.

SENATOR BRUNO: Madam President, can we temporarily lay aside the calendar.

And I believe that there is a privileged resolution at the desk by Senator Larkin. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read the resolution by Senator Larkin, 4502, in its entirety.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 4502, memorializing Governor George E. Pataki to proclaim March 20, 2002, as "West Point Day" in New York State.

"WHEREAS, This Legislative Body is justly proud to celebrate the 200th Anniversary of the establishment of the United States Military Academy at West Point and to call upon Governor George E. Pataki to proclaim March 20, 2002, as 'West Point Day' in the State of New York; and

"WHEREAS, By an act of Congress, on

March 16, 1802, the United States Military Academy was established within the borders of New York State, on the banks of the Hudson River; and

"WHEREAS, The Academy and its graduates are an integral part of the proud history of this state and nation; and

"WHEREAS, The leadership and sacrifices of the members of the Long Gray Line have helped this country withstand countless threats to our cherished democratic way of life; and

"WHEREAS, the alumni have excelled not only on the battlefield but in many fields of endeavors; and

"WHEREAS, The Academy continues to provide our country with able and dedicated future leaders; and

"WHEREAS, Its scenic campus is a mecca each year for thousands of visitors from across our state, continent, and other countries; and

"WHEREAS, The United States Military Academy is in the forefront of our state's outstanding institutions of higher

learning; and

"WHEREAS, Forty-seven years ago, the late James T. McNamara, then a member of the New York State Assembly, and a member of the Academy's class of 1939, was the author of the State Legislature's first 'West Point Day' resolution; and

"WHEREAS, For decades our nation has enjoyed the legacy of freedom and the United States Military Academy at West Point has played a vitally significant role in the maintenance of peace and freedom; and

"WHEREAS, The members of this Legislative Body are equally proud to commemorate this event, marking March 20, 2002, as 'West Point Day' in New York State; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to celebrate the 200th anniversary of the establishment of the United States Military Academy at West Point, and to memorialize Governor George E. Pataki to proclaim March 20, 2002, as 'West Point Day' in New York State; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Governor George E. Pataki."

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

It certainly is an honor and a privilege to welcome General Lennox, his wife, Anne, and the cadets, led by First Captain Andrew Blickhahn, from Colorado, and all of you from all over the country to our chamber.

You've heard through the resolution today is West Point Day. You are very, very fortunate that you have one of our most senior and distinguished senators, Bill Larkin, representing West Point, and you are in his district. And he is fortunate, as a colonel, former colonel in the military, to be able to represent all of you.

You know, your being here in this time, I think it is so important for all of us to just pause and just to reflect on 200 years ago, with a vision that people had at that time, on March 16, 1802, two hundred years

ago, that we should have a facility where the best of young people would be brought and prepared to meet whatever challenges there might be in the world out there for America.

And here we are two hundred years later, recognizing that these cadets and all of your peers someday, and some of you not too soon, will be in various parts of the world. Doing what? Protecting your fellow Americans, looking after their health, their welfare, jeopardizing your lives. How many cadets in the last few years who graduated have already lost their lives? Several?

So it's great that we pause, that we recognize, and that you fully appreciate that you are the best that America has in its young people, with the staff, with the officers, with the general, who joins as the superintendent in June, who himself has distinguished himself in so many ways - academically, with a Ph.D. from Princeton in literature, and having attended Harvard in the military fellowship courses, and having distinguished himself among his peers in the military to reach one of the pinnacles of what

anyone would consider to be success in your life.

And I am a little bit in awe, when I'm looking at so many officers and potential officers, as a first sergeant in an infantry company in Korea. And Bill keeps reminding me that he was a colonel, and there are some other colonels, and that we have to be as respectful as of course we want to be.

But I am going to defer to Colonel and Senator Larkin, but really want to just wish you the warmest welcome, on behalf of all of our colleagues, that we can wish you, and wish you all the best in all the things that you represent, because you are the best, and thank you for all the good things that you do now and that you will do with your lives as you go forward just carrying the banner of America throughout the world and protecting us and our freedoms.

God bless you all.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Larkin.

SENATOR LARKIN: Thank you, Madam

President.

It is a real honor and a privilege to stand here before you today and introduce to you in a few minutes the corps of cadets that are visiting us.

This past weekend we celebrated the 200th anniversary of the United States Military Academy. This academy was authorized by President Thomas Jefferson, March the 16th of 1802. There were many who thought this academy should never be started because they were afraid of what the military would be. Two hundred years later, we look back and say thank God that Thomas Jefferson was not swayed by those who thought the military was the wrong place for our young people.

You know, 52 years ago a young member of the Assembly, Mr. McNamara, class of '39, started this annual visit by the academy to the State Capitol. It's continued on every year. And as we look back and see, what do we really see? We see a group of young men and women -- and some of you should take note in the brochures that you have, and you can find the quality and the caliber of the men and

women that we have accepted at the United States Military Academy, their status and their classes, what they stood for, what they belonged to before they came to West Point.

Fifty-eight thousand men and women have attended West Point and have graduated. We talk about the big heroes of West Point. This past weekend, some of us that are called "Mustangs" were fortunate enough to saddle up with the grads and talk about old times. And the old times, one thing came through: duty, honor and country, the cornerstone for every cadet, the bible by which he and she lives by, the bible by which they learn to lead the men and women that they will lead.

Some of these men and women here today will graduate in about -- how many days, gentlemen, ladies? Seventy what?

You notice how they all know; right? Senator Bruno, they know when the day is ending better than we do.

They will join tactical units - the 101st, the Big Red One, the 82nd Airborne, 10th Mountain, from Fort Drum -- and they will be placed in harm's way. And they will have

the tremendous responsibility to watch over those entrusted to them to ensure that they guide them out of harm's way.

This is a task that nobody really wants, but this is a task that many would like to have but few are chosen.

This graduating class of about 900, if you go back to when the screening by the 435 Congressmen, the 100 Senators, and other special allocations, there were approximately 14,000 men and women that made an application to go to West Point. This summer, in 72 days, as you heard, approximately 900-plus will graduate.

We have the best, we have the brightest. And the best and brightest at West Point are led by a distinguished New Yorker, really. General Lennox was born in Westchester County, was appointed to the Academy by Dick Ottinger. And Mrs. Lennox is a product of Manhattan. She calls West Point home.

As you heard Senator Bruno say, General Lennox has one distinguished career. He has served in every position from a platoon

leader in a battery -- some of you don't know, if you check his bio, you'll find out -- that like a lot of us, he also got to Fort Benning for the infantry school. He has served in every responsible position any member of the United States military would like to.

I know Senator Velella would be very appreciative to know that he had a job that you have. He was the Congressional liaison officer. We understand that you still are the liaison to the Second Floor. You know what I'm talking about.

(Laughter.)

SENATOR LARKIN: General Lennox, I was talking to some of your colleagues in the class of '65 and '67 on Saturday. And they said, "You know, when you talk about West Point and you look at General Lennox, you always see duty, honor, and country."

But there were two other words that they used that I think carry you to a great degree: "integrity" and "responsive." And in the past year at West Point, you have shown these to be true.

We have a number of cadets here

today. I'd appreciate it if when your name is called if you would stand up, please, because there are men and women in this chamber who respect you and they'd like to pay you homage.

And if I mispronounce your name, blame Charlotte.

We've already met the First Captain, Andrew Blickhahn, from the state of Colorado.

Cadet Stephen Bishop, from Freeport.

John Marchi, you're next. Cadet Cassandra Facciponti, who also joined us Friday night in New York City. Thank you.

Cadet Soren Gutierrez, Pound Ridge.

Cadet Karl Hoempler, from Suffern.

Cadet Paul Hwang, from Belle Harbor.

Cadet Benjamin Levine, from Glenmont.

Cadet Harry Park, from Jackson Heights.

Cadet Stephen Pikner, Jackson Heights.

Cadet Frank Pingelski, from

Corinth.

Cadet Kara Pond, from Richmond, Virginia.

(Laughter.)

SENATOR LARKIN: Cadet Kevin Powell, from Delmar.

Cadet Greg Santorsola, from Mamaroneck.

Cadet Adam Sasso, from Commack.

Cadet Dominic Trippodo, from the great Hudson Valley and Lake Katrine.

Cadet Andrew Walton, from my district, Pine Bush. Good to see you again.

Cadet Raymond Yu, from Little Neck.

And from the home of the United States Military Academy, it's my honor and privilege to introduce Olivia Zimmerman. Thank you.

Ladies and gentlemen, the strength of this corps is something we should all recognize. The strength of our nation is built upon the young people that we see here today.

When 9/11 happened, there were a number of young men and women that were

legislated for special assignment, and the superintendent received mail, as the commandant of cadets did, and I guess General Kaufman did. And these men and women said: "We don't want the cushy assignment. Our fellow members are in harm's way, and we request that we be given an assignment that starts now, not later on." That's the quality of men and women we have here at West Point.

You know, when you talk about West Point, a lot of people talk about the Long Gray Line, and they talk about the people that went to West Point. Who can ever forget General MacArthur, whether you've been in the military or not. Senator Bruno said to me, "You know, the speech that he gave in November of 1962 still rings in the ears of every member of the armed forces that I was ever associated with, when he said on the Plains on November the 12th, 1962: 'The Corps, the Corps, the Corps.'"

When we also think about West Point, we think about others. We think about two men that became president. We think about the heroes, of Patton, Eisenhower,

Schwartzkopf. But we ought to take a step further, because people don't think about them. I asked General Buzz Aldrin -- I have to call him Buzz, sir -- and he was talking about how great it was at West Point.

He said, "I went to the Air Force" -- because 30 men out of the classes went then to the Air Force. And he said, "You know, somebody asked me, what did it feel like walking on the moon, the second man to walk on the moon." And he said, "I thought back to my days marching on the Plains, and said: 'I was blessed because I had the training at West Point. It gave me the cornerstone.'"

And also, for those who weren't at Friday night's function, Mrs. Aldrin was - one young man said to her, "Could I shake his hand? He walked on the moon." And she said, "He takes the garbage out every Thursday morning also."

(Laughter.)

SENATOR LARKIN: But just think about it. George Goethals, a West Pointer, construction of the Panama Canal. General Wesley Groves, the Manhattan Project, the

A-bomb. Edward White, the class of '52, was the first to walk in space; later blew up on a tarmac at Canaveral. Buzz Aldrin we've mentioned.

And there's one person that's near and dear to everybody's heart this month, "March madness." As my roommate for 22 years, Randy Kuhl, said: "Didn't we have a cadet from West Point be a great basketball player?" And I said, "Yes, Randy, and he beat Syracuse." And his name is Mike Krzyzewski, the great coach of Duke, an honor graduate of West Point, a great All-American.

This is the type of people who have made West Point.

One other thing that has been said, at West Point they teach -- they teach information that was made by former graduates.

Ladies and gentlemen, General Lennox, Mrs. Lennox, the corps of West Point.

(Standing ovation.)

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, I would ask my colleagues to join me in

granting unanimous consent for General Lennox to share some thoughts with us here in the chamber.

GENERAL LENNOX: Senator Bruno, Senator Connor, Senator Larkin, and members of this distinguished Senate, first of all, I'd like to say that I am still in awe of first sergeants.

(Laughter, applause.)

GENERAL LENNOX: As a boy who grew up in Yonkers and attended Cardinal Hayes in the Bronx -

(Applause, laughter.)

GENERAL LENNOX: -- and received my nomination from Dick Ottinger, it's an honor to come here and it's an honor to be able to speak to this distinguished body.

Thank you on behalf of the corps of cadets and West Point for this tremendous day here. As you know, we're celebrating the bicentennial -- duty, honor, country -- West Point at 200 years. Timeless leadership, that's our motto.

Two hundred years ago, Thomas Jefferson signed into law the Academy, and it

was initially established to produce artillerists and engineers. And over the years, we've produced presidents, great generals, corporate innovators, and community leaders.

We have a saying, much of the history we teach was made by the people we taught. We lead in leadership.

West Point is a national treasure, but it is all New York. Washington called us the strategic center of the continent, and right there on the Hudson River, we agree.

An alumnus asked me if we were going to continue the bicentennial celebration after 9/11, and I said, "We have to, because West Point has been with this country through its ups and downs, through peace and war." And what better sign to the American people than celebrating this bicentennial during the period that we're going through right now. We're going to be around through this period and for the next 200 years. We continue with the celebration.

We're New Yorkers. The West Point civilian work force comes almost entirely from

New York. Something you might not know, that we're the third largest tourist attraction in New York, behind Niagara Falls and New York City itself.

We seek to be good neighbors and stewards of the great resources we have there at the Academy. And we're working hard to galvanize the relationships we have with our great communities around us.

When 9/11 occurred, that tragedy, it hit West Point twice -- New York City, fifty miles to our south, but also the Pentagon. And West Point extended its hand, offered everything we had to help. We did do some small things -- provided tents, raised some money, provided blood. The corps raised some money for the Red Cross, they gave blood, gathered up some items to help the people who were working down there at ground zero.

We instituted security and closed the post, I think for the first time ever for West Point. And it had an effect on the local communities.

We fought hard, we're open now for the local communities. We're opening up for

our tourists once again. And I think that is only right. To help us in doing that, we have two great infantry companies, from the 1st and the 69th Rainbow Division out of New York City. And they are now a part of West Point there with us.

I would like to ask all of you to come and visit your Academy. We would love to have you. I think that you would see that these great young men and women are ready to do the jobs we've talked about right here, just as the 2 to 3 million tourists see every single year. Please come and visit.

And finally, I'd like to say thank you for your support. Thank you for your support today and always. We are New Yorkers.

Thank you very much.

(Standing ovation.)

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, on behalf of Senator Connor and all of us here in the Minority in the Senate, we wanted to congratulate General Lennox and all the graduates from West Point, in recognition

of their 200th anniversary, and this brilliant recording of it that they presented us all today.

We look forward to March every year when at some point in the month we have a West Point Day and we get to meet the new cadets that will graduate on May 31st. It's our distinct honor to be among them at this particular time in history.

When we reflect back to 1802, when West Point was first founded, there was a fear about the delicate balance between the military and the elected government of America at that time. And yet in the last 200 years, as has been exemplified by no other country, the military has supported the elected government in this country and at the same time defended it.

And we saw that certainly after the events of September 11th, the attack on America through New York, and the way that even the Academy was all over the state, particularly in New York City, at ground zero, right in the middle of danger, trying to protect its citizens.

We also have Major Mike Breslin here with us today, who is the county executive of Albany. And his brother serves in the Senate and sits to my left, Neil Breslin.

And I just wanted to inform Senator Larkin that actually, after the first moon landing on July 20, 1969, in the original plan, out of respect for that military service, Major Edward Aldrin was supposed to be the first American, the first human being to ever walk on the moon, but the commander decided that he would supersede and actually was the first on the moon. But that it was partly a recognition of the West Point Academy that went into the original decision.

So we congratulate all of you for being here. We wish you well in your careers and wish you safety in your lives.

Thank you.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the resolution that is on the floor before us.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe there is another privileged resolution by Senator Morahan at the desk. I would ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 4496, honoring Cadet Seth P. Model upon the occasion of his designation as the recipient of the AFSA Award to Outstanding CAP Cadet NCO of the Year 2001, and the General Billy Mitchell Award, to be presented on March 26, 2002.

ACTING PRESIDENT McGEE: The

question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President and my colleagues, we understand that there are many in the chamber that would like to at this time speak. But the general and the cadets were supposed to be with the Governor some minutes ago, and in the Assembly by 12:00, and back in our chambers at the conference room having a lunch.

And everyone here, of course, will be invited to the lunch and have a chance to visit on a personal basis with the general and his wife and the cadets.

So out of deference to their time and to their schedule -- and in the military, schedules are critically important. As they are here in the Senate, General.

So we would again thank you and look forward to spending some time with you in a more informal and leisurely way this afternoon.

Thank you, Madam President.

(Applause.)

SENATOR VELELLA: Madam President.

ACTING PRESIDENT McGEE: Senator Velella.

SENATOR VELELLA: Are there any substitutions at the desk?

ACTING PRESIDENT McGEE: There are substitutions at the desk.

SENATOR VELELLA: Can we take them up now.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 23, Senator Maziarz moves to discharge, from the Committee on Transportation, Assembly Bill Number 6571C and substitute it for the identical Senate Bill Number 844B, Third Reading Calendar 372.

On page 26, Senator DeFrancisco

moves to discharge, from the Committee on Local Government, Assembly Bill Number 9546 and substitute it for the identical Senate Bill Number 6125, Third Reading Calendar 398.

And on page 26, Senator Rath moves to discharge, from the Committee on Local Government, Assembly Bill Number 9446 and substitute it for the identical Senate Bill Number 6423, Third Reading Calendar 400.

ACTING PRESIDENT McGEE: The substitutions are ordered.

Senator Velella.

SENATOR VELELLA: May we please have the continuation of the noncontroversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 253, by Senator Kuhl, Senate Print 3071A, an act to -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number

263, by Senator Velella, Senate Print 6231, an act to amend the Education Law, in relation to the education of persons in youth shelters.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 270, by Senator Balboni, Senate Print 849, an act to amend the Banking Law, in relation to the maintenance of assets.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 273, by Senator Farley, Senate Print 6294, an

act to amend Chapter 591 of the Laws of 2001.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 298, by Senator Seward, Senate Print 3517, an act to amend the State Finance Law, in relation to matching funds.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 302, by Senator Volker, Senate Print 6026, an act to amend the Executive Law, in relation to extending provisions.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 326, by Senator Leibell, Senate Print 6300, an act to amend the Town Law, in relation to the residency requirements.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 337, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

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

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

Senator Velella, that concludes the noncontroversial reading of the calendar.

SENATOR VELELLA: Madam President, may we now have the reading of the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 198, by Senator Volker, Senate Print 6214, an act to amend the Penal Law, in relation to making murder in the first degree provisions.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Madam President, in 1995 this chamber -- and I was looking at the names on the bill, because I have a copy of the bill that passed in '95. In my humble opinion, the most important bill I've ever passed in my life, and it took me almost 25 years to do it, was the passage of the death penalty bill in 1995.

Which, by the way, we were very careful of -- and, contrary to what some of the media people have said, has been virtually untouched except for one provision in it, the People versus Jackson issue, that the Court of Appeals just recently -- although the Court of Appeals affirmed their objection to it, and I won't get into all the details.

But what they did is by what they did most recently they basically said, in the opinion of many of us, the statute is whole; we're not going to withhold judgment simply because there was a piece of the death penalty statute that was ruled unconstitutional.

The reason I say that is it's important, because I don't see any way that the Court of Appeals is not going to affirm the statute we've already passed. I mean, every indication is that -- and the anti-death-penalty people have been desperately trying to find some issue. And the latest tactic, of course, was just delay. They've delayed for almost a year. But the decision is expected to come this summer.

This bill, by the way, will have nothing to do -- and that's why I have not even tried to move some other changes to the death penalty bill until the final decision that should be made this summer.

I know that many people object. But the 1995 bill saved more people, saved more innocent people in this state, in my humble opinion -- particularly in New York City -- than any bill we've ever done here. The murder rate is at an absolute all-time low.

I just see that some professor from John Jay College, of course is opposed to the death penalty, couldn't figure out why the

murder rate is so low. He wants to do a commission to figure it out. Well, those people in criminal justice all know why. And people say: Well, nobody's been executed. You don't really need to execute anybody.

But I'll tell you, we have saved millions of dollars in this state by the amount of credible pleas that we've had by people who would have gone to trial without question if there was not a death penalty included in the procedure. Tons of people have pled to life without parole. A lot of people have pled to 40, 30 years to life, and so forth.

So you can say all you want -- you know, you're opposed to the death penalty, it's not a nice thing. But New York stands as a state, more than any other, where the numbers are absolutely clear. We repealed the death penalty, the murder rate shot up, particularly in New York City and in Buffalo, which set records.

The numbers are clear. Almost as many people were killed a few years after the death penalty was -- murdered, rather, as at

the World Trade Center -- nearly as many people were murdered in one year in New York State.

I mention that because that conclusion -- and you can say there's lots of other reasons. And I know everybody has been taking credit for low -- not only murder rates, because what happens is when murder rates are low, violent crime rates are low. And that's exactly what it is. There's been an enormous reduction; New York leads the whole country.

It's not just the death penalty statute. But you can say all you want, but the people who were involved in this -- and by the way, most of the people in this room that are here voted for the bill. I'm not saying that, you know, everybody here, but most of the people here that are still in this chamber were people who voted for it.

What this bill does, and it involves a -- what I consider -- I'll have to be honest with you, a ridiculous decision, a couple of ridiculous -- it points up, I think, the problem here. The bill was designed

particularly to deal with multiple killers, if you really look at all the provisions and the aggravating circumstances.

People said to me: Why aren't family killings included in this? And the answer is family killings are not deterrable. They're very, very tough to deter.

It's not vengeance we're seeking, it frankly is deterrence. And we see it here. There's no question in my mind. And I know other people disagree.

But what this bill deals with is the serial killer provision. Which essentially said that you have to have two or more additional killings within 24 months. And it had a provision here that related to people according to a common scheme or plan, because that's what serial killers are normally considered to be part of.

So we had two cases here involving people who murdered four people. I have to tell you, it's a little difficult for me to deal with some of the reasoning. But it was pretty clear to my mind that the judges just simply did not want to sentence these people

to the death penalty. So they sentenced them to life.

Now, the DAs feel that they could have used another -- stressed another section of the law, for one thing. But the feeling of the DAs was that the serial killer provision, particularly the serial killer provision in the law, is exactly what the death penalty should be about.

And that's why they have asked for this bill, which basically simplifies the serial killer provision and goes from two or more to one or more additional killings, eliminates the language on separate transactions, and says it -- gives it 48 months.

Now, as I've said to some people, this doesn't necessarily mean that a person who commits multiple killings, that you have to be covered under this statute. There's other places to do it. But particularly serial killings, which normally may be as many as 10 or 12, and you only are able to deal with three or four of them, it just seems as if there ought to be a viable provision in the

law -- if you're going to have a death penalty statute.

Never expected, by the way, that a lot of people would be executed. Never. It's not surprising to me. I think this summer the most likely is that the death penalty statute will be upheld, and then we'll have some federal appeals. There are presently six people on death row -- three whites, two blacks, and one Hispanic. Just so if anybody really cares.

The problem has been for the anti-death-penalty lawyers. They've had a great deal of difficulty because that's been their big contention, they've been trying to work out numbers.

But anyways, I just -- so that everybody understands, this does not deal - this is one of the aggravating circumstances. That is, in order to prosecute somebody, you go to the jury with certain aggravating and mitigating circumstances.

And in New York, by the way, we have very clearly to deal with the issue of mental problems and so forth. And in some of

the other states, the way that their statutes are set up -- under our statute, it's essentially virtually impossible to execute somebody who has true mental problems, if you look at the mitigating circumstances, the way it's set up. So that -- you know, I just want to point that out, because some of the debate about how it's set up I think does not pay attention to that.

But the real reason that we set this process up was to give juries -- not prosecutors, and not judges -- but to give juries the option and to have the information, the two-tier jury system. It's been upheld all over the country, statutes similar to this. In fact, we've been asked for our statute to be -- it's generally considered to be the most fair statute in the country.

I'll finish up by saying that the one thing I think that people do not realize, and there's been so much talk about DNA and innocence and all that. There's truth to that, that there have been some cases. But I point out to you the fact that a person, under the law, if DNA finds you're not guilty, it

means under the law you're not guilty. It doesn't necessarily mean, however, that they didn't commit the crime.

And the reason it is is because what the DNA evidence did was to exclude you based on the evidence. For instance, some of those cases were multiple killings. That is -- or not -- multiple defendants, I'm sorry. And then if the DNA knocked out the evidence, even though that person could well have been involved in the killing, it means that under the law they're innocent.

I don't know how many times I've talked to prosecutors who have said to me -- I said that, you know, "You lost the case, he's been found innocent." And they'd say to me: "Yeah." I'd say, "Well, are you really looking for the killer?" "Oh, no, no, no, he was the killer. It's just that we can't prove it."

I only mention that because it's something that is not understood. Under the law, they're innocent. But many of these people actually committed the crimes, and you just can't prove them, and that's the way the

law is.

So what this does, basically, is to uphold a serial killing provision. It does not add anything or really subtract anything. All it's designed to do is to clarify what was intended when we passed the death penalty bill in 1995.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: I'll yield to Senator Paterson.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: I'll be very brief, Madam President.

So therefore, Senator Volker, you believe that the court would be somewhat constrained to come to the point of view that it did in the cases of the two individuals who had committed four or more murders and would have been persuaded to have ruled differently based on the corrections that you're making in this legislation?

SENATOR VOLKER: You're asking me a question?

SENATOR PATERSON: Yes.

SENATOR VOLKER: Yes, the answer is yes, that it appears as if at least there are intentions. And the opinions appear to indicate that that is so. And we're trying to clarify what was intended initially.

I mean, the people were, I think, sentenced to life, if I'm not mistaken. But I think the clear -- what we're trying to do is clarify for serial killers, obviously -- and these are people that have killed multiple people -- so that we don't have this problem again.

And that's what the DAs asked us to do, by the way. It came from the District Attorneys Association this last year.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield to a question?

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: Senator, on the memo explaining this bill it highlights the Mateo case. Isn't it a fact that Mateo

was charged with first-degree murder, found guilty, and actually sentenced to death?

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: He's one of the people on death row.

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: So despite the fact that -- again, through you, Madam President, if the sponsor will continue to yield.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: So despite the fact that the serial killer portion of the indictment was dismissed, nonetheless, Mateo was prosecuted under the death penalty and, as you properly point out, sentenced to die.

Through you, Madam Chairman, if the sponsor will continue to yield for one other question.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: The

Senator yields.

SENATOR DOLLINGER: I'm concerned, Senator Volker -- we've talked, as we did back in 1995, and have revisited this issue a couple of times tangentially since then. And I'll address sort of my view of what's happened and what the death penalty statute has done.

But my question is this. If what we're seeking to do by this bill is to get at serial killers, why do you remove the language that would establish the serial portion of their conduct? That is, generally in New York's criminal jurisprudence, in order to aggregate offenses, in order to increase the penalties, we require that the conduct of the defendant be -- occur pursuant to a common scheme or plan.

For example, the one that I'm most familiar with, because I tried a case like this a decade ago, involved someone who was accused of Medicaid fraud. He had engaged in a conduct where he had used small amounts of money, stolen it on a number of occasions over a period of time. They were able to aggregate

the petty larcenies into a grand larceny because they followed the same consistent scheme or plan.

My question is, you're eliminating the common scheme or plan language here; so this is a bill that affects multiple killers, but not serial killers, because they're defined by the fact that they're engaged in a common scheme or that their killing stems from the same modus operandi or criminal defect or whatever we want to call it.

SENATOR VOLKER: I think the problem is, in response to that, is that the problem with the definition of a common scheme or plan means -- for instance, at least it seems to mean to certain judges that you kill somebody in exactly the same way, use the same weapon, you're involved in exactly the same series of conduct. That's not necessarily true with serial killers.

And I can only -- you know, I guess -- I dealt with some serial killings, for various reasons -- I won't get into it - and some of the serial killers kill people in different ways and for different reasons.

They usually have a same kind of deep-in reason. And keep in mind that part of the problem here is that you're almost reaching into the mind of the killer.

SENATOR DOLLINGER: Right. That mental defect issue that we've discussed a lot.

SENATOR VOLKER: Right. And one of the things about -- it's difficult for a court to make those kinds of determinations.

And the DAs argue that essentially, if you have somebody that kills a bunch of people within a fairly short period of time, just by the normal -- because of the acts themselves, it's generally some sort of common scheme. But the difficulty in proving it is that you're kind of reaching into the mind of the killer.

So the more simple way to do it - and it is true that other provisions of the death penalty statute could cover those. But the feeling is that a person who could be considered, and certainly could be considered a serial killer, there should be a provision which is enforceable in the death penalty

statute by itself.

And you are right about Mateo. Mateo was found guilty of the killings and actually is on death row. So it isn't that he got off entirely, and I didn't mean to say that.

But he did -- this provision was thrown out. And the feeling is that you may well have somebody who that's the only provision you can use, for one reason or another.

So what they're concerned about is that if you're going to have a death penalty statute, you know, you should at least have - you should certainly have the serial killer provision in it.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will yield for one more question.

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

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: Senator, you highlight, I think, my point. Which is I think we both acknowledge that the serial

killer is usually driven by a mental predisposition, whatever that may be. A defect; I would call it defect.

But it's evidenced in his conduct. He or she does things in a somewhat similar - has a similar victim, similar modus operandi, similar location of the crime, similar weapon, similar form of killing.

But isn't it critical that in a crime which we define by intention, if we're going to aggregate the offenses, that we ought to look for the same intention as the key to the aggregation?

In other words, if we're going to increase the penalties for someone who's accused of being a serial killer, shouldn't we require that that common scheme or plan be a part of it or that common defect or that common whatever we want to call it, mental deficiency that causes them -- shouldn't we require, in order for the aggregation to occur, for that common scheme or plan to exist?

SENATOR VOLKER: In all honesty, it's a defense lawyer's dream. Because when

you think about it, you got somebody who you know, for instance, may have killed 15 or 20 people. And I can cite you some of the cases nationwide involving people that they believe killed, you know, 30, 40 people. One particular killer who was dragged all over the country looking for bodies.

The difficulty, though, is if the killings come in a fairly short period of time, then, you know, it's virtually assumed that there was some sort of common scheme. But because -- the problem is how will you possibly prove a common scheme when you're dealing with somebody who has committed individual killings on a fairly repetitive basis, probably in fairly the same way.

But a serial killer does not necessarily mean that that person killed everybody exactly the same or that -- you know, that in his mind it's not a common scheme or whatever, but in reality we know it probably is. Or presumably is.

But what we're trying to do here is do an enforceable piece of a death penalty statute, very honestly that maybe some judges

have difficulty, very honestly, in courts maybe in dealing with.

SENATOR DOLLINGER: I would like to thank Senator Volker for his, as always, candid and thoughtful responses.

Just briefly on the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Volker and I seven years ago had a lengthy discussion, I think several, about the death penalty and what impact it would have on the crime rate in this state, on the murder rate in this state.

To the best of my knowledge, none of the six inmates who are currently sentenced to death in New York would ever acknowledge, have ever suggested that had they known there was a death penalty they would not have committed their crime.

And I know Senator Volker has talked -- we've debated that issue before, about when people have that impulse or that predisposition to commit a horrific crime, as

did Mr. Mateo in Rochester, does the fact of an impending penalty influence their conduct. I don't believe there's a shred of evidence that it does.

I do acknowledge with Senator Volker that the existence of a death penalty may have some impact on others out there in the marketplace who might be predisposed to commit a crime. But crimes of this violence and of this nature just do not attend rational thought. These are not a process by which people sit down and say "had I known there was a serial killer statute in place, I wouldn't have committed a couple of crimes."

But the biggest concern I have with this bill is that I think this bill radically alters the aggregation rule in New York with respect to any crime. The aggregation rule, where we allow our criminal justice system to take a series of crimes and aggregate them and make a more substantial penalty, has I believe at every single level required that there be evidence of a similar fashion or that it occur pursuant to a common scheme or plan.

It is my personal opinion that this

bill is a marked departure from that because it eliminates that provision.

In addition, I think Senator Volker is correct about one other thing. One of the factors that's used in the criminal justice system to make a determination about a serial killer or a series of different isolated crimes that are then aggregated together is the coincidence of those events; that is, that they happened at a relatively frequent interval, that they happened over a course of months, they happened over the course of a year.

What this bill does is this bill suggests that the period of time from which those events can be combined is actually going to be increased from two years to four years. In other words, that we're going to take that factor that shows common scheme or plan - which is coincidence in time -- and we're going to expand that over a much longer period of time.

Madam President, I voted against the death penalty bill in 1995. I'm going to vote against this bill. I don't think that

the elimination of the aggregation language, which has long been a part of our criminal justice jurisprudence, is warranted. I think that expanding it from 24 to 48 months may have the impact of creating even more pressure on already very pressured defendants to plead guilty to life imprisonment.

I will agree with Senator Volker on one thing. There is no question that the death penalty as an impending penalty in capital cases has substantially increased the number of those who have pled guilty and taken the penalty of life imprisonment.

But at the same time, I think that expanding the time period gets us further away from "common scheme or plan," makes it not appear as though this is a serial killer bill, but this is just a multiple killer. Two killings that occur, whether they have any connection at all, would qualify under this bill for the death penalty, even though -- and I would almost find it difficult to believe that a prosecutor would not charge the death penalty for both of those individual events.

So for that reason, Madam

President, I think this statute is a fundamental change in long-held criminal jurisprudence about the aggregation rule. I think it goes too far in disturbing the finely struck balance.

And I'll commend Senator Volker again. Although we disagreed, when all was said and done, I will agree with him on one other thing: I think we have the best and fairest death penalty statute in this nation. And I think that under these circumstances we don't need to tinker with that fine balance that we struck seven years ago in imposing this penalty. I think this is to slightly unweight that fine balance.

And under those circumstances, since I voted against it seven years ago, I'm going to vote against this as well.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: This bill is

intended to widen the net of people who could be captured under capital punishment. Under this legislation, more people are liable to be labeled as serial killers.

Now, under current law, the people who would be included in this category would certainly go to prison under first-degree murder. But this bill would make it possible for them to be eligible to receive the death penalty. So this bill will make it so that more people will be eligible to be put to death under state law.

As I understand this bill, if I were to kill someone today because I needed money and then, a couple of days later, if I realized that that worked so well that I decided to go home and kill my partner, under current law I would not be eligible to receive the death penalty. But under this law I would be eligible to receive the death penalty. And so, as I say, more people would be eligible to be put to death in our state.

Now, I'm against the death penalty, so no matter when the death penalty comes up, I vote against it. And I think it's a shame,

I think it's the shame of New York State that after many years of being humane in our criminal justice system as it applies to capital punishment, we changed.

That said, the criteria for putting people to death in our state has apparently worked. There are six people now on death row. As I understand it, the criteria for putting people to death in our state was supposed to be very limited. The legislation was very, very carefully crafted so as to make sure that only those people who had committed the most heinous crimes would be eligible to receive the death penalty. And there are six people on death row.

The criteria was enumerated that that legislation very clearly. Very, very clearly. And it was crafted after a tremendous amount of negotiation among those who supported the death penalty for a larger group of people and those who wanted extremely limited circumstances under which the death penalty could be done. And both parties in both chambers as well as the Governor were involved in those negotiations.

What this bill would do is to change that statute. And so for us to debate changing that statute with this legislation and making it possible for more people to be put to death is unfair, because if we're going to change that statute, then those of us who oppose the death penalty should be able to debate that as well and give us a chance to repeal the death penalty.

I have to caution my colleagues, those who supported the death penalty under the very limited statute that was passed in this state and those who oppose the death penalty in general, that this is an expansion of the death penalty. This means that more people could potentially be put to death in our state.

And so I urge everybody who is opposed to capital punishment to oppose this legislation, and those people who had a difficult time voting for the original statute to vote against this. Because this expands the categories or the circumstances under which people can be put to death.

And the time to do that is

certainly not now. The time to do that is when we in New York State are ready to debate the entire issue of capital punishment.

Thank you.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Very quickly, Madam President, I'd like to say to Dick - and who, by the way, is always very articulate, and I appreciate the debate on the issue of how the serial killer area comes about. And you are right, I think it is an interesting question.

I only want to say to you, and you'll know exactly what I'm saying, res ipsa loquitur as far as the death penalty is concerned. I mean, the numbers speak entirety for themselves.

Senator Duane, I really don't see this as an expansion of the death penalty at all. We're still listing the serial killer - this was already in the law. What happened is, as so often happens in this state, some judges have put sort of like a hold on it. I don't think really any more people are going

to be prosecuted because of this, because this is one of the -- will be one of the aggravating circumstances.

In most multiple killings, the person who killed several people will probably be charged, is likely to be charged anyways. I mean, I'm not saying that the jury will decide to do it. You may be right that it may cause a few -- not very many, it may cause a few more people to be eligible for the death penalty. But not very many. We don't have a lot of serial killers. Thank God, we don't. I mean, it is pretty rare.

But I really don't think -- and I agree with you on one thing. I wouldn't do bills -- and we have several to change provisions -- if it really, actually changed the structure of the death penalty. I don't really think this does. And I don't think we want to the change the structure until after the Court of Appeals decision.

I just think this is a clarification of the serial killer provision that we had in the bill when we passed it in '95. We debated it quite strenuously. And it

just seems to me that this is just a logical progression, given what the courts have said.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Marchi, to explain his vote.

SENATOR MARCHI: For the purpose of explaining my vote.

I have historically been against capital punishment, going back to my college days, I guess, when I raised the questions that had been advanced by Thucydides and Beccaria in the Middle Ages or the late Middle Ages.

But -- and I have great admiration for the sponsorship of this bill and the very earnest consideration which he evidenced by his presentation in making a very close case.

I do want to invite your attention to the experience in Manhattan, where the number of homicides had descended to eight. When Morgenthau took over, it was much higher than that, 30 years ago. Bob Morgenthau has been able to accomplish that, notwithstanding the fact that there are problems that arise out of the persuasion that I share with him.

So I just thought that I would pass that on to you, because Bob Morgenthau is an example that you can be constructive on -- in both aspects.

I vote no.

ACTING PRESIDENT McGEE: Senator Dollinger, to explain his vote.

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

Again, I appreciate Senator Volker's tremendous candor. And when we debated this seven years ago, he again exemplified -- although we had strongly different point of views, I think we tried to reason together even though we reached different conclusions.

My concern with this bill, Madam

President -- and I'll state it again -- is that under the current death penalty statute you need to show aggravating circumstances in order to be able to charge them with a capital offense. What this bill does is that this says if there are two murders and you can't prove aggravating circumstances in either of them, you can then tie them together subsequently by time over four years, and you don't have to prove aggravating circumstances in order to charge them with a capital offense.

I still think that if -- when we voted for the death penalty, we said in certain cases you must show aggravating circumstances in order to raise the specter that the state will take a life at the end of the criminal process. And before we eliminate that aggravating-circumstances test as a prerequisite, we should, if we're going to take several killings, none of which has aggravating circumstances, and combine them together to eliminate the aggravating circumstances test, the only way to do it is to say it's through a common scheme or plan

that occurs relatively close together, which would be a coincidental factor which would lead someone to the conclusion that the same mental defect or the same impulse was driving the crimes.

And under those circumstances, Madam President, we fought long and hard, and I know Senator Volker was right at the heart of it, for the aggravating-circumstances language before the death penalty could be imposed.

I'm reluctant and unwilling to relieve the government of its obligation to prove those aggravating circumstances when what we're doing is narrowing the common scheme or plan requirement that we originally agreed would be a substitute for aggravating circumstances in some cases.

Again, I think before we eliminate that, we should require that they be done, pursuant to a common scheme or plan, relatively close together. I'll vote no.

ACTING PRESIDENT McGEE: Thank you, Senator Dollinger.

Will those voting in the negative

please raise their hands high so the Secretary can record them.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 198 are Senators Andrews, Breslin, Dollinger, Duane, Hassell-Thompson, L. Krueger, Marchi, Montgomery, and Senator Schneiderman. Also Senator A. Smith.

Ayes, 47. Nays, 10.

ACTING PRESIDENT McGEE: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 253, by Senator Kuhl, Senate Print 3071A, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Kuhl, an explanation has been requested.

SENATOR KUHL: Yes, Madam President.

This is a bill that simply would permit the operation of a registered farm vehicle on public highways to and from a

repair shop or a garage for purposes of making necessary repairs.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 270, by Senator Balboni, Senate Print 849, an act to amend the Banking Law.

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

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

Senator Kuhl.

SENATOR KUHL: Is there any

housekeeping at the desk?

ACTING PRESIDENT McGEE: There is one motion, from Senator Seward.

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

ACTING PRESIDENT McGEE: Motions and resolutions.

Senator Seward.

SENATOR SEWARD: Yes, Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And that's Senate Number 1856, by Senator Maltese.

ACTING PRESIDENT McGEE: So ordered.

Senator Kuhl.

SENATOR KUHL: Would you recognize Senator Paterson, please.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, there will be a meeting of the Minority, the Senate Minority will meet in Room 314, particularly today, at 1330 hours.

ACTING PRESIDENT McGEE: Thank you. There will be a meeting of the Minority, there will be a Minority conference in Room 314 at 1330 hours today.

Senator Kuhl.

SENATOR KUHL: There being no further business, Madam President, I move we adjourn until Monday, March 25th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Monday, March 25th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:41 p.m., the Senate adjourned.)