NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 18, 2004

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please 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.)

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 17, the Senate met pursuant to adjournment. The Journal of Saturday, May 15, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: 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 McGee.

SENATOR McGEE: Thank you, Madam Chairman.

On behalf of Senator Skelos, I wish to call up his bill, Print Number 3925, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 165, by Senator Skelos, Senate Print 3925, an act to amend the Correction Law.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Madam President, I now move to reconsider the vote by which this bill passed.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator McGee.

SENATOR McGEE: Madam President, amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Morahan, page 65, Calendar Number 1040, Senate Print 6139;

Sponsored by Senator Marcellino, page number 65, Calendar Number 1042, Senate Print 6268A;

Sponsored by Senator LaValle, page number 66, Calendar Number 1051, Senate Print 6901.

Madam President, I now move that the bills retain their place on the order of Third Reading Calendar.

THE PRESIDENT: So ordered. The amendments are received, and the bills will retain their place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

Amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Leibell, page number 22, Calendar Number 295, Senate Print Number 4715;

Sponsored by Senator Little, page number 29, Calendar Number 456, Senate Print Number 5869;

By Senator Larkin, page number 30, Calendar Number 468, Senate Print Number 953A;

By Senator LaValle, page number 35, Calendar Number 608, Senate Print Number 6193A;

By Senator Larkin, page number 36, Calendar Number 650, Senate Print Number 6229;

By Senator LaValle, page number 50, Calendar Number 867, Senate Print Number 6219;

By Senator Golden, page number 51, Calendar Number 895, Senate Print Number 6516;

By Senator Golden, page number 54, Calendar Number 926, Senate Print Number 6655A;

By Senator Trunzo, page number 60, Calendar Number 985, Senate Print Number 6548;

By Senator Kuhl, page number 60, Calendar Number 993, Senate Print Number 3221;

By Senator Spano, page number 61, Calendar Number 996, Senate Print Number 5908;

And by Senator LaValle, page number 65, Calendar Number 1038, Senate Print Number 5978.

I now move that these bills retain their place on the order of third reading.

ACTING PRESIDENT McGEE: Thank you, Senator Fuschillo. The amendments are received, and the bills will retain their place on Third Reading Calendar.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you for recognizing me, Madam President.

I am offering the following motion. On page 64, I offer the following amendments at the desk to Calendar Number 1035, Senate Print 4253, and ask that the bill retain its

place on the Third Reading Calendar.

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

SENATOR SCHNEIDERMAN: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk, if we could make them at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 4, Senator Duane moves to discharge, from the Committee on Local Government, Assembly Bill Number 9223 and substitute it for the identical Senate Bill Number 5754, First Report Calendar 1158.

On page 4, Senator Seward moves to discharge, from the Committee on Local Government, Assembly Bill Number 2213 and substitute it for the identical Senate Bill Number 6048, First Report Calendar 1159.

And on page 36, Senator Skelos

moves to discharge, from the Committee on Tourism, Recreation and Sports Development, Assembly Bill Number 9687A and substitute it for the identical Senate Bill Number 4811A, Third Reading Calendar 641.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could have the title read on Resolution 4988, by Senator Bonacic, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 4988, honoring Robert W. Allison upon the occasion of being named Citizen of the Year by the Greater Margaretville Chamber of Commerce on May 19, 2004.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed,

nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could have the title read on Resolution Number 4989, by Senator Bonacic, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 4989, honoring Trooper Jason S. Sedita of the New York State Police upon the occasion of receiving a Superintendent's Commendation for his outstanding police work.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could have the title read on Resolution Number 4990, by Senator Bonacic, and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 4990, honoring Dr. Elsa D. Pasquale upon the occasion of receiving the 2004 Citizen of Distinction Award from the Orange/Sullivan County Chapter of the American Red Cross in Greater New York on May 20, 2004.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk, 5061, by Senator Paterson. Could we please have it read in its entirety, and then if you would recognize the distinguished Minority Leader.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Paterson, Legislative Resolution Number 5061, commemorating the 50th Anniversary of Brown v. Board of Education.

"WHEREAS, It is the practice of this Legislative Body to take note of and publicly acknowledge milestone events in our nation's history; and

"WHEREAS, Attendant to such concern, and in full accord with long-standing traditions, this Legislative Body is justly proud to commemorate the 50th anniversary of the landmark Supreme Court decision Brown v. Board of Education; and

"WHEREAS, The genesis for this extraordinary event rests on a simple yet profound truth. In the field of public education, separate but equal has no place;

and

"WHEREAS, Authored by Chief Justice Earl Warren, only ten pages long and fraught with the weight of legal uncertainty and social unrest, Brown set about the onerous task of overturning its more foreboding predecessor, Plessy v. Ferguson, the 1896 Supreme Court decision upholding de jure segregation; and

"WHEREAS, For the NAACP Legal Defense and Education Fund, the LDF, Brown capped a twenty-year legal strategy to abolish the regime of Jim Crow by showing the harm and humiliation of state-imposed racial segregation; and

"WHEREAS, In Brown, the intangible but genuine harms of racial segregation were aptly argued by NAACP LDF counsel Thurgood Marshall, and innovatively buttressed by the groundbreaking research and scholarship of Professor Kenneth Clark of the City University of New York; and

"WHEREAS, Armed less with doctrinal propriety than moral certainty, eschewing precedent for social science data, and casting

itself into one of the most prolonged political hailstorms in history, the Supreme Court, in its unanimous Brown decision, ignited a substantive change in the very fabric of America's social structure; and

"WHEREAS, The time for change had come, but America resisted; and

"WHEREAS, Embattled from the start, the Brown decision met with widespread and organized resistance. Its remedy of all deliberate speed was promptly ignored. On its tenth anniversary, less than 2 percent of the African-American children in the South attended desegregated schools; and

"WHEREAS, As history instructs, Brown not only marked the culmination of a battle well-fought, it would also stand for the beginning of a struggle yet to come; and

"WHEREAS, Brown was a catalyst for change, and for this we celebrate its many successes. Brown's progeny ultimately secured Jim Crow's demise, not only in education but in all public accommodations; and

"WHEREAS, The Brown decision unquestionably laid the legal and political

framework for the Voting and Civil Rights Acts; and

"WHEREAS, Perhaps most importantly, Brown inspired within a generation the faith to vigorously pursue a democracy where all men and women are created equal; and

"WHEREAS, In this regard, Brown helped this great nation become even greater; and

"WHEREAS, Let New York join America, on this 50th anniversary of Brown v. Board of Education, in reflecting on its symbolism and recommitting ourselves to championing its ideal of equality and justice for all; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate the 50th anniversary of the historic Brown v. Board of Education United States Supreme Court decision."

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

First, I would like to thank my

colleague Senator Ruth Hassell-Thompson, whose idea it was to bring this resolution -- and drafted most of it -- honoring the 50th anniversary of Brown v. Board of Education.

There are those who feel that the dream of full integration in public education is not fulfilled. But I'd suggest to them that we have come a long way. We may have a long way to go, but we have done very well in the fifty years since Brown.

Brown v. Board of Education was handed down, as was read by the Secretary, Madam President, on May 17, 1954, which was a Monday in 1954. And I was born May 20th, the Thursday of that week. And clearly, you can tell that the decision has held up better than I have.

(Laughter.)

SENATOR PATERSON: The whole Brown v. Board of Education theory was derived out of the experiences of the late Justice Thurgood Marshall.

In 1930, Justice Marshall graduated from Lincoln College in Pennsylvania and wished to attend the University of Maryland

Law School, which was close to his residence in West Baltimore. He was turned down for admission there, there was no African-American law school in the state of Maryland, and in his bitterness was accepted by Howard Law School, where his mother had to pawn her wedding ring in order to pay for the increased tuition and transportation, allowing Justice Marshall to go to law school.

When he graduated law school in 1933, his anxiety and feeling over his denial of admission to Maryland Law School led him to read an article written in the Harvard Law Review by a student named Nathan Margold, and was then given to the NAACP.

The article suggested that the way to attack the segregated facilities in this country was actually to document the fact that these facilities, and particularly educational facilities, did not give equality. In other words, not to attack the separate doctrine from Plessy v. Ferguson, but to attack the dicta that addressed equality.

And so what Justice Marshall did is he went to a student who had graduated from

Amherst in 1933, a student by the name of Donald Murray, who graduated in the top 3 percent of his class, an African-American, and he had him apply to the University of Maryland Law School. Mr. Murray was denied the same way former Justice Marshall was.

And then he asked Mr. Murray to write a letter to the school asking how he could receive a legal education in the state of Maryland. And the school wrote back that either they could wait for them to build a black law school in Maryland, or he'd have to go out of state.

That was the letter that Thurgood Marshall was looking for. That's what was the basis of the lawsuit in the state of Maryland. And, shocking and surprisingly, the court ruled in favor of Mr. Murray, and he was then admitted to the University of Maryland Law School in 1933.

Over the years, Thurgood Marshall used this issue of separate but inherently unequal, based on facilities. And finally, in 1950, the United States Supreme Court issued a ruling stating that when there was separate

education, it must be documented to be equal.

There were three cases that Thurgood Marshall worked on at that point; one in Clarendon, South Carolina, where the 25 percent white students in the school district received 60 percent of the resources. There was one in Prince Howard, Virginia, where the African-American high school did not have a cafeteria, a gymnasium or any resource library area. And, finally, the one in Topeka, Kansas, where the 7-year-old Linda Brown had to walk past the white primary school and across train tracks to get to the black school that had half the number of books.

Marshall chose the Topeka case because of the symbolism of the little girl. But all three cases were linked, along with a case from Wilmington, Delaware, and one from Washington, D.C., also related to resources, and that led to the decision of Brown in 1954.

This is what brings us to a lot of legal cases that we see today based on not just the racial element of education but the distribution of resources. Right here in New

York State, 81 percent of African-American students are actually educated separately from their white student colleagues. It is 48th in the 50 states. Only the states of Michigan and Illinois have poorer records. Eighty-five percent of Hispanic students are separated from other students in their education, 50th out of the 50 states.

And so while there have been great strides, while there have been great educational opportunities, we have still got to find a way to make sure that every child in this country is given an equal opportunity in public education.

Children are being left behind all the time. And it is our aim in honoring, all of us here, whether we are from upstate or downstate, Republicans or Democrats, whatever our ideological view is, we now recognize that the Plessy v. Ferguson decision, even though it held that separate but equal facilities could exist in this country, actually contained data and dicta that was used to actually reverse itself, as the Supreme Court has done 13 times in American history, to

probably its greatest ruling in the spring of 1954.

And that is the spirit in which we pledge this resolution, Madam President.

I would like, as an addendum to it, to make you aware that in 1980 the University of Maryland Law School changed its main building and facilities and named them after Supreme Court Justice Thurgood Marshall, who refused to attend the ceremonies and admonished his Supreme Court colleagues not to attend them either. Not because he didn't appreciate that they were reaching out to him, but that he felt that his presence would justify the University of Maryland's treatment of African-Americans and other minorities prior to 1933, and also that it would buttress what are idiosyncrasies that still exist in education patterns around this country.

And so it is in that spirit that hopefully we will all learn from the Brown case and dedicate ourselves to those principles that we recite when we offer a Pledge of Allegiance before our sessions every day, that there will be liberty and justice

for all.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. First I'd like to --

SENATOR MARCELLINO: Madam President, if I could interrupt.

ACTING PRESIDENT McGEE: Just one moment.

Senator Marcellino.

SENATOR MARCELLINO: I apologize, Senator.

Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, 332.

ACTING PRESIDENT McGEE: Immediate meeting of the Rules Committee in the Majority Conference Room.

Thank you very much, Senator Hassell-Thompson, for the interruption. You may continue.

SENATOR HASSELL-THOMPSON: Thank you. I hope you won't empty out the theater

before I speak.

Thank you, Madam President. First, I would like to thank my leader, Senator David Paterson, for his generous cosponsorship with me of this bill. And he has left very little to say. He has given the historical perspective, of which most of us know, and perhaps for a few it is a reminder.

But I think certainly the thing that is most important about this landmark case is as we approach this budget, the CFE has to be our modern-day commitment to Brown v. Board of Education. Because we know the importance of education, and we continue to support public education. And while we may need to reform it and while we may need to tinker with it and do a variety of things with it, it's the best thing that we have that assures that all children have the opportunity to be educated.

So I ask you, as we pass this resolution today, that we keep our educational promise to America's children. For it will determine our future not only in our African-American and Latino communities, but

our future as a strong and equitable and just society. Investing in the talent and the training of the American people will provide the foundation for our continued position of leadership in the world as we know it.

Thank you.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

As Senator Hassell-Thompson has just noted, the commitment to Brown v. Board of Education is not just a commitment to revere it and treat it as a historical artifact; it is something that has to be followed and implemented every year in every school system.

And as we now enter the last part of our legislative session, a session in which we've been held up by our inability to pass a budget, I think it is important for us to acknowledge honestly that we are held up by the same issues that were faced by the school districts in Brown.

We are held up because this

Legislature cannot come up with a way to comply with the Campaign for Fiscal Equity decision, which found, as the court found in Brown, that we have two unequal school systems in this state.

And when you read the substantial social science data and anecdotal materials that were submitted in the Brown litigation, which was sort of a breakthrough from the point of view of litigation strategy, you find things like the following.

This is an anecdote about a segregated school: "All of our basic equipment was secondhand, passed down from another school. We got nothing new. In science rooms, there was one desk for the teacher with the proper equipment for science. In the other, all-white school, each student had desks with their own burners. We got hand-me-down textbooks that had been written years before. At the time, we accepted it."

Well, unfortunately, today you can turn to the decision of the New York State Court of Appeals in the Campaign for Fiscal Equity and read the following: "Plaintiffs

presented substantial evidence that New York City public schools have in the last two decades suffered from inadequate classroom supplies and equipment. Science classes have suffered from a chronic shortage of lab supplies, such as beakers, Bunsen burners, beam balances, and microscopes. In the same period, schools have suffered from a lack of basic supplies such as chalk, paper, art supplies, and, in some schools, desks and chairs."

That is not Topeka, Kansas, in 1950; that is New York State today.

And for us to go forward and honor the memory of Thurgood Marshall and the others who fought for Brown v. Board of Education in words, but to fail to act legislatively to end the unequal school systems in our own state, I think is not to do honor to those men and women, but to dishonor their memory.

Senator Paterson referred to the fact that one of the key facts in evidence in the Brown v. Board of Education litigation and the other related cases was that the African-American schools had half the books.

Again, I turn to the opinion of the New York State Court of Appeals in the Campaign for Fiscal Equity. Page 20: "The New York City Board of Education's own report showed that New York City schools had 9 library books per student, half as many as schools statewide and under half the number recommended by the American Library Association.

So we're dealing with a situation in which we know that 75 percent of the minority students in this state are in the New York City school system, and that that school system is truly separate but unequal.

So I think it's great that we're remembering Brown today, it's great that Senator Hassell-Thompson and Senator Paterson have raised this and brought this to our attention. But it is incumbent on us to honor the memory with more than just words. Let us put up the money and enact the reforms mandated by the Court of Appeals. We have 17 days left in this legislative session. It is time for us to act so that the people who fought and decided to end de jure segregation are not dishonored by our maintenance of de

facto segregation.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Yes. There is little that one can say after my three colleagues have spoken. But what is little, I will say.

This was a decision dealing with integration, but it would never have come about if the Supreme Court didn't come together in a consensus opinion. What very few people realize is that before the appointment of Governor Earl Warren as Chief Justice of the United States, the Supreme Court was leaning to a 4-3 decision that would eliminate the problems existing in separate but equal and come out in favor of integration of all public accommodations.

Now, remember, Earl Warren was never a liberal, even though there were sticker signs after this decision "Lynch Warren." Earl Warren was the governor of California who incarcerated Japanese-Americans during World War II. He later said this was

the worst act he has ever done in his life.

Now, when the chief justice died, President Eisenhower asked Thomas E. Dewey, the presidential candidate who -- the governor of New York who had run for president and lost. And I believe Senator Marchi remembers Governor Dewey. I know the Thruway; he knows the governor. And Thomas E. Dewey turned down the chief justice position, which then went to the governor of California, who was Dewey's vice president. And that was Earl Warren.

Now, when he got to the court, he saw the court was hopelessly split. They were vacillating between 4 and 3. And he joined with Justice Felix Frankfurter in terms of working on a majority. At the end, two Southern justices refused to go along in the consensus opinion. These were Southern justices. And they said: All we should do is give these schools separate but equal funding.

And they were eventually convinced that there is no such thing as separate but equal funding, the schools would not get equal funding, and they joined with the chief justice and the majority, and it became

something which was essential to the passage of Brown v. Topeka. It became a unanimous decision. Because this decision had to be a unanimous decision.

Now, in the 50 years since Brown v. Topeka, many things have occurred. There has been an increase, a great increase in the population of black middle-class people. Many have move to the suburbs; some have stayed in the city. And some got elected to the Senate, as Senator Smith reminds me. But it has had very little impact in terms of social-class issues. Working-class and poor blacks have not as yet gained from it.

And here we have in our society a population in great need, a population that needs schools that are better-funded, classrooms that are smaller rather than larger, principals that know what they're doing in relationship to diverse populations.

And I would like to echo one of my colleagues, this is another reason for the enactment as soon as possible of the recommendations of the Campaign for Fiscal Equity.

Now, there are different positions on this. The position of CFE is that we should pour $9 billion, $10 billion into the system. The position of the Regents is anywheres from $7.5 billion to $9 billion. But even the gubernatorial-appointed committee, the Zarb Commission, all of whose members were appointed by the Governor, came out with the report stating that there should be an increase between $2.5 billion and $5 billion.

None of these have been taken seriously up to now. The Court of Appeals said that we must act by July 31st. How will we act? What will be done? July 31st is only two months away. We don't have a budget, and we don't have the conclusion and implementation of the Court of Appeals decision.

Ladies and gentlemen, why are we here? What are we doing here if we do not tackle the most difficult issues of our day and come out on the right side?

Thank you.

ACTING PRESIDENT McGEE: Senator

Hassell-Thompson.

Just one moment.

SENATOR HASSELL-THOMPSON: I just have some concluding remarks on behalf of Senator Paterson. I will yield.

ACTING PRESIDENT McGEE: You want to close?

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

I hate to be the bearer of such bad news, but 50 years after Brown v. Board and the -- I think the second decision on Brown that is of significance to us today is that there was another one in 1955, a court decision which said that we should move with all deliberate speed, I believe.

So we're moving very slowly. Fifty years later, New York City, the education system in New York City is one of the most segregated systems in the nation, and I daresay the state reflects that as well. We also have a system in our state that is separate and unequal, and that has been identified in the CFE case as well.

We also have extremely segregated communities. And it's my understanding that it is very difficult to have an integrated school system without an integrated society. So on both of those, 50 years later we have not done very well, not progressed very far.

We still have the highest dropout rate, especially among young African-American men. And not only do we have this high dropout rate, but it is coupled with the highest incarceration rate. In fact, the incarceration rate of young African-American men is higher today than it was in 1954. Today, 50 percent of black men in their early thirties who are high school dropouts have a prison record.

So we've done very well in terms of our incarceration rate. We've gone way over in terms of the number of -- the percent of African-Americans who are incarcerated. And we also have the highest dropout rate. They seem to complement each other. We have the lowest college entry rate among African-American men in particular and African-Americans and other people of color in

general. Or I should say Latino-Americans.

We have the highest unemployment rate. In New York City it has been reported that 50 percent of African-American men who are of employment age are now, as we sit today, unemployed.

So we have -- in a very real sense, we have gone back from where we are at the point of Brown v. Topeka, Kansas, Board of Education.

We have found many different ways to wage wars on social issues that we find to be problematic and detrimental to society. We've had War on Drugs; we have school safety acts which incarcerate or charge children with felonies; we have school zones. We have high rates of young men and women, especially men of color in my community, who are arrested for a variety of reasons other than them having committed a crime, a criminal act. We have a society now where a large percent, 900,000 African-Americans are now in prisons across our country. Many of them have been disenfranchised for life.

So we have not really lived up to

the Brown v. Board of Ed of Topeka decision. We have a long way to go. It's still all deliberate speed, it's still incarceration over education, it is still sending jobs out of this country. We still don't make anything in this country. We have manufacturing jobs that are bleeding, and we're sending our jobs, whatever is left, to other parts of the world.

And today we don't have a budget for our state. So a large number of people who depend on us to run the programs to try to deal with some of the issues that we've raised here are not being funded because their funding has stopped. So this is a crime of neglect of government, and I'm very sorry that this is the bad news.

But let us come together and change this direction, and let us really live up to the intent and the dream of what Brown v. Board of Ed meant or intended to mean, and that is that we would have a society where all people would be considered having an equal option to the opportunities that our nation affords us.

Thank you very much, Madam

President.

ACTING PRESIDENT McGEE: Thank you, Senator Montgomery.

Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

I rise in support of this resolution, not only in recognizing the occasion, the 50th birthday, if you will, of the Brown decision, but this past Saturday in Rockland County, we had a ceremony in the little village of Hillburn, New York, commemorating a 1943 decision where Thurgood Marshall was the attorney of record, wherein they desegregated, as a result of his activities and his work, the school district in Hillburn, which was one of the last segregated districts in the state of New York. We have built a suitable monument there, with the Alpha Phi Alpha sorority, which Thurgood Marshall was a member of.

And it is quite clear, with all of the speakers and the review of the history in Topeka and the Brown decision, that the one in Rockland County that was won in a small

courthouse in New City was really a harbinger of what was to come vis-a-vis desegregation in our schools.

It was also clearly admitted that we have not reached that level that was designed and envisioned by those who fought so hard and so long to deregulate our schools -- to desegregate them, I'm sorry.

So I stand in support of this, in recognition of that great day. I'm glad that Senator Paterson put this on the floor so we could speak to it. I know my constituents are very concerned about this. And we did take the time Saturday to commemorate his memory and his accomplishments.

Thank you.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Thank you, Madam President.

I rise because discrimination against one person is discrimination against all of us. Without repeating what my colleagues have said, it seems to me terribly unfortunate when we have to rely upon the

courts and their judicial activism to do what we as a legislature really ought to do, both today and 50 years ago.

We have the Campaign for Fiscal Equity decision which was a, I think, brilliant decision, came down last June from the Court of Appeals. And I would hope that the best way we can celebrate the Brown case is by dealing with the opportunity and the right of each child for a sound, basic education. That, to me, is the bottom line. And I certainly hope we proceed along that basis.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President.

The one thing that has distinguished this upper house from those guys across the hall is the fact that we share a camaraderie. Even when we are being disagreeable, we are not disagreeing with -- being disagreeable with each other.

And I would like to remind you that

we all talk about Thurgood Marshall. But a former member of this august body was one of the lead attorneys in this particular case. That was Constance Baker Motley. And I'm certain that, if she was here today, that she would be encouraging each and every one of us to make a decision about the CFE decision, and for us as legislators to be the prime movers, because we are ultimately responsible.

And in the spirit of camaraderie, I ask all of you to join together to make it possible for the children of the State of New York to have what was intended by Brown v. Board of Ed, and that is an equal opportunity to excel and to become good taxpaying citizens of the State of New York.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I have an opportunity every year, every spring to help some young people in Central New York have a deeper understanding about the decision around Brown v. Board of Education, and also to help them understand

their remarkable opportunity today to receive an education in a much more equitable setting than did many Americans 50 years ago.

I was, as some of you know, involved in the civil rights movement right out of high school -- right out of college, excuse me. I'm dating myself even more than I want to. And I had the pleasure of working with great Americans like Charles Evers, Aaron Henry, and Fannie Lou Hamer. And I have never lost track of my friends in Mississippi and in Memphis, Tennessee, who were on the front lines of the movement.

And I thought that one thing that I might able to do as a Senator would be to help some young people hear directly from some of those individuals what the real lessons of the civil rights movement were and why they should not take for granted the gains of that movement.

In particular, nonviolence, which was the driving force behind the integration activities that led to Brown v. Education, required a remarkable strength of character. And that was something that was instilled in

people by teachings at home, teachings in the churches.

There were a series of meetings that would take place all over the South called mass meetings, and once a week most families would go to a church, listen to a speaker, give them the kind of enthusiasm that they needed to be strong and vigilant to sustain their strength of character, to sustain that fortitude, to bring about what is the greatest social revolution in this country's history.

And I'm proud that each year, when I take young people down to Mississippi and they spend a week hearing about the lessons of the civil rights movement, they come home with a new respect for their elders, a new respect for those who made sacrifices they never before could have imagined, and they understand, as in Brown v. Education, that it was not just Martin Luther King, Jr., making a speech at Washington Mall in 1968, it was not just one or two key people who brought about civil rights in this country, but it was ordinary men and women just like them and just

like their parents that made this movement happen.

So I think it's very fitting today that we pause in our activities and commemorate the ordinary, the very ordinary but very brave young women and young men who decided they were willing to integrate schools, that they were willing to maintain that strength of character against terrible odds and prejudice that most of us could not even imagine. And we are all better Americans for that lesson today.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson, to close.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

Just on behalf of Senator Paterson, he has asked that any members who wish to sign on to the resolution, there is an open invitation. And he hopes that all of us will do so.

Thank you.

ACTING PRESIDENT McGEE: As is our practice, all members will be put on --

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we have all members on. And anyone not wishing to be on, notify the desk, as is our normal procedure.

ACTING PRESIDENT McGEE: Thank you, Senator Marcellino.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we go back to motions and resolutions. I believe there's a motion.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Madam President, I wish to call up, on behalf of Senator LaValle, Print Number 722, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 393, by Senator LaValle, Senate Print 722, an act authorizing the Town of East Hampton.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Madam President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT McGEE: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: I ask now that the bill retain and restore its place on the Third Reading Calendar, and I now offer the following amendments.

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

Thank you, Senator Morahan.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we now return to reports of standing committees. I believe there's a report of the Rules Committee at the desk. I move that it be adopted.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 7281A, by Senator Volker, an act to amend the Public Authorities Law, the Tax Law, and the Local Finance Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT McGEE: All in favor of accepting the motion will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is passed. The Rules report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we now move to the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 23, by Senator LaValle, Senate Print 924E, an act to amend the Highway Law, in relation to designating the "North Fork Wine Trail."

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 249, by Senator Spano, Senate Print 1390A, an

act to amend the Vehicle and Traffic Law, in relation to enacting the "Move Over Act."

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 585, by Senator Wright, Senate Print 6386C, an act in relation to creating the Constantia Public Library.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 682, by Senator Fuschillo, Senate Print 6623, an act to amend the General Business Law, in relation to rental vehicle companies.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 722, by Senator DeFrancisco, Senate Print 6525, an act to amend the Public Authorities Law, in relation to contracts between the Onondaga County Water Authority.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 741, by Senator Trunzo, Senate Print 936A, an act to amend the Vehicle and Traffic Law, in relation to form of number plates.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 750, by Senator Kuhl, Senate Print 4918, an act to amend the Vehicle and Traffic Law, in relation to sanctions for credit card charge.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 756, by Senator Nozzolio, Senate Print 5926A, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 805, by Senator Libous, Senate Print 6617, an act to amend Chapter 564 of the Laws of 2003 amending the Mental Hygiene Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 845, by Senator Marcellino, Senate Print 775, an act to amend the Criminal Procedure Law, in relation to anonymous juries.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Padavan, Senate Print 5507, an act to amend the Criminal Procedure Law, in relation to statements.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 945, by Senator Hoffmann, Senate Print 3598B, an act to amend the Public Officers Law, in relation to including.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 946, by Senator Golden, Senate Print 3961B, an act to amend the Executive Law, in relation to designating Asian New Year as a day to be commemorated.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 981, by Member of the Assembly Grannis, Assembly Print Number 9610B, an act to amend the Real Property Tax Law, in relation to

partial abatement.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 983, by Senator Little, Senate Print 6692, an act to amend the General City Law, the Town Law, and the Village Law, in relation to establishing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 991, by Senator Rath, Senate Print 2047A, an act to amend the Vehicle and Traffic Law and the Penal Law, in relation to suspension.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Montgomery and Sabini recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1003, by Senator Maziarz, Senate Print 6860, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1007, by Senator Balboni, Senate Print 4156C, an act relating to enacting the Chemical Security Act of 2004.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Volker, Senate Print 7281A, an act to amend the Public Authorities Law,

the Tax Law, and the Local Finance Law, in relation to revenues.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 17. This act --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

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

SENATOR MARCELLINO: Can we have the controversial reading.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1182, by Senator Volker, Senate Print 7281A, an act to amend the Public Authorities Law and others, in relation to revenues.

SENATOR BROWN: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill which has been negotiated with

the Assembly and the Governor, which is an amendment to the Buffalo Fiscal Stability Authority bill that we passed last June, I think.

I haven't -- but anyways, what it does is -- and it has been negotiated with a number of people in Buffalo, including we have a provision in here that the unions requested relating to disclosure and discussions with some of the unions. Although admittedly they would like something even more drastic, like they would like another member on the board and so forth, which of course we can't get them.

What this really does is, and it breaks down, is that right now the City of Buffalo cannot truly borrow money, even though one of the officials of the city said he thought he could. But the best he could possibly do to borrow money would be at a very high rate. Because obviously the city has holes in its budget, as well as the school district.

Now, the school district initially opposed this provision, until they realized

that what this bill will do is allow the Buffalo Fiscal Stability Authority to borrow money for not only the school district, but also for the city, in lieu of making cuts in the budget, until our budget is completed and until they can receive some state aid money. Because their cash flow is obviously very restricted.

What this bill really does is allow a very favorable borrowing for the fiscal authority to give the money to the school district and to the city to be able to operate until the beginning of the next fiscal year, which is July 1st.

Admittedly, we had some questions initially, until we discussed it with the fiscal stability authority and talked with the comptroller and so forth, and then we realized that without this bill the likelihood is that the city and the school district would have to either face a number of layoffs initially and would face a potential cash flow situation.

So this bill, I think, is absolutely critical to the maintaining of the stability of not only the city itself, the

city side, but also the school district. In fact, maybe more important for the school district even than the city itself. Because we expect that when the budget is finally passed that they will receive the money that they have asked for, the amount that they need to plug a hole in their budget. And if they get more, obviously they'll be even happier. So -- but that remains to be seen.

So that's what this bill essentially does. There's no real opposition to it, except that the board -- the common council would like a lot of amendments to it that give them more authority, which unfortunately we can't do.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you.

On the bill.

ACTING PRESIDENT McGEE: Senator Brown, on the bill.

SENATOR BROWN: I want to thank Senator Volker for his explanation. Let me say I have the utmost confidence in Senator Volker. And I want to certainly thank him for

the role that he's played in being supportive of the City of Buffalo.

The thing that troubles me a little bit about this piece of legislation is we can't really get a straight answer on what the school district feels, what the city council feels, what the city comptroller feels.

While the school district has signed off on this -- Senator Volker is absolutely accurate in saying that -- they have signed off on it with the proviso that the control board, if it does not need to borrow any additional money for the school district, that there will be no fees assessed to the school district in any borrowing that they do. The school district claims that the control board has signed a document stating that.

Now, the city comptroller indicates that he can borrow at rates comparable and lower than the control board on new debt. That he can't borrow it at lower or comparable rates on any refinancing of old debt, but on new debt the city comptroller claims that he has gone out and he's gotten more favorable

rates than the control board does on new borrowing.

The question is also raised that on additional borrowing, additional debt, what will be the fees and costs that will be associated with that, and who will be paid those fees and costs? I think that's something that this body should be concerned about if we're concerned about the fiscal stability of the City of Buffalo.

Another complaint from the city council and the city comptroller is the control board just made the decision to cut the city's agreed-upon borrowing in half, from $22 million to $11 million. And I can understand the control board making decisions and providing the oversight to the City of Buffalo. But now they're cherry-picking the decisions that the local officials that have been elected by the residents of the city of Buffalo are making.

And the thing that really troubles me is that many of the people that are making these decisions don't even live in the city of Buffalo. How would any of you feel if

decisions were being made about your community and the people that were making those decisions didn't even live in that community? I have a real problem with that.

Now, you know, the other thing that galls me, one of the things that the control board eliminated from the borrowing of the City of Buffalo is the ability to demolish over 600 problem properties. And in Buffalo, where you have these problem properties, oftentimes they're set on fire, there are arson fires, sometimes people are dealing drugs out of them, sometimes dogs are being fought in these vacant, abandoned, problem properties in the city of Buffalo.

And in some cases, taxpayers who have been living in neighborhoods for 30, 40, and 50 years have to suffer with these conditions right next door to where they live.

And the question I have is, what gives the control board and all of them who do not live in the city of Buffalo, who don't live with those oppressive conditions, the ability to say: Common council, city comptroller, mayor, we don't like your

decisions about how this bond money is going to be spent, and we don't think that you should be spending bond money on demolishing problem properties that endanger and threaten the health and safety of the residents of your community?

So let me sum up by saying I'm going to support this legislation. I'm going to support this legislation if for no other reason than my trust and belief in Senator Volker. But I am a little concerned about this control board and how it's operating. I want to raise the red flag in this chamber today about this control board.

And if we are serious about helping the City of Buffalo, I am asking and pleading and begging all of you to pay more close attention to what's happening to the second-largest city in the State of New York.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: On the bill.

ACTING PRESIDENT McGEE: Senator

Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Which I am supporting, because I have to assume that Buffalo is in very dire straits, needs assistance. We know it needs assistance. And certainly Senator Volker has made the case.

I want to look at it from another point of view, which is not specific to Buffalo but specific to the work that we have done in this house, with the other house, on the budget reform package, which was so ably chaired by our Finance chair.

The fact is, we wouldn't have cash-flow problems if we -- if we could adopt some of the motions that were put forward in the budget reform conference committee. We would pull back the date of our budget to May 1st. We would forward-fund, for two years, education, so that school boards would know exactly how much money is going to be coming to them for the following year. We would not have to float loans to carry us through at the individual municipal and school levels, at the district level.

We really have to give serious

attention to reforming the way we are doing budgets in this house and in the other house. And we have to look at how we can overcome these impossible problems that we make for lower levels of government because of our intransigence and because we are not putting things before ourselves on a timely basis.

And the only way to do that is through adopting some of the recommendations that were made in the budget reform conference committee.

Thank you.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 17. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR MARCELLINO: Madam

President, is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR MARCELLINO: Based on that, then, I move we be adjourned until tomorrow, Wednesday, May 19th, at 3:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Wednesday, May 19th, at 3:00 p.m.

(Whereupon, at 4:14 p.m., the Senate adjourned.)