NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 21, 2002

11:10 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

ACTING PRESIDENT McGEE: In the absence of clergy, may we bow our heads in a moment of silence, please.

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 20, the Senate met pursuant to adjournment. The Journal of Sunday, May 19, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

SENATOR SKELOS: Madam President,

there will be an immediate meeting of the Energy Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Energy Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could just continue, please.

ACTING PRESIDENT McGEE: The Secretary will read.

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

As a judge of the Court of Claims, John J. Brunetti, of Baldwinsville.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of

John J. Brunetti, of Baldwinsville, as a judge of the Court of Claims, to succeed himself.

We've received the paperwork on the nomination from the Governor. We found his credentials excellent and all in order. He appeared before the committee earlier this morning and was unanimously moved to the floor for consideration at this time.

And I most respectfully yield to Senator DeFrancisco for purposes of a second.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm very proud to stand and second the nomination of John J. Brunetti. John is a close friend, as is his wife, who's with him today.

He's an individual that practiced law for a short period of time with me, but a most enjoyable period. And he also was my legislative counsel. Now, that's the minor stuff.

The important things that he did and what show how well-qualified he is is that he's doing criminal cases in the Court of Claims. And the criminal cases require a

background in criminal law. That background includes as an Assistant U.S. Attorney, the first assistant attorney for the District Attorney's office. He teaches law school at Syracuse University, as he's done in evidence and various other subjects.

He's published various articles, but most recently has published a book. As his resume shows, it's the -- in my mind, it's the definitive work on confessions for the state of New York, and it's published by Gould Publishing.

John is a wonderful human being, an individual who has great legal ability. But most of all, he's a man of integrity, character, and evenhandedness. Anyone who has to appear before him, under circumstances that they don't like to appear before him in a criminal case, has to feel that no matter what their circumstances are, they're going to be treated fairly. And they are treated fairly.

So I'm very, very proud and pleased to second the nomination for Court of Claims Judge, my friend John J. Brunetti.

ACTING PRESIDENT McGEE: The

question is on the nomination of John J. Brunetti as a judge of the Court of Claims. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: John J. Brunetti is hereby confirmed as a judge of the Court of Claims.

Joining us today is Judge Brunetti in the chamber, along with his wife, Rockette, and friends.

Thank you. Welcome aboard, Your Honor.

(Applause.)

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, William C. Donnino, of Syosset.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you again, Madam President.

I move the nomination of William C. Donnino, of Syosset, to succeed himself as a judge of the Court of Claims.

Again, we examined the credentials of the candidate. They were all in order. He appeared before the committee earlier this morning, was unanimously approved to go to the floor for consideration at this time.

And I most happily yield to Senator Marcellino for purposes of a second.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. Thank you, Senator Lack.

I appreciate the opportunity to rise today to second the nomination of William C. Donnino, a Syosset resident, as judge of the Court of Claims. Syosset is my home district, my hometown. The judge lives a short distance away, and I don't think we've ever met.

But it is my pleasure to -- after reviewing his extensive resume, which goes back over 40 years of experience in the law and practicing law in New York, and a Court of

Claims judge since 1989, this resume and his experience speaks for itself.

However, I did venture out to make a few phone calls and find out about the judge. And I asked a couple of attorneys that I know who practice regularly before the bar. And they tell me this judge's credentials are superior, that he is a pleasure to appear before, and that it is a credit to the court that he is on that.

And I thank Governor Pataki for making his renomination and keeping such a fine jurist on the Court of Claims. I am confident he will continue to serve admirably for many years to come, and I am proud to count Mr. Donnino as a constituent and wish him well.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, I just want to say very quickly that all four of the nominees today are all excellent nominees. And all of them have worked with the Legislature one way or another, have a connection with the Legislature.

Bill Donnino and I were friends for many, many years. He's an excellent lawyer, he's been a great judge.

And I think it's a tribute to Governor Pataki and to the Court of Claims that we have such excellent people going to the Court of Claims.

And I especially want to commend Bill, who we miss him here in the Legislature, but I know he's doing a great job in the Court of Claims.

ACTING PRESIDENT McGEE: The question is on the nomination of William C. Donnino as a judge of the Court of Claims. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Judge William C. Donnino is hereby confirmed as a judge of the Court of Claims.

And joining us in the chambers this morning is the Honorable William C. Donnino, with his wife, Catherine.

May I take this opportunity to say, on behalf of the New York State Senate, welcome aboard and congratulations to you.

(Applause.)

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Guy J. Mangano, Jr., of Long Beach.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Guy J. Mangano, of Long Beach, to succeed himself as a judge of the Court of Claims.

We received the nomination from the Governor. We examined the credentials of the candidate. They were found to be excellent. He appeared before the committee earlier this morning, was unanimously moved to the floor for consideration at this time.

And I most respectfully yield for purposes of a second to Senator Skelos.

ACTING PRESIDENT McGEE: Senator

Skelos.

SENATOR SKELOS: Thank you, Senator Lack.

And thank you for the consideration of the committee in moving the nomination of Guy James Mangano, Jr. -- a great record as a practitioner, as a principal law clerk in the courts, and now for two years as a judge of the Court of Claims.

What's special today also, and I know that Judge Mangano, Jr., would appreciate this, is the fact that his father is here, the distinguished former presiding judge of the Appellate Division, Second Department, now officially a resident of Long Beach, in my district, and somebody who you have to be very, very careful when you play golf with because he knows how to work his handicap very successfully.

So I know -- Judge Mangano, I know how proud you are of your son. Judge Guy James Mangano, Jr., I know how proud your father is of you. So it's my pleasure to rise and second your nomination, and congratulations.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

I'll tell Senator Skelos you can take the Manganos out of Brooklyn, but you can't take the Brooklyn out of the Manganos.

The fact is I know retired Justice Mangano is proud of Judge Mangano. We are all proud of him. I'm delighted to second it. And I know up there in the heavens the sheriff, Judge Mangano's grandfather, the last sheriff of Kings County, and someone who I knew quite well, who we always referred to as Mr. Democrat from Brooklyn, is indeed proud as well.

Madam President, I am delighted to second this nomination.

ACTING PRESIDENT McGEE: The question is on the nomination of Guy J. Mangano, Jr., as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Judge Guy J. Mangano, Jr., is hereby confirmed as a judge of the Court of Claims.

Judge Mangano is joining us in the chambers today, along with his parents, Guy and Anne Mangano, and friends Maria and Pat.

May I say, on behalf of the New York State Senate, welcome and congratulations.

(Applause.)

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Ronald A. Zweibel, of New York.

ACTING PRESIDENT McGEE: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I move the nomination of Ronald A. Zweibel, of New York, to succeed himself as a judge of the Court of Claims.

We've examined the credentials of the candidate. They were found to be

perfectly in order. He appeared before the committee earlier this morning, was unanimously moved to the floor for consideration at this time.

And I am most happy to yield to Senator Paterson for purposes of a second.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, please permit me to second the nomination of Judge Ronald Zweibel to succeed himself on the Court of Claims, where he has served since 1987 with great distinction and has engendered the esteem of his colleagues because of his great work.

Prior to that, from 1978 to 1987, he was the head of New York State's Crime Victims Compensation Board. We knew him - "we" in the editorial legislative "we" -- as the assistant counsel to the Speaker, Stanley Fink, during his 18-year term. Judge Zweibel served from 1976 to 1978 as his assistant counsel, and from 1974 to 1976 he was the counsel to the Codes Committee.

Formerly of the New York City

Department of Corrections, Judge Zweibel has a long and rich history and will continue to serve quite admirably on the Court of Claims.

He is a resident of Senator Schneiderman's district. Senator Schneiderman is out of the chamber and asked me to get up and extend his heartfelt appreciation to the work that Judge Zweibel does as well.

So I second the nomination of Judge Zweibel to succeed himself on the Court of Claims.

ACTING PRESIDENT McGEE: The question is on the nomination of Ronald A. Zweibel as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Ronald A. Zweibel is hereby confirmed as a judge of the Court of Claims.

Joining us in the chamber today is Ronald A. Zweibel, His Honor Ronald A. Zweibel, and his wife, Eleanor, and his son,

Robert.

And on behalf of the New York State Senate, may I say congratulations and welcome aboard.

(Applause.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Corporations Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Corporations Committee in the Majority Conference Room.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Larkin, on page 37 I offer the following amendments to Calendar Number 799, Senate Print Number 6401A, and ask that said bill retain its place

on Third Reading Calendar.

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

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT McGEE: Senator Espada.

SENATOR ESPADA: Thank you, Madam President.

On behalf of Senator Kuhl, on page number 27 I offer the following amendments to Calendar 617, Senate Print Number 3104, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

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

ACTING PRESIDENT McGEE: Yes.

SENATOR SKELOS: If you could make the substitution, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 58, Senator McGee moves to discharge, from the Committee on Rules, Assembly Bill Number 1888B and substitute it for the identical Senate Bill Number 3112A, Third Reading Calendar 1101.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk that I've sponsored. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: Thank you. Just one moment.

The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 5649, memorializing Governor George E. Pataki to proclaim May 25, 2002, as Missing Children's Day in New York State.

ACTING PRESIDENT McGEE: The

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 260, by Senator Kuhl, Senate Print 3947A, an act to amend the Education Law, in relation to the total salary.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 1.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 379, by Senator Marchi, Senate Print 4322B, an act to amend the Public Authorities Law and the New York State Medical Care Facilities Finance Agency Act.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 970, by Member of the Assembly Schimminger, Assembly Print Number 9980 -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1022, by Senator Skelos, Senate Print 6829A, an act to ratify, legalize, validate and confirm.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1211, by Senator Alesi, Senate Print 289, an act to amend the Penal Law, in relation to the crime of false personation.

ACTING PRESIDENT McGEE: 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.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1213, by Senator Morahan, Senate Print 832, an act to amend the Family Court Act, in relation to authorizing.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside, please, Madam President.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1214, by Senator Kuhl, Senate Print 1362, an act to amend the Penal Law, in relation to the imposition of driver's license suspensions.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1215, by Senator Farley, Senate Print 1601, an act to amend the Tax Law, in relation to the

requirement.

ACTING PRESIDENT McGEE: Read the last section.

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

SENATOR PATERSON: Lay that bill aside, aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1218, by Senator Leibell, Senate Print 2363, an act to amend the Civil Service Law, in relation to special rights.

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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1219, by Senator Volker, Senate Print 2784, an

act to amend the Civil Practice Law and Rules, in relation to the fiduciary exemption.

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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1221, by Senator Trunzo, Senate Print 4601A, an act to amend the Vehicle and Traffic Law, in relation to the definition.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1222, by Senator Saland, Senate Print 5046, an act to amend the Penal Law, in relation to establishing.

ACTING PRESIDENT McGEE: 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.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1223, by Senator Velella, Senate Print 5333, an act to amend the Vehicle and Traffic Law, in relation to adjudication.

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, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1224, by Senator Alesi, Senate Print 6032, an act to amend the Alcoholic Beverage Control Law, in relation to the authorization.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1225, by Senator DeFrancisco, Senate Print 6247, an act to amend the General Business Law, in relation to the penalties.

ACTING PRESIDENT McGEE: 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.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1226, by Senator Saland, Senate Print 6431, an act to amend the Penal Law, in relation to permits.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1227, by Senator Wright, Senate Print 6528, an act in relation to the retirement plan for employees.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1228, by Senator Maziarz, Senate Print 6582, an act to amend the Criminal Procedure 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 1229, by Senator Velella, Senate Print 6761, an act to amend the Real Property Tax Law, in relation to the payment of taxes.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1230, by Senator Farley, Senate Print 6965A, an act to amend the Public Officers Law, in relation to waiving.

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, 57.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Farley.

SENATOR FARLEY: Madam President, is it all right if you call up 1215? I think the objection to it has been released.

ACTING PRESIDENT McGEE: Senator Morahan, may we call up Calendar Number 1215?

SENATOR MORAHAN: Yes, Madam President.

ACTING PRESIDENT McGEE: Thank you.

The Secretary will read.

THE SECRETARY: Calendar Number 1215, by Senator Farley, Senate Print 1601, an act to amend the Tax Law, in relation to the requirement.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1231, by Senator Stafford, Senate Print 7001, an act making certain findings and determinations with respect.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk.

The Secretary will read.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1232, by Senator Hoffmann, Senate Print 7084, an act to amend the Agriculture and Markets Law, in relation to the exemption.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

The Secretary will read.

THE SECRETARY: Calendar Number 1233, by Senator Stafford, Senate Print 7164A, an act to amend the Alcoholic Beverage Control Law, in relation to the exemption.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1234, by Senator Balboni, Senate Print 7202, an act to amend the General Municipal Law, in relation to the computation.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1235, by Senator Espada, Senate Print 7340, an act to amend the Executive Law, in relation to an application.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1236, by Senator Meier, Senate Print 7388, an act to amend the Social Services Law, in relation to increasing the standards.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect December 31.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR MORAHAN: Yes, Madam President. Will you please call up Calendar Number 1228, by Senator Maziarz.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 1228.

THE SECRETARY: On page 69, Calendar Number 1228, by Senator Maziarz, Senate Print 6582, an act to amend the Criminal Procedure Law, in relation to permitting.

SENATOR PATERSON: Explanation.

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

SENATOR MAZIARZ: Thank you, Madam President.

This bill would permit a vulnerable elderly person to be accompanied by a social

worker, rape crisis counselor, psychologist, or other professional providing emotional support whenever such elderly person is called before a grand jury to give evidence, provided that the district attorney's office would consent to that appearance.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, if the sponsor will yield just to one question.

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

SENATOR MAZIARZ: I would always yield to my good friend from Rochester.

ACTING PRESIDENT McGEE: The Senator yields to his good friend.

SENATOR DOLLINGER: Thank you. Senator Maziarz, you're not going to be able to say that next year, because we'll both be from Rochester.

Through you, Madam President. This bill is a great idea in the sense of it allows someone who is determined to be vulnerable to be accompanied to the grand jury by a social

work or someone who can help them.

My only question was, shouldn't this apply to anyone who is determined to be vulnerable, regardless of their age?

SENATOR MAZIARZ: I'm sorry, I didn't quite hear that question.

SENATOR DOLLINGER: Through you, Madam President. Shouldn't the bill apply to anyone who is determined to be vulnerable regardless of their age?

For example, I think in the memo you refer to the fact that we allow this to occur for young children. We've now allowed it for elderly people.

SENATOR MAZIARZ: Right.

SENATOR DOLLINGER: But shouldn't it be anybody who's determined to be vulnerable?

It could be a 40-year-old woman or a 25-year-old man or a 50-year-old who might not necessarily be elderly but nonetheless, because of a whole bunch of reasons, including the trauma induced by the crime or other factors, could be determined to be vulnerable.

I'm just concerned that, rather

than do this just for the elderly or just for children, we ought to do it for anybody the court determines to be vulnerable.

SENATOR MAZIARZ: I would tend to agree with you, Senator Dollinger, but the New York State District Attorneys Association has expressed some concern -- not necessarily opposition, but some concern of opening it up that wide. And that's why I think the original bill was done for children and this one for elderly. They have not expressed any objections to this bill for the elderly.

But I tend to agree with you. I think it could be wider participation, if you will.

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

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Maziarz's acknowledgement that what we have done in this state is we have created special protections for children who appear before grand juries.

Having counseled clients who have appeared before grand juries who are businesspeople, I can tell you it's one of the most daunting things that you do, to send someone, even if they have no criminal culpability, to send them into a grand jury with the district attorney, a stenographer, a raft of documents, and a roomful of strangers. It's a very, very intimidating process.

And I would just hope that if this bill passes and becomes law, we would look instead to a broader bill that would say anyone who is determined to be vulnerable, for whatever circumstance. There could be a preclearance through the courts of that vulnerability determination.

Once we decide that people are vulnerable, that they need someone to help them through this process, that we would permit someone to come in, within the cloak of secrecy that accompanies our grand juries.

I look forward to the day I can vote for that bill. But I'm going to vote for this one today. Thank you.

ACTING PRESIDENT McGEE: Any

other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President. To explain my vote.

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

SENATOR DUANE: I'm going to vote against this bill, in large part because I think it's not appropriate to single out senior citizens.

I think that senior citizens are as able to function in a grand jury room as well as any other citizen. I agree with Senator Dollinger, if we're going to make a sweeping infirm or vulnerable, then that should go for everybody.

But for everyone going into a grand

jury, it's a very trying and difficult thing for anyone to do. So again, I don't think that a senior citizen is any better or any less able to handle themselves in a grand jury proceeding.

I do want to say, though, that fortunately, senior citizens in our state are provided with their civil rights. They are protected against discrimination in employment, in housing, in public accommodation.

That's -- it's a good thing that's that in the law. What's missing in the law is protection based on sexual orientation and gender identity.

So I hope when we're working to protect people in this body that we will remember to include those who are not protected in our state now. And that's people who can be discriminated against, fired, evicted from their homes based on their sexual orientation and gender identity.

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

ACTING PRESIDENT McGEE: Senator

Duane will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Will you please call up Calendar 1214, by Senator Kuhl.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1214, by Senator Kuhl, Senate Print 1362, an act to amend the Penal Law, in relation to the imposition.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This bill is simply a measure of enforcement. Currently, when an individual is sentenced to pay a fine for a violation of, say, a marijuana possession, there is no -- if

they do not pay the fine, there is no recompense from the court.

So this provision puts into place that the court in fact can enforce that payment by suspending the license of an individual. And that's what the purpose of the bill is.

It's an issue that actually was brought to me by several justices of the town justice courts. And so this is a direct response to their inability to actually enforce the provisions of the law.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I'm going to vote in favor of this bill, Senator Kuhl. And the only reason why I rise is I think this is actually a great idea. It ought to be applied not just to infractions for marijuana, but, quite frankly, all of those little fines that are imposed in our criminal courts, in our town and village criminal courts, which obviously serve as an alternative to more severe sentences.

We have lots of teenagers who come

to our courtrooms who are fined for disorderly conduct and trespass and minor violations. And I think you properly point out that this bill, which only applies to marijuana -- but if the local criminal courts had a way to tie the nonpayment of all of those little fines for, frankly, kids being kids, or adults, or whatever, when they misbehave, I think this would be a great way to send a message to them that if you don't pay that fine that's imposed by a magistrate in the criminal court, you're eventually going to lose your right to drive.

And I just think -- it only applies to marijuana. I would urge that you take a look at expanding it to say that anytime a fine remains unpaid for more than 30 days in the local criminal courts, the perpetrator, the offender will lose and the court has the ability to suspend their license as part of that penalty.

I think it's a reasonable measure, and I think it would get greater compliance among the miscellaneous fines that are handed out in droves by magistrates that aren't responded to.

Madam President, I'm going to vote in favor and urge my colleagues to do the same.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

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

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR MORAHAN: Madam President, can we return to the regular reading of the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read in the regular order.

THE SECRETARY: Calendar Number

970, by Member of the Assembly Schimminger, Assembly Print Number 9980, an act to amend the General Business Law, in relation to exempting.

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, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1213, by Senator Morahan, Senate Print 832, an act to amend the Family Court Act, in relation to authorizing restitution.

SENATOR DOLLINGER: Explanation.

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

SENATOR MORAHAN: Yes, Madam President.

This bill would permit the Family

Court to authorize restitution for medical and dental expenses up to $1,500 as a condition of probation or conditional discharge in cases involving respondents over 10 years of age.

ACTING PRESIDENT McGEE: 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 1213 are Senators Duane, Hassell-Thompson, Montgomery, and Paterson. Ayes, 57. Nays, 4.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Madam President, can we reconsider the vote on Calendar 970.

ACTING PRESIDENT McGEE: The

Secretary will call the roll on Calendar Number 970.

THE SECRETARY: Calendar Number 970, by Member of the Assembly Schimminger, Assembly Print Number 9980, an act to amend the General Business Law.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: The roll call is withdrawn, and the bill is laid aside.

SENATOR MORAHAN: I'd like the bill laid aside for the day.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1232, by Senator Hoffmann, Senate Print 7084, an act to amend the Agriculture and Markets Law, in relation to the exemption.

SENATOR DUANE: Explanation, please.

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

SENATOR HOFFMANN: Thank you, Madam President.

Last year we passed a piece of legislation that was designed to end the process of duplicative licensing for people who sell milk. Those who are selling milk in small containers exclusively through vending machines requested and obtained legislation that would allow them to not have to have the duplicative license for a milk dealer.

Unfortunately, the bill contained within it enough vague language that it could have been interpreted as allowing somebody to sell, on a larger-scale basis, milk in large containers. Therefore, we have amended the bill.

It was vetoed last year. In the veto message, the Governor stated: "Although the bill may have been intended to exempt only those persons who distribute milk exclusively through vending machines, its actual effect would be to broadly exempt vending machine operators from licensure, regardless of whether such operators engage in the customary functions of a milk dealer." All very good

points from our esteemed Governor.

Therefore, we have addressed Governor Pataki's concerns, and there is new language in the bill before us today which includes the phrase "sells no milk in bulk or in containers that are greater than one pint in size."

There are memoranda in support from the Department of Ag and Markets and from Farm Bureau.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Paterson, on the bill.

SENATOR PATERSON: This is an issue that we appreciate that Senator Hoffmann is trying to address.

We did feel last year, 16 of the - we did feel last year that the bill was basically too broad, that the exemptions are -- or at least that the legislation as it stands now applies to grocery stores and other types of vendors and perhaps if the

regulations are changed, that might be a solution.

But we do not feel that the concerns that the Governor raised in his veto are cured through this piece of legislation.

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

Senator Hoffmann.

SENATOR HOFFMANN: Would Senator Paterson yield for a question?

ACTING PRESIDENT McGEE: Senator Paterson, do you yield for a question?

SENATOR PATERSON: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HOFFMANN: Senator Paterson, could you be a little more explicit? I'd appreciate your suggestions on how the bill could be changed.

I feel that counsel has done an adequate job, the Department of Ag and Markets has done an adequate job. Where do you see a deficiency? I think it's quite explicit in here as to the size of the cartons.

ACTING PRESIDENT McGEE: Senator

Paterson.

SENATOR PATERSON: Thank you, Madam President.

Senator Hoffmann, there's just a feeling that there are other types of vendors in addition to milk dealers who are affected by this. They also fall under these regulations. And it was really a health and sanitary issue that we think we're trying to address.

We certainly understand what you're trying to accomplish. Perhaps just the stringency of the regulations themselves might be diminished to a certain degree.

But since in the end it's consumers who are affected by what could be the sanitary conditions, we did not feel that this piece of legislation, while it does make an adjustment, significantly cures the concerns that the Governor raised. And we'll be looking forward to see how the Governor takes a look at this piece of legislation.

SENATOR HOFFMANN: Madam President.

ACTING PRESIDENT McGEE: Senator

Hoffmann.

SENATOR HOFFMANN: Yes, on the bill.

I would just like to point out for the record in the years since this measure passed in this chamber and in the other house, and in the months subsequent to the Governor's veto message, I've heard no concerns from the other side of this chamber regarding health and safety requirements or sanitary requirements, as just voiced by Senator Paterson. This indeed comes as a tremendous shock to me. Had those been brought before this committee, we would have reviewed them.

My concerns were addressed -- my concerns were the same as the Governor's and Ag and Markets'. We addressed them within the bill.

I think I believe that there is a tremendous responsibility in this state for us to accomplish two things in this area. One is to make milk as convenient as possible and as accessible as possible for the many people who will purchase other beverages through vending machines. In this instance, because milk has

now been made available in vending machines, particularly in schools, it is improving the nutrition of a large number of New York State citizens, especially children and it also creates a very important new market for our dairy industry, which is the largest facet of New York State agriculture, agriculture being New York's number-one industry.

I think this is a matter of some great significant. I think that this is an important measure for us to pass. And I look forward to the Governor's approval this year.

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.)

SENATOR PATERSON: Party vote in the negative, Madam President.

ACTING PRESIDENT McGEE: Party vote in the negative.

Senator Morahan.

SENATOR MORAHAN: Party vote in the affirmative.

ACTING PRESIDENT McGEE: Party vote in the affirmative.

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46. Nays, 25. Party vote.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1235, by Senator Espada, Senate Print 7340, an act to amend the Executive Law, in relation to an application.

SENATOR PATERSON: Explanation.

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

SENATOR ESPADA: Surely.

Senator Paterson and Madam President, this bill creates a mechanism and establishes criteria which must be considered by the Supreme Court in determining an application for expungement for a person who is not prosecuted or, if prosecuted, the individual was acquitted, the conviction was

reversed or vacated, or the individual was granted a pardon, or the individual was not convicted of an offense which is a designated offense.

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

Read the last section.

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you. Will the sponsor please yield?

ACTING PRESIDENT McGEE: Senator Espada, will you yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you, Madam President.

Just one quick question. It's my understanding -- and correct me if I'm wrong -- that fingerprints, for example, are not returned if an individual has been arrested, incarcerated, and his conviction was overturned.

What's the distinction between DNA, where, if it's been collected, there are adequate protections that if somebody tampers with it or uses it inappropriately that there are felony-level penalties to protect against that? So why would we need to expunge somebody's DNA upon the overturning of a conviction and we don't give back fingerprints, for example?

SENATOR ESPADA: Well, this particular bill would require that, unlike existing law -- and may I add that this is mirroring existing law with respect to what you mentioned and also with respect to other property that is seized through an investigation.

But the DNA records that an individual -- that are taken from an individual in connection with an investigational prosecution differ in that currently existing law does not purge DNA records for convictions that are vacated or reversed or that are -- where individual has obtained a pardon.

Also, individuals that are

acquitted are not granted that ability by way of law. So those conditions are the ones that this particular bill addresses.

Still, the individual would have to make application to the court. The mechanism that establishes this procedure would call for the judge to have input from the district attorney's office. So we see it as an important mechanism that involves the full scope of weighing whether an individual is to be retried, whether an individual's DNA sample could affect another investigation, and obviously allows for DA input before a conclusion is reach by the court.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

ACTING PRESIDENT McGEE: Senator Espada, will you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR HEVESI: I'm just trying to understand the scope of this legislation. And I may wind up supporting this, but I need to understand it first.

Is it possible that if your bill were to become law that an individual who has a long criminal history, has been incarcerated many, many times but had never been compelled, for whatever reason, to provide a DNA sample, gets arrested on that particular latest arrest, is required to submit a DNA sample, happens to be acquitted or is convicted and has that offense, that conviction overturned, and then has to, under your bill -- and then files an application to have the DNA expunged, isn't it possible, then, that we would have a situation where you'd have somebody with a long criminal history who you might want to be included in the state's DNA data bank who you may not have intended to be excluded based on that one application, based on that one arrest?

SENATOR ESPADA: The answer is no.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

ACTING PRESIDENT McGEE: Senator Espada, will you yield?

SENATOR ESPADA: Yes.

SENATOR HEVESI: Thank you.

Why is that? Why is the answer no to that question?

SENATOR ESPADA: The DNA identification index will continue and throughout our votes continues to be and should be a database for those who have criminal convictions, those criminal convictions that stand.

Those criminal convictions that have not been reversed or met with a pardon will continue to be a part of the DNA identification index if my bill became law.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

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

SENATOR ESPADA: Yes.

SENATOR HEVESI: Thank you, Madam President.

I don't understand. My specific question here is -- here's my concern. My concern is, again, somebody with a long

criminal history who has never provided information, DNA, his DNA, and therefore has not been included in the DNA data bank, but we know that this individual is likely to be a recidivist offender -- if your legislation is passed and that individual on one particular arrest has the conviction overturned or he is acquitted, wouldn't it be in the state's interest that that individual who was, pursuant to that arrest, compelled to provide a DNA sample, wouldn't it be in the state's interest to have that individual's DNA as part of the state's data bank despite the fact that his conviction was overturned on one particular arrest?

SENATOR ESPADA: It may very well be in the state's interest, but it certainly is not a concern of this bill, nor likely outcome of this bill.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

SENATOR ESPADA: Yes.

SENATOR HEVESI: Thank you.

If I am arrested and I submit fingerprints, as I'm required to when I'm

arrested, and then my conviction is thrown out or I'm acquitted at trial, is there any obligation on the part of the state or local law enforcement to destroy my fingerprints?

SENATOR ESPADA: Fingerprints are allowed to be returned. I'm not aware of any law that would allow for their destruction without some petition to the court.

And I should hasten to add that counsel informs me that they can be destroyed upon application to the court.

SENATOR HEVESI: Okay. Thank you. Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Hevesi, on the bill.

SENATOR HEVESI: I'm going to support this bill. There is an important distinction there that I was trying to make here.

But my broader concerns are more that I'd like the state's DNA data bank to be as inclusive as possible for a whole slew of reasons, criminal justice reasons, which have demonstrated quite clearly that the more expansive your DNA data bank is, the more

likely you are to convict individuals who are -- who have committed crimes, some unspeakable crimes, most notably sexual offenses. And in addition, you will wind up in a situation where the inclusion of DNA samples will result in individuals who are not guilty being exonerated and saving resources of local law enforcement.

I'm going to support this bill because, notwithstanding the fact that we have yet been unable -- and I know that the Governor is interested in expanding the DNA data bank, as are some members of this chamber, as am I. Until we have a situation where, upon arrest, anybody is arrested, that DNA information is mandatorily put into the state's DNA data bank, I can see why Senator Espada would move this bill.

So I'm going to support it. But I would like to again call for the most expansive type of DNA data bank in New York State. There are so many cases that could be solved with the inclusion of DNA evidence, and there are innocent people languishing in jail. And I would submit, Madam President, that it

is probably a good expenditure of state resources for those individuals convicted of capital offenses and a number of violent felony offenses that in the interests of justice that the DNA testing be provided for for those individuals in order to ensure, certainly for people who may be facing the death penalty, and for others also who are languishing in jail for years and years and years who didn't do it.

Because year after year, month after month, we hear of cases where somebody has been sitting in jail on a rape conviction for 12 or 15 years and it turns out that they didn't do it. Somebody winds up coming along and saying, well, yeah, I was really the culprit, or new evidence comes forward and or what have you. And now with the inclusion of DNA technology, that's something we want to get involved with.

So I'm going to support Senator Espada's bill. But once again, I really do believe that we should be much more inclusive in who is required to give samples of DNA. And I know some of my colleagues on this side

of the aisle will not agree with this. But I'd like to see anybody who is arrested be required to submit a DNA sample.

That's going to wind up serving a greater public good. We are going to get people off the streets who have committed crimes and we were not able to catch them. And when they began expansive use of DNA for criminal justice purposes in Great Britain, they immediately had a slew of hits on individuals who were sexual offenders and got them off the streets really quickly.

So having said that, I'm going to support Senator Espada's bill. I appreciate his work on this. But I hope in the future we can see an expansion of the state's DNA data bank.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, these kind of debates are always interesting. Senator, I would only point out one thing to you. Read the bill very carefully. It says "permits an individual to apply to the court of original jurisdiction for an order."

It doesn't say that the court has to release the DNA records. If there is some reason, and if this guy is a multiple offender -- or woman, for that matter -- then I would assume that he probably will not be able to get the record expunged just on the basis of the fact that he was pardoned on one crime or that the individual case was vacated and so forth. That's number one.

Number two, there is an impression that there was a huge percentage of inmates in this country who are found to have not committed the crime because DNA has found that the evidence under their conviction, by which their conviction was found, was not proper.

I would caution everybody to understand something, because the media has made this sound as if none of the people who are found innocent by reason of DNA didn't commit the crime. Unfortunately, that is not true.

How many times I have talked to prosecutors and I say, "This person was found innocent" and they said, "Yeah, we just didn't have the evidence." "Are you looking for the

perpetrator?" They said: "Oh, no, he did it, there's no question about it."

You must understand something about DNA. Let me give you an example in several murder cases where there were two people -- or three people, even -- who committed the crime, and there's DNA evidence, and the DNA evidence was used against one or two of the individuals. Because they didn't have, maybe, other evidence.

What happens is the DNA evidence turns out to be the wrong person. It's one of the other people. So the other two people, they get their convictions reversed, because there's really no evidence to convict them.

It reminds me of the famous incident that happened in Senator Stachowski's district many years ago. It's way before he was born. There was a big shooting at a crossroads in Cheektowaga, and three people were convicted of murder and eventually executed. And as the guy is about to -- or the second guy is about to be executed, he said: "Charlie didn't do it, he didn't kill anybody. He didn't kill anybody." And the

warden said, "You know, I don't think he did it."

What they meant was that Charlie was a bad shot. He admitted firing, but Fred said "I actually hit the guy." So it was the bad shot defense. In other words -- and the people that looked at this case said, "Well, obviously Charlie didn't do it. I mean, everybody said he was innocent."

Somehow innocence is an interesting question. If you're shooting at somebody and you happen to be a bad shot and two people get killed -- and that's what did happen -- are you not going to find somebody guilty because they happen to be a bad shot and the other guys were better shots?

The point I'm just trying to make, and I'm not trying to draw this out, is you do have to be a little careful with some of these cases. There really are not that many cases where DNA finds people innocent. It's good that they do; don't get me wrong. And some of them are genuinely innocent cases. That is, these people were genuinely innocent.

But innocent is a -- by law doesn't

necessarily mean that they actually didn't commit the act. It means we can't prove it. Because under our system, if we can't prove it, they're innocent, period.

But there's no question -- and especially in these death penalty cases - that some of these people actually committed the crime. But because of the fact that the evidence may have been scanty, and if DNA was used or if fingerprints were used or something was used, they were found innocent, and rightfully so. If you don't have the evidence, they should be found not guilty.

But you really have to be a little careful with claiming that they never did any of these things. They've had a number - several of these people have said, Well, I didn't really kill her, I killed him, or something like that.

But my point, I think, is with this bill, I don't think this bill creates any necessary danger. I happen to be with you that we should use a lot more DNA. I think a lot of your colleagues, particularly in the Assembly, do not take that position, as you

well know. But I think as the years go on, we are going to take more and more DNA samples. And ultimately I suspect that we will do it on felony arrests. And I think that will be fairly soon. Because when you think about it, it really does make sense.

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you. Just briefly. And I very much appreciate Senator Volker's comments.

But it also brings out the one real failure that we've had here in this house. And I don't blame it so much on this house, I really blame this on the Assembly. Something we need to do and we need to do immediately is stretch out that statute of limitations on violent felony offenses.

Because -- and the reason the DNA debate is so important in this particular case is with a five-year statute of limitations on sexual-related offenses, you have and we have had a situation that's -- it's brought it home for me because in Queens there's a police

department warehouse with rape kits that have aged past five years. We then do DNA testing on them subsequent to five years and are unable to prosecute.

So I agree with Senator Volker. If you have a DNA kit and it shows that you have semen from a perpetrator pursuant to a rape, that's very strong evidence.

I agree with Senator Volker that if you have somebody who has been convicted of an offense and somehow use DNA to not exonerate the individual but maybe to throw out evidence upon which they were convicted, that probably serves the interests of justice, but it is not as definitive as it is when you finally convict somebody.

But this issue of the statute of limitations, we must address this and we must address it soon. If I had my druthers, I would completely eliminate the statute of limitations on all violent felony offenses, flat out eliminate it.

And particularly when we are in the throes of the scandal in the Catholic Church, which continues day after day after day, where

victims can only seek a civil recourse and not criminal recourse amongst child rapists, is just flat-out wrong. And I will again just state for the record, and I've spoken on this the floor about this in the past, that the notion that you can't serve justice because 15 or 20 years later witnesses are not as reliable and what have you, that fact, Madam President, makes the burden of proof much more difficult on the prosecution, which must prove beyond a reasonable doubt in a criminal case that an individual is guilty, that memories have faded.

If somebody has raped somebody and the evidence only becomes available after that five-year period, so what? What's the distinction between homicide, where there is no statute of limitations, and some other unbelievably violent offense where the victim, though they are still alive, are damaged so badly for the rest of their lives as to defy belief? Why shouldn't there be recourse for that victim?

So on behalf of all the victims of sexual assaults, the victims of the pedophile

priests, the victims of anybody who has been assaulted or victimized in any way in a violent capacity in this state, we should eliminate this statute of limitations for violent felony offenses. We can do it in a responsible way. And I would be willing not to have it completely eliminated, we can extend it outwards. But five years is just completely and grossly inappropriate.

I think Senator Volker would agree with me, as would many others in this chamber, because we've brought these bills before. I call on the Assembly to take action on this, take action immediately. Because this is flat-out wrong.

And for all the victims of this church scandal right now, which is much worse than we know it to be in the press right now -- it's much worse. Logic dictates that the numbers of individuals who have been raped, been molested by priests is exponentially higher than the number of cases that we've heard about.

And that these individuals, after five years, or I believe it's their 18th

birthday, they can no longer -- the perpetrators can no longer be brought to justice in a criminal sense is just wrong. I mean, this is just wrong. We need to change this policy, and we need to do it as soon as humanly possible. For the victims of sexual abuses of priests, for women who have been raped, for anybody else who is the victim of a violent assault.

I mean, if I am brutally assaulted by somebody with a weapon or what have you, and I can only prove it or the state can only prove it after a certain amount of time has elapsed, why am I then precluded from having justice? Why? I don't understand it. It's wrong.

So, Madam President, I thank Senator Volker and Senator Espada for their work in this area. I agree with Senator Volker. I hope the day comes when, upon the arrest for violent felony offenses, DNA samples are provided. I understand my colleagues, many of whom on my own side of the aisle, don't like the civil liberty implications of this. But in the interests of

justice, I think that needs to be done and a serious look and reexamination of the statute of limitations in New York State must be explored.

Thank you.

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

Senator Espada.

SENATOR ESPADA: Madam President, thank you very much.

I thank Senator Hevesi for imparting the wisdom and the questions. And I think most of it is absolutely necessary, in that this is an emerging and developing field.

However, I just want to return to a very simple fact here, and that is that we should weigh very carefully people who are innocent, weigh very carefully those precious freedoms that we protect. You know, we get very upset if we find out that certain financial data of ours or credit data is being shared without our permission, or that our telephone numbers are provided to potential vendors that seek our business.

Yes, it's an emerging field. Yes,

it could yield very beneficial results that could point toward guilt or innocence. But a real basic tenet that this legislation speaks to is to purge the DNA database of people who are innocent, who have been found innocent through a court, who have been found innocent through a part in another procedure, and it does prevent abuse.

That issue aside, I think we do need to revisit the issue of individuals that have multiple felonies, and I think that point is well taken.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

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

I guess the discussion has made it, for me, a little bit more confusing as opposed to clearer. I think I heard Senator Volker talk about the fact that in many of the instances, while the person may not necessarily be guilty of this particular offense, there is a sense or knowledge that there is guilt. My concern becomes that when

we become more concerned about guilt than justice, I become afraid.

Primarily because, as I understand the intent of the bill, is if in fact in the individual cases where the sentence has been reversed or overturned for whatever reason, that such evidence like fingerprints are allowed to be destroyed.

And my colleague was alluding to the way in which Great Britain handles similar kinds of cases, that if they're looking for a perpetrator, for instance, between the ages of 16 and 25, every young person, young man, white male between 16 and 25 must come in, spit in a cup, and that DNA is tested and the base is kept.

Well, we don't live in Great Britain, and we are trying to ensure that the civil liberties that are protected by our Constitution are the responsibility of every member of this house. And when we -- and it does not mean that we can't look at what other countries do, but we also have to weigh what they choose to do and balance that with that which is in the civil liberties and rights of

citizens of this country.

And so it concerns me a great deal when even though we may strongly believe and -- but without evidence we cannot prove that a person is guilty -- it does not necessarily mean that they are in fact innocent. And I think that that was the point that Senator Volker was making.

But justice doesn't ask us to do that. Justice says predicated on the findings and a judicial process, if the person is not found guilty, the information therefore is not valid. If the information is not valid, the information should then be destroyed.

And if I'm understanding the bill incorrectly -- I would hope that I'm not, because that's what I am voting for and supporting.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, would Senator Espada yield?

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

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Yes, Senator Espada, could you explain what is the process now for retrieving your fingerprints in the event -- under the same circumstances as your bill requires return of DNA? What is the process now of retrieving your fingerprints?

SENATOR ESPADA: An application has to be made to the court.

SENATOR MONTGOMERY: For retrieving your fingerprints?

SENATOR ESPADA: For the return of fingerprints.

SENATOR MONTGOMERY: If you are found not -

SENATOR ESPADA: An application is in order. But I'm also told -- and not being a defense attorney, I'm also told that the court can do it as well, or it can be done automatically without a petition.

SENATOR MONTGOMERY: Without petitioning the court?

SENATOR ESPADA: Yes.

SENATOR MONTGOMERY: So my question is, why then are we setting up this additional requirement for retrieving your DNA when in fact there is no indication that you have been associated with any charge?

SENATOR ESPADA: Well, it's really either/or, in the sense that the information can be sealed or the petitioner can obviously ask that it be returned.

SENATOR MONTGOMERY: If Senator Espada would continue to yield.

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

SENATOR ESPADA: Yes. Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Senator Espada, your legislation seems to require that a petition, an application shall be served on the district attorney, and it also -- an application must go to the courts.

And both the attorney, the district attorney and the court must agree that this DNA eventually could be retrieved by the person based on the fact that they have been

found not to be associated with the charge that has been made against them, or the investigation -- or they have been found to be not guilty, no conviction, the case was thrown out, they have been pardoned and what have you.

So it seems to me that you are leaving the decision essentially up to the court and the district attorney. And my experience with district attorneys is that you, in their eyes, you are guilty until you can prove innocence. And everyone that they touch seems to be guilty. I mean, they can convict a banana, it seems to me, based on the way that I've known some district attorneys to operate.

So I can never imagine that they would agree to return DNA. Why would we leave it up to them to make that decision?

SENATOR ESPADA: I'm trying to - could you, Senator Montgomery, reask your question? Quite frankly, your analysis of the bill is correct. I'm just not clear on your question.

SENATOR MONTGOMERY: My question,

through you, Madam President, again, to you, Senator Espada, is we seem to be setting up an additional requirement on the part of the person who is attempting to retrieve the DNA sample.

And the people who are making the decision, one of them being the district attorney, must concur. That person is very unlikely to concur that a DNA sample should be returned. So if in fact the final decision rests to some extent with the district attorney, are we not setting up a situation where people are not likely to be able to retrieve them? Because district attorneys do not view people as being finally and conclusively innocent.

SENATOR ESPADA: This is not a - this mechanism does not put in force a retrial. This does not add an additional requirement.

Viewed correctly, this would correct the abuses and the criticisms that - I'm not saying I agree totally with your analysis. But to the extent that some or any of it is true, this procedure would allow for

that -- the information, the DNA samples and other documents and analysis, to be returned.

Yes, the onus is on the individual, in part. If the individual voluntarily provided the samples, then, yes, they would have to also petition the court. This does not force the conclusion though, that your analysis implies. The DA's consent is not required, and it truly is in the hands of a judge.

SENATOR MONTGOMERY: Madam President, if I may.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Senator Espada, in your bill, on the second page, starting on line 30, after the court has apparently rendered a decision that the DNA can be returned, the bill says "such record and any samples, analysis, or other documents shall, at the discretion of the prosecutor thereof, be destroyed or returned."

So I think perhaps unwittingly we have left the final decision to the discretion of the prosecutor. And in every instance

where the prosecutor has discretion to deny access to documents, retrial, leniency in any way, that is denied. That is a very difficult and unworkable situation, where we give the prosecutor the last word on a person's -

SENATOR ESPADA: Madam President, if I may beg an indulgence, I think there may be a confusion around "possessor." The "possessor," the word found in line 31, is not the prosecutor. It is the state DNA lab. The possessor is not the prosecutor.

SENATOR MONTGOMERY: Oh, okay. All right, I stand corrected. Thank you.

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.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT McGEE: Senator Fuschillo.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Can we return to motions and resolutions, please.

I believe there's a privileged resolution at the desk by Senator Saland. Can we have the title read and move for its adoption.

ACTING PRESIDENT McGEE: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Saland, legislative resolution honoring Ronald T. Mullahey upon the occasion of receiving the Service Above Self Award from the Poughkeepsie Rotary Club on May 30, 2002.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator -- Senator Morahan.

SENATOR MORAHAN: That's me.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Could we now move the Resolution Calendar, please, with the exception of Resolution 5647.

ACTING PRESIDENT McGEE: The motion is to accept the Resolution Calendar. The exception is noted. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Andrews.

SENATOR ANDREWS: Never mind.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: One minute.

Can we call up Resolution 5647, have the title read, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Legislative Resolution Number 5647, commending Parents of Murdered Children of New York State, Incorporated, upon the occasion of its 20th Anniversary.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Yes. Senator Schneiderman informed me that that resolution should be opened to all Senators.

Those who do not want to be on the resolution as a sponsor can make that known to the desk.

ACTING PRESIDENT McGEE: The resolution is open for cosponsorship. We will

put everyone on as a cosponsor. If you do not wish to be a cosponsor, please notify the desk.

Senator Morahan.

SENATOR MORAHAN: Is there any housekeeping at the desk, Madam President?

ACTING PRESIDENT McGEE: Yes, there is.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Farley, on page number 48 I offer the following amendments to Calendar Number 969, Senate Print 5378B, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Fuschillo.

Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

I'd like now to adjourn -- with no other further housekeeping being in front of the desk, adjourn until Thursday, May 30th, 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Thursday, May 30th, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 12:30 p.m., the Senate adjourned.)