NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 4, 2003

3:20 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, Jr., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: I ask the Senate to come to order, members to take their places, staff to take their places.

And I'd ask everybody in the chamber to please rise and join with me in saying the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT KUHL: I'd ask everybody to remain standing and ask the Reverend Clyde McCaskill, of the Hoosick Valley Community Church, to offer the invocation.

Reverend McCaskill.

REVEREND McCASKILL: Let us pray.

Father, we thank You that we live in this nation, the freedoms that are ours to come and to go, the lives that have been laid down in the past.

And today, Father, we come before You and we ask Your blessing upon our men and our women in the military, those in harm's way, that You put a cloud of protection around each and every one, that Your hand be upon our

leadership, our president, that You give him wisdom, You give him guidance, that You give him direction.

We pray for those men and women here gathered in this room today, Father, that You do the same, that You give them wisdom, understanding, and knowledge, that the decisions that are made in this place will be decisions based upon You, the good of all mankind, for You tell us in Your word to trust in the Lord with all of our heart: Lean not to thine own understanding, but in all thy ways to acknowledge Thee and that You, Father God, will direct our paths.

So we ask for that. We ask that You watch over each and every one -- the men, the women, their families. Bless them. We thank You once again. In Jesus' name we pray, amen.

God bless you.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 3, the Senate met pursuant to adjournment. The Journal of Sunday, March 2,

was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 45, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

433, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law;

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

801, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

And 2173, by Senator McGee, an act to amend the Insurance Law.

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

Senate Print 98, by Senator Velella, an act to amend the General Business Law;

551, by Senator Skelos, an act to amend the General Business Law;

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

And 1388, by Senator Volker, an act to amend the General Business Law.

Senator DeFrancisco, from the Committee on Judiciary, reports:

Senate Print 557, by Senator Skelos, an act to amend the General Obligations Law;

1089, by Senator Hannon, an act to amend the General Obligations Law;

1600, by Senator McGee, an act to amend the Family Court Act;

2286, by Senator DeFrancisco, an act to amend the Real Property Law;

And 2287, by Senator DeFrancisco, an act to amend the Real Property Law.

Senator Kuhl, from the Committee on Transportation, reports:

Senate Print 264A, by Senator

Maziarz, an act to amend the Highway Law;

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

764, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

788, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

924, by Senator LaValle, an act to amend the Highway Law;

1054, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

1247, by Senator Kuhl, an act to amend the Highway Law;

1429, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

1735, by Senator Skelos, an act to amend the Highway Law;

And 1876, by Senator Kuhl, an act to amend the Vehicle and Traffic Law.

Senator Saland, from the Committee on Education, reports:

Senate Print 597, by Senator Kuhl, an act to confirm, ratify, validate, and legalize;

834, by Senator Volker, an act to

authorize approval;

1136, by Senator Seward, an act in relation to legalizing;

1591, by Senator Seward, an act in relation to creating;

1602, by Senator Padavan, an act to repeal Section 3 of Chapter 6;

1679, by Senator Rath, an act to amend the Education Law;

And 2023, by Senator Saland, an act to amend the Education Law.

Senator Balboni, from the Committee on Veterans, Homeland Security and Military Affairs, reports:

Senate Print 87, by Senator Maltese, an act to amend the Real Property Tax Law;

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

And Senate Print 783A, by Senator Marcellino, an act to amend the Vehicle and Traffic Law.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: All bills

are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could adopt the Resolution Calendar in its entirety, with the exceptions of Resolutions 554 and 568.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar which is on the members' desks, with the exception of Resolution Numbers 554 and 568. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Resolution 554, by Senator Alesi, have the title read and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read Resolution Number 554, the title only.

THE SECRETARY: By Senator Alesi, Legislative Resolution Number 554, memorializing Governor George E. Pataki to proclaim March 3 through 6, 2003, as Manufacturing Week in the State of New York, in conjunction with National Manufacturing Week.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees.

ACTING PRESIDENT KUHL: The Secretary will return to the order of reports of standing committees.

I believe there's a report of the Judiciary Committee at the desk. The

Secretary will read.

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

As a judge of the Columbia County Court, Jonathan D. Nichols, of Valatie.

ACTING PRESIDENT KUHL: Senator DeFrancisco, on the nomination.

SENATOR DeFRANCISCO: I'm pleased to rise to move the confirmation of the nomination of Judge -- soon to be Judge Jonathan Nichols. We had a committee meeting this morning; he was determined to be well qualified and passed our committee unanimously.

And the position that he's soon to be appointed to or soon to take is a county court judge in Columbia County, which means he's going to wear three hats. He's going to actually be a county court judge, a family court judge, and a surrogate court judge, handling all those responsibilities. And he's well qualified for all of those responsibilities in view of his broad practice.

So I would move the nomination. I'd ask Mr. President to recognize Senator Saland to second the nomination.

ACTING PRESIDENT KUHL: Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Thank you, Senator DeFrancisco.

Mr. President, it is indeed an enormous pleasure, if not an honor, to have the opportunity to second the nomination of Jonathan D. Nichols to the county court bench in Columbia County.

I have come to know Jonathan over the course of the years in which I have represented Columbia County here in this house, some 12-plus years now, and can tell you that he not only enjoys an exceptional reputation as an attorney -- witness the resume that he presented to us earlier today when he appeared before the Judiciary Committee -- he's a man who has a broad array of experience professionally, not only as a civil attorney but as a county and municipal attorney.

He is a man who has served as

confidential law secretary to a supreme court judge, as well as having worked for the appellate division. He is a man who is eminently qualified to serve on the bench.

And it's not merely the qualities that he brings to the bench by way of his professional training. He is, as I mentioned earlier this morning, an extraordinarily decent man, the kind of person who anybody would feel comfortable coming before the bench to have his or her case ruled or adjudicated upon.

He is a man who has served his community. In addition to being an extremely busy practitioner, he has found the time to be a very active member of his community in a very broad and diverse way.

And he's joined here today by members of his family, his wife, Katie; his children, Jason and Chelsea. And his parents gave up the rather sublime 80-plus degree weather in southern Florida to return to Columbia County to share this moment with him.

He also has some friends from Columbia County here, including the esteemed

clerk of the Columbia County board of supervisors.

And I would just want to extend my heartiest congratulations to him, to his family, to thank him for being there, and to tell him that he joins a long line of extraordinarily capable appointees recommended by Governor Pataki. And it's my pleasure to have been part of this process.

I wish you extraordinarily well, and I know the people of Columbia County will be served exceptionally well.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

Hearing none, the question is on the nomination of Jonathan D. Nichols, of Valatie, as a judge of the Columbia County Court. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The

nominee is unanimously confirmed.

We're very, very pleased to have Judge Nichols in the chamber with us, together with his wife, Katie, and daughter, Chelsea, and son, Jason, and his parents, Charles and Phyllis Nichols.

Judge, congratulations. Do us well, which I know you will.

(Applause.)

ACTING PRESIDENT KUHL: Reports of select committees.

Communications and reports from the state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Volker, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Print 427.

ACTING PRESIDENT KUHL: Senate 427 will be recommitted, and the enacting clause will be stricken.

Senator Skelos.

SENATOR SKELOS: Mr. President, are we ready to go to the noncontroversial reading?

ACTING PRESIDENT KUHL: Yes.

SENATOR SKELOS: If we could at this time.

ACTING PRESIDENT KUHL: The Secretary will read the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 45, by Senator Skelos, Senate Print 555, an act to amend the Penal Law, in relation to establishing the Class E felony of unlawful procurement.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 55, by Senator Seward, Senate Print 683A, an act to amend the Insurance Law, in relation to the payment of first-party benefits.

SENATOR SCHNEIDERMAN: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 69, by Senator Johnson, Senate Print 397A, an act to amend the Vehicle and Traffic Law, in relation to the civil liability of a lessor of a vehicle.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 86, by Senator Volker, Senate Print 1441, an act to amend the Penal Law, in relation to sentences.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR SKELOS: If we could go to the controversial reading at this time.

ACTING PRESIDENT KUHL: The Secretary will do the controversial reading of the calendar, beginning with Calendar Number 55, by Senator Seward.

THE SECRETARY: Calendar Number 55, by Senator Seward, Senate Print 683A, an act to amend the Insurance Law, in relation to the payment of first-party benefits.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 55, Senate Print 683A, has been requested by the Acting Minority Leader.

SENATOR SEWARD: Certainly, Mr. President.

This legislation before us

supplements and complements Senator Skelos's bill, the so-called runner bill, which we just passed, as well as the administrative changes that have been made at the State Insurance Department, the so-called Reg 68 changes, all designed to enact measures to reduce the no-fault fraud problem in New York State.

Now, the bill in front of us does a number of things. It enhances the opportunity to challenge fraud. Current law requires -- or court decisions require insurers to pay or deny a claim within 30 days, and the insurers are precluded from raising fraud as a defense to payment after that short 30-day time period. This bill would allow the fraud to be pursued after the 30-day period.

Also, the bill would, after a process which is outlined in the legislation, allow for the decertification of health-care providers who are involved in professional misconduct or incompetency, knowingly make false statements in medical reports in connection with a no-fault claim, or refuse to appear to answer questions relating to no-fault treatments.

The bill also increases the penalties for insurance fraud. And in that same light, it requires that one-half of the monies in the Motor Vehicle Theft and Insurance Fraud Prevention Fund be used to support the investigation and prosecution of insurance fraud by our local district attorneys.

Also in the legislation is the creation of a temporary panel on medical care and treatment under no-fault, all designed to recommend to this body and the other house and the Governor additional changes, a way that we can further improve the no-fault system and the medical care rendered under that system.

And finally, Mr. President, this legislation clearly requires the Superintendent of Insurance to consider the impact of these various reforms when considering further rate determinations on the part of the insurance carriers.

In other words, we want the consumers of this state to fully benefit from the savings that are derived from the provisions in this bill, as well as Senator

Skelos's and the other measures that have been taken to fight and combat auto fraud when it comes to their insurance policies.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I have an amendment, a friendly amendment at the desk. I would like to waive the reading of the amendment, and I'd like to speak on it.

ACTING PRESIDENT KUHL: Excuse me, just give me just one minute, Senator Montgomery.

Senator Montgomery, thank you for that momentary lapse. I just wanted to check to make sure that the proposed amendment was germane and properly served, and I believe it has been.

So at this time your application is granted to have the reading of it waived, and you're now afforded the opportunity to explain the amendment.

SENATOR MONTGOMERY: Yes, Mr. President. I want to thank my colleague, Senator Seward, for introducing this

legislation. I think it's certainly of particular interest to people in my borough, in my district.

But there are a couple of amendments that I would like to propose, and perhaps we can consider them. I know this is relatively short notice, but nonetheless these are, I think, important and very good amendments.

First of all, I'd like to just point out that my amendment includes, in addition to Senator Seward's bill, an office of public insurance consumer advocate. And I thought that since we are moving to try and protect the industry and to try to deal with the whole question of fraud, which we know to be a very big problem, especially in Brooklyn, that we should also include in such legislation a particular office that seeks to protect the interests of the consumers.

And this particular advocate would represent the interests of nonbusiness automobile and health insurance consumers in our state.

In addition, the amendment that I

offer would establish a means by which those persons who were willing to use a managed care facility as part of the upfront agreement with the automobile insurer would be able to receive a discount, in a similar fashion that we do for people who take special driver's courses to reduce their likelihood of being involved in an accident.

And another important aspect of the proposal that I have would require or would establish in statute what already happens, but we would like to make sure that that is a part of the Insurance Department's official responsibilities. And that is to require them to maintain a database so that we can track and know specifically which insurances are providing the very best rates and where we're having the most problems in terms of insurance claims and what have you.

And, lastly, I'd just like to add that I also -- the amendment that I'm introducing includes the possibility of consumers benefiting from savings or from excess profits from insurers. As it stands now, the consumer only benefits when profits

exceed 20 percent. I would reduce that to 13 to 14 percent, so that it's more likely that those drivers who are careful drivers, who do not really cause the problems in terms of high rates of accidents and claims, that once an insurance company reaches 13 to 14 percent, that the consumers would benefit from such a profit excess.

So those are some of the, I think, most important aspects of my amendment. And I would ask that Senator Seward would perhaps consider accepting this as a friendly amendment, which would improve greatly, I think, his bill that is before us today.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Breslin, did you wish to speak on the amendment?

SENATOR BRESLIN: Thank you, Mr. President.

As ranking Democrat on Insurance, I fully support the legislation of Senator Seward. It's a wonderful first step and a very beautifully crafted bill.

However, I also agree with Senator

Montgomery and would add the consumer into the puzzle. And the bill, among other things, as Senator Montgomery pointed out, creates a consumer advocate which will be independent of the Insurance Department, won't be someone from the Consumer Protection Board, but will be someone from the Executive Department, someone who will able to review rates to make sure that they're fair and review them on an ongoing basis.

Also, there's a provision in the bill that talks about the IMEs, the independent medical exams which defense lawyers order routinely and choose the doctor who reviews the case which, in my opinion, prolongs litigation, sometimes unfairly.

If the Insurance Department, if they have a list of those people they view to be independent, independent medical examiners, you would have a far more neutral evaluation or assessment of a particular case and one which would be far more likely to result in a quicker and fairer disposition of a pending case.

So for those two reasons alone,

Senator Montgomery's amendment makes this a bill that's more comprehensive and protects not only the insured but the insurer as well.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

Senator Krueger, on the amendment.

SENATOR LIZ KRUEGER: Thank you. I also rise to support Senator Montgomery's amendment.

I think when we look at the history of debate in both houses, in the Assembly and the Senate, on what we ought to be doing about auto insurance fraud and in fact auto insurance premiums, we see that having a consumer component is critical to ensuring part and A and part B of the assignment.

Senator Seward's bill addresses the fact that there is a concern, a real concern in the state about fraud by certain people in our communities relating to auto insurance. But there's nothing in the bill in its own right that actually addresses the second and, from a public perspective, perhaps the larger

issue, auto insurance premium costs.

So to address the fact that we want to as a legislative body do something about fraud in auto insurance without also, in a parallel track -- and I would agree that Senator Montgomery is right to merge those into one bill -- ensure the consumer side of the formula, which is to assure that consumers in fact see a decrease in their auto insurance premiums because we are being a more responsible legislative entity by putting controls on fraud in the insurance industry.

Because, frankly, from a consumer perspective, if you have fraud -- or stop fraud and you don't actually then decrease the cost of auto insurance to the vast majority of people who are not participating in any form of fraud, then you really only accomplish part A of the assignment.

And in fact, when you look at the increased costs of auto insurance in the state over the last decade, what you find is a continuing pattern of growing costs for auto insurance without actually any analysis relating it to the cost of fraud.

If we're going to move forward on a piece of legislation that would in fact do something to address fraud and would hopefully then, by definition, decrease the cost to the entire community, drivers and insurers alike, around the reality of auto insurance fraud, surely we should do the -- we should move forward in a logical, rational way that assures that there's a consumer protection component attached to this move forward and perhaps even a public, stated commitment by this Legislature and by this government that the reason we are going forward is to recognize the crisis of the cost of auto insurance to consumers.

And that really the only way to follow through on that commitment to all of our constituents to try to get auto insurance premiums under control is to assure that we've got the consumer protection component built in and that we make a serious commitment not just to addressing the fraud side of the equation, but to addressing the cost of auto insurance, which is really the focus that most of our constituents are talking about.

Thank you very much.

ACTING PRESIDENT KUHL: Senator Schneiderman, to speak on the amendment.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Briefly on the amendment.

I think that Senator Montgomery has covered most of the points. One additional benefit that would be provided through her amendment relates to the concern many people have with Senator Seward's bill's exemption from the 30-day requirement, which many of us feel are very important, particularly for low-income people who are in need of getting their awards in a timely manner.

The legislation as presently presented would allow insurers essentially virtually unlimited delays in making such payments, creating tremendous pressure on the indigent and, once again, creating a two-tier system where those who had the means to sustain themselves probably would be in a better position to deal with the insurance company than those with less money.

Senator Montgomery's amendment would provide that if there was not proof of

fraud, the 30-day requirement must be complied with and impose strict penalties on an insurance company that did not meet up to this requirement.

Finally, coming back to Senator Liz Krueger's remarks, we've been here now for two months, and almost everything that has happened here and in the Assembly is this ritual by which we pass our one-house bills, they pass their one-house bills, we send out newsletters to our constituents bragging about our one-house bills, and nothing gets done on a variety of very important issues.

It is our commitment in our conference to address the issue of high auto insurance rates this session. It is something we will be talking about. I think that making the point that Senator Montgomery has made by her amendment, that it's time for the Assembly and the Senate to get together on this, is a very, very critical point.

I hope we will do something about this. This is costing citizens of our state an extraordinary amount of money and certainly the businesses in our state. Let's not just

stick with the same one-house bill we passed last year, let's address this issue before the session is out.

I urge everyone to support the amendment. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Those Senators who are in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, Stavisky, and Senator Brown.

ACTING PRESIDENT KUHL: The amendment is lost.

Any other Senator wishing to speak on the bill?

The Secretary will read the last section.

THE SECRETARY: Section 13. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 55 are Senators Duane, Paterson, Sampson, and Schneiderman. Ayes --

ACTING PRESIDENT KUHL: The bill is passed.

Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I'd like to explain my vote.

ACTING PRESIDENT KUHL: On Calendar Number 55?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: Sorry I missed you before.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: It's very difficult to be against a bill that punishes fraud, that calls for savings to go to the consumers and provides for a real deterrent to individuals who might consider fraud and might commit fraud.

The only problem with this bill -- I voted yes, but I hope in the negotiations this changes. The problem is the 30-day period. When no-fault insurance was put into effect, there was a quid pro quo. The concept was you don't have a right to sue anymore, but you have a right to prompt payment. And that prompt payment includes wages, and it also includes medical care.

Not only for the indigent, but middle-class individuals would have to rely on these payments to pay their doctors and also to live on while this process is going on.

There's many ways that the insurance company can presently extend the 30 days, by calling for an independent medical exam -- which isn't really independent -- but also they also can call for certification of these particular injuries.

What we're doing, basically, by that provision is hurting the honest person who has insurance that is following the rules that -- when they gave up the right to sue. And I just think that's wrong.

If someone is going to commit fraud

and have the risk of a Class D felony for a $1,500 fraud, seven years in jail, that should be a pretty good deterrent. And that's the way we should punish fraud, not by punishing everyone and shifting the burden of proof.

Thank you.

ACTING PRESIDENT KUHL: I'll ask the Secretary to announce the negatives on that bill which was passed just a couple of minutes ago.

THE SECRETARY: Those recorded in the negative on Calendar Number 55 are Senators Duane, Hassell-Thompson, Paterson, Sampson, and Schneiderman. Ayes, 56. Nays, 5.

ACTING PRESIDENT KUHL: Once again, the bill has been passed.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Briefly, Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Well, Senator Schneiderman, the bill has already passed. Technically, it's already gone.

I recognized Senator Paterson. So

just as a further reminder, could you -- just as a reminder, please rise, I'll recognize you during the course of the vote. And that would be the appropriate time.

So we'll overlook my missing you at this moment, and recognize you to explain your vote on a bill which has already passed the house.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Reminder, once again, the rules call for a two-minute limitation.

SENATOR SCHNEIDERMAN: I appreciate your courtesy. I do have a tendency to slump that makes it hard to see that I'm standing at times.

I really have to echo what Senator DeFrancisco said. And I think we sort of cancel each other's votes out on this. I voted against the bill for the same reasons that he discussed in his remarks.

I do think that it is critical that as we do, hopefully, craft a bill with the Assembly that actually will become a law and

address this critical issue for the people of the state of New York, we'll be cognizant of the points made in Senator Montgomery's amendments, particularly with regard to this 30-day rule.

Again, it is essential to punish people who are guilty of fraud. This legislation would impose a punishment on people who are not guilty of fraud. This would impose a punishment on people who are needy, who are totally innocent, and that is really contrary to our traditions of justice in New York and in the United States.

I'm voting no because this I find particularly offensive. I do hope that this is not the last time we will see such legislation in the course of this session.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will continue to read the controversial reading of the calendar.

THE SECRETARY: Calendar Number 69, by Senator Johnson, Senate Print 397A, an act to amend the Vehicle and Traffic Law, in relation to civil liability.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 69 has been requested by the Acting Minority Leader.

SENATOR JOHNSON: Mr. President, there's a crisis in the automobile business today that has been coming on for years, the almost impossibility of leasing an automobile, brought about by an anachronistic law passed in 1924 which was never intended to cover leased vehicles. It was never intended to make the owner of a leased vehicle responsible.

The reason they didn't intend that is because there were no leased vehicles in those years. They only sold vehicles. And when a vehicle was sold, they put an exemption in the vicarious liability law which said that the person who loans money on a car is not considered the owner and is not responsible for damages.

Now, the leasing company is in the same situation today as a company was, as a

bank was which financed a car back in 1924.

All we're saying is clear up this anachronistic system which is preventing people from getting cars, making it more expensive to get leased vehicles.

We've had a real exodus of car leasing and rental companies in the state of New York. And the crisis has come to such a head that some companies are going to charge a thousand dollars more to get a lease, raise the prices of leases, if they stay at all. And most -- and many are not going to stay in New York and lease a car.

Now, I ask you, what is the difference if you're driving a leased car and have an accident or if you're driving a car which you finance and have an accident? The difference is that the manufacturer, or leasee, is still responsible for the leased car, but he's not responsible for a car which he manufactured and sold to me. Why not? Because this law, this anachronistic law says so, that's why.

There's no good reason in the world to have this old law in place, and we're going

to try to remove it. It's not just my idea. The AAA is in favor of this, the UAW is in favor of this, the banks, the leasing companies, the auto manufacturers, the auto dealers. Everyone knows that they're going to lose a lot of sales and a lot of business because people will not be able to afford a car.

Just as an example, I bought a car for my daughter recently. If I wanted to finance it for three years, it would be $800 a month for three years. I could lease it for $329. And many other people know the same situation. Well, obviously, leasing is the new way of buying a car which you can afford but you cannot afford if you were going to buy it and finance it.

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

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I listened to the sponsor's explanation of the bill, and I have a number of problems with it, with the bill.

In the first place, as I took a

look at the bill memo, it talks about the problems obtaining insurance. From what I understand, most of these car leasing companies are self-insured. So this does not seem to be a problem.

Secondly, the bill memo speaks about caps and the fact that New York is one of the few states in the country to have the vicarious liability provisions apply to automobile leasing. From what I understand, many of the states continue the vicarious liability but have capped the amounts. And I think this elimination of all liability, I think, is a serious mistake.

The bill memo talks about the companies leaving the state of New York, the GMACs of the world. From what I understand, many of the companies have left for other reasons, not because of vicarious liability. They've left because either the savings and loan scandals affected them, they are no longer doing auto leasing business. For one reason or another, many of these companies have left, but not because of vicarious liability.

I believe Senator Johnson -- and the bill memo certainly talks about the increase in cost to the consumer. As far as I understand, there's no evidence that repealing the vicarious liability provisions would lower the cost to the consumer.

There are a number of other issues that I think ought to be addressed. A manufacturer such as a Ford or a GMAC, they go into the leasing business for two reasons. One is to obtain the tax write-off that the IRS provides. They receive a tax break. There's a depreciation allowance on their assets. And, secondly, the fact is that people tend to lease cars every three years, while people purchasing cars keep the car for six years. So they get two bites instead of one.

Now, the manufacturers can't claim that they want to be rid of the vicarious liability provisions and at the same time claim a tax write-off. That, to me, is wrong.

Secondly, the auto leasing business has not been very profitable. But this is a function of the economy, not of the vicarious

liability provisions. If you were going to buy a car, the newspapers are filled with offers, zero percent financing. They're giving rebates. It doesn't pay for somebody returning a leased car to make the purchase. So this is, as I said, a function of the economy.

Vicarious liability has always been a part of our legal system. If I own a house and I rent it out to somebody and I neglect to have the sidewalk or the walkway cleared during the recent snowstorm, I'm liable. I'm liable. As I ought to be. Or if I have a fleet of delivery trucks and one of my trucks is involved in an accident, I'm liable. And the same should apply to auto leasing.

It seems to me that they want the profits and the benefits without having any of the responsibility and certainly not having any of the risk that's involved.

The last point I want to make is that we can't bail out the leasing companies because of their inability to predict the cost -- or predict the amount the car could be sold for at the end of the term of the lease.

And that I think is the issue here.

So for these arguments and for others, I urge that my colleagues vote no on this bill. Thank you.

SENATOR JOHNSON: I'd like to address some of the criticisms directed at this bill.

ACTING PRESIDENT KUHL: Senator Johnson, on the bill.

SENATOR JOHNSON: I really don't know what accounting, what tax breaks and depreciation allowances have to do with this discussion. What do they have to do with this discussion? Nothing.

There are only three states in the union which have unlimited vicarious liability: Connecticut, Rhode Island, and our state. And that's where they're not going to lease cars anymore. The other states do not have the same requirement.

They do have the same accounting procedures, they have the same tax breaks, they have the same depreciation. Those things are equal in all states. So that's not an argument about this bill one way or the other.

I would say that all we're doing -- and I want you to listen, Senator -- Senator Stavisky. I was going to call you Stachowski.

SENATOR STAVISKY: Call me Toby.

SENATOR JOHNSON: I'll call you Toby. Listen, Toby, it's like this. What's the difference if a manufacturer manufactures a car and sells it and finances it and has no further liability or whether he manufactures the car and leases it and has continued liability -- you cannot hear me? I'll talk into the speaker. How about that?

Tell me what -- why should a manufacturer who sells a car and finances it have no further responsibility for the liability, for any actions of the driver of that car, or if he leases it, he has potential unlimited liability? Why should that situation exist?

It shouldn't exist. As I told you, it's an anachronistic thing from 1924 when most people didn't have cars, there was no leasing, and that just said the banks are not responsible for the driver of the car and his accidents.

We're putting the person who leases the car today in the same situation. He leases it, and he still has every aspect of ownership: he can use it anytime he wants, go anywhere he wants, pay the bills, put on new tires, get it greased and oiled and have it polished and do everything that you do if you own your own car. The only difference, he can get a good car to use for less money than if he purchased it, and that's why he does it. And that's a great innovation that makes it possible for a lot of people to have cars they could not otherwise afford.

This law, if it's not changed, is going to take away that opportunity for a lot of the consumers of this state.

ACTING PRESIDENT KUHL: Senator Sampson, why do you rise?

SENATOR SAMPSON: Through you, Mr. President, would the sponsor just yield for a couple of questions?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Sampson?

SENATOR JOHNSON: Yes, Mr.

President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, how much money will be lost if these leasing companies, if these financial institutions pull out of New York State?

SENATOR JOHNSON: Well, of course, Senator, you know that I don't know the answer. But if we had a couple of months, we could write to all these banks, auto dealers, manufacturers and ask them what would happen if leasing stopped in this state.

Maybe they would all move to Jersey and lease a car there, because they don't have unlimited vicarious liability there, and drive to New York every day and have accidents.

Who's going to compensate those poor victims? Well, the insurance company of the driver of the car who's responsible.

ACTING PRESIDENT KUHL: Senator Sampson.

SENATOR SAMPSON: Through you, would the sponsor yield for another question?

ACTING PRESIDENT KUHL: Senator

Johnson, do you yield to another question from Senator Sampson?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, what requirements do these other states who don't have this vicarious liability, how do they protect victims if they're involved in accidents if the vehicle is leased? Or is there any other mechanisms that these other states have?

SENATOR JOHNSON: Well, you know, Senator, it's almost like being in New York State and getting hit by somebody who doesn't have insurance on his car. That's -- that's a problem we have in our state no matter what happens.

But in the other states, most all of them require auto insurance. And the auto insurance company of the owner or the lessor of the car -- or the lessee of the car would compensate in accordance with the amount of coverage that they carry.

SENATOR SAMPSON: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to another question?

SENATOR JOHNSON: Oh, yes, of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, doesn't the -- don't these dealerships require that a certain amount of insurance -- that the lessee of these vehicles have a certain amount of insurance on these vehicles when they lease these vehicles, up and above the minimum level of insurance?

SENATOR JOHNSON: Yes, Senator. I neglected to mention that. Of course, when you lease a car, you're required to carry, in most cases, 100,000 to 300,000 in personal injury liability -- some have a flat $300,000 limit -- and also 50,000 or 100,000 on property damage.

So yes, all leased vehicles are required to be insured to a higher limit than

the state requires of an individual who owns his own car.

SENATOR SAMPSON: Okay. Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT KUHL: Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SAMPSON: Through you, Mr. President. So during the course of these leasing arrangements for most of these dealerships or these financial institutions, how much have these institutions actually paid out in personal injury awards because of incidents such as this? Obviously, from New York State. Do we have that number?

SENATOR JOHNSON: I had a figure here that in 2000-2001, there was $1.6 billion paid out. But I'm not sure that's -- I think it's New York State, but let me see if I can find my paper here.

In New York State -- oh, this -- I'm a year off. August 2001-2002, 215

lawsuits, total sought, $1.6 billion. That's not the amount paid out, that's the amount sought. I'm not sure how much they got. But --

SENATOR SAMPSON: Through you, Mr. President --

SENATOR JOHNSON: All I know, Senator, is they paid out enough money to be willing to abandon this state because they're losing too much money. So it must be a pretty substantial matter.

And I might say that they're probably having problems, like a lot of people in New York City, getting liability insurance at all because of 9/11. Just another part of the big picture. And the liability insurance companies are not happy to write anything.

ACTING PRESIDENT KUHL: Senator Sampson.

SENATOR SAMPSON: Through you, Mr. President, the last question for the sponsor.

ACTING PRESIDENT KUHL: Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SAMPSON: Through you, Mr. President, what percentage is the leasing business of these dealerships, what percentage?

SENATOR JOHNSON: We've had testimony from many dealers. I don't think I have a global number, but some dealers say it's 30 percent, 40 percent, 50 percent, 60 percent of their business.

One Cadillac dealer said it's 75 percent of his business. Because people who want an expensive car can't afford to buy it, but they can afford to lease it. So it's creating a lot more business in this state by having available leases.

SENATOR SAMPSON: Thank you.

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

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If, through you, the sponsor would yield to a question.

ACTING PRESIDENT KUHL: Senator

Johnson, do you yield to a question from Senator Krueger?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I admit to not knowing a lot about the car leasing business from a business perspective. But it does seem to me that what we're talking about are trade-offs in dollars and cents about who pays what, when, where, and how.

Following up on Senator Sampson's question about the number of people who actually sue under vicarious liability, you used the number 215, which is also the number I have. But you said -- and that's on about, according to the data I'm looking at, about 887,000 new car leases in New York State per year.

And even though you already answered the question you don't know how much actual payout there has been on those 215 cases, and so I'm not expecting you to know,

it seems to me a big question is how much does a car lease cost here in New York State versus a car lease in New Jersey or Pennsylvania.

Because I make the assumption, until proved otherwise, that somebody who is leasing cars in New York State is actually factoring in this cost of doing business, and has been conceivably for 70 years, and that consumers are probably paying that cost already.

So I was wondering if you knew what the cost of a car lease in New York State was, on average, in comparison to some other states. It doesn't have to be New Jersey or Pennsylvania.

SENATOR JOHNSON: Well, obviously it's much higher in New York than most other states because of this provision.

And, I think, what is the cost of a lease if you can't get one?

And the other question I would like to address to you, if you would answer a question, Senator Krueger. Would you respond to a question?

SENATOR LIZ KRUEGER: Yes.

SENATOR JOHNSON: I have to talk into this microphone.

SENATOR LIZ KRUEGER: I'm sorry, I'm having trouble hearing you, Senator.

SENATOR JOHNSON: Yeah. My question would be, if you haven't leased your car and you've purchased it and you have auto insurance, and let's say you have 100,000 to 300,000, if somebody sues you for a million, they can't get it because you have a maximum of 300,000.

Now, you think it would be right if we said to the manufacturer of your Jaguar or whatever that they should pay the rest of the damage over and above the amount that your insurance covers? For what purpose?

That's the situation that is facing the leasing companies.

SENATOR LIZ KRUEGER: Mr. President, through you, if I was allowed to answer the question from the sponsor.

ACTING PRESIDENT KUHL: You have the floor to speak on the bill, Senator Krueger, if you'd like to.

SENATOR LIZ KRUEGER: Thank you

very much.

In answer to your question, again, I would say this goes into the business decisions of me as a leaser versus a buyer and the business decisions of the company who is leasing versus selling. We are each factoring in the costs and benefits to ourselves of the advantages and disadvantages of being a leaser or a buyer or someone who leases that car or sells it.

So that I think, without seeing the data -- and I think data is critical here for us in this decision -- that when I go to lease a car, as opposed to buy one, I factor in -- and by the way, I don't lease a car, but I don't think that's here or there -- I factor in the decisions about, okay, my liability is only X, their liability is Y. That's a plus or minus for me as someone who will lease a car versus buy it.

I have advantages in many cases, depending on who I am, from a tax perspective in leasing versus buying a car. And in fact, the companies who manufacture and sell cars or lease cars do the same thing. They calculate

in the deductibility in their taxes of being able to be a leaser of a car rather than a seller of a car.

And they calculate the depreciation value on short-term leases. Because these, to my understanding, are relatively short-term leases -- three years, I think, is the average lease. And that they are making a business calculation.

And that in fact one of the calculations of being in the car business is that these can be dangerous vehicles and people can get hurt. So manufacturers in fact do have liability for their automobiles if they fail to meet health and safety standards in the manufacture of their vehicles, and we know of lawsuits around that.

And I would argue leasers also have liability. To go back to an example from Senator Stavisky, if you sell your house versus rent your house, if you rent your house, you have -- I'm sorry, if you are the owner of a house who rents it out, you still have liability for what happens to the tenants. If you sell that house, you don't.

And I think we all recognize in the law and accept that as a given, and I see a parallel in this. So that's my answer to your question.

But if I could, through you, Mr. President, ask the sponsor to yield to an additional question.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Krueger?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator Johnson, since we've had this law on the books for so many years, and you're pointing out that most states don't, did they change their laws in recent history, and what was the outcome for them of decreased costs for consumers? Since one of the arguments is, or at least my argument is that consumers are paying those costs now.

So if states change their practice, are they in fact seeing a decrease in the cost

of the lease to somebody?

SENATOR JOHNSON: I'm certain, Senator, that you can lease a car at a lower rate in most other states. Whether -- the fact that that situation doesn't exist in that state obviously means that the insurance costs for lessors are less in those states, and therefore the payment would be less.

This is something peculiar to this state and two other states with unlimited vicarious liability, which makes our leases cost more, almost inaccessible.

And you wouldn't see this pile of letters from auto dealers and manufacturers and banks and whatever if it weren't a real crisis in this state. And that's why this bill is here. It's irrespective of whether you rent out your house to somebody or not. That's got nothing to do with it. If you own the house, you have to maintain the house, you have to supervise the people that live there. You've got some control.

Once this car is leased, it's out of control. I take it, I go anywhere I want with this car and do what I want with it. And

I can have drag races or whatever, and they have no control. So how can they be responsible for what I do?

But when you rent out a house, you still have the responsibility. You buy your own liability coverage, because you know the problem; you've got to make sure they have a gas detector in the house and a fire detector and all the good things that you have to do to maintain a property properly. It's totally not connected in any way with leasing a car from a leasing company.

SENATOR LIZ KRUEGER: Mr. President, if I could speak on the bill.

ACTING PRESIDENT KUHL: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I think it is obvious why there would be a pile of letters from people who are in the business of leasing cars that they would rather not have liability. I assume that everyone who's in the car leasing business would prefer, if they were given the option, not to have liability for the business that they are in. And therefore, I would

guess that every single business would always write a letter like that.

That doesn't change the issue for me. And the fact is, I think that the analogy with being an owner of almost any other product where you rent it out or go into a lease arrangement, that there is liability for you and that you factor it in to doing business.

And I think that the real issues before us are in fact the consumer issues, both the costs of being a consumer of a car rental or lease arrangement, but also the very real costs for a victim who has been harmed by an automobile having the ability to be protected in the sense of having a mechanism to get their costs reimbursed for being harmed by a dangerous vehicle.

And I would argue that there is liability involved with vehicles. They are dangerous items. We have liability as a driver, manufacturers of cars have liability as the producers of those vehicles. And somebody in a middleman business, so to speak, has liability as well, because they have

chosen to be in that business, and that that is a standard we use in a variety of different businesses and industries in this state.

So in advance of our vote, I will be voting no on the bill.

Thank you very much.

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

Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Onorato?

SENATOR JOHNSON: Yes, Senator.

SENATOR ONORATO: Senator Johnson, I would like to know the bottom line. New York State is currently one of the highest places -- prices to lease a car in the United States. If this law passes, how much will it save the leasee on their lease?

Will it increase their cost by making it mandatory to increase the amount of insurance that they are currently purchasing, or not? What's the bottom line? What's the

savings going to be to the consumer?

We know it's going to save the manufacturer or the leaser of the product a great deal of money if they're not liable for it. But how much is it going to cost more for the consumer to lease the automobile?

SENATOR JOHNSON: I don't have a figure.

But there's such a thing, which is part of the American dream, of having competitive businesses from which you can make choices to make your purchases. And we have a bank that's not even in this state now that's said they're going to come and lease cars in this state if we get rid of this vicarious liability provision. That means we're going to have a lot more competition. And competition is what gets prices down, nothing else.

And we're going to have more competition, and we're going to get rid of an anachronistic provision which is not necessary. And that we're not relieving the manufacturers or lessors of any of the liability which they normally have.

All we're saying is they don't have to provide unlimited insurance, without limit, above your insurance which you buy for your own car or which you lease, either one. We're saying the insurance you are required to carry on your car, you do carry on your car, that will protect the people who are injured. But you don't have unlimited manufacturer or leaser liability over on top to provide a bonus for somebody who has an accident because they're lucky enough to hit a leased car.

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor continue to yield for another question?

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to another question from Senator Onorato?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ONORATO: Senator, assuming that the leaser -- how much more insurance will be required to satisfy the

leaser to cover? Will it now be required to have $3 million worth of coverage, $5 million? What would be the satisfactory number of additional insurance to relieve the actual owner of the car from any further responsibility?

SENATOR JOHNSON: As I said before, most leasing companies require 100,000 to 300,000 in liability on bodily injury and 50,000 to 100,000 on property damage. The person that leases the car buys the insurance.

As far as the lessor/owner, we're not requiring them to carry any coverage. But obviously, these big corporations do carry coverage. They're not going to go without it, because sometimes maybe a fellow might not keep his insurance up, and if there were an accident, then he'd be responsible, obviously.

So the fact is that they're not going to have to buy any more coverage, but they're going to be able to compete. They're not going to have the problem they face now of not being able to get insurance for any amount because they don't know who you're leasing the car to.

So some of these leasing companies are going out of business because they cannot get insurance, period. And that's a serious situation. And this way, the person who leases the car will be responsible for carrying the insurance, and the problem is essentially solved.

And I say, George, it's only different -- it's no different than if you buy a car and finance it yourself. You're responsible, because you're the owner. Because you lease it, you're treated as the owner in the case of this bill.

ACTING PRESIDENT KUHL: Senator Onorato.

SENATOR ONORATO: One last question, if the sponsor will yield.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to another question by Senator Onorato?

SENATOR JOHNSON: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ONORATO: You indicate now that the leasing companies are finding it

extremely difficult to purchase insurance for the leased automobile. What makes you think that the person who's leasing the car will make it easier for them to get the insurance?

SENATOR JOHNSON: Well, it's required in his contract that he provide the insurance. You see, they can evaluate the driver because they know his driving record. They can get it from the Motor Vehicle Bureau. They know his financial responsibility. And you're a responsible person, or they wouldn't even give you the lease, for the most part. And you know that.

And your insurance company evaluates you, and they provide the coverage that's required, and everybody is protected.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT KUHL: Senator Saland, why do you rise?

SENATOR SALAND: On the bill.

ACTING PRESIDENT KUHL: Senator Saland, on the bill.

SENATOR SALAND: Mr. President, I overheard portions of the debate. And I would just respectfully submit that those that would

claim that this is a part of the cost of doing business that the so-called owner of the car, the automobile company factors in the amount of money in anticipation of the possibility of vicarious liability, that plus the fact that there are, quote, unquote, only 215 cases most recently reported during whatever the measuring year or period is, are totally irrelevant.

I have leased cars and, quite candidly, until learning of the issue of vicarious liability, I wouldn't have assumed for one minute that anybody but me was responsible for (a) my driving and (b) insuring my vehicle.

The convenience of leasing a car for many consumers is that they have the ability to obtain a car, a recent model car at a relatively nominal price. And few if any of them think they're anything but the owner. They're responsible for the service, they're responsible for the maintenance, they are responsible for the way they drive that car.

And as I believe Senator Johnson alluded to a bit earlier, there are only three

states in this union that have the absolute vicarious liability that is provided under New York statute.

And what we're really talking about, whether there be 15 cases, 215 cases, or 515 cases, the vast majority of the public, even during this controversy, is totally unaware of the fact that there's somebody other than them, the driving public who leases a car, who is responsible for insuring that car. Very few, if any, do.

What we're really talking about is a means of maintaining a deep pocket and subsidizing the litigation industry. Because there is little or no desire on anybody's part to basically try and deal with what is really the issue here. I wouldn't say on anybody's part, but on some parts.

The bottom line is if there's only 215 cases, then who is benefiting? Who's benefiting? Every consumer, assumedly, if I'm to take the argument that the factor -- this is factored in, every consumer is paying more.

Every company that is involved in this process, in light of apparently some

rather astronomical recent decision, has now made it clear that they are deeply troubled by this type of vicarious liability. I'm sure many of them, much like myself -- and I consider myself to be a reasonably educated consumer -- were unaware of this vicarious liability. It's now an issue that's front and center.

Is there a reason other than trying to pander to the trial bar to not enact this legislation? I can think of none. I can think of nobody -- I'm going to carry the same amount of insurance whether I lease my car or whether I buy my car. And I'm going to carry an insurance umbrella on top of that, because in this sue-crazy world in which we live, I'd better have plenty of insurance. And any of you who don't carry that umbrella are pretty silly too.

But the bottom line is this is nothing but the equivalent of a subsidy to the trial bar. Period, the end.

I very much commend Senator Johnson for his efforts and quite clearly and obviously will be voting in support of his

legislation.

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

Senator Connor, why do you rise?

SENATOR CONNOR: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Connor, on the bill.

SENATOR CONNOR: You know, in my many years here I have not been one of those who has embraced every so-called tort reform that's come down the road.

And indeed, I think proposals that we hear about now in Washington for capping pain and suffering are plain wrong. I think the bill we just did when I wasn't here -- I'll get around to voting no on that in a few minutes, Mr. President -- I think that was wrong.

I think, as I've said many times on the floor, various proposals by the City of New York, for example, to cap its liability I think were wrong. I think when you're run over by a bus, it doesn't really matter whether the bus driver is a public employee or

a privately employed person.

So believe me, I'm not one of these people who decries our society and our economy as overly litigious, who thinks because you have an advanced degree you should be exempt from the laws of negligence and liability therefor.

But I think in this case this bill is the right thing, Mr. President. It's the right thing to do. And I'll tell you why. One of my colleagues earlier said what are we worrying about here, the lessor or the person who actually owns the lease of the automobile, technically, is liable. Manufacturers are liable; in some circumstances, dealers can be liable.

But in those circumstances where the manufacturers are liable or dealers may be liable, not as -- a rarer occurrence than where manufacturers are liable, they're liable when you prove they did something wrong or they failed to do something that they had a duty to do. So they had a defective automobile or they failed to properly inspect it or they failed to perform some duty to

protect the consumer or the public who may be injured by the vehicle. They are liable, and they should be liable.

The fundamental principle of tort law is very simple. And I learned this from Professor Vernon X. Miller, who was a tort expert who's many years deceased. The fundamental principle is if you have a duty or -- a duty to either act or refrain from acting and you violate that, you're liable.

And I don't care if you're a fancy surgeon, a bus driver, or whomever. When you have a duty and you fail to do it and someone is injured as a consequence, you should be liable, whether you're the manufacturer, the dealer, the operator.

What we have here, though, and that's why they use the word "vicarious," we have liability imposed on someone who has no duty to act or not to act. Why do they have no duty? Why do we have this? Because at the time our law was written, it was contemplated that the owner of the vehicle had sole control of it.

If you registered your car, you

held the title, it was your car. You bought it, you might owe some people to pay back a loan on it, but it's your car. And it makes sense, because then it says you're the owner, and if I give it to my 17-year-old kid, who I control, I control the automobile, I own it -- and as I say, at the time the concept of owning it meant I have the keys to it; it's in my garage, or it's in front of my house. I control it -- and I give it to my next-door neighbor or some other person and say, Here, use my car, that I controlled whether or not they got to use it or not.

And I had some relationship with it, be it -- obviously, one of my children, I at least have the myth that you control your teenagers. Now that my kids are teenagers, I know what a myth that can be. But I am responsible, I'm their parent.

Or if I give it to my neighbor, I had the choice of giving my neighbor the use of my automobile or not. You don't give it to strangers, you give it to people you know. If you know them and you're only faintly acquainted with them, it's your own fault for

trusting them. You don't know them well enough.

If you give it to the neighbor across the street who you know likes to knock down a six-pack after work every day, that you have some responsibility for that. And you ought to be liable. And you are liable. And that was our law.

But that was our law long before the financing vehicle of a lease was contrived and enacted. Instead of giving title and taking back, in effect, a security lien against the automobile so that you make your payments, I now, as a bank -- because the dealers don't hold on to these. The dealers do the lease and all, you drive up with the car, they sell it to the bank, the bank is now the owner of the car.

I'm a bank, I put up money. If I give you a loan, you give a security lien to the bank, that's fine. There's no liability. But because of the way -- it's a reverse. Rather than have to run after your -- hey, listen, if you don't pay the lease or the loan, the tow truck pulls up and takes away

the car.

The difference is if it's a security interest, you then need some resort to legal processes to perfect, if you're the bank, your title on the deadbeat who didn't pay you.

If it's a lease, you own the vehicle. Your tow truck brings it in, you got the car. You own it. You can sell it, put it up to auction, things they do with it.

We now -- this anachronism, now, because of this new financing mechanism, suddenly makes the bank liable for how you drive your automobile or whether you give it to the next-door neighbor that just pounded down a six-pack or you let your kid drive it or whatever.

Yet all these agreements, everybody understands when you lease the vehicle, you register it in your name and you buy the insurance. So where's the liability here? The person who's injured, what relationship do they have with this bank? What duty does this bank have to them? The answer, quite clearly, is none.

No more than if I say to a friend -- if I say to my friend John here, "I'll lend you 20,000 bucks because I know your credit's no good, go buy a car," and he says: "Marty, I give you my word, give you my word, when I get my legislative allowance check this year, I'll give you 10 grand, and next year I'll give you the other 10, and I'll pay you back."

And he buys the automobile, registers it, insures it, and lends it to somebody -- lends it to Mike Balboni, who is so busy thinking, so busy thinking about his bills to make our homeland safe that he runs into a mailbox, and the mailbox hits somebody waiting for a bus, and now they want to sue me.

That's what vicarious liability is. All I did was lend some money. I didn't tell him what kind of car to get, I didn't tell him how to drive it. He has insurance. But the mailbox hit the person, they already collected the $150,000 in coverage that my friend John is provided for, but their lawyer says, you know, "We can nail Connor for a couple of

hundred thousand too, because he lent the money. He lent the money." That's what vicarious liability is.

And as I say, I know most people on the other side of the aisle have often looked at me as the -- as a pawn of the trial lawyers, someone who always supports their positions. I often agree with them. And, as I explained before, I agree with them on real issues of liability, on real issues of appropriate compensation for pain and suffering and injuries done by real tortfeasors -- real tortfeasors not just being the actor but, in the case of product liability, a manufacturer that had a duty to make a safe product or to warn a consumer about an inappropriate use.

In this case, we're just nailing a bank because, as Willy Sutton said, that's where the money is. And they have absolutely no relationship to the negligence.

So, Mr. President, in this case I'm voting yes. I think we have to recognize that the leasing transaction is nothing more than a financing mechanism. It entails no ownership

responsibility or control over the automobile, any more than if you lent the money. The only control you have is the same as the lender has. If they don't pay, you send somebody out to take back the car.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, did you wish to be recognized on the bill?

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill.

I was not a plaintiff's trial lawyer when I was active in the practice of law, I was a defense lawyer. And in fact, I represented some automobile manufacturers. And listening to the discussion that's gone on now, I find it somewhat baffling because it doesn't really fairly reflect the history of the development of leasing as a mechanism for car companies to increase their profits, which is what corporations should do. If I bought stock in Ford, I would certainly like to see that they were doing everything they could do to increase their profits.

But that's what this is about. And

I would urge that the critical portion of this legislation is found in lines 20 to 21, where it says: We're leaving vicarious liability alone for everyone except when there is a lease, and for the purposes of this section only, the leased vehicle is defined.

What that means is that the companies that will benefit from this legislation are not giving up ownership. They are still owners of the vehicle. They're still able to depreciate that asset for tax purposes.

What this means is they are targeting a very small responsibility that goes along with the rights you retain by being an owner and seeking to eliminate it without changing the other benefits that they receive as owners.

Let's put this in some context. Vicarious liability is a legal principle that was developed many, many, many years ago because of a fundamental problem. It's in many ways a problem of proof. It's something that, you know, all of us who studied tort law remember very complex fact scenarios where

there seemed to be a lot of people at fault and the question was who, under our best judgment, under the American system of justice, should bear the burden, who should pay.

And the principle of vicarious liability is -- and now I would like to quote from the New York State of Appeals in the case of Mowczan v. Bacon: "Vicarious liability. The enactments of vicarious liability removed a hardship and imbalance which the common-law rule visited upon innocent persons. To wit, owners would not be permitted to evade responsibility by claiming that their vehicles were being used either without authority or not in the course of their business."

So the point of vicarious liability is to say, okay, if you retain ownership, you retain the benefits of ownership, you have a responsibility. You have a responsibility for what happens with that car.

That is something that is true today. If somebody takes my car and uses it and gets into an accident, I'm responsible. I retain the abilities of ownership, I bear the

responsibilities of ownership.

A number of years ago automobile companies, including my distinguished former clients, realized that there was a way to make more money than by selling cars. And the way to make more money was as follows. You lease a car, you get payments, you retain ownership so you're allowed to depreciate the asset, and, because you're doing short-term leases of one, two, or three years, you double the number of cars you sell.

Because people lease cars for three years, they come back in and get another car for three years. The average ownership period for a car which people would purchase with their own money or finance by a bank was about six years.

They cut that in half. This was a great idea for making money if you were a car company. And this is something that went through the boom of the 1990s, when a lot of people were feeling flush and wanted to lease cars and pay a little more money and have a new car every three years. The difficulty now is that the market has collapsed.

And I would urge that there are some serious, serious factual errors in some of the materials that are before us. Some of the materials that are before us suggest that there were a billion dollars in vicarious liability claims that were paid out by New York State car rental and leasing companies in 1997.

If you look at the documents on which that statement is based, in fact, it says these claims were paid out or reserved in civil litigation. That means if you're a company and you were sued, you have your accountant say: We have this potential liability, and we'll set it aside.

We're talking about 215 cases of vicarious liability in the State of New York in the most recent year for which we have data. That's 2001.

Car companies, financers can lease cars because they make money. No one is coercing them into leasing cars. The suggestion that this is some great punishment that is being inflicted on these businessmen is absurd. If they want to make more money by

leasing cars, they have to take responsibility for ownership. If they want to sell the cars, they can sell the cars and they don't have the problem.

I think what we're looking at here is a group of businesspeople who are having problems in the market for other reasons who are looking to get the State Legislature to bail them out in some small respect.

I would urge you that if you look at the actual data, it shows that even in states that don't have vicarious liability, the market for leased cars is collapsing. It's not because of our law.

The latest survey -- and this is dated August 2, 2002, so this is about a year old -- the latest survey by the Consumer Bankers Association of 41 lenders and automotive finance companies showed they lost an average of $2,451 a vehicle in 2001. That is across the country.

That's not because of vicarious liability. That's because it's hard to make money leasing cars when there's this glut on the market of used cars when there's zero

percent financing and when car companies are doing everything they can do to actually sell their product.

I would urge that the notion that there's no one who's going to be harmed by this change in the law that's being proposed is absurd. Another of the memoranda submitted to us says: Who profits from the vicarious liability laws? The victim? The victim can already receive compensation from the tortfeasor's liability insurer.

Well, that's interesting. The problem is what happens if that person is not able to pay. What happens if there isn't adequate insurance? Someone suffers brain damage, someone is crippled. The owner of the car, the owner of the car, the company that depreciates the asset, the company that benefits in every other respect from ownership is responsible.

They are seeking to evade one obligation of ownership through this statute. And I would respectfully submit if they don't want to own the cars, they don't have to own the cars. They can sell the cars. Let's pass

a statute saying delete for the purposes of this section.

Let's say that they're entitled to the benefits of someone who sells the car for all purposes, but then they don't depreciate the asset. They want it both ways, Mr. President.

I respectfully submit that there is a good system in place, enacted many, many years ago, to provide that plaintiffs in these cases don't have to prove what's in the mind of the defendants. You can have the excuse that it was an unauthorized use of the car. That's vicarious liability. It applies to every one of us who lend our car to someone.

Why should the group of people who actually aren't just doing this as good Samaritans, lending cars -- they're making money out of this venture, which is a respectable thing to do -- but why should they be exempted when people who aren't seeking to make a profit from lending cars, they're just seeking to do a good deed, are not?

This is a business situation. This is an industry that is seeking a bailout

because they're not making money anymore. The people who will suffer are the victims who will not be adequately compensated by the driver's insurance companies. And if those victims are indigent, they will be on our backs, on the backs of the taxpayers, they will be paid for out of our public financing of healthcare.

So what's really going on here? We're talking about an effort to evade responsibility for ownership while keeping the benefits of ownership by a group of companies seeking to make profits. And the people who will suffer if this is passed -- and I don't believe it will be passed and become a law in its present form -- are the victims and are the taxpayers of the State of New York who have to pay for their healthcare.

I hope that we can do something about this issue. I hope that we can do something about the high cost of having a car in New York, of auto insurance. We've discussed it earlier. This statute doesn't solve the problem. And I would urge that there are other states that have taken more

creative approaches to this problem that we should probably be looking at as the session goes on.

I think that this is simply an effort to keep the benefits of ownership while avoiding the responsibility. I appreciate companies wanting to make money, but it's not the job of the New York State Legislature to single out a very small, specific industry and cut a loophole in the law for their benefit.

I am voting no. I urge everyone to vote no.

ACTING PRESIDENT KUHL: Senator Duane, did you wish to speak on the bill?

SENATOR DUANE: If the sponsor would yield, Mr. President.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Duane?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DUANE: Thank you.

The tax advantage on the

depreciation of the leased car, leased auto, I know that there's a tax advantage federally. Does the state tax law track the federal tax law?

In other words, can you get both a tax advantage on the federal and the state level on the depreciation?

SENATOR JOHNSON: I would say it does, Senator, yes, pretty closely.

SENATOR DUANE: Thank you.

And just if the sponsor would yield for a final question.

ACTING PRESIDENT KUHL: Do you yield to another question, Senator?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DUANE: In a scenario where a person driving a leased car doesn't have enough money through their own insurance or their own funds to pay for, for instance, the hospitalization or the physical therapy, the missed work, et cetera, of someone who's injured in an accident, at the end of the day,

in that kind of scenario, who is it who would actually have to pay the medical costs?

SENATOR JOHNSON: Well, of course, if the person has liability insurance on their car, they have to carry coverage for their own medical benefits up to $50,000. That's your own policy.

If you have an accident with someone else, their policy might have to pay you if they're responsible for the accident. You understand that? That's limited only by the amount of insurance they have.

SENATOR DUANE: Through you, Mr. President, just for a clarification, if the sponsor would continue to yield.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to one last question?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DUANE: But if the person who's hit doesn't have any -- say they're a pedestrian and not driving a vehicle or don't own their own vehicle, who would pay, at the

end of the day, for the medical expenses of that person?

SENATOR JOHNSON: Well, of course, if you're talking about a person who owns their own car and they do not have insurance -- is that your postulation, that they own a car but they don't have insurance?

SENATOR DUANE: No, a pedestrian.

SENATOR JOHNSON: Yeah, but hit by a leased vehicle? Is that what you're asking?

SENATOR DUANE: Yeah.

SENATOR JOHNSON: Well, the person who leases the vehicle is required to carry, according to their contract, a maximum amount of insurance, usually 100,000 to 300,000 or 300,000. Sometimes they have a million dollars' worth of coverage. That car has to be insured. That's one of the terms of their contract.

And if the person who leased the car doesn't carry the insurance, I guess they'll be sued for the amount of benefits and they'll be responsible for it, just as if they owned the car. Owned or leased, either way.

SENATOR DUANE: Thank you, Mr. President. Just very briefly on the bill.

My colleagues covered most of the areas that I was interested in debating on the floor. But just to add one other scenario -- and not to make it into a question, but just a statement.

You know, for instance, in the case of an illegal, uninsured driver, just, you know, at the end of the day, who would pay is the public, through Medicaid, or someone -- you know, indigent benefits of someone going into a hospital, that sort of thing.

So someone always has to pay in these cases. And I think, in a way, that's the heart of what this debate is about: where as a society do we want that responsibility to go?

So with that, I'm going to vote in opposition to this bill, and I hope that my colleagues will join me.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives.

Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Mr. President, because I have a pecuniary interest in Calendar Number 69, I respectfully request to be excused from voting on this matter.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Hassell-Thompson will be excused from voting on Calendar Number 69.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT KUHL: Senator Stavisky, why do you rise?

SENATOR STAVISKY: Very briefly to explain my vote.

ACTING PRESIDENT KUHL: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: I think Senator Schneiderman had it right, that this legislation is really a response to the economic situation that we're in today, the low interest rates and the inability of the leasing companies to predict what the cost -- the amount they can charge at the end of the lease.

But don't forget, they're making money as we go along. The same analogy that I used before: I own a co-op, and if I were to sublease it, there would be rent accruing to me. And yet I'm still assuming the liability.

And lastly, Mr. President, I would hope that we could perhaps, as a compromise, join some of the other states. While they have -- you can claim that they do not have vicarious liability, they still retain a measure with the use of caps. And I would suggest that perhaps this might be the way to proceed.

I vote no.

ACTING PRESIDENT KUHL: Senator Stavisky will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 69 are Senators Andrews, Breslin, Diaz, Dilán, Lachman, Onorato, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, and Stavisky. Also Senators Montgomery and Parker. Ayes, 48. Nays, 14.

ACTING PRESIDENT KUHL: The bill is passed.

I would remind the members -- Senator Connor, why do you rise?

SENATOR CONNOR: May I have unanimous consent to be recorded in the negative on Calendar Number 55.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Connor will be recorded in the negative on Calendar Number 55.

I would just remind the members who were out of the chamber, it makes it very, very difficult for the clerk to record your vote when you're moving about the chamber. The rules do require you to vote from your seat.

So as we move through the session,

please make sure that if you're going to cast a vote that you're in your seat.

Senator Brown, why do you rise?

SENATOR BROWN: Mr. President, I would also request unanimous consent to be recorded in the negative on Calendar 55.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Brown will be recorded in the negative on Calendar Number 55.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Social Services Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Social Services Committee in the Majority Conference Room, immediate meeting of the Social Services Committee in the Majority Conference Room.

Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: If it's appropriate, Mr. President, I would just like to ask a question on the vote. My excuse

was not counted. In which direction is it counted, as a positive or a negative? It did not say that my vote was excused.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, you were not recorded as voting on the particular bill.

SENATOR HASSELL-THOMPSON: At all?

ACTING PRESIDENT KUHL: At all.

SENATOR HASSELL-THOMPSON: Okay. Thank you.

ACTING PRESIDENT KUHL: Okay? I think the record probably shows an abstention.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT KUHL: The Secretary will continue to read the controversial reading of the calendar.

THE SECRETARY: Calendar Number 86, by Senator Volker, Senate Print 1441, an act to amend the Penal Law, in relation to sentences for Class A felony drug offenses.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator

Volker.

SENATOR VOLKER: Mr. President, this bill is identical to the bill, I believe, that was sponsored last year by Councilman Espada -- okay, I thought it was kind of funny -- Councilman Espada in last year's session.

It is -- what's interesting about it is I was looking back, I realized that having been here when the so-called Rockefeller Drug Laws were put in and having, of course, fought with the governor at the time over the initial Rockefeller Drug Laws -- which were far, far more draconian than what was eventually passed -- I also realized something that I had frankly forgotten about.

And that is that one of the reasons why there's so much confusion is because the same year that we passed the Rockefeller Drug Laws, we passed second felony offender. And it kind of accounts for the fact that there is so much confusion over Rockefeller Drug Laws, what constitutes Rockefeller Drug Laws and what constitutes second felony offender.

I want to say that Assemblyman Joe

Lentol, who was in the Assembly with me back in 1973, to his credit -- and in fact, in my opinion, one of the reasons why I happen to believe the issue of drug reform is going to be at least initially resolved this year is because he admitted at the hearing that it's not really the Assembly's concern of Rockefeller Drug Laws, it's really about second felony offender. Because the big numbers in jail today are not because of Rockefeller Drug Laws, but because of the second felony offender.

This bill, and I frankly realized it last night as I was going through all the numbers, basically, if we pass this bill and the Assembly passes this bill and the Governor signs it, this will end the Rockefeller Drug Laws entirely.

This will -- this bill actually -- and I ran back and checked it all, went through all the different laws that we did, the changes. I've got about four reports here that show how the amendments to the Rockefeller Drug Laws occurred back in the mid-'70s, the late '70s. The big changes in

that were in 1979.

But in reality, what this bill deals with is around 600 people who are in jail. And I say it deals with people in jail, and it also deals with people who could be arrested in the future for A-I or A-II felonies and would change the sentencing structure.

For the new people -- that is, for the people that would be arrested after November 1st of 2003 -- instead of the maximum sentence being 15 to 25 to life, it would become 10 to 20. Essentially, the life term falls off. So that for the A-I felonies, there would no longer be a life term.

That doesn't mean that somebody under another statute couldn't be assigned a life term. But for purposes of these drug laws, there would no longer be a life term.

And I say that because a number of the people that are in jail under A-I felonies are also charged with other crimes, and even violent crimes -- even more violent crimes, I guess you could say. And that's one reason why we refer in the law to "persistent

violator" and "second felony offender," because some people are in under both.

At any rate, what this bill would do as far as people that are presently in jail -- about 600 people -- within two years, the people that are in jail under the A-I and A-II could apply for a resentencing. And that resentencing, which would be either the initial judge or the court, or parole, depending on the situation, they could be entitled to a 1/7th provision for merit time and 1/7th also for good time.

And as a result, depending on the determination, some people could be released from jail. There's no question. Some people say as high as 125 or 130 people.

I can tell you, having studied these people, a lot of these people will never get out of jail, because you have some of the biggest drug offenders in the country are part of this group. So no judge is going to let them out, in my opinion.

There are other people who are mules and people who are first-felony offenders who as far as I know did not have

prior violent felonies to their -- not to their discredit. Those people would have a very good opportunity -- in fact, might well have their sentences commuted and therefore would be able to get right out of jail.

So what this bill really does is to take the issue, in my humble opinion -- well, I mean really, even though the media has talked about it, what the media is talking about is other parts of drug laws, not the Rockefeller Drug Laws. When you vote on this bill today, you are voting to terminate the Rockefeller Drug Laws as they were passed back in 1973. We want everybody to understand that.

Now, you can argue about whether you want to go farther and whether you want to do more, you want to do treatment, all that sort of thing. I'm just talking about the Rockefeller Drug Laws themselves. This is it.

And so you could talk about the B felonies, which are not Rockefeller Drug Laws. Some of them are second-felony offender issues. There's a lot of issues. But that's what this is. It changes the way the A-I and

A-II drug felonies are governed for both people in jail and out of jail.

So I just want to remind everybody that, interestingly enough, all the talk about Rockefeller Drug Laws should end when this bill is passed and signed into law.

ACTING PRESIDENT KUHL: Senator Lachman, why do you rise?

SENATOR LACHMAN: Yes, Mr. President. Will the distinguished Senator from Buffalo yield to a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield a question from Senator Lachman?

SENATOR VOLKER: I yield, but I don't know whether I'm the distinguished Senator from Buffalo. Go right ahead.

(Laughter.)

ACTING PRESIDENT KUHL: Well, you didn't get much response from anybody in the chamber, Senator.

SENATOR VOLKER: I know it. Senator Brown is right next to him; I thought maybe he was asking about him.

(Laughter.)

ACTING PRESIDENT KUHL: The Senator yields, Senator Lachman.

SENATOR LACHMAN: There might be two or three distinguished. I'm referring to this distinguished gentleman.

In your remarks, Senator Volker, you made mention of the fact that this has no impact on the B felonies.

SENATOR VOLKER: That's true.

SENATOR LACHMAN: Now, I believe that the B felonies are a larger cohort of the population than the A felonies, approximately about 15,000. Am I correct?

SENATOR VOLKER: Absolutely.

SENATOR LACHMAN: Okay. If this is the case, Senator Volker, what impact does this legislation have in dismantling major parts of what we now call the Rockefeller Drug Laws?

SENATOR VOLKER: Senator -- and by the way, I guess I didn't hear you. The B felonies are -- I think what you were talking about was B, C, D, and E felonies. Actually, the B felonies are 6,025, which is just a -- just so that you know.

But let me explain something to you. I don't claim that this does anything with B felonies. But this -- the B felonies that we have here were not the Rockefeller Drug Law felonies. In 1979, we changed the sentencing. So what I'm saying to you is that this bill would finish the Rockefeller Drug Laws completely, as it was passed in 1973.

But you are right when you say that this does not deal with the rest of drug felonies, which are B, C, D, and E, of people that are in jail.

I guess my point was, though, that as far as Rockefeller Drug Laws, this ends the Rockefeller drug era.

ACTING PRESIDENT KUHL: Senator Lachman.

SENATOR LACHMAN: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Lachman, on the bill.

SENATOR LACHMAN: I would very much like to agree with my good friend and colleague on the other side of the aisle, Senator Volker. But I cannot agree with him,

because the Rockefeller Drug Laws, as we comprehend them and understand them today, are not limited, are not limited to this issue, but go beyond this issue into felonies B, C, D.

And I find, and I dislike saying this, that there might even be a racial aspect to this. And what I mean is that most of these offenders who are caught with 4 ounces of drugs in their possession, whether they are selling them or using them or buying them or doing nothing with them, are sent to jail frequently without parole. So you have 18-year-olds who are sentenced to jail and some of them will never be paroled, they'll be sentenced to jail for life.

At the same time, you have a convicted murder, the Preppy Murderer, Mr. Chambers, who in his teens brutally killed another teenager. And after 15 years and parole, he is walking the streets of New York.

Now, I think there should be one standard for all people. And maintaining the bulk of the Rockefeller Drug Laws destroys this one standard and gives the advantage to

those who committed murder. Joe Goldberg, who murdered his daughter, who was 10 years old, is getting paroled after 11 years. And there are others as well.

Now, there is something inherently wrong, unless we dismantle most of what has come to be known as the Rockefeller Drug Laws today. I would much rather have Nelson Rockefeller's name associated not with these drug laws but with the State University of New York, which in many ways he was the catalytic agent for its start and its growth.

Thank you.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Mr. President, briefly on the bill.

First of all, I do want to acknowledge Senator Volker's courageous losing battle to accurately refer to the Rockefeller Drug Laws and distinguish them from other laws.

I think, Senator, you understand that people are using that as a rubric under which we group a lot of laws that as a technical matter are not the Rockefeller Drug Laws. And I'm afraid it's sort of -- you know, once you make -- start definitions like "assault weapons," you really can't control the course of the debate.

The issue before us, though, is a package of laws -- some of which are Rockefeller Drug Laws, some of which are not -- that it is generally if not universally acknowledged distort the sentencing systems of the State of New York.

We have gathered, over the last few years, an extraordinary coalition of people committed to modifying these laws and repealing many of these laws.

And I think that it's important for us to understand, as we consider voting on this bill, what we're really doing as a matter of politics. Because we aren't just operating in a vacuum here in the Senate chamber, we're operating in a state where there's a political movement that has been assembled, there are

people who have given hundreds and hundreds of hours of their times, there are people who have contributed millions of dollars to the cause, not just of dealing with the A-I offenders but of dealing with this entire pervasive system of injustice that we have inflicted -- we, the state legislature, we, the state government have inflicted on so many New Yorkers.

And I would urge the sponsor that the fact that the advocates do not support this bill, the fact that the advocates are holding out for more comprehensive reform that addresses more of the victims of the draconian drug laws of this state, and of their families, of their children, of their mothers -- the reason they're not supporting this is because we know that a coalition can only succeed in obtaining comprehensive reform if we stick together.

I'm going to vote no on this bill. I'm going to encourage my colleagues to vote no on this bill. And I would urge that this is a situation that is analogous to the situation we faced when there was a coalition

formed to pass hate crimes legislation and there was an offer that came to pass the legislation but to split the coalition, give a half a loaf, leave out bias-related violence based on sexual orientation.

The coalition, under the leadership of our current leader before he was leader, Senator David Paterson, hung together. They could have gotten a half a loaf, they could have gotten a bill punishing bias-related violence for acts based on religion or race. They didn't take it. They hung together. They understood the politics that we all have to fight together if we're going to accomplish serious, comprehensive reforms.

This is an effort to split the coalition. It's not acceptable. Too many people have worked too hard. We are going to reform these laws this year. Let us not give up so easily on the whole package. Let us seek comprehensive reform.

Let us get away from New York State's system of prison-based drug treatment. Let's have a bill that provides funding for drug treatment in the communities. Let's deal

with the A-II. Let's deal with the B. Let's deal with all of the felons who were unfairly affected by these bills.

I am with the coalition. And, my colleagues, I hope all of us will be with the coalition, and let's see this through to comprehensive reform. I vote no.

ACTING PRESIDENT KUHL: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Thank you. I rise to speak on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Following up on Senator Schneiderman's points, I also rise to urge everyone to vote no.

And while I have no disagreement with Senator Volker's historical analysis of what was or wasn't the Rockefeller Drug Laws at the time that they were passed, I think, as Senator Schneiderman alluded to, we're describing ketchup versus catsup and how that is interpreted.

And the fact is that today in New York State, when a broad universe of

people are begging this Legislature to address the unfair drug laws and the failed drug laws that we have in this state, we're not talking about just this kind of bill. And in fact, one of the arguments for voting against this bill is in fact Senator Volker's own statement that if we pass this bill we'll be able to say that we did reform the Rockefeller Drug Laws. Because this is not the case.

A bill that would perhaps affect 500 people in the prison system when 21,000 are in fact in our prison system today under what is generically or catsup-like referred to as Rockefeller Drug Laws, a bill that only talks about 500 people does not address the issue.

A bill that would have no impact on over 90 percent of the drug offenders entering our system each year and over 97 percent of the drug offenders currently in our system is not a repeal of the Rockefeller Drug Laws.

A bill that doesn't restore sentencing discretion to trial judges and in fact increases penalties for large numbers of drug offenders is not reform or repeal.

Addressing -- or failing to address any new plan for alternatives to incarceration or increase funds for drug rehab is not a bill that addresses the needs of the Rockefeller Drug Law reforms that are so desperately needed.

And in fact, ultimately, a bill that will allow some people to walk out of the chamber saying that we followed through on our commitment is a bill that we cannot allow to pass, because we cannot, frankly, allow ourselves to be let off the hook that we did what we need to do for people throughout the state of New York by claiming that passage of this bill will solve the problem.

Because all of us in this room, whether we personally might agree with certain components of this bill and what it would do for 400 or 500 people in the prison system, all of us in this room know the passage of this bill does not address the bigger issues that we face as a state.

And I will throw in, additionally, last year was the year to do this and we failed to do it. This year there are all the

same arguments as last year, plus one more that I would urge us to focus on in the context of any bill we are dealing with on the floor of the Senate. We could save an enormous amount of money by taking a serious approach to reforming Rockefeller Drug Laws, by making the investments in drug treatment, in alternatives to incarceration, in allowing nonviolent drug felons out of our prisons sooner. We need that money for education. We need that money for health care. We need that money for treatment and prevention.

So in case there was any doubt about the arguments for serious revisiting of Rockefeller Drug Laws, I will add to the case the budget crisis that we are facing and the fact that now, here in March, we are still not addressing the issues facing our state.

Thank you, Mr. President.

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

Senator Volker, to close.

SENATOR VOLKER: Mr. President, I think -- I know what's been said here, and I'm -- you know, when we have Codes Committee

meetings, we try to be completely frank about what we're talking about. And you can generically call anything you want. But I want to tell you what this points out. And I appreciate what everyone has said here.

The problem is there is a mythology that has developed about these enormous numbers of people that are in jail under the drug laws. Let me tell you something about this state. You know, I've been here for a couple of years, involved in Codes. In 1980, New York had 40,000 inmates in our system. So did California. We were tied for the most number of inmates in our system.

Senator Krueger, you are right on the money about drug laws, except you're talking about the wrong state. It's California. They are now reaching for 170,000 inmates. There were 165,000 the last I knew. I haven't checked lately; I assume they're probably still going up.

It's not happening in New York. We're going backward. We're moving down. By "backward" I think we're moving forward, is what I mean. We're now at about 64,000,

65,000 inmates. We were at 72,000. The studies that we've been doing show that the number of nonviolent inmates in our system is the lowest level it's been in our history.

We're having a devil of a problem finding people for our shock incarceration program. Which some people forget about, which is maybe the most successful in the country. The problem is that some of the advocates don't like to talk about it because they don't like the word "shock."

I just had somebody from California that was telling me they had this great program and had such a great program and that it was such a great program that they had a recidivism rate of zero. I said "You what?" When they told me they had a recidivism rate of zero, I knew that they were exaggerating a little bit. They claimed out of 4,000 people, no one committed a new crime. I said, "Well, you know, I think maybe that's a little bit of an exaggeration, because no one's ever done that before, and I don't think you did it either."

I mean, it sounds like a pretty

good program, but very expensive, what they were telling us about. And it's been used in Mexico, in California. We're looking at it.

When you talk about not going any farther, this house passed a bill that went farther. And it wasn't the jailbreak that the Assembly suggested. Because that's what the Assembly bill was, a jailbreak.

Remember something, we don't believe in prison-based drug treatment, just prison-based drug treatment. But look at New York City. What's New York City done? Jeez, they've got some great drug programs. The only problem is, they keep chasing these people around. Because since there's no compelling reason for them to stay in a drug program, they just disappear.

You've got to have some sort of -- some way to force somebody to stay in that drug program. The truth is most of the people who go to jail in New York under drugs have committed multiple, multiple crimes. In fact, most of them were on probation when they committed the crimes, or have previous convictions. I'm not saying all.

All I'm saying to everybody here is that there seems to be this idea that they're afraid that if we do this bill, the total momentum is going to be shot. And you know why that is? Because, unfortunately, some of the groups were not telling the truth.

The New York Times has -- I've read these stories in the Times, the Times-Union. All these papers give these incredible stories that are just not true of the numbers of people that are in jail.

What I'm saying to you is, and I'm committing to you from my perspective, if this bill passes, the Rockefeller drug era is gone. That doesn't mean, though, that we should stop considering drug reform and all that sort of stuff. Who says that?

In fact, the Senate is the only house that put a legitimate $20 million in the budget to deal with drug reform. It's been in there for two years, by the way. The Assembly talked about putting money in. I think they put a dry appropriation in for a hundred and some million. But I don't think they ever put any money in there.

My point is this -- and I know why some of you are voting against it. I know the Assembly's all nervous and jerky and so forth, because they don't like not to have to -- to vote against this, because this is the end of the Rockefeller Drug Laws.

I mean, you can say, well, it's not really what we think. It doesn't matter what you think. The law is the law. B felonies were never -- B felonies were changed from the Rockefeller Drug Laws in 1979.

By the way, to talk about this as racist, that really bothers me. The people most affected by drug laws, by drugs, are people of color. The people -- some say the people whose lives were saved and the people who have got the most benefit from getting drug dealers off the street are people of color. Because that's the neighborhoods where the terrible disasters occur.

And I would tell you, I can tell you I personally believe that the death penalty abolition, after that, the minority neighborhoods were shattered with murders, one after another after another.

You -- well, we can argue that. I only mention that because if anybody tries to say that I or my colleagues had any intention of doing anything that would hurt minority neighborhoods, they are absolutely, totally, and completely wrong. The last thing in the world we want to do is that.

So all I say to everybody here is that the people that have come in to see us, the Families against Mandatory Minimums, they're talking about this bill. And, by the way, we explained it to them and they now understand it. This is what they're talking about.

The B felons, nobody goes to jail -- by the way, there is no parole -- you mentioned, and I know you slipped, you said something about being in parole forever. There aren't any under B felonies. There just aren't any of that. The only parole people stay on forever had to do with the A-Is and the A-IIs and all that, and we're getting rid of that.

So I only point that out to you, that if you're voting against this bill, what

you're voting against is the end of the Rockefeller Drug Laws.

Now, you can put me on the spot and say: Is this the last thing you want to do? No. Why would I not want to do more? We wanted to do more last year.

The Assembly's problem, and I'll publicly say it, what the downstaters wanted to do, the upstaters didn't want to do. And what the upstaters could do, the downstaters didn't feel was enough. That's the problem. We knew that. It's no secret.

Because there was so much -- frankly, so much mythology put out by a lot of people who came into this state, spent a lot of money on advertising and a lot of money on a lot of things, and they convinced, you know, some of the newspapers that this was some horrendous situation. And then we started showing them the numbers, and then they said, Well, jeez.

I noticed my own newspaper, which is a very liberal newspaper, the Buffalo News, finally printed some real numbers this year. I was very encouraged. They said: Well, this

bill is a pretty good bill, you ought to go farther. Yeah, okay. And I agree with that.

But I can only finish by saying I understand how the whole system works. We were ready last year, this house, to negotiate with anybody on drug law reform. The problem was the Assembly wasn't ready. I mean, they just weren't. And, you know, you can deny that, you can say it was us.

I've said that all along: Somebody wants to negotiate on drug laws, we will. But we won't agree to a jailbreak. We won't agree to 10,000 or 15,000 people walking out of jail and hoping that they get drug treatment. That's just not going to happen.

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

THE SECRETARY: Section 18. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Party vote

in the negative.

SENATOR FLANAGAN: Party vote in the affirmative.

ACTING PRESIDENT KUHL: The Secretary will record the party-line votes and announce the results.

THE SECRETARY: Ayes --

ACTING PRESIDENT KUHL: Senator Schneiderman, are you rising to explain your vote?

SENATOR SCHNEIDERMAN: Yes, sir. Mr. President, very briefly, to explain my --

ACTING PRESIDENT KUHL: Generally before the vote is announced, Senator. We want your words to have some effect on the voting body. That's the reason for that.

(Laughter.)

ACTING PRESIDENT KUHL: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Well, I thank you, Mr. President. I will try to have as much of an effect as I can as quickly as I can.

I really am just rising to respond

to Senator Volker's comments, because I don't think there's anyone on our side of the aisle who questions the Senator's sincerity and commitment to honestly addressing criminal justice issues. And while we may disagree, there's certainly no lack of respect intended.

But we really -- I really do have to say that when we talk about mythology, the mythology relating to drug offenses and who's in prison for drugs is really so pervasive that we have to get to the big myth.

This is the most drugged-up society in the history of the world. There are people who have money, there are people who are middle-class, there are people who largely are white who can get drugs from their doctors or, in the case of my district in Washington Heights, drive in from New Jersey to buy drugs in poor communities, who aren't going prison.

It's not a matter of us suggesting that anyone in this house is intentionally racist. But the facts are that the majority of drug users and sellers in this country are white, but in New York State, 94 percent of the drug offenders are African-American or

Latinos.

We are moving in the right direction, we are moving in the right direction, but we haven't got there yet. And each family, each person who is in prison, it's not just a matter of statistics or numbers. These are human beings. Let's do something to reform all of the drug laws that have nonviolent people in prison, over 20,000 still. We're moving in the right direction; still, too many.

And I am glad we're doing better than California. Maybe it's because we don't have a "three strikes and you're in" law, as California does. I hope we won't add that to our problems.

But I do think that everyone, I speak for everyone in our conference in commending Senator Volker for his sincerity in these efforts. And I do hope he will get to the negotiating table this session.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 38. Nays, 24. Party vote.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: If I could have unanimous consent to be recorded in the negative on Calendar Number 69, S397A.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane will be recorded in the negative on Calendar Number 69.

Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I also request unanimous consent to be recorded in the negative on Calendar 69, S397A. I thought I voted no before, but I made the mistake of being in my seat, so probably people didn't see me.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Krueger will be recorded in the negative on Calendar Number 69.

Senator Flanagan.

SENATOR FLANAGAN: Mr. President,

can we please return to reports of standing committees.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees.

I believe there is a committee report from the Social Services Committee at the desk. We'll ask the Secretary to read.

THE SECRETARY: Senator Meier, from the Committee on Social Services, reports:

Senate Print 1821, by Senator Meier, an act to amend the Social Services Law;

1824, by Senator Meier, an act to amend Chapter 706 of the Laws of 1996;

And 1827, by Senator Meier, an act to amend Chapter 436 of the Laws of 1997.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: All bills are ordered directly to third reading.

Senator Flanagan.

SENATOR FLANAGAN: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is none.

SENATOR FLANAGAN: Mr. President, there being no further business to come before the Senate, I move that we stand adjourned until Wednesday, March 5th, at 11:30 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, March 5th -- note the time, 11:30 a.m.

(Whereupon, at 5:28 p.m., the Senate adjourned.)