NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:10 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

May I ask everyone present to please rise and join me in the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation will be given by the Reverend Peter G. Young.

Father Young.

REVEREND YOUNG: Thank you. Let us pray.

Let us remember that all of our Senators might be guided in their role of government for a just and caring society. May they strengthen them in our prayer and lead them and give them wisdom and understanding as they work for the good of our country and our citizens.

But let us today remember the important people that are the class of confirmande that are about to take on the administration of major state agencies that

will be confirmed here at this Senate session. May we ask that they understand it's not always easy to be gentle. That in the political world we're taught to be tough, competitive, and assertive. But there are times when we like to be soothed, as our citizens are asking, and treated gently.

As we treat packages with gentleness when they are labeled "Fragile: Handle With Care," so we ask you, our new leaders in state government, that our compassionate God give you the sensitivity and the courage to be gentle with other people. Help us to hear the anguish and the hurt in others, and treat them with kindly care.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 15, the Senate met pursuant to adjournment. The Journal of Friday, April 12, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: Without objection, the Journal stands approved as

read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills:

Senate Print 6577, by Senator Stafford, an act to amend the Public Officers Law;

And Senate Print 7047, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the nominations that have been reported from the Finance Committee at this time.

ACTING PRESIDENT MEIER: The Secretary will read the report of nominations from the Finance Committee.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, reports the following nominations.

As a member of the State Commission on Quality of Care for the Mentally Disabled, Gary O'Brien, of Latham.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: We had some fine nominees before the Senate Finance Committee today. And it's a pleasure to yield to Senator Farley for the first consideration.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you very much, Mr. President. Thank you, Senator Stafford.

It is with enthusiasm that I move the nomination of Gary O'Brien, of Latham, New York, who serves in Schenectady with the Commission on Quality of Care. And let me just say what an outstanding job he has done in this area.

I thought it was kind of interesting, one of his first accomplishments

was that he has developed and always worked within his budget. We have a little trouble with budgets sometimes here, but we're going to be within it too, I think, shortly.

But Gary O'Brien has done a terrific job in an area that is so very, very important to the State of New York. He has a resume that is truly remarkable. He has been very active within the community. He's organized athletic programs, conducted parenting classes for young parents. He's been very, very active in the Catholic Church. And Gary has been truly an asset to public employment.

Let me just say that as far as the Commission on Quality of Care is concerned, no agency has been more warmly received in the city of Schenectady than the Commission on Quality of Care. And everybody that is there enjoys working there, and they particularly enjoy working for Gary O'Brien.

It is with enthusiasm that I nominate this remarkable young man for reappointment to the Commission on Quality of Care.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the nomination?

The question is on the nomination of Gary O'Brien as chair of the Commission on Quality of Care. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Gary O'Brien is unanimously confirmed as chair of the Commission on Quality of Care.

Mr. O'Brien is present with us today in the gallery.

(Applause.)

ACTING PRESIDENT MEIER: And Mr. O'Brien is accompanied by his sisters, Marilyn Davis and Patricia Dulka; his niece, Maureen Dulka; and a cousin, Jane Millard.

Mr. O'Brien, we wish you well with your very important duties.

The Secretary will continue to read.

THE SECRETARY: As a member of the Industrial Board of Appeals, Gregory A. Monteleone, Esquire, of Goldens Bridge.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure to yield to Senator Leibell.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

I would like to take a moment, if I could, to speak to this nomination. And we are once again very appreciative to the Governor for sending us the name of someone who is so well qualified.

I'm very pleased to speak here on behalf of Greg Monteleone. He is a resident of my district, a member of our community, someone who's been very active in our community, and a well-known name and family name in our area, in our region.

He's a successful practitioner of law, a graduate of my own law school, St. John's University School of Law. I know he

will make a great contribution to the Board of Appeals.

And once again, in conclusion, I thank the Governor for sending us this name.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the nomination?

The question is on the confirmation of Gregory A. Monteleone as a member of the Industrial Board of Appeals. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Monteleone is with us today in the gallery. Mr. Monteleone, congratulations and good luck with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of

the Industrial Board of Appeals, Mark S. Perla, Esquire, of Clarence.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure to yield to Senator Rath.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you, Senator Stafford, Mr. President.

It is with a great deal of pride that I stand to nominate Mark S. Perla of Clarence, New York, one of the heartland areas in Western New York, to reappointment as a member of the Industrial Board of Appeals.

Mark Perla has served with distinction in so many posts in Western New York that it would be difficult to list them all. But just by way of example, let me point out that he served as the chief of the civil division of the U.S. Attorney's office and a number of other positions before he reached that particular distinction, and as a younger man, as an executive assistant to the district attorney, the chief of the City Court

Bureau, and on down the line of the kinds of things that you might expect of someone who has a particularly busy practice now in civil and criminal litigation -- a graduate of SUNY Buffalo Law School, one of the Perla family who is certainly well known throughout Western New York and distinguishing themselves in so many ways that it is wonderful that the Governor has sent him for reappointment.

And I am proudly here to make that nomination. Thank you.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the nomination?

The question is on the nomination of Mark S. Perla as a member of the Industrial Board of Appeals. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Perla is with us today in the

gallery. And congratulations, sir, and good luck with your duties.

(Applause.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: As a member of the Board of Trustees of the City University of New York, Reverend John S. Bonnici, of New York City.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, I yield to Senator LaValle.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President.

I rise to move the nomination of Father John Bonnici to the CUNY Board of Trustees. Father Bonnici is replacing Father Crimmins, who has served on the CUNY board, and that this position has been somewhat codified as being a clergy position on the CUNY board.

Before I talk about Father Bonnici and his qualifications, I just want to rise as chairman to compliment, as I have on many occasions, the members that serve on the Senate Committee of Higher Education for the way that they have, over a protracted period of time, conducted and comported themselves in asking questions and dealing with nominees. As we all know, it can be a very unnerving process -- one that we, as legislators, take for granted.

Before Father Bonnici arrived at the committee, there were a number of questions that the members had. And I must tell you that Father Bonnici, in his background, probably second to none: holds a

doctorate, has written extensively -- has written extensively on a number of theological subjects, studied in Rome for a period of a year.

In my discussions with John Bonnici about CUNY and his responsibilities on the CUNY board, I was quite impressed and quite taken by the fact that he was probably one of the few nominees that came before the Higher Education Committee and the Legislature, the Finance Committee, that was well versed on the master plan and what CUNY hopes to achieve over its next number of years.

And so to understand what the blueprint is is very important in understanding what your duties and responsibilities are all about. Father Bonnici talked about a focus on students, and that's what higher education is all about. It's all about the education of students.

His certainly pastoral responsibilities makes him fully understand that you must communicate with the group that you must lead and, if you are to make policy decisions in higher education, you must know

what the needs of the consumer are.

Father Bonnici talked about his own life experiences in the formative years of his life and how that shaped the way he viewed education and higher education, and the importance, that it was the ladder to students achieving their aspirations and their dreams. And the importance of having some financial wherewithal or support from the state in achieving those goals.

Father Bonnici made it very clear, both to me and to the committee, that there was a separation in his thought process between theological beliefs and secular beliefs in establishing policy for higher education. His duties, his responsibilities were all about the City University of New York, establishing policy for the students of the City University.

And so I think over a period now of two weeks, both last week before the Senate Committee on Higher Education and this week before the Finance Committee, I think Father Bonnici has demonstrated, you know, a knowledge of the position that hopefully, if

this body casts sufficient votes, he will be placed with responsibility, and understands the job of a board member. And that's very important, because we can understand policy but also the give-and-take between board members and what it's all about.

So, Mr. President, I move the nomination of John S. Bonnici for the position of trustee to the City University of New York.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, this is a very difficult vote for me, particularly listening to Father Young's invocation. I listened very carefully.

And I know many members on this side of the aisle have some grave reservations about Father Bonnici's service or potential service on the CUNY board.

No one questions the academic qualifications and the scholarly writings, no one. And it seems to me that there is no litmus test in terms of certain issues -- the issues of choice, the issues of sexual orientation, and so forth.

It seems to me that we have to ask nominees difficult questions because that's our role, that's our job, to think of the most difficult questions we can, we can ask -- and we do ask them, but we ask them of every nominee. Every nominee. We did it in the past with a previous individual who wished to serve on the CUNY board, and we will do it in the future. He was not singled out. And all of us, I want to emphasize, have great respect for the clergy.

Now, having said that, I think there are three problems with this nomination. In the first place, back in November -- and others will speak in more detail, but back in November of 1999 he sent a letter to the various parishes in the archdiocese dealing with the creation of a Westchester Council on Human Rights. And the argument given was that it might include gay people.

This relates to the CUNY nomination in terms of the nondiscriminatory aspect of the admissions policy and the overall policy of CUNY. Sexual orientation is one of the protected categories within the

antidiscriminatory policy. So this is one area.

The other area that troubles me is the article on the website of the archdiocese, particularly for Father Bonnici's particular area of responsibility, and that deals with the article called "Why Contraception is Wrong."

CUNY has the various health centers in each campus, and at those health centers they offer information on birth control and on abortion counseling. This was an area of concern to me.

Secondly, CUNY has a medical school, the Sophie Davis Medical School, which is four years undergraduate and two years of actual medical school before they go on to finish their degrees. In the fourth year, they take a course called family practice. And the question arose as to how Father Bonnici would feel about including women's health needs as part of the curriculum.

And bear in mind that the CUNY trustees determine the courses of instruction offered at all of the CUNY institutions.

Now, my objections are not in these areas, because I don't think these are part of the so-called litmus test. To me, the litmus test is whether the individual understands the rich heritage that is CUNY, the heritage that goes back to the 1840s and the creation of City College.

It goes back to CUNY where we have more Nobel Prize winners from CUNY than any other institution in the country, where Harvard has granted more Ph.D.s to CUNY graduates than to any other institution. CUNY has always been the poor man's Harvard, or the poor woman's Harvard. And this is of concern to me.

I asked questions about the fiscal needs of CUNY, which I find very, very important, particularly in times of budget difficulties. I was not satisfied with these responses.

And my objections are not theological. My objections are lack of familiarity with the tradition of CUNY, with the history of CUNY, and most particularly the mission and the goals of CUNY.

Today in the Finance Committee I heard Father Bonnici say that resources should be dedicated to the classroom, that these services -- and he meant birth control and abortion -- should be available elsewhere. I sat in on the Finance Committee meeting this morning, and that's what I heard.

It seems to me that Father Bonnici handled himself extremely well under very, very difficult circumstances. However, it gives me no pleasure to indicate that I plan to oppose this nomination. Obviously, I suspect my vision will not prevail. And I certainly hope that Father Bonnici lives up to everything that Senator LaValle, whose judgment I do trust, everything that Senator LaValle has set for him.

And I urge a no vote on this nomination. Thank you.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you.

I also rise to speak in opposition to the nomination of the Reverend John Bonnici as a trustee of the board of the City

University of New York, and I want to indicate my agreement with the ranking member of the Higher Education Committee on this nomination.

The role of the trustee of the board of any educational institution is to oversee and help to facilitate the activities and programs which exist at the institution in which that individual serves. A trustee therefore should represent the needs and demands of the students at any such institution.

Unfortunately, this is not the case with the situation at hand. While Father Bonnici is, I am sure, a productive member of the Archdiocese of New York, and I'm sure that he serves well as a priest, I do not think that he would be a productive or beneficial member of the CUNY Board of Trustees.

Father Bonnici has spent the prior seven years, and possibly longer, as both the assistant director and later director of the Family Life Respect Life office of the Archdiocese of New York. Now, that office has a very important mission -- in fact, it is the primary mission -- and that is, and I'm

quoting this directly from the Archdiocese of New York's website, "to implement the United States bishops' plan for pro-life activities."

While I would expect a Catholic priest to be nothing but antichoice - although some in their hearts may not be, but I do know that they put forward that official doctrine -- and as that does seem to be his position, since it is his life's work -- and I respect his belief and his right to subscribe to those tenets.

But I don't feel that it is appropriate for someone whose job it was and is now to oppose a woman's right to choose, including basic methods of birth control, to serve as a trustee on the board of an institution which, through campus health centers, provides such treatment, reproductive information and information regarding procedures, including abortion and alternatives, to women who are students at CUNY or for faculty or for staff.

Let me talk about students in particular. Students often rely solely on their campus health center for their health

care needs while they are attending college. And this is particularly true at the CUNY institutions, where so many students lack any kind of health care insurance or access to health care. And so we should be fighting to ensure that the broadest possible array of treatments and programs are offered to serve the populations which need them the most.

I absolutely fear that if Father Bonnici is confirmed here today, his role on the Board of Trustees will be geared towards the compromise and possibly elimination of certain women's health programs which currently exist at CUNY. And that is something that I cannot support and the reason why I cannot support Father Bonnici.

We heard from a former member of the Board of Trustees on Sunday at a press event that in fact members of the Board of Trustees have enormous influence over their colleagues, and that they are given enormous leeway in trying to influence university policy and they have a role in formulating what courses can and cannot be offered, in critiquing descriptions of courses.

And so to say, which I believe Father Bonnici has said, that he's just one vote on the Board of Trustees does not really show the full extent that a trustee's influence can have as a trustee at the City University of New York. Remember, we have seen similar situations with other board members where they've wielded enormous impacts on that institution.

There was a mayoral appointment not so many years ago that did all he could to get rid of remedial education for students who were just entering the CUNY system, and he was successful in many ways. So to say that just one member of the Board of Trustees doesn't have much influence is absolutely not correct.

Additionally, I am very, very concerned about the already underserved population of lesbian, gay, bisexual, and transgender students who attend CUNY and the potential effect Father Bonnici's presence on the board of CUNY would have on these individuals.

Remember, trustees have oversight over courses, they set policy, and they set

the direction of the academic priorities of the institution. And he has made it no secret that he opposes basic equal rights for the lesbian, gay, bisexual, and transgender population. And we saw that through his efforts to have the Westchester County Legislature exclude these protected categories from their equal rights legislation.

Now, New York City has very, very strong antidiscrimination laws, and New Yorkers of every sexual orientation are guaranteed civil rights. In addition, New York City has a very strong pro-choice history. And in fact, one of the most far-reaching clinic access laws -- before this body passed a clinic access law -- the strongest, one of the strongest in the nation was passed in New York City.

So we have a long and rich history of reproductive rights for women, which most of us consider to be a basic part of health care for women. And so to appoint someone, again, whose job is to try to eliminate that, is completely and totally inappropriate.

And again, it's wrong to say that

just one member of the board doesn't have much of an influence, that is not true. In fact, the reason that these appointments are put forward by the Governor and then come before this body is because they are so very important to what happens at the City University of New York.

Now, Father Bonnici has published various articles, one of which is entitled "Ignorance is Not Bliss: The Homosexually Oriented Catholic," which was published in Priest magazine in February of 1994. In this article Father Bonnici describes homosexual relationships as intrinsically disordered. Intrinsically disordered.

I wonder if that's what you all consider my relationship with my partner, Louis Weber. Is it intrinsically disordered? Or is my relationship equal to the relationships you have with your partners and your spouses?

I believe that my relationship is loving and caring, and we are a family. And to say that it is disordered by virtue of the fact that it exists between two of us of the

same gender is completely and totally anathema to me and I hope to other members of this body.

You know, I respect Reverend Bonnici's right to his personal views regarding homosexuality. I know that other people share that view. I do not, however, respect the fact that he has made it his life's work to oppose equal rights for my community and to try to eliminate a woman's right to choose. That is his life's work. Does anyone here think that that would not be the biggest part of his agenda as a trustee at CUNY? It is his job.

I'm not alone in my opposition to Father Bonnici's nomination. NARAL has spoken out against his appointment, many teachers and administrators, the PSC union, which represents the professors at CUNY. Countless rank-and-file women and men from all over New York City have been calling my office incessantly, and I've told them that I'm doing everything I can to stop this totally inappropriate appointment.

I'm sure that Father Bonnici would

be a wonderful trustee of a Catholic university. But he absolutely is the wrong choice for CUNY.

In addition, Father Bonnici actually has no experience with public higher education at all. He has, of course, attended institutions of higher education; they are not public. And to my knowledge, aside from a public school education, which I know he went to elementary school in a public school -- I'm not sure whether he went to junior high and high school in a public school, because it's not on his resume -- but he has no experience with public higher education.

I can't in good conscience vote for Father Bonnici. I cannot disregard the rights that people have in New York City, including their civil rights and the rights to reproductive and family planning services.

I'm just reminded I'm running to my time limit.

But please, do not vote for someone that thinks that my relationship is intrinsically wrong and that a woman attending the City University of New York should not

have access to reproductive services. Please, let's stop this nomination and put forward a trustee for CUNY who will really meet the academic needs and the other needs that CUNY needs to meet during these difficult times.

Thank you.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: I have a slightly different view of this nominee. And I've never met him, don't even know who he is up there. Could care less.

I've looked at his resume, and I've heard at least one speaker talk about there's no question about his qualifications. To me, what higher education is all about is a group of different people gathering together to learn different viewpoints and make your own judgment on the various issues.

So long as a person has the qualifications to be a trustee, which I believe this individual does, the fact that he may disagree with any one of us on one, two, three or four issues should not be the standard in which the nominee is judged.

I happen to disagree with him on the gay rights issue. I've voted for the bill out of committee every time Roy Goodman put it on. But other people have different points of view. And I'm sure other people on the CUNY board presently have different views than he does on this particular issue.

Whether you realize it or not -- I think you probably should -- one of the most divisive issues in this country has been for the last several years the issue of abortion. Whether you call it choice or whether you call it right to life, or whatever your buzzword is to make it look better in your particular argument, the fact of the matter is all people don't believe that abortions are proper.

Do you mean that anytime someone has a different belief they can't serve on a board? Or you say of the Catholic priests because they're Catholic priests and they have certain point of views and certain theologies, certain standards that they adhere to, they are presumptively disqualified to be a member of an educational board? I don't think so.

So I will support this nominee,

despite the fact that his personal beliefs on some issues are contrary to mine. And I believe we should have different points of view in a matter of a board of trustees, so that decisions can be made based upon all points of view so that they'll be better decisions.

I will support this nominee.

ACTING PRESIDENT MEIER: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I too stand, as my colleague, Senator DeFrancisco, to support this nominee. And we had a rather spirited discussion this morning in the Finance Committee. And certainly, as I said then, I will say again today, as I respect the opinions of my colleagues on the other side of the aisle, as I respect what Senator Duane has just put before us, I, like Senator DeFrancisco too, disagree.

If you look at Father Bonnici's resume, he is extremely qualified for this position. And I, like Senator DeFrancisco,

before this morning had never laid eyes on this gentleman. And as I said in that meeting, in watching him conduct himself through some very intense questioning, it even convinced me even more that he is qualified to serve as a CUNY Board of Trustees member and that he will add diversity to this board.

And, Mr. President, again, as I said earlier at the Finance Committee meeting, one of the things that disturbs me immensely is that if people believe in issues of life, for some reason those of us who believe in those issues become unqualified. We become not able to serve. I find that very disrespectful. And I think my constituents who are pro-choice and pro-life find that very disrespectful.

Certainly we are all entitled to our opinions, and we are all entitled to beliefs and thoughts and philosophy. But I also believe in the law, as I am sure Father Bonnici does. And the law of the land says that clinics can serve needs of women and that those clinics are available and that abortion is legal.

And because of that, I see at no time, as he serves in this capacity, that he is going to break those laws. Therefore, because of his belief on this issue or the issue of gay rights or other issues, I would say that he would add spirited debate and he would also be a good addition and serve very well as far as the educational values of the people of the university.

ACTING PRESIDENT MEIER: Senator LaValle to close for the Majority.

Senator Stafford.

SENATOR STAFFORD: Since this nomination came from the Finance Committee, I feel I should say something. Also, since we have such a fine nominee, I think I should say something.

Almost everything has been said here that can be said. I disagree with some things; I agree with others. It's that philosophy, I hope, is the reason that I support the nominee.

And I would just like to point out one point that was made here that I think maybe it was just somebody misspeaking. But

they said they didn't think the nominee understood the history or the goals of the City University.

Well, I've been here 37 years, and I've seen people come before the various committees for various responsibilities. And I would share with you that it's my opinion that this person understands the history and the goals of the City University as well as any that have come before the committees where I have either attended or chaired.

And, Mr. President, as I mentioned earlier, we had fine nominees this morning. Father Bonnici is one of them. And I certainly stand here to support his nomination.

ACTING PRESIDENT MEIER: Both sides have exhausted their time.

The question is on the nomination. All those in favor signify by saying aye.

(Response of "Aye.")

SENATOR LACHMAN: Mr. President, I would like to have two or three minutes to explain my vote. I'm told it's in order.

ACTING PRESIDENT MEIER: Just a

moment, Senator. I'll hold that matter.

Under the rules, there is no explanation on a voice vote, Senator.

SENATOR MONTGOMERY: I would like to explain my vote, Mr. President.

ACTING PRESIDENT MEIER: The chair has already ruled on that point, Senator Montgomery. With all due respect, Senator, there is no explanation of one's vote on a voice vote.

SENATOR MONTGOMERY: Then I respectfully request some additional time so that I will have a chance to speak on this issue.

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

SENATOR PATERSON: Mr. President, may I have unanimous consent to allow for each member to explain their vote, as this is a - for one minute, perhaps.

ACTING PRESIDENT MEIER: Is there any objection to Senator Paterson's request?

Without objection, members will have one minute to explain their vote. Please indicate your desire to do so by raising your

hand.

I believe Senator Lachman requested first. And we'll start a list.

Senator Lachman.

SENATOR LACHMAN: Yes, thank you, Mr. President for allowing me that two, three minutes of a minute to explain my vote.

I unfortunately wasn't present at the Finance Committee meeting, but I was present at the Higher Education Committee meeting. And I was concerned about some of the issues that were raised in terms of the social arena and Reverend Bonnici.

However, I was pleasantly surprised about his depth of knowledge of public higher education and the need to even make CUNY a greater institution than it is today for all students attending CUNY.

I was also informed by him that he will work with Chancellor Goldstein towards the master plan of CUNY, especially areas in terms of the honors college and also the equalization of faculty lines.

Finally, I want to say that any member of the CUNY Board of Trustees can

recuse themselves in matters of conscience. And this has been done before; it can be done again. But we cannot make this an issue, whether it's pro-life or pro-choice or issues in terms of gay rights that some of us might differ with.

Here is a man, Father Bonnici, who is succeeding a man, Father Crimmins, who holds his same views -- perhaps has not written as widely as he has.

So therefore, to explain my vote, I would say under difficult circumstances to allow the Chancellor to go ahead to rebuild CUNY with the input of all students and faculty, we need a strong Board of Trustees.

And I am hopeful that this new member will take into consideration not only his conscience but the consciences of others. And if in any way this disagrees with the bylaws of the Board of Trustees of CUNY, he will, as his predecessors have done, recuse themselves in order for the greater good of the university.

Thank you.

SENATOR VELELLA: Mr. President,

I believe -- and I would ask the members to have the courtesy. We've had the courtesy to extend the one-minute unanimous consent statement. I would ask those members explaining their vote to not abuse the courtesy, please.

ACTING PRESIDENT MEIER: Your point of order is well taken. The chair will be watching for one minute.

I have a list, and I'm going to recognize people in the order in which they requested recognition.

Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President. In my one minute I'm going to make five points.

The first is, as was brought up during the committee debate by Senator Mendez, the committee had never taken a litmus-test position on any nominee. And as a matter of fact, philosophically we've had members of all political stripes, to the left, to the right, to the center.

Number two, regarding the letter dealing with gay and lesbian issues, Father

Bonnici was clear and he talked about church doctrine respecting every individual.

Number three, Father Bonnici was clear that in his position he would serve all students.

Number four, Father Bonnici is an adjunct professor and we should not hold against him that he did not attend a public school, as Senator Stachowski and Senator Dollinger have not attended public schools.

And lastly, the CUNY board is diverse. It has gubernatorial appointments, it has mayoral appointments, appointments by borough, by alumni, et cetera.

I vote yes on the nominee.

ACTING PRESIDENT MEIER: For the information of other members, that was a minute, as a standard to use.

Senator Montgomery and then Senator Mendez.

SENATOR MONTGOMERY: Yes, Mr. President, in one minute I -- I would like it to be on record that I certainly do not consider Father Bonnici because of his religious affiliation.

I do, however, understand that there is no instance that I am aware of where any member of the Catholic clergy can override their tenets as it relates to their belief in totally in abstinence. Certainly I share that belief. But also they do not believe in any way that the health services that women need as it relates to reproductive services can be supported by them.

CUNY is a very large system where there are -

ACTING PRESIDENT MEIER: Senator, could I ask you to conclude, please.

SENATOR MONTGOMERY: Yes. In conclusion, because of the fact that there's large numbers of women who are students, faculty, women who depend on that system for their health care, and it will not be possible for -

ACTING PRESIDENT MEIER: Senator, how do you vote?

SENATOR MONTGOMERY: I vote no.

ACTING PRESIDENT MEIER: Senator Mendez.

SENATOR MENDEZ: Mr. President, I

stand up with great pleasure to endorse the nomination of Father Bonnici in the Higher Education Committee meeting.

He was very explicit, he showed complete cognitive clarity in terms of the mission of the City University. I have no doubt in my mind that Father Bonnici will be able to discharge the functions of his job in a very efficient manner.

And to tell you the truth, Mr. President, I really believe that all these questions are irrelevant to the duties that he has to engage in.

So, very proudly, I vote yes.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I'll just make three quick points.

First of all, I'm not so much interested in higher education in the City of New York as I am in higher opportunity. I had a colloquy with Father Bonnici about it. And I think he takes a very narrow view of the mission statement of the university if he

suggests that somehow women's health could not be a factor or shouldn't be a major factor in higher opportunity for women throughout the city of New York.

Secondly, I am concerned about the Westchester County letter, which I have not received a copy. I'm not so much troubled by the theology in it as I am by the conclusion, the logic, which doesn't find its home in either Thomist or Aristotelian logic that I'm familiar with, that says we're better off not having a human rights commission because one of the things they may do is protect the rights of gays. I think that's an error of judgment and an error of logic. It raises a question.

Lastly, to address the public policy issue, I believe in the diversity of viewpoints. I believe in a robust public policy debate. But at the same time, I'm concerned about the future of CUNY and whether it will fit in the overall public policy of this state.

I believe that a debate in CUNY about women's health would be not to the

advantage of the women of the city of New York.

Reluctantly, Mr. President, I'm voting no.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

Very briefly, I also will be voting no. I think that for me the critical issue is not really someone's personal point of view. There are many people who are antichoice for whom I have a great deal of respect.

However, I think that it's important to look at the background of this individual. This is an extremely important trust, a public trust that we're seeking to confer. We have an obligation to look at it. And as far as I can tell, his background is not in higher education, is not in any of the areas that will benefit CUNY, but is really as an activist in opposition to abortion rights and in opposition to gay rights.

And I respectfully submit that that does not qualify him for this position and, if

we are really looking for the best people, I would respectfully submit that there are even other members of the clergy who could responsibly fulfill this position and that we shouldn't just say okay, you know, we're going to just go with him because he happens to be a priest.

There are a lot of priests who serve with distinction in positions of trust. I think it's a mistake to support this particular nominee for this particular position, and I vote no.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'll be voting no also.

The one point, I was happy, in my dialog in the Finance Committee, to find that the reverend said that he would support the human rights of all peoples. Well, I was concerned because I knew when we had a proposal for a human rights commission in Westchester County a couple of years back, one of things it was to do was to protect the rights of gay people from discrimination.

And there was a letter submitted by Reverend Bonnici which was saying that the commission should not come into being. And I felt that was very inappropriate, because you don't deny this kind of a commission which can help so many people because one avenue, one particular area is not supported by you.

But I still am very concerned that the health centers, which offer contraception, and not only birth control but abortion services, that they are something that this gentleman will not be able to support because of his fundamental teachings and because that is the center of his vocational life. I agree -

ACTING PRESIDENT MEIER: Senator, we're over a minute. How do you vote?

SENATOR OPPENHEIMER: Okay, I vote no.

ACTING PRESIDENT MEIER: Senator Krueger.

SENATOR KRUEGER: I rise to explain my vote.

Clearly Father Bonnici has the right to be antigay and anti a woman's right

to choose. However, given his position professionally on his day job, in his writings, I do not believe that it is appropriate for him to shape the legitimate scholarly teaching and serve his functions at CUNY.

Following up on a point that Senator Lachman made earlier, about the responsibility to recuse oneself from issues where you have a moral position that is different than the law, I would urge that Father Bonnici, if he is affirmed today, recuse himself from any decisions about student health and counseling services, because they must be open to students who request information on contraception and safe sex; that he recuse himself from voting on tenure issues for scholars who are working in the fields of reproductive rights and civil rights for gay and lesbian and bisexual and transgendered people; that he recuse himself from decisions about courses and programs that deal with complex issues of sexuality and gender.

And frankly, given my desire that

he do recuse himself, I don't believe that he will actually be able to serve as a CUNY trustee effectively, given the differences between his day job and his responsibilities as a trustee. So I do vote no on his confirmation.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, I rise -- quite frankly, I'm disappointed. I thought that we judge candidates and nominees appointed by the Governor on their merits. I don't see that happening here. I see them judged on their beliefs, on their principles. And that's extremely disappointing.

I don't think that Father Bonnici should be recused or excused or disqualified from voting on issues of sexuality any more than my good colleague Senator Duane should be excused or recused from voting on those issues. Yet his position is very, very firm and clear, and I respect the fact that he espouses his position in a very forceful manner.

I certainly welcome Father Bonnici

to the CUNY board. His qualifications are extremely impressive. I think he will be fair-minded. I think adhering to principle is not a disqualification for a CUNY board member in this day and age.

I vote aye, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

I rise to oppose this nominee. I have opposed other nominees to the CUNY Board of Trustees for character problems. I certainly find no problem with an individual espousing their personal beliefs.

But there is absolutely nothing wrong with members of this body, who are charged with the responsibility of overseeing who gets on this board, we're saying that we don't believe that this individual, in the discharge of their duties on the board, will suit CUNY well and its mission well and its purpose well.

And those who say, well, he's entitled to his opinion or he's only one of a

number, I would just point out, if there are 15 voting members on the board, at what point -- at Number 6, at Number 7, at Number 8 -- do we then oppose the person because they will implement policies that will be damaging to women and homosexuals? No, you do it when the first one does that.

And I believe this nominee, though he may be of fine character, and I assume he is, would vote the wrong way on a series of issues and influence policy in a way that I don't want influenced. And I am opposing this nominee for that reason, Mr. President.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I too rise to oppose this nomination, as I did in the Finance Committee. And I am not opposing him because of his day job, I am opposing him because of the answers that he gave to me in the Finance Committee.

I do not believe that he has a clear understanding of the mission of CUNY or the student that attends City University. And

as a product of City University, I believe that I have a responsibility to look closely at those who will be making a decision for those young people who may come from my community.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: There's been a lot of talk, Mr. President, about the mission of CUNY. It's always been my understanding that the mission of any institution of higher education is to foster thought and debate in a forum which is open and free.

When we start ruling on what people think and say that you think one way and you are no longer qualified to be representative or your kind of thought is no longer qualified to be representative, then we take the university system and we say one way and one way only and everybody else that disagrees need not apply. This debate is going in a very, very dangerous direction.

I vote aye and urge a very strong aye vote.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Mr. President, I don't know what's happened to the concept of academic freedom where every idea was welcome in the academy. Seems like they're closing the door now because some people think the wrong way.

I think just the thought that Father Bonnici could sway with his powers - and I know he's well educated, perhaps maybe more qualified in his doctorate than some of the trustees that are there. Maybe so well educated that they're afraid that he could sway the other 16 members of this board to do his bidding.

I doubt it very much, but I think he's entitled to try, although I don't believe he will. Because when he spoke to us, he said "I'm here to help advance the education of the youngsters of New York City who need an opportunity for an education and CUNY is the way to go."

And I think he's going to do what he said and try to promote education. He's

not going to push these issues to the detriment of his pledge, really, which is to advance the education of the people in CUNY.

So I think it's really a lot of - a lot of, shall I say, bias in some people's minds against the institution or the views which he holds. And, you know, you're not as old as John Marchi and I, and if he was -

ACTING PRESIDENT MEIER: Senator Johnson, could I ask you to state your vote, please.

SENATOR JOHNSON: I'd like to vote in favor of Father Bonnici's nomination. Thank you.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: To explain my vote.

I made it clear when I opened with my opening comments that my objections were not based on theology, they were not based on his positions on choice or on gay rights. And in fact I daresay many members of the current CUNY board probably agree with him.

My objections are based on lack of

familiarity with CUNY. Reading the Chancellor's mission statement twice does not qualify you to be a member of the CUNY board.

My objections are based on his lack of fiscal understanding, the problems facing CUNY today, its goals, its aspirations. This is not what we mean by diversity. Diversity of opinion, yes.

But I believe that this nomination is not a good one. And as I said, it is not based on the fact that he is a priest but based upon his lack of experience. There are plenty of priests whom I could support.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question, then, is on the nomination. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The ayes have it. The nominee is confirmed.

Father Bonnici is with us today in the gallery. And, Father, congratulations.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the Empire State Plaza Art Commission, Judith A. Barnes, Ph.D., of Troy.

As a member of the Medical Advisory Committee, Kathleen Benson Smith, of Oswego.

As members of the Advisory Council to the Commission on Quality of Care for the Mentally Disabled, Shirley B. Flowers, of Brooklyn, and Joan E. Klink, of Fishkill.

As members of the Council on Human Blood and Transfusion Services, Robert A. Dracker, M.D., of Syracuse; Alicia Elena G. Garcia, M.D., of Staten Island; and Lazaro Generoso Rosales, M.D., of Fayetteville.

As members of the State Hospital Review and Planning Council, Eric R. Allyn, of Skaneateles; David O. Simon, of Chappaqua; and Frederick Yanni, Jr., of Baldwinsville.

As members of the Board of Visitors of the Binghamton Psychiatric Center, Joyce Gioia, of Binghamton, and Nancy Ann Thomas, of Binghamton.

As a member of the Board of Visitors of the Bronx Psychiatric Center, Richard Somer, of the Bronx.

As a member of the Board of Visitors of the Broome Developmental Disabilities Services Office, Mildred Hendry Bengel, of Binghamton.

As members of the Board of Visitors of the Buffalo Psychiatric Center, Margaret V. Lombardi, of Buffalo, and Carolyn A. Siegel, Esquire, of West Falls.

As members of the Board of Visitors of the Capital District Developmental Disabilities Services Office, Thomas W. O'Connor, of Delmar; Francis J. Sheridan, of Voorheesville; and Cheryl A. Walther, of Hudson Falls.

As a member of the Board of Visitors of the Capital District Psychiatric Center, Carrie S. Taylor, of Delmar.

As members of the Board of Visitors of the Central New York Developmental Disabilities Services Office, Jane G. Allen, of Brantingham; Marian Budnar, of Cazenovia; Sally Johnston, of Syracuse; and Thomas

Yousey, Sr., of Lowville.

As members of the Board of Visitors of the Elmira Psychiatric Center, Patricia Lucas, of Elmira; James J. Norton, M.D., of Montour Falls; and Judith H. Phillips, of Watkins Glen.

As a member of the Board of Visitors of the Bernard M. Fineson Developmental Disabilities Services Office, Helene Schaumberger, of Douglaston.

As members of the Board of Visitors of the Finger Lakes Developmental Disabilities Services Office, Mark A. Wickham, of Penn Yan, and Bernice Ziehm, of Webster.

As members of the Board of Visitors of the Richard H. Hutchings Psychiatric Center, Richard Ellison, of Syracuse, and Carol F. Puschaver, of Liverpool.

As a member of the Board of Visitors of the Kingsboro Psychiatric Center, Shirley B. Flowers, of Brooklyn.

As members of the Board of Visitors of the Middletown Psychiatric Center, Ann Marie Maglione, of Middletown, and Helen R. Swanwick, of Middletown.

As members of the Board of Visitors of the Queens Children's Psychiatric Center, Jeanne S. Riger, of Whitestone, and Ralph M. Somerfield, of Floral Park.

As a member of the Board of Visitors of the Rochester Psychiatric Center, Edward J. Sardisco, of Rochester.

As a member of the Board of Visitors of the Staten Island Developmental Disabilities Services Office, Christine Dickhut, of Staten Island.

As a member of the Board of Visitors of the Sunmount Developmental Disabilities Services Office, Jane Dumoulin, of Tupper Lake.

As a member of the Board of Visitors of the Taconic Developmental Disabilities Services Office, Ronald S. Lehrer, of Poughkeepsie.

And as a member of the Board of Visitors of the Western New York Developmental Disabilities Services Office, Pamela D. Burgoon, of Fredonia.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominees. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 547.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 547.

THE SECRETARY: In relation to Calendar Number 547, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 11076 and substitute it for the identical Senate Bill Number 7047, Third Reading Calendar 547.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 547, by the Assembly Committee on Rules, Assembly Print Number 11076, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

The bill is before the house.

SENATOR DOLLINGER: Explanation,

Mr. President.

ACTING PRESIDENT MEIER: Senator Stafford, an explanation has been requested by Senator Dollinger.

SENATOR STAFFORD: Mr. President, I was of course a bit taken aback, because we have had a number of these in the past few weeks. And we had a number of them the past few years, as a matter of fact.

I would point out, Mr. President, that we do live in a very, very complex state. And of course the budget is hammered out on the anvil of discussion, reason, and sensitivity. That's presently being done.

But of course until we do have the completion of the budget process, we have to have government proceed. And it would be, of course, very serious if that did not take place.

I could go and spend hours on this explanation, but as most of you know, I'm not into spending hours in explanations. But I certainly see my colleague rising, and I trust that this is possibly the reason that I was asked for an explanation.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

ACTING PRESIDENT MEIER: Senator Stafford, do you yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: How long, Senator, is the extension required by this bill?

SENATOR STAFFORD: One week. Seven days.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Stafford will yield to another question.

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

SENATOR STAFFORD: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Is there a

reasonable prospect that in the next seven days we'll actually conclude the budget negotiations and have a budget document prepared for deliberation and debate in this house?

SENATOR STAFFORD: Mr. President, I've been here 37 years. And if Senator Dollinger thinks I'm going to answer that with great -- with any, shall I say -- well, just let me leave it at that.

I would suggest that I've learned there are certain things you're never sure of. We have 211 legislators and a governor, and we have a great deal of work that is being done.

I would say, Mr. President, that I'm hopeful.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Explanation satisfactory.

Just briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I will give

Senator Stafford one thing. The consistency, Senator Stafford -- with one minor exception. I think I asked you that question ten years ago when I first got here, and the answer was exactly the same except you prefaced it by saying "in the 27 years that I've been here" instead of "the 37."

But the answer remains consistent. We don't know whether we're going to get a budget on time, we have no reasonable prospect for getting a budget on time in a week.

So not only, in my judgment, do we strain the credibility that we have, that little tiny bit of remaining credibility we have with the people of our state -- strained, in my opinion, to the absolute limit because we never get the budget done on time -- but now we're straining credulity further because we're passing a one-week budget extension with no reasonable prospect we will get the budget done on time.

If we're going to continue to do this interim budget adoption, these rolling resolutions, if we're going to get away from the notion of an April 1st budget, then let's

just go to the congressional pass. Let's just keep passing budget resolutions, keep spending money without even putting the budget in place. That would be a policy choice that I might even be willing to consider.

But it seems to me missing the April 1st date, rolling this over every week, having messages of necessity from the Governor for one week when we don't have a reasonable prospect for passing a budget, is foolishness.

Let's be honest with the people of this state. Let's tell them we need two months to get this deal done, let's pass an extender until the first of June so we can at least say that we've done something that's reasonable and bears some relationship to reality.

This bill -- and I've voted against these extensions since the day I got here - is just an absolute ruse on the people of this state. Let's at least be honest with them, tell them we can't get the thing done on time. We're tied up in reapportionment, we're dealing with all kinds of other issues, we don't seem to want to be able to get the

budget done on time, so let's take two months, let's set another deadline, one that would be credible, one that we could tell them we will get the budget done in that credible period of time. Let's do something that has some credibility.

As long as we continue this slapdash manner of doing things, lurching from week to week with budget appropriations, I'm going to continue to vote no for such silliness, Mr. President.

ACTING PRESIDENT MEIER: Any other member wish to be heard on the bill?

The debate is closed.

Read the last section.

THE SECRETARY: Section 30. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 3. Senators Dollinger, Duane, and L. Krueger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions and adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MEIER: Order of motions and resolutions.

The question is on the adoption of the Resolution Calendar in its entirety. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk, 4949, by Senator LaValle. I'd like to have it read in its entirety and move for its adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator LaValle, Legislative Resolution Number 4949,

welcoming Gaetano Silvestri, President of the University of Messina, Italy, upon the occasion of his visit to New York State.

"WHEREAS, It is the sense of this Legislative Body to pay tribute to those distinguished educators from throughout the world whose endeavors have so significantly promoted the exchange of knowledge between students from the great Empire State and those from foreign countries; and

"WHEREAS, Cultural exchange programs between students from New York State and those from abroad have an educational value which is immeasurable, and provide the opportunity for experiences which last a lifetime; and

"WHEREAS, This Legislative Body is justly proud to welcome Gaetano Silvestri, President of the University of Messina, Italy, upon the occasion of his visit to New York State; and

"WHEREAS, Gaetano Silvestri will visit, with a delegation from the University of Messina, to promote the program of cultural exchange established between the State

University of New York at Stony Brook and the University of Messina to study Italian emigration and the Italian-American community; and

"WHEREAS, Born in Patti, Messina, Italy, in 1944, Gaetano Silvestri graduated with a degree in law in 1966, with honors; and

"WHEREAS, In 1967 Gaetano Silvestri won a special prize for the best degree thesis in constitutional law from the President of the Republic, at the 20th anniversary of the Constituent Assembly. In 1968, he was granted a scholarship by the National Research Council. In 1969, he attended the Seminar on Studies and Parliamentary Research at the University of Firenze; and

"WHEREAS, Gaetano Silvestri became an assistant professor at the Chair of Constitutional Law at the Faculty of Law of the University of Messina in 1970. He taught local authorities law and parliamentary law, and in 1980 he became a professor of constitutional law, obtaining the Chair of Parliamentary Law at the Faculty of Political Sciences; and

"WHEREAS, Two years later, Gaetano Silvestri was elected as director of the Institute of Juridical Sciences of the Faculty of Political Sciences; and

"WHEREAS, During the late 1980s, Gaetano Silvestri was appointed to the Chair of State Doctrine at the Faculty of Law of the University of Messina, and to the Chair of Constitutional Law at the same Faculty of Law; and

"WHEREAS, From 1990 to 1994, Gaetano Silvestri served as an elected member of the Higher Council of the Magistracy of the Parliament of Italy; and

"WHEREAS, In 1998, Gaetano Silvestri was appointed as a member of the Scientific Committee at the Institute of Studies on the Regions of the National Research Council; and

"WHEREAS, Since July 31, 1998, Gaetano Silvestri has served as Rector of the University of Messina, Italy; and

"WHEREAS, Gaetano Silvestri's dedicated work has clearly had an enduring impact on countless students in New York State

and Italy, and accordingly, he merits the recognition and the applause of this Legislative Body for his impressive dedication to others; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to welcome Gaetano Silvestri, President of the University of Messina, Italy, upon the occasion of his visit to New York State; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Gaetano Silvestri, president of the University of Messina."

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Mr. President, very briefly, I had the opportunity a number of years ago to go to the University of Messina, Sicily, with my dear professor, Professor Mignone from State University at Stony Brook. And we were able to forge agreements that were later signed by President Shirley Strum Kenny, president of the university, that has allowed, and hopefully into the future, relationships between Stony

Brook and the University of Messina.

So, Rectore, we welcome you, Silvestri -- Gaetano Silvestri, who is the president or the rector of the University of Messina is here. He is joined by Mrs. Silvestri, also Professor Marcello Saija, and Professor Letterio Bonina.

Professor Bonina's mom is a LaValle. I just have to make that note for the record.

And, of course, Professor Mignone from Stony Brook University, we welcome you here once again in our chamber.

Mr. President, I think our dear colleague Senator Marchi would like to make some remarks in Italian so that our visitors feel at home.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, we're delighted to have this presence. And if I may, without objection, just say that I'm very pleased in Italian.

[Remarks in Italian]

ACTING PRESIDENT MEIER: Senator

Paterson.

SENATOR PATERSON: Mr. President, I didn't understand everything Senator Marchi said. Could the Secretary read that back, please.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: For purposes of the translation, I think Senator Marchi basically said "how you doin'."

(Laughter.)

ACTING PRESIDENT MEIER: Any other member wish to be heard?

President Silvestri, to you and your party we wish you welcome to the Senate chambers.

And I am especially happy to extend a welcome to you as the State Senator who represents the village of Messina, New York.

Welcome to our chambers today.

(Applause.)

ACTING PRESIDENT MEIER: We have to formally adopt the resolution. We were so carried away by Senator Marchi's eloquence

that the chair neglected that formality.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Rath.

SENATOR RATH: Mr. President, there's a privileged resolution at the desk by Senator Marcellino. May we please have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number 4948, commemorating the 32nd Anniversary of Earth Day, April 22, 2002.

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those organizations dedicating their purposeful work to increasing public awareness

of, and appreciation for, the natural resources of New York, recognizing the role all citizens have in protecting the environment and the quality of life in this Empire State; and

"WHEREAS, On April 22, 1970, approximately 25 million Americans participated in the first Earth Day demonstration to express their concerns over the environment and the fate of the planet; and

"WHEREAS, In the 32 years that have passed since the original Earth Day, the planet has been subjected to the continuing burdens of world population growth, increasing commercial and residential development, ocean pollution, increasing stores of toxic and nuclear waste, and other similar assaults which have exacerbated the growing dangers of global climate change, ozone depletion, toxic poisoning, deforestation, and mass species extinctions; and

"WHEREAS, Following the first Earth Day, and the demonstrations of concern of over 20 million Americans, a collective national

action has resulted in the passage of sweeping new laws to protect the invaluable resources of air, land, and water; and

"WHEREAS, April 22, 2002, marks the 32nd anniversary of Earth Day, a day set aside to celebrate the beauty and bounty of our environment and to revitalize the efforts required to protect and maintain respect for the environment and its resources; and

"WHEREAS, Earth Day 2002 activities and events will also educate all citizens on the importance of acting in an environmentally sensitive fashion by recycling, conserving energy and water, using efficient transportation, and adopting more ecologically sound lifestyles; and

"WHEREAS, Earth Day 2002 Activities and events will also educate all citizens on the importance of supporting the passage of legislation that will help protect the environment, and will highlight the importance of a heightened awareness of environmental concerns amongst our state's leaders; and

"WHEREAS, The goal of Earth Day 2002 is not to plan only one day of events and

activities but to continue worldwide efforts to protect all aspects of the environment; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate the 32nd anniversary of Earth Day on April 22, 2002."

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I would just like to rise briefly and speak to this resolution.

We've done this each and every year as a tradition, and I just want to point out that while there are many laws and people's awareness of the problems our environment faces, we are basically fighting a battle of holding action. We're neither winning nor losing the fight, and that's not a good thing. We've got to do a lot more to protect this planet that we live on. It's the only one we've got.

And we can never and should never take it for granted, and we must leave it in a better condition than we found it when we took

over, so that our children and our grandchildren have a better place to live than we have today.

So with that, I urge everyone to go off into their communities and speak to the issue of the environment and its protection and its defense, and to work towards making this a better place to live and raise a family.

Mr. President, I would like to open this resolution up in the usual manner to all members of the house.

ACTING PRESIDENT MEIER: Senator Rath, shall we then open the resolution to all members and ask any member not wishing to be on this resolution to notify the desk.

SENATOR RATH: Thank you, Mr. President.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Rath.

SENATOR RATH: Mr. President, may we please have the noncontroversial reading of the calendar.

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

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in relation to providing a tax exemption.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 374, by Senator Marcellino, Senate Print 4436A, an act to amend the Vehicle and Traffic Law, in relation to the number of prior

suspensions.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 416, by Senator Volker, Senate Print 368, an act to amend the Civil Practice Law and Rules, in relation to confidential communications.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 424, by Senator Volker, Senate Print 3583, an act to amend the Penal Law, in relation to loitering.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 424 are Senators Duane, Hassell-Thompson, L. Krueger, and Montgomery. Ayes, 57. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Hassell-Thompson, are you asking to be recognized?

SENATOR HASSELL-THOMPSON: Yes, I voted in error. I wanted to be counted as voting in favor.

ACTING PRESIDENT MEIER: Without objection, the record will reflect that Senator Hassell-Thompson voted in the affirmative on Calendar Number 424.

SENATOR HASSELL-THOMPSON: 424, right. Thank you.

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: Calendar Number 432, by Senator Volker, Senate Print 5426A, an act to enact the Criminal Procedure Law Reform Act of 2002.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 465, by Senator Balboni, Senate Print 5249, an act to amend the Environmental Conservation Law, the Public Authorities Law, and others, in relation to the establishment of a water pollution control.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

483, by Senator Morahan, Senate Print 1110, an act to amend the Executive Law and the Penal Law, in relation to payment.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 484, by Senator Alesi, Senate Print 1134, an act to amend the Correction Law, in relation to making it a Class A misdemeanor to simulate.

ACTING PRESIDENT MEIER: Read the last section.

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

November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator Alesi, Senate Print 1141, an act to amend the Correction Law, in relation to barring sex offenders.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 486, by Senator Skelos, Senate Print 1264, an act to amend the Correction Law, in relation

to requiring.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 492, by Senator Meier, Senate Print 6406, an act to amend Chapter 906 of the Laws of 1984.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

500, by Senator Libous, Senate Print 3577, an act to amend the Mental Hygiene Law, in relation to directing the State Commission on Quality of Care.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 506, by Senator LaValle, Senate Print 6615, an act to amend Chapter 453 of the Laws of 2001 amending the Education Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 530, by Senator Marchi, Senate Print 6409, an act to amend Chapter 759 of the Laws of 1973 relating to the transfer of lands.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR RATH: Mr. President, may we please have the controversial reading of the calendar.

ACTING PRESIDENT MEIER: The

Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 416, by Senator Volker, Senate Print 368, an act to amend the Civil Practice Law and Rules, in relation to confidential communications.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested of Calendar 416 by Senator Paterson.

SENATOR VOLKER: Mr. President, this is a bill that initially was a broader-based bill some years ago. In fact, at one time Harvey Weisenberg and I, who is the sponsor in the Assembly, had got an agreement with the Governor's office -- at least we thought we had an agreement -- and the bill was vetoed some years ago, about three or four years ago.

There is a common law principle that in cases of law enforcement officers that certain privileges were always provided, which has been overruled, essentially, by courts. And because of the nature of what has been happening in law enforcement areas -- some

would say in part because DAs have become so aggressive in pursuing law enforcement officers -- some of the former privileges that were provided were revoked some years ago.

This bill only provides an extremely limited exemption for confidential communications between a law enforcement officer and an elected union official. And the reason for this has to do with the law enforcement officer speaking with somebody who is in authority about his case.

It does not apply, by the way, as one time was thought, to people who are superior officers or any of that sort of thing. And that, by the way, has been the assumption that some people have made.

Frankly, in a whole series of areas, these kinds of exemptions are provided by statute or by understanding. Personally, you know, I realize that because these are police officers, there has been more concern than there was years ago.

The city opposes it -- I assume they're still opposed to it -- simply because they say that anything like this should be

negotiated, primarily, and because they're worried that somehow something might occur that might deter them in negotiations and in prosecutions.

My personal feeling is that this bill is an extremely limited bill which makes sense and is frankly all, under today's conditions, that should be done. I don't think it should be extended. But I really think this is something that should be done.

I guess partly because of my background in law enforcement, I know how the whole system works. It does not protect any police officers. What it does do is to allow something that occurs now, generally speaking, where counsel, for instance, obviously don't have to -- can't be called before grand juries, who talk to their clients.

In effect, what's happening with a union official is that those union officials are supplanting, in a number of cases, the counsel. So I think this makes sense, and I think that it's something that should be done.

ACTING PRESIDENT MEIER: Senator Paterson.

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

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: And I'll try to make this brief.

Senator Volker, if a person speaks to an elected union representative and it then becomes a privileged conversation, if the elected union representative in any way had anything to do with the case, does this legislation cure the fact that the privileged communication could impede an investigation?

SENATOR VOLKER: Yes. The reason this is so limited -- now, that issue came up as to whether if the elected -- for instance, if the elected union representative should be a commanding officer. Obviously, if they're directly involved in the case, they can't be a privileged communication.

This assumes that the person who is the elected union official is not at all

involved in the case. If that person is, then that person certainly could be called before a grand jury or in fact, I suppose, could be called before a criminal jury, for that matter, and not just a grand jury, but could become a witness in the case.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: One last question.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator Volker yields.

SENATOR PATERSON: Mr. President, Senator Volker yields, and thank you.

SENATOR VOLKER: Sure. Yes.

SENATOR PATERSON: My concern is that where attorneys are available, how does the elected union representative help where the attorney doesn't?

In other words, don't we already have, as we have time-tested a provision for a way in which an individual can have a privileged communication without necessarily using those who regularly don't enjoy that

privilege?

SENATOR VOLKER: I think the difference between -- now I understand that probably in many areas a counsel is immediately available to a law enforcement officer.

That's not necessarily true, by the way, in the city of New York, nor is it true, for instance, in the city of Buffalo or in other cases.

The attempt here is to deal with an issue where people do not have counsel readily available so that they can ask questions. In fact, one of the questions they very often will ask is "Who is a good counsel?" and, you know, that sort of thing.

And if they make any communication with the case -- apparently there have been cases where law enforcement people have asked elected union officials, for instance, to recommend an attorney to them and may have even discussed a little bit of the case with them, and the union official, for instance will say: "Well, how bad is it? Did you do it?" In other words, ask them some questions.

And they were called before a grand jury and refused to testify because they said that they were being -- this was being discussed with them in confidence.

The problem, by the way, is that there was a case where a captain who could have been -- I guess could have been considered to have some influence on the case, was called before a grand jury. Didn't testify, but then was forced to testify because he could have been involved in the case.

And one of the reasons this was drafted the way it is is to avoid the possibility that somebody might use somebody involved in the case, a union official, communicate with them in an attempt to keep them from being able to testify in the case itself.

And, you know, I would say -- I'm saying on the floor and I'm saying the way the bill is drafted, that just wouldn't happen under this legislation.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on this bill?

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 416 are Senators DeFrancisco, Duane, Hassell-Thompson, Hevesi, Krueger, Paterson, Santiago, A. Smith, M. Smith, and Stavisky. Ayes, 51. Nays, 10.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator Volker, Senate Print 5426A, an act to enact the Criminal Procedure Act Reform Act of 2002.

SENATOR DOLLINGER: Explanation, please.

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

SENATOR VOLKER: Sure. Mr. President, in the interests of brevity, let me answer a few questions to start with about

this bill.

Essentially, this is the same bill that -- it was the same as the Criminal Procedure Law Reform Bill of 2001 and the Criminal Procedure Law Reform Bill of 2000. There was a change in '99, if I'm not mistaken, or after '99, because we enacted several of the provisions that were in the bill from the year before or the year before that.

In other words, the Criminal Procedure Law reforms were suggested when Governor Pataki became governor in '94. In '95, we began looking at this issue.

The bill is the same identical bill, if I'm not mistaken. The only changes would be matters of references to law since 2000. Because we did, as I say, make several changes before that.

It makes a series of changes -- by the way, the bill passed last year 50 to 11. I just want you to know. In fact, I'll tell you exactly who voted yes and no if you'd like.

At any rate, it relates to changes

in identification testimony. It relates to granting prosecutors the right to pretrial - to appeal pretrial orders, just as defense can. And it also allows better access to evidence, really for both sides, under the 15-day rule after arraignment and before trial.

Although what's happened is that courts have made rulings that have essentially decided on very technical grounds that identification evidence has to come only at certain times.

Maybe the biggest issue is the issue of identification of a person who is an accused before the trial and identification of the person at trial after the person has changed his appearance dramatically. That's happening more and more, where defense attorneys very wisely, I think -- I mean, you know, the guy who has a beard, for instance, cuts his beard off, loses a lot of weight and tries to look different and gets to the trial.

What this legislation would say, by the way, one of the changes would be is if a person is identified and properly identified

prior to the trial, that it does not necessarily mean that the identification has to be thrown out if the person at the trial cannot absolutely identify that person at the trial because of the change in the person's appearance and all the rest of the stuff.

If the identification was proper - that is, if it was a proper lineup or whatever -- then a case cannot be thrown out simply because the person can't identify that person at trial.

There's a series of other things which I can get into: the right to be present at jury selection. This legislation says - and the only reason it says it is because a court decided, after a whole case had been decided and it was at the Court of Appeals, that because the accused was not present at the jury selection, even though he didn't object, that the case could be thrown out.

What this says is that he's got to object, either before the trial or at the trial, to the jury selection or he will be considered to have waived his right to be present at the jury selection.

So those are the basic principles involved here. It is a comprehensive bill. It is essentially the same bill as last year. And that's the bill.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'll be very brief.

I appreciate Senator Volker's, as always, detailed explanation of the bill. I think he's right on the nose as to what this bill does.

I objected, I believe, last year on the basis of the identification testimony, suggesting that to allow someone other than the witness who made the initial identification to make the subsequent in-courtroom identification, to allow a third party to in essence say, Well, there was a time on such-and-such a date that a lineup was performed and Dale Volker was the victim of the crime, looked at the crowd, and he identified Defendant Number 3, who it turns out is the man in the dock who's being charged with the crime. It seems to me that that goes

against at least my fundamental sense of fairness.

That if there is an identification, a prior identification during the course of the criminal investigation, especially, quite frankly, with modern videotape and all the other procedures that they use, there's probably tons of evidence that they can preserve that shows that the victim made the identification.

And so I'm reluctant to allow the third party to make that testimony, to give that evidence, when there are clearly ways presently that you could preserve the recollection of the victim or the person who makes the identification.

The second thing -- and I sort of come to a new awareness of this -- is the importance of the right to be present at trial. And I agree with Senator Volker that the Court of Appeals has gone a long way to taking that statutory right and giving it a very expansive reading.

But, Senator Volker, I've come to the conclusion that that right is a good idea

and one that should be respected in the extreme because of the danger that the defendant will be convinced that his lawyer has sold him out during the criminal process if he's not present.

As, Senator Volker, you well know, there are sidebar conferences, there are conferences with other lawyers, there are conferences in the room. The one thing the defendant needs to know is that when his lawyer leaves his side and goes into a conference with the other lawyers or with the judge, that he isn't in there saying: Oh, by the way, I know my guy is guilty and I know you've got him and I'm going to give away the case.

Even though he comes back out and puts on his mantle of a defense lawyer, I think the defendant needs to absolutely be assured that his lawyer is following his instructions and providing him with the best possible defense and not in any way compromising that defense.

Under those circumstances, there is, at least to the best of my knowledge, only

one way to ensure it, and that is to rigorously require that the defendant be present at every stage of the proceeding, whether they be critical or even maybe not so critical.

Because otherwise, the defendant will be convinced, as quite frankly I have no doubt many people in our institutions are now completely convinced, that the only reason why they're there is because their lawyer sold them out at the time of the trial, not because of their guilt or innocence.

And I would suggest that if we do away with that rigorous application of the right to be present throughout every part of the trial, we will do harm to the confidence in our criminal justice system, even on the part of those who are accused, who in many cases may be charged with minor offenses, maybe major offenses, but they need to know that their lawyer is constantly being their advocate.

If we breach or break with the tradition of allowing them to be present, I think we will lead to a substantial suspicion

that the lawyer was not doing his job.

So I talked about the identification last year. I believe that to make a modification, along the lines that this bill suggests, to the right to be present at trial would be ill-advised as well. So I will continue to vote no, Mr. President.

Thank you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Then the debate is closed.

Senator Volker.

SENATOR VOLKER: The -

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Mr. President, could we have the roll call opened up for the purposes of Senator Smith needs to vote, please.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President. I'd like to request unanimous consent to be recorded in the negative on this particular calendar item.

ACTING PRESIDENT MEIER: Senator Malcolm Smith will be recorded in the negative.

The roll call is withdrawn.

Senator Volker.

SENATOR VOLKER: Let me quickly respond.

And I happen to agree with what you said. But I think that the difference is, I think, in the results.

I'm not so sure that the confidence in the criminal justice system isn't more warped away, as I call it, by the fact that people -- in a case, for instance, where a person pays no attention to the fact that he wasn't at the entire jury selection process, makes no objection -- because remember, all this bill says is that the person certainly

can make an objection and he can make an objection even at the trial, could conceivably make an objection.

But if the trial is over with, he makes no objection, it's pretty clear that what happened is that the lawyer, after losing all the way through, then said "By the way, were you at the entire jury process?" And the guy probably said, "No, I don't think so. I missed part of it."

Then he goes -- because that's his only issue, so he goes in and says "He wasn't there at the whole process, and therefore the case should be dismissed."

I think maybe you could argue that it's more destructive to the criminal justice system to do that than to do the limited kind of situation we're doing here that they must at least raise some sort of an objection before the entire end of the case.

I agree with you on the fact that the person should be allowed to be at all stages of the process.

The second thing, as far as identification, we're not saying that the

person should not be there to make the identification. The issue is that in certain limited cases the person may be entirely different. The person who made the identification in fact may be dead. I mean - or missing or whatever.

And one of the things that the prosecution points out, sometimes the - certain of the boys, as we call them, the mob, has been plucking witnesses sometimes for trials so that they can't identify you. I mean, that's an unusual situation, I must admit, although I had a situation where the attempt was made to do that in a case that I was involved in years ago.

And if they couldn't actually identify that person at the trial, technically speaking, even though that person has been thoroughly identified and there's all sorts of evidence, you can't bring that in. That doesn't mean you're going to lose the case. But it could be a critical piece of evidence.

All we're saying here is that if there's plenty of evidence to show that the person was properly identified, and if for

some reason the person who did the identification can't be there or is unable - if he's unable to identify, as you and I know, Richard, at the trial, you've got a problem. Whether it's the final word or not.

Because what we're just saying here is that you can't go until the trial is already over and then say, "Well, you know, we're going to throw this case out because the guy didn't properly identify him." That's all I think it says.

But I agree with you that you have to be very careful in this area, because clearly you've got to be concerned about the person's rights.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Just one point in response, Mr. President, if I can, to Senator Volker. And I agree with much of what he says.

I think, Senator Volker, you make a very good point when you talk about, you know, the sort of catch-you kind of -- gotcha kind of thing when the defendant shows up at the

end of trial and says: "Oh, by the way, I was never told that I could object if my lawyer walked into the conference room without me."

And I would think, Senator Volker, that -- and the difficulty with this is that the defendant may not know of his right to object and may, because of his relationship with his lawyer, for whom he puts in his faith, that he will advise him when to object or not -- I know this for a fact, that at least in one case that I was partially involved in a long time ago -- I wasn't even a prosecutor or a defendant, I represented a witness.

And the lawyer for the defendant made it a practice that every time he went to the bench, every time he'd turn around, he said "I want on the record the fact that I'm advising the defendant he has a right to object to my going up here. Do you object or don't you?"

And I'm afraid that the defendant may rely on his lawyer for guidance as to when he should object. And so you have that dilemma again of our -- I agree with you, you

don't want him to come back at the end of the trial and say: "Gee, I wasn't told." But at the same time, because he puts his faith in his lawyer, he may not know that he does have the right to object.

So I think, Senator Volker, these are very tough issues, they're very ground-level, in-the-courtroom kind of gut issues. And I think the better rule -- and I frankly think the Court of Appeals has decided this, it's come up with basically a blanket rule: You have to be there all the time, and we're going to continue to toss out these cases where the defendant is deprived of the right to participate in every phase of the trial.

Senator Volker, I think you and I might be able to agree on how we would deal with this with notice and other things. I don't think this bill gets there, and I would still recommend a no vote.

ACTING PRESIDENT: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 432 are Senators Andrews, Connor, Dollinger, Duane, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Santiago, A. Smith, M. Smith, and Stavisky. Ayes, 49. Nays, 12.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Rath.

SENATOR RATH: Mr. President, may we please return to reports of standing committees. There are reports at the desk.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

Senate Print 1537A, by Senator Maltese, an act to amend the Retirement and

Social Security Law;

3966A, by Senator Saland, an act authorizing;

5599A, by Senator Velella, an act to amend the Administrative Code of the City of New York;

6446, by Senator Bonacic, an act to authorize;

And Senate Print 6784, by Senator Marchi, an act to amend the Retirement and Social Security Law.

Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 481, by Senator Alesi, an act to amend the General Business Law;

491, by Senator Marcellino, an act to amend the General Business Law;

1073A, by Senator Fuschillo, an act to amend the General Business Law;

3141A, by Senator Morahan, an act to amend the General Business Law;

4995A, by Senator Fuschillo, an act to amend the General Business Law;

5618A, by Senator LaValle, an act to amend the General Business Law;

And 6692, by Senator LaValle, an act to amend the General Business Law.

Senator Velella, from the Committee on Labor, reports:

Senate Print 198, by Senator Morahan, an act to amend the Labor Law;

4298, by Senator Spano, an act to amend the Labor Law;

5706, by Senator Velella, an act to amend the Labor Law;

And 6476, by Senator Velella, an act to amend the Labor Law.

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

Senate Print 1879, by Senator LaValle, an act to amend the General Municipal Law;

1880, by Senator LaValle, an act to amend the General Municipal Law;

2275, by Senator Bonacic, an act to amend the County Law;

3157, by Senator Leibell, an act in relation to allowing;

3403, by Senator Larkin, an act to amend the General Municipal Law;

3559, by Senator Trunzo, an act to amend the Real Property Tax Law;

3636, by Senator LaValle, an act to amend the Real Property Tax Law;

3698, by Senator Maziarz, an act to amend the County Law;

4175, by Senator Meier, an act to amend the General Municipal Law;

4212, by Senator Kuhl, an act to amend the Town Law;

4481, by Senator Seward, an act to amend the County Law;

4517B, by Senator McGee, an act authorizing;

5372, by Senator Rath, an act to amend the General Municipal Law;

5540A, by Senator Maziarz, an act to amend the Real Property Tax Law;

5699, by Senator Bonacic, an act to amend the Real Property Tax Law;

6136, by Senator Wright, an act in relation;

6144, by Senator DeFrancisco, an act to amend Chapter 492 of the Laws of 2000;

6159, by Senator Volker, an act to

amend the Local Finance Law;

6215, by Senator Volker, an act to amend the Local Finance Law;

6237, by Senator Kuhl, an act to amend the Local Finance Law;

6238, by Senator McGee, an act to amend the County Law;

6297, by Senator McGee, an act to amend the General Municipal Law;

6396A, by Senator Meier, an act to authorize;

6435, by Senator Hoffmann, an act to amend the Real Property Tax Law;

6467, by Senator Libous, an act to amend the Town Law;

6578, by Senator Larkin, an act in regulation;

6580, by Senator Larkin, an act to amend;

6650, by Senator LaValle, an act in relation;

6669, by Senator Rath, an act to amend the Real Property Tax Law;

6728, by Senator Rath, an act to amend the General Municipal Law;

6729, by Senator Rath, an act to amend the Real Property Tax Law;

6748, by Senator Saland, an act creating;

And 6774, by Senator Nozzolio, an act to amend the Real Property Tax Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 103, by Senator Marcellino, an act to amend the Criminal Procedure Law;

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

200A, by Senator Volker, an act to amend the Penal Law;

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

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

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

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

1342, by Senator Saland, an act to amend the Criminal Procedure Law;

2305, by Senator Volker, an act to amend the Penal Law;

2772B, by Senator Bonacic, an act to amend the Penal Law;

3009, by Senator McGee, an act to amend the Criminal Procedure Law;

5478, by Senator Padavan, an act to amend the Criminal Procedure Law;

5850, by Senator Balboni, an act to amend the Penal Law;

6131, by Senator Volker, an act to amend the Criminal Procedure Law;

6437, by Senator Balboni, an act to amend the Penal Law;

6454, by Senator Fuschillo, an act to amend the Penal Law;

6455, by Senator Fuschillo, an act to amend the Penal Law;

And 6465, by Senator Maziarz, an act to amend the Criminal Procedure Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 487, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

1636, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

2723, by Senator Meier, an act to amend the Vehicle and Traffic Law;

3796A, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

4518, by Senator McGee, an act to amend the Vehicle and Traffic Law;

4597, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

And 4602, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

Senator Alesi, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 536, by Senator Hoffmann, an act to amend the Economic Development Law;

1503, by Senator Alesi, an act to amend the Economic Development Law;

1963B, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law;

3404, by Senator Larkin, an act to amend the Alcoholic Beverage Control Law;

4682B, by Senator Larkin, an act to

amend the Economic Development Law;

5108, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law;

6017, by Senator Alesi, an act to amend the Economic Development Law;

6018, by Senator Alesi, an act to amend the Economic Development Law;

6146B, by Senator Larkin, an act to amend the Economic Development Law;

And 6413, by Senator Alesi, an act to amend the Economic Development Law.

Senator Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Print 5297, by Senator Volker, an act to amend the Public Authorities Law;

3104, by Senator Kuhl, an act to amend the Public Authorities Law;

5715A, by Senator Johnson, an act to amend Chapter 672 of the Laws of 1993;

And 6091, by Senator Stafford, an act to amend the Public Authorities Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 6354, by Senator Kuhl, an act to amend the Education Law;

6478, by Senator Espada, an act to amend the Education Law;

6851, by Senator Kuhl, an act to amend the Education Law;

And Senate Print 6906, by Senator Kuhl, an act to amend the Education Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 390, by Senator Skelos, an act to amend the Social Services Law;

404, by Senator Skelos, an act to amend the Social Services Law;

3977, by Senator Saland, an act to amend the Family Court Act;

4595, by Senator Saland, an act to amend the Family Court Act;

4902, by Senator Saland, an act to amend the Domestic Relations Law;

5199, by Senator Saland, an act to amend the Family Court Act;

5484, by Senator Saland, an act to amend the Family Court Act;

And Senate Print 6483, by Senator Spano, an act to amend Chapter 555 of the Laws of 2000.

All bills ordered direct to third reading.

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

Senator Rath.

SENATOR RATH: Is there any housekeeping, Mr. President?

ACTING PRESIDENT MEIER: We have a motion and we have some vote changes, Senator.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

On page number 27 I now offer the following amendments to Calendar Number 495, Senate Print Number 6640, and ask that said bill retain its place on Third Reading Calendar, on behalf of Senator LaValle.

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

Calendar.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Are there any substitutions, Mr. President?

ACTING PRESIDENT MEIER: Yes, we have some substitutions.

The Secretary will read the substitutions.

THE SECRETARY: On page 15, Senator Alesi moves to discharge, from the Committee on Local Government, Assembly Bill Number 7464 and substitute it for the identical Senate Bill Number 477, Third Reading Calendar 306.

On page 16, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 618B and substitute it for the identical Senate Bill Number 197B, Third Reading Calendar 332.

On page 20, Senator Rath moves to discharge, from the Committee on

Transportation, Assembly Bill Number 9490 and substitute it for the identical Senate Bill Number 5837, Third Reading Calendar 377.

On page 24, Senator Skelos moves to discharge, from the Committee on Investigations, Taxation and Government Operations, Assembly Bill Number 1539 and substitute it for the identical Senate Bill Number 1246, Third Reading Calendar 445.

On page 30, Senator Morahan moves to discharge, from the Committee on Finance, Assembly Bill Number 10092A and substitute it for the identical Senate Bill Number 6375A, Third Reading Calendar 529.

And on page 31, Senator Hoffmann moves to discharge, from the Committee on Agriculture, Assembly Bill Number 3518 and substitute it for the identical Senate Bill Number 3555, Third Reading Calendar 539.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I would request unanimous consent to be recorded in the negative on

Calendar 416, Senate 368, and Calendar 432, Senate 5426A.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative with regard to Calendars 416 and 432.

Senator Andrews.

SENATOR ANDREWS: Yes, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 416, Bill 368; Calendar 424, Bill 3583; Calendar 483, Bill 1110.

ACTING PRESIDENT MEIER: Without objection, Senator Andrews will be recorded in the negative with regard to Calendars 416, 424, and 483.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 416.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar Number 416.

Just to finish the order of business:

Reports of select committees.

Communications and reports from state officers.

Senator Rath.

SENATOR RATH: Mr. President, I hand up the following notice of my intent to amend the Senate Rules and ask that it be filed in the Journal.

ACTING PRESIDENT MEIER: Notice is received, and it will be filed in the Senate Journal.

Senator Rath.

SENATOR RATH: There being no further business, I move that we adjourn until Wednesday, April 17th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, April 17th, at 11:00 a.m.

(Whereupon, at 5:20 p.m., the Senate adjourned.)