NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 10, 2004

11:16 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 9, the Senate met pursuant to adjournment. The Journal of Monday, March 8, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: I believe there's a substitution at the desk, if we could make it at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 28, Senator Hannon moves to discharge, from the Committee on Judiciary, Assembly Bill Number 5805 and substitute it for the identical Senate Bill Number 1099, Third Reading Calendar 426.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, 3811, by Senator DeFrancisco. I ask that it be read in its entirety, that you recognize Senator

DeFrancisco, and then move for its passage.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 3811, congratulating the Marcellus Central High School Lady Mustangs Girls Soccer Team and Coach Laura Updike upon the occasion of capturing the 2003 New York State Class B Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching and strategic planning; and

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

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute

to those young people within the State of New York who, achieving outstanding success in athletic competition, have inspired and brought pride to their school; and

"WHEREAS, This Legislative Body is justly proud to congratulate the Marcellus Central High School Lady Mustangs Girls Soccer Team and Coach Laura Updike upon the occasion of capturing the 2003 New York State Public High School Athletic Association Class B Championship; and

"WHEREAS, The Marcellus Lady Mustangs enjoyed a truly outstanding season. They compiled an overall record of 16 wins, just one loss, and a single tie. In league play, the Marcellus Girls Soccer Team had a most impressive record of eight victories, one loss, and one tie; and

"WHEREAS, Moving on to the postseason, the Lady Mustangs defeated Skaneateles, South Jefferson, and Ilion to earn the Section III title. They then went on to defeat both Chatham and Potsdam to win regionals; and

"WHEREAS, The Marcellus Girls

Soccer Team then faced tough competition and emerged with a victory against Alden in the New York State Semifinals, thereby earning a place to compete in the New York State Class B Championship Game against Oneonta on November 15, 2003; and

"WHEREAS, the Marcellus High School Girls Soccer Team was well aware of the challenge to be faced in the season's final game. Their opponent in the New York State Class B Championship Game was the undefeated Oneonta Yellow Jackets; and

"WHEREAS, The Lady Mustangs took to the Webster Soccer Association Fields, where they rose to the challenge and gave their hearts and souls for 98 scoreless minutes. Finally, with less than two minutes remaining in double overtime, Marcellus was able to score the only goal of the game to capture the 2003 New York State Class B Championship; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Head Coach Laura Updike and her assistant coaches, Ryan Mooney and Lisa MacLachlan, as well as the never-ending

encouragement and support of friends, family, and the entire Marcellus Central School community; and

"WHEREAS, This most exceptional team was proud to have among them three All-State honorees, five All-League First Team players, five All-League Second Team players, two members who were named to the All-Central New York First Team, three players who were named to the All-Section III Team, and four individuals who achieved Honorable Mention for All-League; and

"WHEREAS, No team, no matter how gifted one or even a handful of individuals may be, can accomplish all that has been achieved by the Marcellus Central Lady Mustangs without exceptional skills teamwide. The 2003 New York State Class B Champion Lady Mustangs had talented team members throughout its player roster that included: Captains Jenna Farneti, Katie O'Laughlin, Amy Ware, and Sarah Vulcano; Sami Boyle, Maureen Dooley, Kelly Hanlon, Candy Hofmann, Jocie Jankowski, Alyssa MacLachlan, Megan Mannion, Alyse O'Brien, Sara Potter, Jessi Reynolds, Amanda

Stessen, Hannah Vaughn, Katie Walter, Jennifer Young, Katie Young, and Katie Zimmerman; and

"WHEREAS, The Marcellus High School Girls Soccer Team received a Certificate of Academic Achievement from the New York State Public High School Athletic Association. This honor is accorded to only those teams who achieve athletic excellence while actively participating in varsity-level interscholastic athletics; and

"WHEREAS, The 2003 Lady Mustangs shared noteworthy attributes off the field as well as in competition. Individually and collectively, they constantly exhibited good sportsmanship and scholarship, thereby demonstrating to themselves and to others that they have an enviable combination of talent and character which reflects favorably upon their school and their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Marcellus Central High School Girls Soccer Team and Coach Laura Updike on their successful season, overall team record,

and capturing the New York State Class B Championship; and be it further

"RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the members of the Marcellus High School Girls Soccer team and to Coach Laura Updike."

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

I rise to congratulate these young ladies from Marcellus who have excelled and become state champions.

You know, during your lifetime you're going to look back to this as clearly one of the highlights. If you look at each other that are sitting together today, you'll be friends forever. You have a common bond that very few people will have in life, because of a championship such as this, especially when it was won in double overtime by one goal. I mean, that's something that's very rarely done by anyone.

Senator Farley said, when he walked in the room -- he's from Schenectady -- he

said, "It must be one of Senator DeFrancisco's resolutions." He's getting so used to champions coming from Central New York that he expected that it would be you.

Last year, we had the National Champions Syracuse University Basketball Team. But your accomplishment is just as strong as that.

Two things I want to emphasize. There was a lot of whereases, but two things I want to emphasize. The team play is what did it. Obviously you can't win as individuals. You were much greater as a team than all of the parts individually. And that's true in life as well. And hopefully you will follow those principles in whatever you do.

And, lastly, this part of the resolution is not usually in resolutions, and that is that you also achieved a Certificate of Academic Achievement from the State of New York, which shows that you have balance in your life, that the academics is just as important as the sports.

So I'm happy you're here, I'll be happy to have lunch with you this afternoon,

and best of luck in everything you do in the future.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: I just want to rise, if I might, to congratulate this wonderful bunch of young girls and congratulate Senator DeFrancisco for having all these great teams.

I just want to say one of the teams that was mentioned that was defeated happened to be a school from my district. And I want to congratulate you, on behalf of those girls, for winning. You were a very worthy opponent and much deserving of the victory that you got.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, 3812, by Senator Nozzolio. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: May we please have some quiet to read the resolution.

The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 3812, recognizing March 10, 2004, as the inaugural day of commemoration for an annual Harriet Tubman Day in New York State.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President, my colleagues. On the resolution.

That this is, March 10th, the very first day of commemoration of Harriet Tubman, a true American heroine.

And I think it's important for this body to note, as Senator DeFrancisco is hosting this wonderful group from Marcellus, today we have a number of men from Auburn who

are here that are bringing a guest from Italy, who is Gioacchino Marinpiepri, who is former assistant to the president of Italy.

What these gentlemen from Auburn and from the Auburn region and from Italy need to know here in New York State, hailing from Auburn, New York, was that Harriet Tubman was a great American heroine who did much to enhance the cause of freedom and liberty in this nation.

And that I am very pleased to be the sponsor of the day of commemoration and urge all my colleagues who wish to sign on to this resolution, in so recognizing someone with great courage who is a genuine American heroine hailing from New York State.

Thank you, Madam President.

SENATOR VELELLA: Madam President.

ACTING PRESIDENT McGEE: Senator Velella.

SENATOR VELELLA: Since Senator Nozzolio has opened the resolution to all members, anyone not wishing to be on the resolution should notify the desk.

ACTING PRESIDENT McGEE: The resolution is open for cosponsorship. If you do not wish to cosponsor, please notify the desk.

Senator Hoffmann.

SENATOR HOFFMANN: Yes, on the resolution.

ACTING PRESIDENT McGEE: Senator Hoffmann, on the resolution.

SENATOR HOFFMANN: Madam President, I want to compliment our colleague Senator Nozzolio in his leadership in commemorating Harriet Tubman in this very special way.

This is a very significant part of this state's and indeed this nation's abolitionist history. We have an historic trail and an opportunity to invite people from all over the country and, indeed, all over the world to visit with us to see this wonderful part of our nation's historical freedom activities.

I've had the pleasure of being able to discuss Harriet Tubman and the Jerry Rescue and other abolitionist activities -- Gerrit

Smith, from the middle of Madison County -- during my annual visits to Mississippi. And I find that people who are interested in exploring the civil rights movement are equally interested in exploring the abolitionist history that had so much of its energy driven from Central New York and the rest of New York State as well.

So I applaud Senator Nozzolio. I'm delighted that we're going to be having an important event hosted by the Governor at the State Museum today.

And I encourage all of my colleagues in their travels, wherever they may be, to remind people of Harriet Tubman and of the great historical locations that are available here in New York State for our students and for other visitors who would like to come and learn more about this nation's rich history in the area of freedom.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would also like to echo my colleague Senator Hoffmann in commending

Senator Nozzolio for this resolution.

And I might add that today, at this very moment, there is a celebration, if you will, going on in my district of the renaming of one of the major thoroughfares through the district. Fulton Street is being renamed by Councilman Al Vann in the name of Harriet Tubman Boulevard.

We have, in my district, sites that were part of the Underground Railroad. It was the southern part of the New York State route into the northern part of the state, ultimately leading to Canada, where slaves found freedom across the river.

The fact that we are a very important part of the movement for suffrage for black people in this country, for women in this country, and that a lot of the activity took place in Senator Nozzolio's district, I think is of note. And we should celebrate it, we should celebrate ourselves, and we should not allow this part of our history to go unrecognized.

So I thank him for this resolution, and I hope that it is open to all of the

members to be on that resolution because this is an issue that belongs to all of us equally. Thank you.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

I too would like to commend Senator Nozzolio on this resolution. Two years ago, I had the distinct honor of being the Harriet Tubman Recipient of this award. And on Sunday of this week, the Greater Centennial Church will be honoring me again with this award.

So she is a woman who is someone that all of us could look to for virtues. And also I think that -- I would like to hope that at some point we will bring out of Judiciary the efforts that have been made to make a holiday in the name of Harriet Tubman.

Thank you, Madam President.

ACTING PRESIDENT McGEE: You're welcome.

Senator Montgomery, for your information, the resolution has been opened up by Senator Nozzolio for all cosponsorship.

Thank you very much.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Can we please now have the reading of the noncontroversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 9, by Senator LaValle, Senate Print 2066A, an act to amend the General Municipal Law, in relation to emergency rescue and first aid squads.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 83, by Senator Balboni, Senate Print 517A, an act to amend the Family Court Act and the Domestic Relations Law, in relation to the issuance of orders of protection.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 113, by Senator Marcellino, Senate Print 788, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 148, by Senator Skelos, Senate Print 1023B, an act to amend the Domestic Relations Law, in relation to parents or other persons.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act --

ACTING PRESIDENT McGEE: Senator Krueger, I'm sorry.

SENATOR LIZ KRUEGER: To explain my vote.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I just rise to -- I support the bill and have voted for it, but also to show my appreciation for Senator Skelos for having amended the bill based on some discussions we had and some concerns that I had about how the bill might be interpreted in its previous form.

So I just wanted to show my appreciation for our working together in changing that bill and making it a better bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Announce the results.

THE SECRETARY: Ayes, 59. Nays,

1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 257, by Senator Rath, Senate Print 5078, an act to amend the Social Services Law and the Executive Law, in relation to county planning and facilitation.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 309, by Senator Little, Senate Print 3930, an act to amend the Tax Law, in relation to the timing of distribution of mortgage recording tax revenues.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 336, by Senator Robach, Senate Print 4101A, an act to amend the Civil Service Law, in relation to suspension of pension.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 342, by Senator Bonacic, Senate Print 4443, an act to amend the Tax Law, in relation to

issuance of lottery sales agent licenses.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 355, by Senator Farley, Senate Print --

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

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

THE SECRETARY: Calendar Number 364, by Senator Alesi, Senate Print 4497, an act to amend the General Business Law, in relation to prohibiting the use of predictive dialers.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of the calendar month next succeeding.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 384, by Senator Volker --

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 411, by Senator Maltese, Senate Print 5488, an act to amend the Education Law, in relation to the property of certain museums.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam

President. If we could now go to the reading of the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 342, by Senator Bonacic, Senate Print 4443, an act to amend the Tax Law, in relation to the issuance of lottery sales agent licenses.

ACTING PRESIDENT McGEE: Senator Schneiderman.

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

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Last year I joined with Senator Padavan and Senator Liz Krueger in voting against this bill because it is an extraordinary broadening, I felt, of the provisions for legalized gambling in our state.

And the concern that was expressed is that even though maybe the details of this bill are not particularly offensive to many of our colleagues, this was putting us on a slippery slope towards overreliance on

gambling to fund critical services.

Unfortunately, the Governor seems to have made those of who voted against this bill prophets, because of the extraordinary explosion in the proposed budget of the reliance on gambling revenues to fund critical programs for our state.

The Executive Budget relies on revenues generated through three racinos, opening this month and next month. More troubling, by far, is the fact that our children's education is now being linked, if the Executive branch has its way, to gambling activity.

The notion that over $300 million in projected revenue from gambling should be put into a fund that is the only proposed fund to guarantee a sound basic education for all the children of this state I think is -- to say that it's offensive understates it. It borders on the bizarre.

I mean, what the Governor seems to be saying is that if Gamblers Anonymous has a good year and a lot of people kick the habit, the quality of our children's education is

going to go down.

We shouldn't be tying critical services to gambling revenues. And I must admit, when we spoke last year about the slippery slope, I didn't think the slope would get this slippery, and this steep, this fast.

Gambling is a bad way to raise public funds. It's something that a lot of us hold our nose and vote for from time to time. But we are headed very rapidly in the wrong direction in this state. I'm going to vote no against this bill. I urge my colleagues to vote no.

But let's also keep our eyes open and be honest with our constituents about the expansion of gambling activities and the desire of some in our government to tie critical services to gambling revenues. It's bad public policy. And unfortunately, we're moving towards even worse public policy at a rapid rate.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you,

Madam President. If the sponsor would yield.

ACTING PRESIDENT McGEE: Senator Bonacic, will you yield?

SENATOR BONACIC: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I voted against this bill also last year. And I was convinced, in fact, by Senator Padavan's arguments about why this was bad public policy.

But my question today, Senator, is I know that you have great concern about the expansion of not-for-profit and charitable organizations in this state translating to a lowering of tax revenue for localities and for the state. And you have spoken quite eloquently about those concerns.

And I'm wondering if there's a reason to also be concerned that with this law somehow we are actually doing harm to other small businesses who would then, quote, unquote, be competing with these benevolent associations.

So that people would be going to

their charitable club, so to speak, for their lotteries, as opposed to other locations that are taxable businesses in the State of New York, and therefore they would be decreasing their purchases in taxable facilities because they would have shifted their time, their activities, and their consumer spending to these not-for-profit organizations.

I was wondering whether you had looked into that or done any analysis of that side impact of allowing lottery sales through these types of clubs.

SENATOR BONACIC: Thank you, Senator.

Madam President, on the issue of the benevolent order, let me just talk a little bit about what this legislation tries to do. Lottery -- the lottery is here, the ticket sales to play the lottery exist now. And what we're dealing with is to allow the benevolent orders to participate in what is going on throughout the state of New York.

So it may not necessarily be competing with a customer who is participating

in a taxpaying entity or a private sector; it may be a new player that visits these benevolent orders and doesn't play the lottery. So perhaps we may recapture some -- or enhance the lottery pot, which goes for education, as you know.

There are 60 different benevolent orders that are not participating in the lottery. And I'll just give you a few of them, so you know who we're talking about -- the Knights of Columbus, the Eastern Star, the Catholic War Veterans, the Disabled American Veterans.

And what our Lottery Division is saying is the reason we're hesitant to allow licenses in those places, they may not be publicly accessible. And the answer to that is there are places now that may not technically be publicly accessible and have lotteries. What am I talking about? A nightclub, where you may have to pay a cover charge to gain access. Certain restaurants where you have to wear shoes and shirts and be presentable before you have access.

So the Division of Lottery is

cautioning, they're cautionary. They say we want clarity in the law. And these worthwhile organizations have come to us to say, Let us put these Quick Draws and everything else in here, so our organizations can enhance not only for education but for the very worthwhile organizations.

I have not done an analysis between whether or not the private sector is going to be hurt or we're capturing new customers and then it would be a noneffect.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Madam President, if the sponsor would continue to yield.

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

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you.

And I'm sorry, I don't know the answer to this, but that is why I'm asking you. At these benevolent associations I know

they sell liquor, they sell food. You do have to be a member, but they operate not unlike a bar or restaurant.

Do they pay taxes on those parts of their business, their sales of liquor or their sales of food? Are they tax-exempt for those purposes?

SENATOR BONACIC: I think -- they're solely tax-exempt on real property taxes. They come under Section 420B of the Real Property Tax Law. And they're exempt at local option, which means the municipality where they're located have to consent to giving of the exemption.

I do believe that they do pay taxes on the activities that you describe.

SENATOR LIZ KRUEGER: Okay. Thank you.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the Senator responding to my questions. And it does leave me some pause about the economics of it.

But I would still argue this is not a law we should be passing, both because while I hear his argument that new people will now buy lottery tickets when otherwise they wouldn't, I'm not convinced that that would be the pattern, but rather, in fact, we would be shifting people who are currently buying lottery tickets in other nonexempt locations in their area to an exempt charitable or, excuse me, benevolent association facility.

I'm also equally concerned, with Senator Schneiderman and the points that Senator Padavan made last year, that we continue to expand and encourage the use of lottery gambling.

In fact, now we say we will pay for education in the future, or expanded payments for education in the future through lottery gambling, and that there are serious concerns that we should have about our expanded access to lotteries and other forms of gambling in the state of New York, because in fact those are real costs to communities and to people. Especially if, in fact, we are actively encouraging a greater number of New Yorkers to

participate in lottery gambling and to encourage them, through broader access, to continue to spend their money in this way.

So I'll be voting against this bill again this year, I think both on two different sets of premises -- the concerns about the expansion of the lottery games in general, but also the concern about our, in our own way, perhaps pitting benevolent associations against small businesses for the outcomes of income. And I worry about that for our communities as well.

Thank you, Madam President. I'll be voting no.

ACTING PRESIDENT McGEE: Senator Sabini.

SENATOR SABINI: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Sabini, on the bill.

SENATOR SABINI: You know, last year we also passed a bill in both houses of the Legislature that's now the law, which in effect eliminated smoking from the headquarters of these benevolent

organizations, because the law specifically states any remuneration for personnel makes the smoking law apply there.

So now you have these posts and these Knights of Columbus halls and others where now smoking is banned. And if you go around to them, they'll tell you that their membership is hurting, that the value of their land is now worth more to them by selling it than by staying afloat.

And in many communities these organizations -- urban communities, rural communities -- these organizations are centers for the community, places where people have gone for generations. And now they're hurting because of government action.

And I think the effect of this bill would be to at least throw them a small bone at a time when they are hurting.

With regard to cannibalizing other businesses, I believe there's already something in the law that states that Quick Draw can't be sold within a certain number of feet of other Quick Draw vendors. So that would already be covered.

And people's habits on Quick Draw tend to be that they play where they are at the moment they're there, if they're foolish enough to play -- because, frankly, the game is a sucker game. But people still play it.

But I believe that -- going around to VFW conventions and Catholic War Veterans meetings, I have heard lots of people complaining about people just not going anymore, especially in light of last year's action on smoking. And if this gets a few more people back into these real centers for the community and makes those organizations feel a little closer to whole, I don't think it's such a bad thing.

I'll be voting aye. Thank you.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 342 are Senators Duane, L. Krueger, Padavan, and Schneiderman. Ayes, 57. Nays, 4.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 384, by Senator Volker, Senate Print 6117, an act to amend the Criminal Procedure Law, in relation to police officer statements.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill that provides that police officers are permitted to provide sworn written or oral statements be offered into evidence at grand jury proceedings without actually being there.

And, by the way, it's "may." So that in many circumstances they still would have to give their testimony. But this allows it to occur.

And the other part of this bill says that the admission of business records

into evidence before a grand jury can be done by way of sworn affidavits instead of by live testimony.

I think -- frankly, this bill was pulled right out of the budget. And what we decided to do this year was to do a few of these that are not that well known and put them in bill form so that they can be discussed.

I think, frankly, there can be a savings here. The Budget Bureau estimates a savings of $150,000 by the fact that police officers wouldn't have to testify at grand jury proceedings.

There's actually another provision in the budget, I might add, that goes even farther than this that talks about allowing testimony in at traffic court and places like that, to avoid police officers or especially state troopers from appearing in many of the local traffic courts.

That occurred because there were some major problems, particularly upstate, with some troopers who were adjourning cases and so forth and were able to get overtime in

certain of these proceedings.

But this is a fairly simple bill. I think probably the piece on business records is pretty well accepted. I think the issue of police officers giving sworn statements in grand juries is a little more difficult.

But I would point out that this does not say that a person -- or a trooper or a police officer would not still be able to give his testimony if the testimony was necessary to be given because of prior statements or something of that nature.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a few questions.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Senator Volker, will you yield for a few questions?

The Senator yields.

SENATOR SCHNEIDERMAN: Just to clarify things, the Governor has already taken -- essentially, used the projected savings from this change in criminal

procedure, the projected savings of $150,000 in the budget, but has not put forward a bill, as you have, specifically identifying that the source of the savings would be the fact that police officers would no longer be required to testify in person in grand juries?

SENATOR VOLKER: Yeah, that's true. This is actually lifted from Senate 6056, Part D, which is an Article VII bill that is before us right now. And the language is essentially identical to what's in the budget bill.

SENATOR SCHNEIDERMAN: So again, to -- if the sponsor would continue to yield.

SENATOR VOLKER: Yes. Sure.

SENATOR SCHNEIDERMAN: The bill, then, the Article VII bill that the Governor has proposed, has this provision buried in it, and you've just broken it out as a separate piece of legislation so that the issue can be addressed and the savings can be weighed separate from the rest of the considerations affecting the state budget?

SENATOR VOLKER: Yeah, that's correct.

In fact, we did that with a few of these things. Because one of the interesting issues is that sometimes these comparatively smaller issues don't really get noticed. And we just want to make sure that everybody understands that we notice them and we're looking at them.

And frankly, there's a number of things in the budget -- and I don't, you know, want to get into detailed discussion about the budget itself. But there are some things in this budget about, you know, cameras at work zones and a different concept of how to do justice court proceedings, which we think are a little bit tough to accept, is the best way I could explain it.

SENATOR SCHNEIDERMAN: Thank you. And one final question.

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

SENATOR VOLKER: Certainly. Certainly.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR SCHNEIDERMAN: Have any

of the police organizations or police unions expressed their support for this legislation?

SENATOR VOLKER: No, not support. I did discuss this with several, and they were not as concerned about this, grand jury proceedings, as they were about some of the other proceedings.

But it is -- it could become a little bit problematic for them. We have not heard decided opposition, but we haven't heard any overwhelming support either.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor for his answers.

On the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that, first of all, I have to commend the sponsor for bringing this issue to light. I think it is rather astonishing that the Governor, in order to scrape together $150,000 for balancing the state budget, has slipped into the Article VII bills that go along with the budget a fundamental change in the criminal procedure of the State of New York

without calling any attention to it.

I think that those of us who have been involved in grand jury proceedings understand that there's a lot of criticism of the process. But the criticism of the process is that it's too easy, many people feel, to secure an indictment through a grand jury, that the standards are not high enough.

So for us for undermine the standards of the grand jury process even further by taking what in many, many cases are the most critical witnesses, police officers, and saying you don't have to come testify, you don't have to be confronted, you don't have to face the grand jury and look them in the eye and give your testimony, you can just submit an affidavit -- while not making that exception for any other witness -- is really an extraordinary step.

And, you know, the criminal justice system, these inconveniences of things like trials by jury and right to counsel, do cost money. But it's money very, very well spent. And I don't think anyone in this house would suggest that we go to a system of criminal

justice based solely on cost considerations. We could find models for that in some dictatorships and fundamentalist republics, but that's not what the United States is about.

To save $150,000 by making such a fundamental change, by removing a critical element of defense in a critical stage of our proceedings, the determination of whether or not someone is indicted, is, after all, as important as any other stage -- as important as trial, as important as sentencing. There's no excuse for trying to close a budget gap created by imprudent tax cuts and wasteful spending in other areas by undermining the grand jury system.

I feel very strongly that the business records portion of this bill is actually a very good thing. And I hope that Senator Volker will come back to us with something that makes it easier to transmit records without requiring the testimony of witnesses when they're kept in the ordinary course of business.

But the first part of this bill

that takes away a fundamental constitutional right, in my view, that provides that police officers can testify by affidavit instead of in person, just can't be allowed to pass.

And I note that the police unions and the police organizations, they're not supporting this legislation.

And as the Senator has, with his usual candor, acknowledged, this again is -- appears to be the Executive branch's attempt to get us on a slippery slope where first we're eliminating the requirement of testimony in grand juries, then we're eliminating the requirement of live testimony in traffic court.

This is fundamentally in conflict with the values of the Founding Fathers and Mothers, what was enshrined in the Constitution, the notice that you have a right to confront your accuser, that you have a right to a grand jury and a petit jury, carried over from English common law, embodied in the most fundamental documents of the republic, shouldn't be undermined in an effort to scrape together $150,000 so the Governor

can balance his budget.

I vote no. I urge everyone to vote no.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

My colleague has probably stated much better than I some of the major issues that I have with this particular bill.

But I just want to reiterate, I think that -- unless I'm mistaken, Senator Volker -- that what this bill does not allow for is for cross-examination. And I always become very concerned that any element of the police report cannot be questioned if in fact the person does not appear in court.

And that just stands out, to me, as being a major, major issue for me. Therefore, I cannot support this bill. I will be voting no.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you. On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I think both of my colleagues were quite eloquent in their concerns. Again, for me, can the price tag on justice in this state be valued at $150,000? No, it is not a good savings in the state budget.

But I'd also argue it's not a savings. Because, in fact, a purpose of a grand jury with proper opportunity to have the information presented -- and I believe very strongly the police must be present for their testimony at a grand jury. If grand juries don't get the correct information, then it's very different to read an affidavit versus hear it from someone's mouth. They will be making judgment decisions that will result in court cases that never should have become court cases.

And in fact, those court cases, even a small number, would translate into a far greater cost to the Office of Court Administration and to police departments in this state than the estimated $150,000

savings.

And I speak from some experience with that. I was on a jury in Manhattan a few years ago -- yes, we had grand juries where police had to testify, obviously. But in this case, as is sometimes the case, this case never should have come to the jury. It was a five-day trial. In fact, the police contradicted themselves consistently in court. And after a five-day trial, it took this jury 15 minutes to find the defendant innocent because the case was so weak.

If we have that kind of risk -- and we do. We know we make mistakes. That's why we have trial by juries in this country. Since we know we make mistakes, since we know this is not perfect, taking away that one step that is so important in a grand jury proceeding of having police come and testify, I would argue, will actually result in many more cases coming to trial that should not have come to trial in the first place.

So it's both a question of how much do we value justice in the state of New York, but also, to do the math more accurately, it

won't be a savings, it will be a cost.

Thank you, Madam President. I vote no.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Note, for the record, my microphone still doesn't work and it's now the third month of session.

ACTING PRESIDENT McGEE: Do you wish to speak on the bill, or do you wish to have --

SENATOR CONNOR: I wish to speak on the bill.

ACTING PRESIDENT McGEE: Senator Connor, on the bill.

SENATOR CONNOR: I think we've heard some misconceptions here. I think we've heard some speakers who don't know the difference between a grand jury and a petit jury.

A petit jury tries cases, hears testimony and cross-examination in public. And it is as to the trial jury or petit jury

which the constitutional guarantees to confront one's accusers appertain.

A grand jury meets in secret. The defendant or target or potential defendant and/or his or her lawyers have no right to even be there, much less cross-examine any witness. There is no cross-examination in a grand jury.

The DA brings in the witnesses the DA chooses to bring in. They can even hear some hearsay in a grand jury. Now, it will later on not be admissible in a trial, but they can get an indictment based on -- partly on hearsay evidence, something you can't do at a trial. But it's in secret.

They can introduce newspaper articles in grand juries. And a grand jury can indict somebody based on a newspaper article, because the defendant or potential defendant doesn't know they did this before the indictment. His or her lawyer aren't allowed in there. They don't get to hear it. Indeed, a defendant has a right to appear before a grand jury if they choose. They don't have a right to bring their lawyer with

them.

When you read or hear about a defendant who -- and it's very rare -- who says -- who waives his rights and requests appearance before the grand jury, that defendant is going in there and the only lawyer that's going to ask that defendant any questions is the DA. And that defendant isn't going to have his lawyer with him. He's not going to have his lawyer with him to make objections, to instruct him to refuse to answer the question.

That's what a grand jury is. It's a relic. It operates in secrecy. Frankly -- and other states have done it; California has done it -- I would be in favor of abolishing the grand jury.

A former chief judge of this state recommended that most strongly and pointed out what's now a famous saying, that any DA worth anything can get a grand jury to indict a ham sandwich.

And it's obvious why that's true. There's no defense presence there. There's no cross-examination. There's no confronting the

witness.

So I would -- as we all want to save money and improve criminal justice, we should adopt one of the systems those other states have where we get rid of the grand jury, where we get rid of the secrecy, the secret proceedings.

You know, you can only speculate afterwards: Gee, why did they indict that person? It was such a flimsy case. Or, in some cases, why did they let that person walk? We had one that was quite controversial recently in Brooklyn.

And I think the public would be better served if all this testimony, the preliminary testimony to see if there is probable cause, sufficient evidence to hold someone for a full trial, were done in public at a preliminary hearing. I believe that's what they do in California. And the DA has to put his evidence up, and it's in public, and the defendant gets to hear it, and his or her lawyer gets to ask some questions of these police witnesses, other witnesses.

But I think we're now -- some of my

colleagues are rushing to protect this system as if it protects our sacred rights. I think the grand jury system as it exists in New York potentially and in just as many cases probably tramples on people's rights as much as in some cases it may uphold them.

And I am suspicious of any system -- and I warn my colleagues, anybody who says, Oh, we have to preserve this because this is -- oh, this is a guardian of our sacred constitutional rights, I really question anybody believing that that could be so, where witnesses appear with only the DA present in a secret proceeding with no defense presence and no defense lawyer. So I am not a great defender of the grand jury.

What does this bill do? This bill says certain routine evidence, and most of the stuff a police officer -- unless the police officer were an actual eyewitness to the crime. But in most cases, that's not the case. In most cases, what is the police officer testifying to? "I got a search warrant. Somebody else arrested the guy. I had the search warrant and I'm a detective and

I went to the apartment pursuant to the search warrant, and we went in, the guy's already been arrested, and we searched and I found this gun that's in the plastic bag or this -- these drugs that are in the plastic bag, and I properly vouchered them and I took them in the police voucher room and I handed them in there."

It's what lawyers call chain of custody testimony. You have to show where you got the stuff and that in fact, before it got before the court or grand jury or whatever, that, you know, it wasn't left sitting around in a diner, it wasn't handed to a messenger who did whatever with it.

That's very routine stuff. And I really don't have a problem with police officers submitting an affidavit on that stuff at that stage. Later on, I would have a problem if they weren't to appear at a trial and be subjected to cross-examination even about such routine actions.

And, Madam President, I really believe that in any case where the police officer is actually an eyewitness -- "I saw

her shoot him" -- of course the DA is going to want to produce the police officer, or else there's going to be no evidence that the crime was committed or it was committed by that defendant.

So I don't think we're going way overboard here. But I think and I would urge Senator Volker that what we ought to do is we ought to revisit -- you know, it's been a long time, long time since this Legislature has initiated any major reform in any area. Oh, yeah, we get big changes buried in a big budget deal that three men in a room hash out in the middle of the night. But we don't have hearings about them. We don't actually reform the law.

And some significant legislation that we've passed -- for example, bias crimes, et cetera, et cetera -- are things that were around forever and the political momentum built so much that, lo and behold, they happened. The pressure was unbearable. The controversy went away because it had been so acceptable, it had been around so long.

I suggest, Madam President, most

respectfully to Senator Volker and my colleagues that perhaps this area of grand jury reform might be something that we should undertake in a real legislative way, with hearings, with experts testifying. Let's look at what other states do, and let's do something about it.

But to defend the grand jury the way it is now is a joke. It's not worth defending. I'm going to vote yes, because to me what's being done here doesn't make it any worse than it already is.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: May I just say for a minute -- and I'm not going to deny some of the things that Senator Connor has said, except to say that we had hearings years ago on grand jury reform. We had hearings on sentencing reform.

In fact, I remember we went across the state -- and I would also point out that we had hearings and one of those hearings was at Senator Paterson's request in Harlem on child sex abuse.

And you know, we all talk around here that we blame people for covering up. I was one of the idiots, if you'll excuse me, who arrested a mother and father for incest when I was a cop. I want to tell you something. Until just a few years ago, you couldn't get a DA to arrest somebody for child sex abuse unless it was an outsider or something of that nature. The media didn't even want to talk about it. And clergy abuse? My God, nobody wanted to deal with it. Society wasn't ready to deal with it, in my own personal opinion.

You know, I have some problems -- and of course, as you know, the guy that made that statement about the ham sandwich was somebody that went to jail. Which, you know, is -- and it's true.

I mean, I guess the problem, though, is when you start thinking about this, how do we change a system that is as old as our system and make it at least as fair?

We all know some people who have been indicted. There's a guy here who just died recently who was indicted by a grand

jury -- in fact, I happen to know all the details of it -- because a certain person wanted him indicted to get him out of the governor's race.

And as my late father said, "No reasonable grand jury would ever indict anybody under those circumstances." And after they were indicted, my father said, "I repeat, no reasonable grand jury will ever indict anybody under those circumstances."

And the first hearing, which was about three months later, it was thrown out.

But it did create a situation -- for me, it was a little personal because I'm in the Senate today in part because of that, because that particular person came after me also. Couldn't find anything to get me on, but got me out of the Assembly, in many ways. And I don't usually talk about it, but everybody is dead now that was involved, so -- but -- except me. Excuse me.

(Laughter.)

SENATOR VOLKER: But you make a good point. And I just wanted to say that this is a very interesting -- and the reason

this bill is here, and I -- you know, sometimes we do, and I happen to agree with you, we do have a tendency to maybe pass off a lot of this stuff. It took us how many years to do sexual assault reform? And we did hearings on that. The problem was that it was like five or six years until we were able to really do anything. And the funny thing is everybody was saying, well, let's not do this piecemeal. I've always -- I don't want to do this stuff piecemeal either.

But the difficulty is the way the system is, and the -- we have this interesting -- when we did sentencing reform, I'll only point this out, we had liberals who wanted longer sentences, conservatives who wanted short sentences on some things and the exact reverse on other things.

And the problem is society right now is really kind of divided on all this stuff. And you made a good point about reading something in the paper. I mean, it's -- I can't believe any DA would read something in the paper today -- I mean, he might well read something like one newspaper

that just committed a crime by announcing grand jury minutes, announcing stuff that was -- that's a crime.

Another newspaper in New York City a year ago printed the picture of one of our Senators in there on a sealed indictment. That's a crime. I mean, technically a crime. And when I challenged the DA, he said, Well, his staff must have did it. Oh, sure. I mean, your staff is going to want to put your boss's picture in -- that doesn't even make a little bit of sense.

The point I'm making is you do make a point. And I don't want to go on except to say that this is really not quite as significant, unless you're some of the police that go in to testify and so forth, and then it's more significant.

But there are many fundamental things in some of these budgets that we should really look at more closely. And you're going to see some bills here that have some of those tricky little bits in there, because we're putting them out just to look at them and so everybody has a chance to say something about

them. I just want you to know that.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, moving from Senator Volker's admission that he has outlived all of his enemies --

ACTING PRESIDENT McGEE: Do you wish to speak --

SENATOR MONTGOMERY: And I'm very happy that he has. And to --

ACTING PRESIDENT McGEE: Do you want to speak on the bill, Senator?

SENATOR MONTGOMERY: I'm speaking on the bill.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: And listening to my colleague Senator Connor -- and I'm always very interested in how he explains the law in a way that I can understand, so I appreciate that.

But I just do want to say that this bill has a lot to do with the perception of what happens with police officers and whether

or not they are held to the same standard of law as every other citizen.

And for some of us who have this ongoing conflict in our districts and communities in various parts of the state where we have situations where police -- there's an action by police that is a criminal act, and that police officer goes into the grand jury, and it -- since no one knows what happens in the grand jury, there is always this speculation that the police have some sort of special position and consideration that other citizens don't have.

So I think what this bill does, the problem here is that if we now are going to say that they don't even have to appear in the grand jury, that they can just submit a statement, that there will not be an opportunity even to question the police officer, not an opportunity to see and observe what that officer -- how the officer responds to questions that are raised, then there is just an added problem with the perception that we do not hold police officers to the same standard, especially when there is an incident

where an officer inflicts undue harm on a citizen.

So I'm going to oppose this. I agree that maybe we should be talking about eliminating the grand jury, certainly as Senator Connor has indicated. I'm not opposed to his position on that. But I do think, as long as we have this process, we should require, especially require that the police officer who is being charged must appear in that grand jury and answer any and all questions him- or herself, rather than having an added level of secrecy in the process.

So I'm going to be voting no on this legislation, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Briefly again on the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: We have a lot going on here today, and I just wanted to try and bring us back into focus on this legislation.

First of all, I think everyone commends Senator Volker for revealing the truth about what's buried in the Governor's budget bills.

Second of all, I think -- I would be surprised if there was not a general consensus that some fundamental reform of the system by which indictments are issued in this state is long overdue. That is something that we should talk about.

And I think, you know, it's easy to get tired of this process. But I think even if we held hearings a long time ago, you know, another round of hearings wouldn't hurt. But I think getting the issue out in the open and trying to address it, particularly given public concerns with some indictments that have come down recently or indictments that did not issue recently, I think that would be appropriate.

But this bill, very simply, to the extent we're concerned about the weaknesses of the grand jury system, to the extent we're concerned about the need to reform it to provide for a fuller and fairer opportunity

for a hearing, there's no argument that this bill helps. This bill takes a system that is bad and maybe it makes it only a little worse, but it makes it worse.

What goes on in a grand jury -- and Senator Connor has clarified the fact that the defense lawyer is not present, there's no cross-examination. But the grand jurors get a chance to look the witness in the eye and grand jurors are allowed to ask questions. And I've represented quite a few people who have been witnesses in grand juries -- and, unfortunately, people who have come out of grand juries on the wrong side of the vote -- and grand jurors do sometimes ask questions.

The key here is that we have the most fundamental accuser, in many cases -- and this bill is not restricted to any particular testimony by police officers. It's perfectly possible, under this bill, that the police officer who made the arrest would testify by affidavit instead of in person. The fundamental accuser should have to look the grand jurors in the eyes and be subject to their questions.

And if you say, well, why wouldn't the DA want the police officer who made the arrest to show up there, the obvious answer is you've got a police officer who's such a bad witness and is so incredible that you don't want him to have to be in front of the grand jury to answer a question.

So I think that this is a system that, as several people have pointed out, is a very badly flawed system. I think Senator Connor is absolutely right that even though we've made some forays into this in the past, it's time to revisit the overall system.

But this bill would take an admittedly bad system and further weaken one fundamental mechanism by which the accused has the ability to see that the grand jury, when it takes its vote, at least really has every opportunity to assess the credibility of the accuser and ask questions if need be.

So I am going to vote no for this. And I look forward to more of these budget-busting bills from Senator Volker. And I hope that we also will take up the fundamental issues that have been raised here

today down the road.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: I'm going to vote no.

And since we're having a lesson on grand juries today, I thought I might mention I did vote against this in committee.

And a defense attorney can be present during the defendant's testimony. That's the only time. But he's got to keep quiet like a potted plant. So there's no actual cross-examination.

However, as Senator Schneiderman had mentioned, grand juries -- having been an assistant DA for a very short period of

time -- have the opportunity and do in fact ask questions in controversial cases.

And the bill, as Senator Schneiderman mentioned, does not in any way limit the type of testimony that can be given by affidavit. Eyewitness testimony can be given by affidavit. And that's the most crucial testimony. And you've got to have an opportunity to see that person presently.

I'm not so sure you can indict somebody by a newspaper article, because a judge always has a right to review the grand jury minutes and to determine whether there's legal sufficiency.

But be that as it may, business records make sense. Live testimony of a police officer who may be a witness to a crime certainly is worth $150,000.

ACTING PRESIDENT McGEE: Senator Parker.

SENATOR PARKER: Madam President, to explain my vote.

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

SENATOR PARKER: I'm voting no on

this bill for many of the reasons that many of my colleagues have mentioned. And I too believe that police officers ought to be present during grand jury proceedings.

But I also wanted to applaud Senator Volker's attempt to really do two things, in terms of reforming the criminal justice system but also finding important ways to save money for this budget. As you know, that's really critically important.

And while we're on that subject, we attempted here to save $150,000 dollars. If we reform the Rockefeller Drug Laws, we have an opportunity to do the same kind of thing, Senator Volker. And a really meaningful change would probably save us about $130 million, maybe, the first year, roughly. Maybe more.

And so I really urge my colleagues to come forward with a meaningful change in the Rockefeller Drug Laws. My colleague Tom Duane happens to have a bill that might do that. I would urge us to take up that bill on our first opportunity. Monday, Tuesday would be fine.

Thank you.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 384 are Senators Andrews, Breslin, DeFrancisco, Duane, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, and A. Smith. Ayes, 52. Nays, 10.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Was I recorded in the negative?

THE SECRETARY: Also Senator Schneiderman. Ayes, 51. Nays, 11.

ACTING PRESIDENT McGEE: You are recorded in the negative, Senator Schneiderman.

The bill is passed.

Senator Kuhl, that completes the controversial reading of the calendar.

SENATOR KUHL: Thank you, Madam President. Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Yes,

there is.

SENATOR KUHL: May we take care of that right now, please.

ACTING PRESIDENT McGEE: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Maltese, on page 30 I offer the following amendments to Calendar Number 439, Senate Print 155A, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: On behalf of a legend in the Senate, Senator Marchi, on page 7 I offer the following amendments to Calendar Number 104, Senate Print 1970, and I ask that that bill retain its place.

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

Senator Kuhl.

SENATOR KUHL: Yes, Madam

President. There being no further business to come before the house, I move that we adjourn until Monday, March 15th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Monday, March 15th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:27 p.m., the Senate adjourned.)