NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 24, 2002

11:07 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

Please all stand and join me in the Pledge of Allegiance.

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

ACTING PRESIDENT McGEE: In the absence of clergy, will you all join me in a moment of silence.

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 23, the Senate met pursuant to adjournment. The Journal of Monday, April 22, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: Hearing no objection, the Journal stands approved as read.

Order of business. Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, reports the following bill direct to third reading:

Senate Print 1563, by Senator Trunzo, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Without objection, the bill is ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Stafford, on page number 37 I offer the following amendments to Calendar Number 667, Print Number 7163, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The

amendments are received and adopted, and the bill will retain its place on Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, on behalf of Senator Morahan, on page number 46 I offer the following amendments to Calendar Number 744, Senate Print Number 4737A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Johnson, on page number 47 I offer the following amendments to Calendar Number 757, Senate Print Number 3346A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The

amendments are received and adopted, and the bill will retain its place on Third Reading Calendar.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I move to recommit Senate Print Number 5634, Calendar 709 on the order of Third Reading, to the Committee on Local Government, with instructions to said committee to strike the enacting clause.

ACTING PRESIDENT McGEE: So ordered.

SENATOR KUHL: Thank you.

ACTING PRESIDENT McGEE: Thank you, Senator Kuhl.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk?

ACTING PRESIDENT McGEE: Yes, there are.

SENATOR SKELOS: I ask that they be made at this time.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: On page 37, Senator Johnson moves to discharge, from the Committee on Health, Assembly Bill Number 9749 and substitute it for the identical Senate Bill Number 6327, Third Reading Calendar 663.

On page 37, Senator Skelos moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 9428 and substitute it for the identical Senate Bill Number 5783, Third Reading Calendar 669.

On page 38, Senator Sampson moves to discharge, from the Committee on Cities, Assembly Bill Number 3672B and substitute it for the identical Senate Bill Number 1720A, Third Reading Calendar 674.

On page 39, Senator Nozzolio moves to discharge, from the Committee on Cities, Assembly Bill Number 6038 and substitute it for the identical Senate Bill Number 6772, Third Reading Calendar 677.

On page 40, Senator Lack moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7944A and substitute it for the identical Senate Bill Number 1389B,

Third Reading Calendar 687.

On page 41, Senator Lack moves to discharge, from the Committee on Judiciary, Assembly Bill Number 8794A and substitute it for the identical Senate Bill Number 5513A, Third Reading Calendar 692.

On page 41, Senator Velella moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7297 and substitute it for the identical Senate Bill Number 6395, Third Reading Calendar 693.

On page 41, Senator Velella moves to discharge, from the Committee on Local Government, Assembly Bill Number 8455 and substitute it for the identical Senate Bill Number 1627, Third Reading Calendar 697.

On page 41, Senator Fuschillo moves to discharge, from the Committee on Local Government, Assembly Bill Number 4955 and substitute it for the identical Senate Bill Number 2586, Third Reading Calendar 699.

On page 41, Senator Rath moves to discharge, from the Committee on Local Government, Assembly Bill Number 1768A and substitute it for the identical Senate Bill

Number 2628A, Third Reading Calendar 700.

On page 42, Senator Hannon moves to discharge, from the Committee on Local Government, Assembly Bill Number 9426 and substitute it for the identical Senate Bill Number 5817, Third Reading Calendar 711.

On page 44, Senator Farley moves to discharge, from the Committee on Local Government, Assembly Bill Number 10383 and substitute it for the identical Senate Bill Number 6724, Third Reading Calendar 722.

On page 44, Senator Velella moves to discharge, from the Committee on Aging, Assembly Bill Number 6673B and substitute it for the identical Senate Bill Number 6360, Third Reading Calendar 724.

On page 44, Senator Larkin moves to discharge, from the Committee on Transportation, Assembly Bill Number 5510C and substitute it for the identical Senate Bill Number 3830A, Third Reading Calendar 729.

And on page 47, Senator Balboni moves to discharge, from the Committee on Social Services, Assembly Bill Number 11041 and substitute it for the identical Senate

Bill Number 7199, Third Reading Calendar 760.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, 5121, at the desk, by Senator DeFrancisco. Could we have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution 5121, congratulating the Boys Basketball Team of Henninger High School and Coach Joe Mazella on their outstanding season and capture of the Boys Class A New York State Basketball Championship.

"WHEREAS, It is this Legislative Body's practice to commend and pay tribute to those who, by achieving outstanding success in athletic competition, have inspired others and brought pride to their community; and

"WHEREAS, It is acknowledged that excellence and success in competitive sports

can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching; and

"WHEREAS, It is further acknowledged that athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, Through its exceptional teamwork and talents, Henninger High School, located in Syracuse, New York, captured the New York State Public High School Athletic Association Class A Title on March 17, 2002, in Glens Falls, New York; and

"WHEREAS, The capture of the state crown, the first for Henninger's Black Knights and the first for any Class A team from Section 3, concluded an outstanding 21-1 season; and

"WHEREAS, Henninger senior Chris Turner, having exhibited superior ability

throughout the state tournament, was named most valuable player in the tournament, scoring 38 points and pulling down 19 rebounds, to lead his team to victory over McQuaid Jesuit High of Rochester by a score of 71 to 56; and

"WHEREAS, The athletic talent and superb spirit displayed by this team are due in great part to the efforts of Coach Joe Mazella, with the able assistance of his support staff; and

"WHEREAS, This exceptional team roster, composed of the following gifted young men -- Jerice Crouch, Chase Frazer, Jason Nelson, Markese Brown, Sedric Hawkins, Roger Robinson, Quincy Fulmer, Erris Robinson, Lenell Graham, Chris Turner, Justin Wright, Terranace Evans, Andray Blatche, and Dan Rogers -- have proven themselves to be an outstanding combination of athletic prowess and discipline, reflecting favorably upon their school, their parents, their friends, and their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to

congratulate the Henninger High School Boys Basketball Team and Coach Joe Mazella on their successful season, overall team record, and capture of the New York State Boys Class A Championship; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Henninger High School Boys Basketball Team and to Coach Joe Mazella."

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm very proud to introduce this Henninger High School boys basketball team. They're in the gallery today.

And, you know, we keep bringing champions from Central New York to this august body because it's a great place to live and a great place to participate in sporting activities.

This team is very, very special. It's the first Section 3 team to ever win the state championship, and that is absolutely phenomenal for this team to be here today and to have accomplished so much, a 21 and 1

record.

And the statistics of the final game: Chris Turner, 38 points and 19 rebounds. I mean, that's not too bad. I think my best game was about 10 points and one rebound, and that was when the ball fell in my hands because it bounced off somebody's head, I think.

But that's an incredible accomplishment. And we're very, very proud of all of you and the coaching staff. Congratulations. And I'm sure this body will unanimously congratulate you by passing this resolution.

ACTING PRESIDENT McGEE: All in favor of adopting this resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President,

there's a privileged resolution, 5122, by Senator DeFrancisco. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 5122, honoring Joseph Mazella upon the occasion of his designation as All-Central New York Basketball Coach of the Year.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, in order for a team to be great, I think you definitely have to have a great coach and a great staff who are helping those students and athletes through their year and years.

Joe Mazella has been named the 2001-2002 coach of the year by a panel of New York State Section 3 coaches and sportswriters. So this is a very prestigious award when you consider it's sportswriters as well, who normally are critical of coaches, I think. Sometimes that happens all too often. But these are the sportswriters and fellow

coaches who have named him Coach of the Year, and it's pretty obvious why.

The team that we just honored won that championship out of a field of 169 Class A teams. Joe Mazella's record over his 15 years of coaching -- listen to this -- 245 wins and 78 losses. That's over 75 percent. I think that's even better than Boeheim, if I'm not mistaken, if I got my numbers correctly.

Nine league champions, five sectional and regional titles, five trips to the Final Four, twice state runner-up, and this year state champions.

Joe Mazella, congratulations. And we will definitely unanimously pass this resolution honoring you and, in your name, the rest of the coaches and assistants that worked with you to mold these fine teams over the many years.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed,

nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

On behalf of the New York State Senate, may I extend my congratulations to the Henninger High basketball team, along with Coach Joe Mazella. And we say thank you very much for your sportsmanship and your work.

(Applause.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, 5123, at the desk, by Senator DeFrancisco. Could we have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 5123, congratulating the Boys Basketball Team of Faith Heritage School and Coach Dan Sorber on their outstanding season and capture of the Boys Class D New York State Basketball

Championship.

"WHEREAS, It is this Legislative Body's practice to commend and pay tribute to those who, by achieving outstanding success in athletic competition, have inspired others and brought pride to their community; and

"WHEREAS, It is acknowledged that excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching; and

"WHEREAS, It is further acknowledged that athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, Through its exceptional teamwork and talents, Faith Heritage School, located in Syracuse, New York, captured the New York State Public High School Athletic Association Class D title on March 16, 2002,

in Glens Falls, New York; and

"WHEREAS, The capture of the state crown was the first for the Faith Heritage Saints, which have been playing the sport for 25 seasons, and concluding an outstanding 27-0 record, the only state champion to finish the season unbeaten; and

"WHEREAS, The Saints senior Ryan Nellenback, having exhibited superior ability throughout the state tournament, was named Most Valuable Class D Player in the tournament, scoring 10 points, pulling down 14 rebounds, and blocking five shots, to lead his team to victory over Harrisville High School by a score of 58 to 48; and

"WHEREAS, The athletic talent and superb spirit displayed by this team is due in great part to the efforts of first-year varsity coach Dan Sorber, and the loyal and active support of the Faith Heritage student body and community; and

"WHEREAS, This exceptional team roster is composed of the following gifted young men: Jason Awad, David Booher, Joel Canino, Tim Halladay, Ryan Nellenback, Vivek

Thiagarajan, B.J. Dwyer, Paul Finch, Andrew Honess, Dan Loucy, Jacob Brunner, and Cooper Stroman. They have proven themselves to be an outstanding combination of athletic prowess and discipline, reflecting favorably upon their school, their parents, their friends, and their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Faith Heritage School Boys Basketball Team and Coach Dan Sorber on their successful season, overall team record, and capture of the New York State Boys Class D Championship; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Faith Heritage School Boys Basketball Team and to Coach Dan Sorber."

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Once again, as I said before, Central New York is the region of the state of champions. And having in one year the Class A and the Class D champions from the same community is just

unprecedented.

And I'm looking at this number, 27 and 0 record. And I also see that Coach Sorber is in his first year, so I guess his win-loss record is 100 percent. I want to see if he could keep that up for 15 years and have this team not be defeated over that period of time.

But seriously, it's an incredible accomplishment. A perfect record in any sport, no matter what division of play it is, is an incredible accomplishment, and I'm sure that all of you realize that.

And the thing I forgot to mention when I spoke to Henninger, and it applies to all of you, is that having played college baseball at Syracuse University and baseball since I was a kid, my closest friends and your closest friends will be those who share these experiences with you, even to when you're an old man like I am.

And it's a great accomplishment, it's something that can never be taken away from you, and it's something you'll be sharing with those friends forever.

So congratulations, Faith Heritage, and best of luck in all your future endeavors.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

Senator DeFrancisco has done a wonderful job extolling the virtues of student athletes, and there's little that I can add. But all of us who represent the Syracuse area are thrilled and elated and enormously proud of your accomplishments. You bring great good favor to all of us.

And we hope that as you leave here you'll carry with you the lasting memory that student athletes like yourselves can one day sit in the chamber here like Senator DeFrancisco, who was himself an outstanding athlete.

And we hope that you'll also remember the important lesson that you're learning now, that sometimes it's not whether you score but whether you make the right pass. You don't always get to carry the ball; sometimes someone else does. But in the end,

team spirit will be the key to success throughout your lives.

Congratulations to everyone who is here today. We're very, very proud of you.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

On behalf of the New York State Senate, may I extend, along with Senator DeFrancisco and Senator Hoffmann, our congratulations to the boys basketball team of Faith Heritage School, and Coach Dan Sorber, on their outstanding season and capture of the Boys Class D New York State Basketball Championship.

Please stand up.

(Applause.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 71, by Senator Skelos, Senate Print 85, an act to amend the Civil Rights Law, in relation to requiring the destruction of records.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 60 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 235, by Senator Skelos, Senate Print 401, an act to amend the General -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 377, by the Assembly Committee on Rules, Assembly Print Number 9490, an act to amend the Vehicle and Traffic Law, in relation to metal coil endorsements.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 442, by Senator Skelos, Senate Print 384, an act to amend the Executive Law, in relation to permitting.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 471, by Senator Meier, Senate Print 6154, an act to amend the Labor Law, in relation to participation in shared work programs.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 579, by Senator Libous, Senate Print 6467, an act to amend the Town Law and the Public Officers Law, in relation to providing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 584, by Senator Rath -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 599, by Senator Marcellino, Senate Print 103, an act to amend the Criminal Procedure Law, in relation to anonymous juries.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 602, by Senator Volker, Senate Print -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 607, by Senator Volker, Senate Print 2305, an act to amend the Penal Law, in relation to assaults against transit employees.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 609, by Senator McGee, Senate Print -

SENATOR PATERSON: Lay it aside,

please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 612, by the Assembly Committee on Rules, Assembly Print Number 9404A, an act to amend the Criminal Procedure Law, in relation to electronic court appearance in Erie County.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR SKELOS: Can we go to the controversial calendar.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 235, by Senator Skelos, Senate Print 401, an act to amend the General Obligations Law, in relation to exoneration.

SENATOR PATERSON: Explanation.

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

SENATOR SKELOS: Thank you, Madam President.

This bill amends the General Obligations Law by bringing back the assumption of risk doctrine in certain civil lawsuits.

In a personal injury action, if a defendant shows that the injuries sustained by the plaintiff arose during the commission or attempted commission by the plaintiff of certain crimes -- which include murder, robbery, burglary, arson, forcible rape, sodomy, or kidnapping in the first degree - and that the actions of the defendant were justified pursuant to the Penal Law, then the plaintiff is deemed to assume all risks of injury coming from the encounter with the

victim.

ACTING PRESIDENT McGEE: Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Skelos, will you yield for some questions?

SENATOR SKELOS: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, wouldn't you agree to the fact that in most of these violent felony cases that the courts have -- and I would say in the overwhelming majority of these cases that the courts have thrown these cases out and that, additionally, we do have a pretty strong common-law wrongful plaintiff statute in the state that really should cover this?

I agree with everything you've said in this bill. I guess what I'm really asking you is don't we already have this available to us right now.

SENATOR SKELOS: The individual

can still be sued. The question is if there's a complete defense, if the plaintiff has assumed the risk by committing certain enumerated crimes.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, what I'm a little afraid of, if Senator Skelos would continue to yield -

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: -- is a blanket exception.

I'm sure that if we look long enough, and I think we've gone through these cases, there have been a couple of times when the result of cases that occur in some of the civil suits, particularly where the plaintiff was actually the violent predator in the situation and the defendant is the one that defended themselves, and because of our comparative negligence status for some reason

there was a 10 percent award against the defendant, who -- and when those types of things happen, you have to wonder how it could happen, with the fine judges that we put on our benches, and assuming the reasonable citizens that serve as jurors.

So I can understand why Senator Skelos wants to make sure that it's a hundred percent. But what I would just ask Senator Skelos to reflect on here, for all of us who are listening today, is that type of blanket exception could also close the door for a few instances where perhaps the plaintiff was at fault -- maybe there was some wrongdoing on the defendant's part, but the reaction of the plaintiff was excessive.

There are few of those situations as well, I'll concede. But I just wonder that in our country right now, celebrating the way we conduct ourselves in our judicial system, if it's not better to just let the courts handle it.

SENATOR SKELOS: If you wish for me to reflect upon it, I shall reflect upon it right now and say that I am most supportive of

the bill, although you have certainly stated a great op-ed piece for the newspapers.

SENATOR PATERSON: Thank you.

Well, Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: I wanted to thank Senator Skelos for his reflections. Right after I vote against this bill, I'll get to work on the article.

ACTING PRESIDENT McGEE: Thank you.

Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 235 are

Senators Connor, Dollinger, and Paterson. Also Senators Sampson and Schneiderman.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Also Senator Stavisky.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: In relation to Calendar Number 235, those recorded in the negative are Senators Connor, Dollinger, Paterson, Sampson, Schneiderman, and Stavisky. Ayes, 48. Nays, 6.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 442, by Senator Skelos, Senate Print 384, an act to amend the Executive Law, in relation to permitting parents of minors.

SENATOR PATERSON: Explanation.

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

SENATOR SKELOS: This legislation would require that a parent or guardian of a minor who is a victim in a sexual harassment

incident should be informed of any proceedings and be allowed to attend.

ACTING PRESIDENT McGEE: Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Skelos, will you yield for a question?

SENATOR SKELOS: Yes.

SENATOR PATERSON: I voted for this legislation last year, Senator, and I would assume I'm going to vote for it again.

But I am just a little troubled at the fact that quite often in many of these child sexual abuse situations the abuser is someone very well known to the child. It in some cases would be the parent.

But we're going to exculp that from this conversation for a moment, because what I want to talk about are situations where the child might be uncomfortable talking in front of the parent. It could be a relative of the parent and of the child; it could be a friend of the parent.

And I just wanted to, since the Senator is on a roll, I just wanted him to again -

SENATOR SKELOS: Reflect?

SENATOR PATERSON: -- reflect on just the possible discomfort to the child of having the parent sitting there while the proceeding is taking place.

ACTING PRESIDENT McGEE: Senator Skelos, will you reflect?

SENATOR SKELOS: The answer is I believe no, it could be either parent, it could be one parent, it could be a legal guardian.

And I just believe when there's a sexual harassment of a minor basically under the age of 18 that a parent should be informed if in fact there's an informal proceeding that may occur, if the child is asked to sign a statement saying it occurred, it didn't occur, I'm not going to pursue it any further. Whatever it may be, I think it's appropriate for a parent to be part of that proceeding.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 30 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 584, by Senator Rath, Senate Print 6728, an act to amend the General Municipal Law, in relation to the procurement of transit vehicles.

SENATOR PATERSON: Explanation.

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

SENATOR RATH: Madam President, this is a very simple bill to authorize municipalities to be able to participate in joint or piggyback procurement arrangements from other municipalities or regional transit authorities or the State of New York.

It does not bypass the competitive bid process. It's merely to help smaller

municipalities to be able to get as good a price and have as good a research done as to how to procure the supplies that they need.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I'm speechless.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 602, by Senator Volker, Senate Print 208, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment.

SENATOR DOLLINGER: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill that's been around -- frankly, I think it first appeared as a program bill for the present Governor. It dates back to 1995. This is what is termed the "three times and you're out" bill. We've debated this a number of times.

In fact, I was reading a memo, which is the original memo, and it's fascinating because it talks about the flood of serious offenders and meaningful change is needed and the bleak picture in criminal justice. Of course, that was in 1995.

And here we are in 2002 and we have a declining prison population, we have a declining violent crime rate, declining murder rate. We have the lowest murder rate, by the way, that we've had since before the death penalty was abolished back in 1965.

So the truth is we have made substantial movement, and many of us believe that that movement is because we have passed

legislation similar to this. We've toughened up on career criminals, we've done all sorts of things.

Admittedly, this is not a -- by any means a -- this is a tough bill. What it says is, and it's very clear, if you have been arrested and convicted of two prior violent felony offenses, and if you are arrested and convicted of a third one, then the sentence becomes 25 years to life.

In the street, this is a permanent sentence for somebody. In reality, what it is is it says that if you can't handle yourself properly to the point where you commit three violent felony offenses, then you are going to jail until you're a very old man or woman.

And that's basically what this bill is.

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

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

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: With pleasure, Senator.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, we already have a standard. And everything you said I think makes perfect sense. What I'm wondering about is raising the standard.

Isn't there a time -- in other words, we could come back every two years and raise it to 25 years and 30 years, and we wouldn't be wrong on the merit because you're talking about some very violent people who obviously have no respect for other human beings.

But isn't there a point at which, just by ratio, these individuals really are - have kind of aged out of the process, are not going to be particularly violent and we're just holding them, in a sense, from the punitive sense of incarceration, you know, rather than the public-safety sense of it?

SENATOR VOLKER: I think you should keep in mind something. And that is that we're talking here of people -- and I

would think that if you would look and do some research -- and we did some research years ago on drug offenses, and it found that most of the people that went to federal prison for drug offenses had at least a hundred arrests in their background.

Imagine how many arrests you'd probably have for people who had been arrested three times for violent felony offenses. And obviously, if they've been arrested and convicted three times, the two prior times they must have spent quite a bit of time in jail because, under our law, clearly they would.

Now, if they didn't learn from those other two violent felony offenses and the sentences that went with them, what exactly do you do with these people?

I think the theory is, yeah, that's true, that they probably will be older. On the other hand, the attitude is this. If they haven't learned from the first violent felony offense, if they haven't learned from the second one -- and probably about 15 other crimes or more that they haven't been arrested

for -- then I guess the question you have is what better place for these people than, frankly, in jail.

I mean, obviously all attempts at regeneration and rehabilitation have failed. And I guess I think it's -- maybe it is a matter of frustration. But I guess the thought is, yeah, they may be older, but apparent they weren't old enough that they couldn't commit another violent felony offense. And let me make that very clear. These are not minor crimes, these are heavy crimes.

So I think the answer is that maybe that's the only place for them for the time being, until -- 25 years to life, obviously they're not going to be young people. But I think it seems to me in the end it's a matter of do you want to get thugs off the streets or you don't, I guess.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, last year I voted against this bill. And my conviction to do so is not

enhanced at all by Senator Volker's persuasiveness.

And there are a lot of persuasive people in here. But I think what sets the Senator apart is that he really does listen to the questions and is quite eloquent in his responses, but also quite substantive.

And I thought it was very understandable that he would say that a part of this is out of frustration. And I think it's the frustration that we all feel that urges us to vote for this bill.

My argument is that we're replacing nursing homes with prisons, that we've got people, as Senator Volker pointed out, that by the time they can commit this third crime, they had to have served the convictions of the other two -- they've got to be somewhere 30, 35, 40 years old.

So we tack on another 12 to 15 years that we already have, so now we're talking about people into their fifties. And what we're saying is rather than in their fifties, we'll keep them until they're about 70.

And what I'm sort of saying is that tours of the prisons -- one of our staff members, along with a few of our members, toured one of the prisons just in the last month. And they said what shocked them is that you have these very elderly inmates who clearly are not in a position to be of any harm to anyone. They may have some of the same feelings, but as time goes on, there isn't really the inclination to act in that way.

And at a time when we would want to be using those facilities for perhaps the next generation of criminals, I wouldn't want to feel that that was thwarted in any way by this legislation.

On the merit of the legislation, what Senator Volker is saying about the types of individuals it addresses is very true. That there's no response I can give to that. And it's not going to upset me when this bill I think passes. In spite of my attempts to prevent it, I get this feeling that Senator Volker is going to win here today.

But at the same point, it's just an

issue I thought I would raise about the necessity to house elderly people at this point in our state penitentiaries.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 602 are Senators Connor and Paterson. Also Senator Schneiderman. Ayes, 51. Nays, 3.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, thank you, Madam President. I would request unanimous consent to be recorded voting in the negative on Calendar 442, Senate 384.

ACTING PRESIDENT McGEE: Without

objection.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. May I have unanimous consent to be recorded in the negative on Calendar 235, Senate Print 401.

ACTING PRESIDENT McGEE: Without objection.

The Secretary will read.

THE SECRETARY: Calendar Number 607, by Senator Volker, Senate Print 2305, an act to amend the Penal Law, in relation to assaults against transit employees.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Yes, thank you.

Madam President, this is a bill that -- very simply, this raises the penalty for assaults on transit employees from an A misdemeanor to a D felony.

And let me say that in the committee there have always been discussions about why the list of people that we have here is here: cleaners, porters, maintainers and so forth. And the reason is that you must

include everyone connected with the transportation system.

The ironic twist is -- and this is particularly in New York City, and somewhat in Buffalo. Remember, we have transit systems now in all the major cities. And in Buffalo we have a system that goes above ground and then underground and so forth, and we've had a number of assaults.

The problem is that these people are exposed, clearly, to the potential for some pretty severe assaults. And an A misdemeanor just doesn't cut it. And that's particularly true in New York City, where A misdemeanors are pretty well treated as handout offenses like that in upstate New York. If you don't have a felony, you really don't have much of a charge against anybody.

And the reason we go to a D felony is because of the potential seriousness of these kinds of assaults. And frankly, there have been some very serious assaults, particularly, and I would say more so in the city of New York, maybe, than in the suburbs,

but they're happening everywhere.

And before somebody asks me the question why don't we just change the assault statute, we've been trying to do that for years, to upgrade the whole assault area, but the Assembly will not do it. But the Assembly has indicated their interest in this sort of bill.

If it were my preference, I would prefer to upgrade the entire assault area because I think it does need upgrading, and I've been trying to do that for about 10, 15 years.

But that's what this bill is. It's passed this house a number of times. I believe it was once on the calendar in the Assembly but has not passed the Assembly.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, the bus drivers in Queens County, the ones who drive the New York City Transit Authority buses, have spoken to me in great detail about this legislation. They are very, very concerned with the increase in assaults on the

bus drivers.

And I urge my colleagues to support this legislation. Thank you.

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

The debate is closed.

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.)

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President, to explain my vote.

ACTING PRESIDENT MEIER: Senator Hevesi, to explain his vote.

SENATOR HEVESI: Thank you, Mr. President.

We had a somewhat extensive debate on this bill last year. And I appreciated at the time very much Senator Volker's candor in discussing a better way to achieve the

objectives that this bill ostensibly seeks to achieve.

I just want to reiterate that, that the best way to do it is to classify second-degree assaults as E felonies for everybody. And you have a much broader scope of inclusion, and you can really remedy problems.

Because if I'm the victim of a second-degree assault, my assailant is only punishable by what is prescribed under an A misdemeanor. Whereas if this bill passed, somebody who is a porter, for example, for the Transit Authority who is a victim of an assault and is brutalized in the exact same way, his assailant can get up to seven years in jail. It's fundamentally unfair.

What is not unfair is affording the protections that exist in current law, the D felony, to the individuals who currently get it: peace officers, police officers, EMTs, paramedics, those folks who are, by definition, putting themselves in the line of fire on a daily basis.

With no disrespect at all intended

to transit workers, the argument has been put forth that the reason why they need the additional penalties is that they are in contact with the public more than other people. But if that's true, Mr. President, lifeguards at public beaches, parks workers, and many other classifications of municipal workers also meet that criteria of being in contact with large numbers of people.

There is nothing, I believe, inherent about somebody who is a stationmaster that makes him more vulnerable or a more inviting target other than that individual is in contact with a lot of people. And again, there's a lot of people who are in contact with a lot of people.

So what I would suggest is that everybody who is the victim of second-degree assault get an E felony as the potential punishment.

And with respect to Mr. President, who is indicating that I have exceeded my time, I will be voting negative on this bill, and I hope to see a more inclusive bill in the future.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The chair was trying to do that discreetly, and you blew it.

Senator Hevesi will be recorded in the negative.

Announce the results.

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

ACTING PRESIDENT MEIER: The bill is passed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, Mr. President, thank you. I rise to request unanimous consent to be recorded in the negative on Calendars 235, 584, and 602.

ACTING PRESIDENT MEIER: Without objection, Senator Hassell-Thompson will be recorded in the negative on Calendars 235, 584, and 602.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: Calendar Number

609, by Senator McGee, Senate Print 3009, an act to amend the Criminal Procedure Law, in relation to eligibility for youthful offender status.

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, 55. Nays, 2. Senators Andrews and Montgomery recorded in the -

ACTING PRESIDENT MEIER: Senator Andrews, are you rising to explain your vote?

SENATOR ANDREWS: No.

ACTING PRESIDENT MEIER: Okay. Let's complete the roll call, and then I'll recognize you, Senator.

The Secretary will announce the results.

THE SECRETARY: Ayes, 55. Nays, 2. Senators Andrews and Montgomery recorded

in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Andrews, why do you rise?

SENATOR ANDREWS: I rise, Mr. President, to request unanimous consent to be recorded in the negative on Calendar 235 and 602.

ACTING PRESIDENT MEIER: Without objection, Senator Andrews will recorded in the negative on Calendars 235 and 602.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there is not -- oh, I'm sorry, Senator Montgomery is asking to be recognized.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to be recorded - unanimous consent to be recorded in the negative on Calendars 235, 442, and 602.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendars 235, 442, and

602.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: I wasn't sure whether he -- I'm sorry, Mr. President, I wasn't sure if he recognized my hand on Calendar Number 609. I didn't hear my name called.

ACTING PRESIDENT MEIER: You're not noted as voting in the negative. Do you request unanimous consent to be recorded in the negative?

SENATOR HASSELL-THOMPSON: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: Without objection, Senator Hassell-Thompson will be recorded in the negative with regard to Calendar Number 609.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT MEIER: Senator Brown.

SENATOR BROWN: I request unanimous consent to be recorded in the negative on Calendar 609, Senate Print 3009.

ACTING PRESIDENT MEIER: Without

objection, Senator Brown will be recorded in the negative on Calendar 609.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we adjourn until Monday, April 29th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, April 29th, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 12:03 p.m., the Senate adjourned.)