NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:12 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, Sunday, May 23, the Senate met pursuant to adjournment. The Journal of Saturday, May 22, 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 companies.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Morahan, I wish to call up his bill, Senate Print Number 6461A, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1045, by Senator Morahan, Senate Print 6461A, an act to authorize.

THE PRESIDENT: Senator Meier.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: Senator Meier.

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

THE PRESIDENT: The amendments are received.

SENATOR MEIER: Madam President, on behalf of Senator Bonacic, I wish to call up his bill, Senate Print Number 6393, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 721, by Senator Bonacic, Senate Print 6393, an act to amend Chapter 915 of the Laws of 1982.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam

President. I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I want to offer amendments to the following Third Reading Calendar bills:

On behalf of Senator Skelos, page 35, Calendar 301, Senate Print 5902A;

Senator McGee, on page 40, Calendar Number 417, Senate Print 2777A;

Senator Larkin, page 52, Calendar 702, Senate Print 6515;

Senator Spano, page 58, Calendar 826, Senate Print 6285;

Senator Morahan, page 74, Calendar 1046, Senate Print 6462A;

Senator Volker, page 87, Calendar 1111, Senate Print 1064A;

Senator Golden, on page 39, Calendar 366, Senate Print 5745A;

Senator Flanagan, on page 59, Calendar 840, Senate Print 7166;

Senator Trunzo, on page 80, Calendar 1110, Senate Print 995;

And for Senator Kuhl, on page 87, Calendar Number 119, Senate Print 3438.

Madam President, I ask that these bills retain their place on the Third Reading Calendar.

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator Farley moves to discharge, from the Committee on Banks, Assembly Bill Number 9445 and substitute it for the identical Senate Bill Number 6805, First Report Calendar 1368.

On page 4, Senator DeFrancisco moves to discharge, from the Committee on

Energy and Telecommunications, Assembly Bill Number 1957 and substitute it for the identical Senate Bill Number 4196, First Report Calendar 1374.

On page 6, Senator LaValle moves to discharge, from the Committee on Higher Education, Assembly Bill Number 7515 and substitute it for the identical Senate Bill Number 6736, First Report Calendar 1390.

On page 8, Senator Flanagan moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 9518 and substitute it for the identical Senate Bill Number 6291, First Report Calendar 1396.

On page 65, Senator Hoffmann moves to discharge, from the Committee on Agriculture, Assembly Bill Number 10811 and substitute it for the identical Senate Bill Number 6451, Third Reading Calendar 936.

And on page 68, Senator Robach moves to discharge, from the Committee on Labor, Assembly Bill Number 10290 and substitute it for the identical Senate Bill Number 6213, Third Reading Calendar 970.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 5155, congratulating the 2003-2004 Baldwinsville Varsity Hockey Team for having been named New York State Public High School Athletic Association's State Scholar Athlete State Champions for Ice Hockey.

"WHEREAS, It is the sense of this Legislative Body to act in accord with its long-standing traditions, honoring the youth of today and the leaders of tomorrow whose character and achievements best exemplify the ideals and values cherished by this great state and nation; 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 in 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, Earning a place on a high school varsity roster is in and of itself a major accomplishment for a high school student. For many, it is an achievement that marks a lifetime milestone; and

"WHEREAS, There are a select few among us for whom outstanding athletic achievement is not sufficient; they are propelled to reach even greater heights by virtue of outstanding academic achievement while they engage in varsity-level practice and competition simultaneously; and

"WHEREAS, Even those select few who are able to accomplish great athletic and academic achievements are unable to rise to the heights achieved by the 2003-2004 Baldwinsville Central Schools Varsity Ice Hockey Team. These individuals are among the

elite who have earned the State Scholar Athlete State Championship for Ice Hockey; and

"WHEREAS, A most challenging formula is applied to determine those select few teams who will attain this distinction. The average of the top eight GPAs of a hockey team are calculated and then compared to all other New York State Public High School Athletic Association hockey teams to determine the team with the highest GPA. The Baldwinsville Bees were determined to have a team composite average of 95.053 percent, surpassing 49 other teams whose composite averages of 90 percent or more might have qualified them for this recognition; and

"WHEREAS, In addition to the team's outstanding academic accomplishment, 11 of its members have earned individual honors as scholar athletes for having attained a GPA of 90 percent or higher; and

"WHEREAS, Baldwinsville Ice Hockey Coach Mark Lloyd and Assistant Coach Bob Millett are to be recognized and commended for emphasizing the importance of academic excellence to their varsity athletes. Coach

Lloyd has been quoted as telling his players: 'Academics come first,' and that if a player is 'struggling in a class, we tell them to take care of their work first and come to practice late'; and

"WHEREAS, Further recognition is made of Coach Mark Lloyd for having been named Coach of the Year for Division I, Section III Ice Hockey for 2003-2004; and

"WHEREAS, While maintaining academic excellence alone requires hard work and dedication, participating in a varsity sport makes achieving academic excellence even more difficult. It is a further tribute to the Baldwinsville Bees Hockey Team that they had a most successful season. Among their accomplishments on the ice were an overall record of 15 wins, 10 losses, and one tie, and a final ranking of 14th place among all teams in New York State. In addition, two of its players were 1st Team All-League selections, and three others were selected for the All-League Second Team; and

"WHEREAS, Ice hockey is a team sport. It is well recognized that no team, no

matter how gifted one or more individuals may be, can accomplish all that has been achieved by the Baldwinsville Bees Hockey Team without exceptional skills throughout. The Bees had talented team members throughout its player roster that included: Chase Bacanskas, Ben Blujus, Corey Bulken, Alex Chissler, Robert Conklin, Zach Ducharme, Richard Dunkelberger, Tyler Fravel, Ryan Heath, Jeff Kasprzak, John Korzyp, Jeff Krull, Kirk Kwaczala, Kyle Kwaczala, Patrick Landers, Chris Lane, Christopher Lloyd, Matt Merriam, Steve Messina, James Muscatello, Paul Nalen, Rob Nalen, Dan Neer, Eric Parah, Mike Perkins, Howard Rotchford, David Rotchford, Justin Sholette, Richard Simone, Erik Smith, Ryan Smith, Ian Stine, Adam Styer, Justin Tierney, Ryan Venditti, Louis Walker, Matt Yando and Tyler Zinsmeyer; and

"WHEREAS, By virtue of their accomplishments on the ice, in the classroom, and as good citizens of the greater Baldwinsville area, the 2003-2004 Baldwinsville Bees Ice Hockey Team has brought great pride to their parents, their friends,

their school and their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the 2003-2004 Baldwinsville Varsity Hockey Team for having been named New York State Public High School Athletic Association's State Scholar Athlete State Champions for Ice Hockey; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Baldwinsville Central Schools, to team members and to coaches of the 2003-2004 Varsity Bees Ice Hockey Team."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

I am proud to rise to talk about the Baldwinsville Ice Hockey Team. Senator Farley mentioned to me this is almost the team of the week from Central New York, we have so many groups that come in. Central New York has a lot of champions in athletic competition.

But what's special about this group, it's not only athletic competition, but the academic competition, which is absolutely unbelievable. A team average of 95.053 percent for academic averages. I mean, that's absolutely unbelievable.

And it shows to the world, I think, that sports -- or athletics and academics are not mutually exclusive. Quite frankly, it's the opposite. The fact is that people that play sports are generally disciplined, they're people that use their time appropriately, and they're people that obviously use their time appropriately to study as well as to compete.

And the coaches should be commended, all of the coaches, for the attitude that you have instilled upon your players.

So I want to thank you for coming here and thank the Senate for taking the time to recognize the Baldwinsville Ice Hockey Team for their great athletic but, more importantly, academic accomplishments.

And you are going to be the future leaders for our community, and I'm positive of

that. And keep up those grades and keep up that sports pressure on your time. And whatever you want to be, you're going to be, because you're selecting what is important to you, competition and academics.

Thank you very much.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Congratulations. As a former teacher, I am infinitely impressed with that grade point average. And best wishes to you. In everything you do, equal success.

Let's give them a round of applause.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

adoption.

And I would point out that there are two Balbonis on the floor. If you want to make the comments interesting, I'll leave the choice to you as to who would make the most interesting comments.

THE PRESIDENT: The shorter one tried to hold the gavel when he come up here, so I'll say no more.

The Secretary will read.

THE SECRETARY: By Senator Balboni, Legislative Resolution Number 5107, recognizing the dedication of the National World War Two Memorial on the National Mall in the District of Columbia on May 29, 2004.

"WHEREAS, On May 29, 2004, the National World War II Memorial will be dedicated on the National Mall in the District of Columbia; and

"WHEREAS, This memorial will be the first national memorial to both recognize the courage, bravery, and unselfish dedication of the members of the United States Armed Forces who served in World War II and those who served on the home front, and acknowledge the

commitment and achievement of the entire American people in that conflict; and

"WHEREAS, The National World War II Memorial, a monument of granite and bronze, has a fitting location on the National Mall, situated between the Washington Monument and the Lincoln Memorial, and flanked by memorials dedicated to the members of the Armed Forces of the United States who served and died in the Korean War and the Vietnam era; and

"WHEREAS, The National World War II Memorial is dedicated to the more than 16 million individuals from the 48 states, the District of Columbia, and the territories and possessions of the United States who served in the Army, Air Force, Navy, Marine Corps, Coast Guard, and Merchant Marine in World War II; and

"WHEREAS, On May 29, 2004, hundreds of thousands of veterans and their families and friends from across the United States will gather on the National Mall to join in the dedication of the National World War II Memorial and to pay homage to the memory of the more than 400,000 members of the Armed

Forces of the United States who died while serving during World War II and the more than 10 million veterans of the Armed Forces of the United States in World War II who have died since the end of the Second World War; and

"WHEREAS, On May 29, 2004, the nation will pay tribute to all the members of the Armed Forces of the United States who served in World War II; and

"WHEREAS, On May 29, 2004, the nation will remember the duty, sacrifices, and valor of the members of the Armed Forces of the United States who served on land and sea and in the air in the more than 89 campaigns conducted in the European and Pacific theaters of operations in World War II; and

"WHEREAS, On May 29, 2004, the nation will acknowledge that the men and women who served in the Armed Forces of the United States in World War II came from all the states, the District of Columbia, and all the territories and possessions of the United States and represented men and women of all races, religions, ethnic groups, professions, educational attainments and backgrounds, all

united in the goal of serving their country and preserving freedom; and

"WHEREAS, Construction of the National World War II Memorial would not have been possible without the donations of hundreds of thousands of individual Americans as well as corporations, foundations, veterans groups, professional and fraternal organizations, communities and schools, who all acknowledged that a memorial should be constructed in the national capital to recognize and pay tribute to the duty, sacrifices, and valor of all the members of the Armed Forces of the United States who served in World War II; and

"WHEREAS, This memorial acknowledges all who participated in this defining event of the 20th century; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to express its gratitude to the more than 16 million individuals who served in the Army, Air Force, Navy, Marine Corps, Coast Guard and Merchant Marine in World War II, and to the millions of

Americans on the home front who contributed to the war effort during World War II; and be it further

"RESOLVED, That this Legislative Body pause further to recognize the dedication of the National World War II Memorial on the National Mall in Washington, District of Columbia, on May 29, 2004, as an occasion to acknowledge and pay tribute to the duty, sacrifices, and valor of all the members of the Armed Forces of the United States who served in World War II, a group known collectively as the 'Greatest Generation.'"

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Thank you for the opportunity to speak about this resolution.

As chairman of the Veterans Committee, one of the things I get a chance to do is to listen to stories, stories from veterans around the state, stories from my own community, about people who served in World War II. And as we know, as the years go by, the numbers of men and women who were left to tell the stories is dwindling.

But it's a time that I think that this nation is going to pause and remember. At least I hope it does. And I was caught short a couple of months ago, and that's why I'm so happy that my son is here today, because my son asked me a question that I had never really thought about. We all learn about World War II in classes, but he said to me quite simply one day, as we were in the living room, he said to me: "Dad, World War II, did we almost lose?" And I thought to myself, what a funny question. And then I realized, yeah, we almost did.

If the Nazi army had developed the atomic bomb before we did, we might very well have lost. And then the horrors of the concentration camps in Europe would never have stopped. And the freeing of all the countries throughout Europe that had been enslaved in the Nazi tyranny, and through the Asian Pacific by the Japanese Imperial Army, would never have stopped. And the world that we enjoy today, even as it's threatened by terrorism, would not be.

So I hope that this Memorial Day is

a very special one for everybody in this chamber -- indeed, in this Legislature, in this state -- and that we take a moment to understand that our children need to realize, yeah, we almost lost. And the only reason why we didn't is because this nation awoke and sent 400,000 people to die, millions more to serve, and basically stopped its entire economy to do nothing but to fight in lands far away.

This monument will be the largest erected for decades in Washington, D.C. And if you talk to many World War II veterans, they're very emotional about it. With all the angst politically in this politically charged environment this year, I hope that this is going to send a message of remembrance -- not only of those lost in battle but of the great strength and great accomplishments of a nation united.

Thank you, Madam President.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, Senator Balboni has stated it so well. I well recall the morning of

December 7, 1941; it was my 9th birthday. And even as a young person, I recall the lines of soldiers, lines of prospective soldiers volunteering for the service, how everyone became a united nation, united as one to fight a battle to save the entire free world.

And that is not mere rhetoric. We all know about the beginning of the Second World War and the brave people of England who withstood the Battle of Britain, who withstood repeated air attacks, the Blitz, as they fought on alone, or virtually alone, after France -- that had the greatest standing army in Europe, that had an equal number of planes, an equal number of tanks, an equal number of armed personnel vehicles to Germany -- after France collapsed in 35 days, leaving England to fight on alone.

And we saw that the brave English people, together with the 90,000-some-odd Polish soldiers that managed to flee from the Dunkirk and subsequent battles to England and fight on as freedom fighters, together with other refugees from other countries in Europe, until the entry of America into the war.

And we saw the fall of France, Belgium, Lithuania, Poland, Latvia, the Low Countries, Holland. There's no question that Adolph Hitler possessed the entire European continent until he then turning on his ally Joseph Stalin and then began the fatal steps toward fighting a two-front war.

Were it not for the materiels flowing to England to keep them sustaining and then the entry of America into the war, we would never have prevailed. And, as many of our veterans say, they'd be speaking German in Europe, all over Europe, and speaking Japanese all over Asia.

We lost hundreds of thousands of brave soldiers, brave, courageous soldiers. But this monument does not only salute the lost, the slain, the wounded, the missing in action, but it salutes those who came back. And many of the members of our veterans' posts all over the state and the country, veterans that unfortunately the average age is now 81, veterans who are dying at the rate of 1500 a day.

Now is the time for us to say thank

you with this beautiful monument in our nation's capital, advantageously situated so that all can see it as they visit our country's capital and our country's monuments.

This monument salutes not only those fallen and missing and wounded, but salutes those who came back, those whom we saluted during the war with blue stars in our flags in our windows as well as the deceased that we saluted with the gold stars in our windows.

When they came back, they changed America for the better, men and women, those women that served in the armed forces as the different WAFs and WAVES and WACs. And this monument salutes them all, as well as those on the home front that I remember so well buying bonds, selling bonds during the war loan drives, saving fat, saving tinfoil, and taking the place of the men who had gone overseas so fight for our country.

Our country was changed, our country was changed for the better. We salute them in this small way, in this -- really, a way that pales in comparison to the sacrifices

they made, changing their entire lives, putting their lives on hold, those that came back. It's very fitting that we salute the ones that returned as well as the ones that lie in foreign graves.

I commend Senator Balboni, the sponsor of the resolution, as well as all those that this monument seeks to salute and memorialize.

THE PRESIDENT: Senator LaValle.

SENATOR LaVALLE: Madam President, I would really, with my remarks, just want to make a footnote to the very eloquent remarks made by my colleagues Senator Balboni and Senator Maltese, by simply saying that I was very touched when I read the book by Tom Brokaw, The Greatest Generation. And I think it capsulized for me those people, during that Second World War, had also -- many of them had been touched by Depression and they went through a major, major war. And that generation truly was the greatest generation.

It's something that we today could -- can learn from and should try to

emulate. Because I think that the road to our success as a nation has always had speed bumps, but it has been our determination as a nation and our national pride that has always brought us forth and made us a great country. So maybe today or tomorrow we can replicate once again the greatest generation.

And they deserve great praise. And this memorial, I think, hopefully will enliven for people what was done, what history was all about, and we can learn from it.

Thank you, Madam President.

THE PRESIDENT: Senator Nozzolio.

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

Madam President, I rise to join the comments of my distinguished colleagues who have so well outlined the gallantry, the sacrifices, the heroism by those brave men and women who fought and served in World War II.

Senator LaValle referred to the greatest generation. Absolutely. Those who served, those who saved the world should be given that accolade.

This coming Saturday is the

unveiling of the National World War II Memorial. Last Saturday I was honored to present one of New York's finest, a gentleman by the name of Emilio "Hank" Sarnicola. Now, Hank served bravely in World War II but, because of a number of logistical and paperwork problems, was not provided the opportunity and not presented with the recognition he so well deserved.

I was very pleased to participate in presenting Hank with the award that he was to be given 60 years ago. On Saturday last, we presented Hank with a Bronze Star. That is the third-highest award that any serviceman or woman could be provided and honored by this United States government. Hank's Bronze Star was given to him for gallantry and bravery well beyond the call of duty, his unselfish dedication to his comrades.

And I represent this to you, Madam President, as just one of the thousands and thousands of stories that exist across this state of brave men and women who gave so much of themselves to ensure that our nation would be free.

We enjoy that freedom. We should never take for granted that freedom. And to the Hank Sarnicolas and to all the millions of brave men and women who answer the call to keep us free, this memorial granted this week, we thank you and we honor you and we will never forget what you have done.

Thank you, Madam President.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, had we the benefit of your presence in World War II -- you have given me such reason for going on and joining my colleagues.

I'm certainly very grateful to Senator Balboni and the other Senators, my colleagues. And that includes Senator Larkin, who had a few months. I was in World War II from 1941 to 1946, with terminal leave. Actually, my -- I was shipwrecked in Korama-Retto [ph]. Before that, I saw Ernie Pyle die in le Shima in the China Sea.

And when you had -- we speak of hurricanes here, a hundred miles an hour. They had them, typhoons of 200 nautical miles an hour. It was simply incredible. Standing

on a bridge 30 feet over the water, the waves were about 80 foot high.

So that's the kind of thing -- and I was just wondering what was waiting for me. Well, I had twenty years in the Reserves, and I prize them. I know Senator Larkin had a notable chunk of time that he contributed.

And so many others who have carried on with consummate bravery and courage and actions that survived, whether it was in 1960, in 1980, and today, there are those who are on the front lines defending the lines of freedom, that we begin to appreciate the services that have inspired so many.

But World War II, there were almost a half a million who lost their lives and survivorship. I remember I wrote a letter to Fiorello LaGuardia at that time, who said he was not going to run again. And Fiorello wrote back to me that he appreciated receiving the letter -- this was, I think, August of 1939 -- he appreciated receiving my letter expressing regrets that he was retiring, but that I might be intrigued to know that the League of Nations -- well, what proved to be

the League of Nations was going to be formulated the following year in its embryonic form.

So that it was not only an opportunity for us to participate in the struggle that ensured our survival in Europe and Asia and elsewhere, but also a recasting of the League of Nations, which had failed at that time to preserve the peace and to recast their image in a later expression which gave it more durance.

And I believe today we stand on the hope that we don't miss our opportunity to defend that -- well, the defense of person, to defend our people of this planet to the cause of peace. And I see manifestations of the renewal of that spirit that animated almost 15 or 16 million people that were mustered. And 5 million of them were within earshot of cannons and explosive devices.

So I was heartened that my colleagues, all of whom are of tender age -- the tenderest is yours, Madam President -- and all of you of tender age who have pronounced yourself on the side of the defense of

freedom, its value, and pledged the support of that concept of freedom and of the dignity of the individual created in a divine image. This was certainly a revelation, and of great personal moment to me to hear it testified to by so many of you.

So thank you, Madam President. And I am very grateful for the opportunity of participating in something like this. I didn't realize then. I was a mature age at that time, in 1941, and here I am speaking with you. And it explains an awful lot why I'm still with you. Because from one chamber to the other, I find great comfort by your companionship and your friendship.

Thank you.

THE PRESIDENT: Thank you, Senator Marchi.

Senator Johnson.

SENATOR JOHNSON: Madam President, I'd just like to say it's very appropriate to speak on this resolution which talks about the World War II Memorial. I was in World War II, the end of the war. My brother, my cousins, my uncles, many of my

school friends. And many of them didn't come back.

And I think they've felt, in the Marine Corps League and the Legion, which I belong to, they felt that it was overdue to get recognition for the World War II veterans. And I'm sure they are very delighted, those that are still around, that this has taken place.

And I think it's something that we should all remember on Memorial Day, because the ones that are here are fewer and fewer each year from World War II. Even Korea veterans are aging out, passing out of the scene.

And it's nice to know that we continue to think of those who not only created our nation but saved our nation in many, many wars, and really to express our appreciation to those that are out there on the front lines now in wars which some people agree with and some people don't. But it's our nation and our people, and they deserve our support now and in the future as well.

Thank you.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

You know, as we look at this monument, we New Yorkers have to take a step back and recognize the fact that New York provided more members of the armed forces in World War II than any other state in the nation. We had more men and women killed and wounded in combat than any other state in the nation.

When we start to look around and see what this monument means, those of us who have been following it since the day the authorization came to the battlefield commissions, we recognize the fact that this is going to depict where, when, how and why American forces were where they were all over the world in World War II.

When we started with 1939, and then we went from there into the Chamberlain discussions of how to settle the peace in Munich, and then what Japan did in October of 1941, discussing the issues, we find out that the bombing of Pearl Harbor, I think, was even

a greater blow than the Munich incident.

As an individual, John Marchi was in a long time before me. But Mr. Casey's father and I went to La Salle, and I left Troy, New York, on the 26th day of April 1944 and went in the service and spent 23 years.

And in all that time, the more you saw people who were in World War II, the more you realized the commitment. Yes, we had a draft. We had a volunteer that was more important than a draft. And we had leaders, not only from our military academies but our candidate schools and our ROTCs that provided us with the leadership.

But the monument must be addressed as an issue to America's role in providing freedom to the world. We were the goal that wasn't. Many times people in John's era and my era -- not you, Serph, you're too young -- said that if it wasn't for the American's initiative in World War II, a lot of people today would be speaking German or Japanese, not their native tongue.

So a visit or recognition of what the memorial is all about will be displayed on

next Saturday on most of the network stations, and especially on the cable networks. But remember, the memorial represents America's standing for freedom, freedom that we want everybody to enjoy. But it also reflects on those who gave some and many who gave all.

Thank you.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

In listening to my colleagues here, I have to say I think we are really most fortunate and blessed to have with us and serving with us veterans of that most difficult and greatest of conflicts that this country has gone through.

I received a phone call about a week and a half ago from a very good friend of mine, Bill Schilling, Sr., who now lives in Florida, and he had tickets that had been sent to him for the dedication in Washington. And his health doesn't allow for him to go there. And he had certainly had a distinguished war record as a pilot in the Army Air Forces in Europe, through most of the western campaigns,

and had seen a great deal of heroism and also a great deal of sadness and tragedy.

It made me think, when I spoke to him, and as with my colleagues, recognizing how fortunate we are to have Mr. Schilling with us, and my own dad, who was an Army officer in Europe throughout the many campaigns there, that the young people today are blessed because they can read about history and they can watch it on TV, but, much more significantly, they can talk to living history with our veterans. Those who have served in World War II and the other conflicts, they are here, they are now, they know what occurred and they know why we fought.

It's most significant that we will be dedicating this memorial in Washington. It's almost a curiosity that this greatest of conflicts, it's taken this long to have a memorial established in our nation's capital. Nonetheless, it's there, and we're all going to hopefully be able to watch it on television and many of us visit it over the course of years in our nation's capital.

But to think back and to recall the sacrifices of all those young people, of the hundreds of thousands who gave their lives, who gave up their tomorrows, who in their youth laid down their spirits so that we could be here today to serve in this legislative body, we are truly blessed to live in this country and to have such men and women who would serve.

Thank you, Madam President.

THE PRESIDENT: Senator A. Smith.

SENATOR ADA SMITH: Thank you, Madam President.

I join with my colleagues on the other side of the aisle to say that this is a momentous occasion, especially since my father too served in World War II, as did many of my uncles. And especially on behalf of my uncle who never returned, and I never had the pleasure of meeting, since I was born in '45.

It has taken too many years to say thank you to the men who served -- and women, who served as nurses and so forth -- in World War II, who because of them we are here today.

And we should take a moment -- if

we do not watch the unveiling, we should take a moment of our time to say a solemn prayer of thank you to each and every one who served.

THE PRESIDENT: All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Alesi.

SENATOR ALESI: Thank you, Madam President. Would you please recognize Senator McGee.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Madam President, I'd like to do a Senate motion to amend a bill on calendar third reading.

On page number 39, I offer the following amendments to Calendar Number 389, Senate Print Number 6120, and ask that said bill retain its place on Third Reading Calendar, on behalf of Senator Padavan.

THE PRESIDENT: The amendments are received, and the bill will retain its

place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Madam President.

I move to recommit Senate Print Number 7057, Calendar Number 1201 on the order of second report, to the Committee on Health, with instructions to said committee to strike out the enacting clause, on behalf of Senator Hannon.

THE PRESIDENT: So ordered.

SENATOR McGEE: Thank you, ma'am.

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Thank you, Madam President. May we at this time take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 423, by Senator Robach, Senate Print 6300A, an act to amend the Retirement and Social Security Law, in relation to deductions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 463, by Senator Maziarz, Senate Print 2603B, an act to amend the General Municipal Law, in relation to permitting the operation of certain raffles.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 2. Senators Duane and Padavan recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator Saland, Senate Print 5940B, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law.

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Madam President, may we lay this bill aside for the day, please.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 592, by Senator Rath, Senate Print 5245, an act to amend the Family Court Act, in relation to orders of restitution.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 755, by Senator Kuhl, Senate Print 5127, an act to amend the Vehicle and Traffic Law, in relation to violations of vehicle weight.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 776, by Senator Trunzo, Senate Print 6608, an act to amend the Town Law, in relation to including the Cherry Grove Fire District.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 838, by Senator DeFrancisco, Senate Print 6909, an act to amend the Public Authorities Law, in relation to contracts.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 856, by Senator Volker, Senate Print 5563A --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 865, by Senator Flanagan, Senate Print 5087, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to the Long Island State Park.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 892, by Senator McGee, Senate Print 2753A, an act to amend the General Municipal Law, in relation to the balancing of public interests.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 934, by Senator Larkin, Senate Print 6016A, an act to amend the Agriculture and Markets Law, in relation to including certain lands.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1086, by Senator Alesi --

SENATOR HASSELL-THOMPSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1115, by Senator Rath, Senate Print 1685, an act to amend the Penal Law, in relation to repeat offender status.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays,

1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1117, by Senator Farley, Senate Print 3031, an act to amend the Civil Rights Law, in relation to the confidentiality of certain personnel records.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1124, by the Assembly Committee on Rules, Assembly Print Number 9159, an act to amend the Criminal Procedure Law, in relation to designating.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1126, by Senator Kuhl, Senate Print 6345, an act to amend the Penal Law, in relation to criminal possession of ephedrine.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1128, by Senator Golden, Senate Print 6544 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1132 --

SENATOR ALESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: Please lay that Calendar 1128 aside for the day.

ACTING PRESIDENT MEIER: 1128 will be laid aside for the day.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1132, by Senator Larkin, Senate Print 6733, an act to amend the Criminal Procedure Law, in relation to giving special agents.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1137, by Senator Alesi, Senate Print 949 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1138, by Senator Nozzolio, Senate Print 963, an act to --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1166, by Senator Libous, Senate Print 6870, an act to amend the Town Law and the Public Officers Law, in relation to providing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I'd just like to thank Senator Libous for bringing this issue to our attention and addressing it and to promoting and drawing attention to this issue, which has really not been addressed adequately in many, many, many, many years by this body.

Thank you.

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1168, by Senator Saland, Senate Print 7020, an act relating to authorizing the Town of Wappinger, Dutchess County.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1169, by Senator Balboni, Senate Print 7134, an act to authorize the assessor of the County of Nassau to accept and consider.

SENATOR ALESI: Lay it aside for the day, Mr. President.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

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

SENATOR ALESI: Thank you.

Mr. President, at this time may we return to Senator Balboni's resolution, open it for sponsorship to every member. And any member not wishing to be a sponsor on the bill

will contact the desk.

ACTING PRESIDENT MEIER: Any member not wishing to be a sponsor of Resolution 5107, please inform the desk.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. May we take up the controversial calendar at this point, starting with Calendar 1086.

ACTING PRESIDENT MEIER: The Secretary will conduct the controversial reading of the calendar.

THE SECRETARY: Calendar Number 1086, by Senator Alesi, Senate Print 127, an act to amend the General Business Law and the Civil Practice Law and Rules, in relation to the Uniform Trade Secrets Act.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Alesi, Senator Schneiderman has requested an explanation.

SENATOR ALESI: Thank you, Mr. President.

Mr. President, this bill has found

its way to the Senate floor for several years now it. And it creates the Uniform Trade Secrets Act, which would bring the State of New York into line with 41 other states as well as the District of Columbia, with a uniform method of treating the misappropriation of trade secrets.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Through you, if the sponsor would yield for a few questions.

ACTING PRESIDENT MEIER: Senator Alesi, do you yield for a question?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

I note that in this proposed legislation, the provision, page 3, line 20, states "In an action under this article, the court shall preserve the secrecy of an alleged trade secret by reasonable means."

Do I take it that the reference to

an alleged trade secret simply means that if the party who says they've got a trade secret simply alleges it, that the court is then empowered to act?

SENATOR ALESI: Thank you. Through you, Mr. President, I think the presumption in this legislation means that such an allegation would have moved it into the court for the court's determination under those circumstances.

SENATOR SCHNEIDERMAN: Through you, Mr. President. But this provision states that a court shall preserve -- it's not -- there's no discretion here -- the secrecy of an alleged trade secret by reasonable means, including but not limited to protective orders.

So is there any process for determination of whether or not an alleged trade secret is a trade secret before this provision requiring the court to act is invoked?

SENATOR ALESI: I believe that that would be the determination made in the court by the court.

SENATOR SCHNEIDERMAN: Thank you. And --

ACTING PRESIDENT MEIER: You wish Senator Alesi to yield for another question, Senator?

SENATOR SCHNEIDERMAN: No, I think I'll speak on the bill at this point. He's minding the store here today.

ACTING PRESIDENT MEIER: Okay. Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President.

I must admit to being somewhat puzzled by this piece of legislation. It has an extraordinarily broad definition of trade secret, which really includes pretty much anything that goes on in any area of business. And all it requires is that a business allege they have a trade secret, and then they have the ability to obtain court protection.

It enables some company that alleges they have a trade secret to bring proceedings against someone who discloses that secret, which would clearly have a chilling effect on whistle-blowers.

And perhaps most remarkably of all, because I think that there is support for this legislation by many people and organizations who, generally speaking, are opposed to the efforts of the plaintiff's bar in the civil justice system, this legislation would exempt companies that bring actions under this extraordinarily broad statute, enabling them to silence whistle-blowers and to just simply allege that they have a trade secret and then seek restrictive measures, and some of them being quite punitive.

It would exempt those companies from Section 8303A of the CPLR. Section 8303A of the CPLR are provisions to impose costs for frivolous claims in actions to recover damages.

So what this essentially says is we're going to create this extraordinary broad category of trade secrets. No real limits on the definition. We're not going to have any court procedure defined to determine whether it really is a secret or not; you simply can allege it.

And if you bring a frivolous claim,

if you frivolously assert it's a trade secret, you're exempt from the provisions of the CPLR that penalize people for bringing frivolous actions.

So I must say that I am puzzled. I'm a strong believer in the civil justice system. I think getting things out in the open is a good thing. In fact, I think we should be considering in this house the "Sunshine in Litigation Act," sponsored by Assembly Member Weinstein, which would amend the CPLR to prohibit secrecy in agreements that could conceal a public hazard.

There have been numerous reports that confidential agreements have delayed public exposure of products such as defective Firestone tires, the voltage problem that resulted in the death of a New York City woman last year. And I think that we should, in fact, be considering ways to get more of the sort of information that corporations seek to cover up at times out into the public realm.

This proposed legislation today would do the opposite and would essentially encourage companies to not even use the

discretion you use now in determining whether or not to bring an action against someone who sought to be a whistle-blower, because you're exempt from the provisions that would penalize you for a frivolous action.

So I'm going to vote no on this, and I hope that we will be able to move forward with a view towards opening up secret dealings of companies where there are public interests at stake. The "Sunshine in Litigation Act" would do this. This moves us in the wrong direction. I'm going to be voting no, Mr. President.

Thank you.

SENATOR ALESI: Mr. President, if I may.

ACTING PRESIDENT MEIER: Senator Alesi, on the bill.

SENATOR ALESI: With regard to the general nature of the Senator's comments, this bill does treat actions taken in bad faith. It also treats actions taken with a malicious intent and actions taken with the intent to harass.

But more importantly, this bill is

designed to bring New York State into what might be termed compliance with those 41 other states that I mentioned earlier, so that we can, as we pursue the development and growth of high-tech industries, protect those industries and those people whose ideas are important to the growth of high-technology from the misappropriation of information that would otherwise be termed a trade secret.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1086 are Senators Andrews, Breslin, Brown, Connor, Dilán, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Lachman, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 38. Nays, 19.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR ALESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: There will be an immediate meeting of the Senate Finance Committee in Room 332.

ACTING PRESIDENT MEIER: Immediate meeting of the Senate Finance Committee in Room 332.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1137, by Senator Alesi, Senate Print 949, an act to amend the Correction Law, in relation to barring sex offenders.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator

Alesi, Senator Schneiderman has requested an explanation of Calendar 1137.

SENATOR ALESI: Thank you.

Mr. President, under current law an inmate in the state prison system, if he is a felon or sex offender, is not allowed to participate in work release. However, through a loophole, if you will, someone who is in the state prison system as a sex offender can participate in community service.

This bill simply tries to bring into line the community service aspect of what otherwise would be a work-release-type opportunity for a convicted sex offender.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I find it remarkable, looking at this, that the state of the law, if this legislation were passed, would be that any person who is an eligible inmate -- and I'm reading from the language of

the statute -- who's under sentence for a crime involving infliction of serious physical injury upon another or any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program if they get the written approval of the commissioner.

There is a process for an exemption for those who are convicted even of violent crimes with weapons. There's a process for determining if that may be a particular case in which someone really can benefit from community release, really is deserving of that.

And yet the prohibition that would be imposed by this legislation would mean that anyone convicted under any of the offenses defined in Article 130 of the Penal Law will not be eligible under any circumstances. Now, that section of the Penal Law addresses every possible sex offense from the most egregious to the most moderate.

Now, there are E&D felonies related to what used to be called statutory rape here. These are not good deeds by any means. They

are deserving of punishment. But I really question the exclusion of anyone just because they were convicted of a sex offense, as opposed to attempted murder or assault with a deadly weapon, from having any possibility of eligibility for such a program.

I feel very strongly about the benefits of community service and work release programs. I worked in a prison with a work release program, and while it was controversial getting it started, the benefits were tremendous.

Most people in our prisons are coming back into our communities. We may not like it, but it's the truth. And if we provide them ways to reintegrate themselves, if we deal with the reentry component of our correctional system in a productive way, there is a better chance they will become good members of the community, they will become taxpaying members of the community, they will reintegrate themselves successfully.

So anything that closes off even the tiny loophole of allowing approval for a program with the written approval of the

commissioner I have to strongly object to. I realize that there's a lot of public agitation about sex crimes just because of the nature of the subject matter. But Article 130, which is what would be covered under this bill, addresses a lot of crimes. And some of them are much more modest than crimes which are not excluded under the current statute.

So I'm going to vote no on this. I think that we have to consider carefully whether or not there is a certain degree of overreaction. It may be that if the statute was redrafted to limit its application to certain of the crimes that are covered under Article 130, it would be something that would win bipartisan support and could pass both houses.

Under the present circumstances, I'm going to vote no and I would encourage everyone else to vote no.

Thank you.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: I have one question for the sponsor, if he will.

ACTING PRESIDENT MEIER: Senator Alesi, do you yield for a question?

SENATOR ALESI: Yes, I'd be happy to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: I don't see any distinction in your legislation between Level 1, 2, and 3. Is that correct?

SENATOR ALESI: The bill simply states someone who is convicted and is serving time as an inmate in a state prison for sex offense, without any regard to what level of sex offense, shall not be permitted to work in a community service application.

SENATOR STAVISKY: Thank you.

I have been troubled by the fact that we do have a Level 3 offender living in my community. The problem with a Level 3 offender is the likelihood that they will go ahead and commit a similar crime again.

I'm going to vote for this bill, but I think there ought to be some distinctions between the levels that are provided under the law.

SENATOR ALESI: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Alesi, on the bill.

SENATOR ALESI: I feel very strongly that, with regard to the question of the discretion of the commissioner, in almost every other case this house recognizes that the discretion of the commissioner is vitally important to the operation of our state's facilities.

But this house also recognized just a couple of weeks ago, when we passed a civil confinement bill, that the recidivism rate of sex offenders is extremely high. It is predictable. And in the case of any inmate who would otherwise be released into community service while still serving time, is a threat to the community.

And this is based on allegations that at least in one case in my area that someone who was a convicted sex offender was allowed community service work in a hospital and allegedly raped a 17-year-old volunteer candy striper.

There's absolutely no reason why an inmate who otherwise would not be allowed on a work release program should be allowed on a community service program. These people are a danger to the community. We know that the recidivism rate is predictably high. And I would urge my colleagues on the other side of the aisle who have spoken against this to reconsider their position.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1137 are Senators Andrews, Duane, Paterson, and Schneiderman. Ayes, 53. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Sampson.

SENATOR SAMPSON: Mr. President,

I'd like unanimous consent to be recorded in the negative on Calendar Number 1086, Senate Bill 127.

ACTING PRESIDENT MEIER: Without objection, Senator Sampson will be recorded in the negative on Calendar 1086.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1138, by Senator Nozzolio, Senate Print 963, an act to amend the Correction Law, in relation to conforming civil immunity protection.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, Senator Schneiderman has requested an explanation of Calendar 1138.

SENATOR NOZZOLIO: Thank you, Mr. President.

That this was a measure that has been discussed on this floor before. Senator Schneiderman and I have discussed this measure that I put forward to ensure that employees of the Office of Mental Health who work in our

New York State prison facilities have the same protections for civil litigation against them as every other employee who works within the prison facilities.

This measure requires that claims for damages arising out of the acts of any OMH employees shall be brought in the Court of Claims, as against the state.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: The sponsor is correct, we have discussed this before. So I will move right to the summation and dispense with the cross-examination today.

My difficulty with this piece of legislation is very straightforward. It is one of a series of bills that are advanced in this house -- and happily, from my point of view, do not pass the Assembly -- that seek to limit the right to trial by jury.

What we have in New York State is

an effort by those who are the opponents of the civil justice system who style themselves as tort reformers, recognizing that they're not achieving the broad reforms in the tort law that they seek, to chip away at the problem by creating a two-tier system of justice in the State of New York.

And this sort of legislation, I believe, in many respects is even more invidious than the broad proposals that would at least change the tort system for rich and poor alike. This legislation would mean that if you are severely injured by the misconduct of an OMH employee outside of a Department of Correction mental health facility -- say, you're meeting with someone or being treated with someone in some other context -- you would have the right to sue and have a trial by jury.

If you are someone who happens to be -- and usually these are people who are poorer, more poorly educated -- and you're in a Department of Correction mental health facility, you don't have a right to trial by jury.

Similar bills have been proposed saying that if you're in a public housing project, you don't have a right to trial by jury. But if you're injured in front of a fancy Park Avenue co-op, you do.

What we're essentially doing here is creating a system in which poor people, people who are in mental health institutions, people who are in public housing, people who are -- and there's a proposal even for people who are using mass transit, are in the back of the bus when it comes to our civil justice system.

And I think that that is a very dangerous road for the State of New York to go down. You should not have your fundamental constitutional right to a trial by jury be determined by your wealth. You should not have your fundamental right to a trial by jury be determined by whether or not you're in a mental health facility or you're outside of a mental health facility.

And I would respectfully submit that it's antidemocratic, I think, at best to try and take trials away from jurors. I think

that this is not something that was stuck into the Constitution on a whim. This is a fundamentally important right to all Americans. It has worked well for us, I believe, over the last couple of hundred years. I don't think anyone argues that the economic growth of the United States in its first 200 years was hampered severely by the fact that pretty much everyone had a right to a trial by jury. And I think that the so-called tort reformers are taking us in the wrong direction.

But having said that, and given the fact that the enemies of the civil justice system are not able to change the law as they see fit, we should not pass these bills that create a two-tier system of justice. I would urge that for the well-to-do, for people who are on the outside of these facilities, for people who are outside of public housing projects to have the right to a trial by jury while we pass bills to take that right away from those who are inside these facilities or in public housing is really a terrible statement about the justice system in the

State of New York.

So I'm going to be voting no, and I would encourage everyone else to vote no as well.

Thank you.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR LIBOUS: Thank you, Mr. President.

I just want to applaud my colleague Senator Nozzolio. As the chairman of the Mental Health Committee, I think it's extremely important that those employees of OMH who work in our prison facilities are protected and they have the same immunity to those civil damages that other employees in this prison system have.

And while I have great respect for

my friend and colleague Senator Schneiderman, I think Senator Nozzolio has done us a great service in protecting those individuals.

ACTING PRESIDENT MEIER: Senator Libous will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1138 are Senators Duane, Hassell-Thompson, Paterson, and Schneiderman. Also Senator DeFrancisco. Ayes, 52. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR ALESI: Mr. President, may we -- I beg your pardon.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: I request unanimous consent to be recorded in the negative on Calendar 1117, Senate Bill Number 3031, please.

ACTING PRESIDENT MEIER: Without objection, Senator DeFrancisco will be recorded in the negative on Calendar 1117.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. May we return to reports of standing committees, for a Finance report.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations.

As a member of the Capital District Transportation Authority, C. Michael Ingersoll, of Saratoga Springs.

As a member of the Niagara Frontier Transportation Authority, Stephen G. Juhasz, of Amherst.

As a member of the State Racing Commission, Lorraine Power Tharp, Esquire, of Saratoga Springs.

As a member of the Advisory Council to the Commission on Quality of Care for the Mentally Disabled, Milo I. Tomanovich, Esquire, of Rochester.

As members of the State Hospital Review and Planning Council, Kevin N. Hill, of

Pittsford, and Stephens Marshall Mundy, of Clinton.

As a member of the Board of Visitors of the Brooklyn Developmental Disabilities Services Office, Era Fischetti, of Brooklyn.

As a member of the Board of Visitors of the Capital District Developmental Disabilities Services Office, Marcella B. Ryan, of Hudson Falls.

As members of the Central New York Developmental Disabilities Services Office, Robin E. Ullman-O'Brien, of Clinton, and Shirley Mary Wilcox, of Little Falls.

As a member of the Board of Visitors of the Creedmoor Psychiatric Center, Lula Fisher, of Queens Village.

As a member of the Board of Visitors of the Finger Lakes Developmental Disabilities Services Office, Bernice Ziehm, of Webster.

As members of the Board of Visitors of the Richard H. Hutchings Psychiatric Center, Nancy E. Kroot, of Cortland, and Daniel Mancini, of Oneida.

As a member of the Board of Visitors of the Mohawk Valley Psychiatric Center, Barbara L. Lovaglio, of Rome.

As a member of the Board of Visitors of the Pilgrim Psychiatric Center, Davis Pollack, DDS, of Bay Shore.

As a member of the Board of Visitors of the Queens Children's Psychiatric Center, Willard Hill, of Springfield Gardens.

As a member of the Board of Visitors of the Rochester Psychiatric Center, Pamela S. Frame, of Rochester.

As members of the Board of Visitors of the St. Lawrence Psychiatric Center, Orman Bomyea, of Malone, and Joanne M. Charleson, of Canton.

As a member of the Board of Visitors of the Staten Island Developmental Disabilities Services Office, Christine Dickhut, of Staten Island.

As members of the Board of Visitors of the Sunmount Developmental Disabilities Services Office, Richard W. Bossert, Ph.D., of North River, and Paul A. Maroun, Esquire, of Tupper Lake.

And as a member of the Board of Visitors of the Valley Ridge Center for Intensive Care, Stephen M. Bernardi, of Norwich.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nominations, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominees. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bills:

Senate Print 7317, by Senator Bruno, Concurrent Resolution of the Senate and

Assembly;

7318, by Senator Bruno, an act to amend the State Finance Law;

And Senate Print 7332, by the Senate Committee on Rules, an act making appropriations for the support of government.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills are ordered directly to third reading.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. May we take up Calendar Number 1403 at this time.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1403, Senator Bruno moves to discharge, from the Committee on Finance, Assembly Bill Number 11231 and substitute it for the identical Senate Bill Number 7317, Third Reading Calendar 1403.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1403, by the Assembly Committee on Rules, Assembly Print Number 11231, Concurrent Resolution of the Senate and Assembly proposing amendments to Articles IV and VII of the constitution.

ACTING PRESIDENT MEIER: The question is on the resolution. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: On the bill, Mr. President.

ACTING PRESIDENT MEIER: We'll withdraw the roll call, then.

Senator Hoffmann, on the resolution.

SENATOR HOFFMANN: Thank you very much, Mr. President.

This is a very proud day, in many ways, for this chamber and for the other chamber as well. This represents the culmination of years of work by some very dedicated people who have tried repeatedly to

find ways that we could guarantee an on-time budget in the State of New York. Overshadowed, perhaps, by the fact that this year the budget is once again late, it should nevertheless be marked as an historic moment in New York State government history.

This, along with 7318, to be voted on momentarily, reflect the hard work of the conference committee led in this chamber by our Finance chair, Owen Johnson, under the guidance of Majority Leader Bruno himself.

And it reflects the will of the people of this state far better than most of us can actually express today, because the mood out there is one of great dismay that the budget has been late for 20 successive years. All of us are being held accountable for that, some of us a little bit more than others, I'm sorry to say.

But those of us who would like to be able to go home, with pride, to say that we can now promise that once we have passed this constitutional amendment by two successive elected legislatures and then by the people of this state, beginning in the year 2006, never

again will there be a late budget.

I compliment the leader of the conference committee in this house, my dear friend, the esteemed Senator Johnson; all the members of the conference committee who worked so hard; Senator Bruno, for having the wisdom to get the conference committee up and running; and the members of the other house who have partnered with us to make this historic event occur.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

As my colleague Senator Hoffmann stated, this indeed is a historic day and hopefully moving forward what has kept us behind schedule for some twenty years.

And before I make my comments on the resolution, I want to again thank Senator Bruno for his leadership, Senator Johnson, and certainly my colleagues, Senator Kuhl and Senator Velella, on this committee that worked so very hard on, and Senator Oppenheimer from

the other side of the aisle, who was a major contributor.

I think, because we are in the process right now of another late budget, the magnitude of what we're doing here is probably going to be overlooked by the media. But it shouldn't be. And I just want to talk about that for a moment.

After twenty years of frustration, I think we should all be extremely proud that we have an opportunity and a document before us that will actually move the process forward and allow us to do those things that sometimes bog us down and make us frustrated.

The resolution, as was stated, will have to pass this year and have to pass again next year. I think that's critical and important for everyone to recognize. And then, even more importantly, will go before the public or the voters in 2005.

And I think why we have an outstanding package here, as we change the date back to May 1st, then we have the opportunity to have a contingency or default budget go into place, I think that it will end

once and for all the quagmire of late budgets.

And, Mr. President, as a member of the conference committee, I now would like to just -- I see Senator Bruno has entered the chamber, and I would like to just thank Senator Bruno for his leadership, Senator Johnson.

And this, once and for all, on this very historic day, once it goes into effect after the voters vote in favor, will end the late budget cycle that has presented to us. And I think all of our work has to move forward in the fact that we then have to next year convince the public that moving the date, putting a contingency budget into place, doing the many things that are incorporated in this bill are important.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I too would like to join my colleagues that preceded me in debate on this issue -- not really to debate the concept of what we're doing here, but to actually commend the people who have been involved in this

process.

Now, this process really of budget adoption has been in its current form for decades and actually centuries. And so what we're changing here today is really very historic, because it's a process that, as I said, has been in existence for many, many years and admittedly has been flawed for many, many, many years.

But the process that brought us to where we are today and what we're doing today really started about ten years ago with the election of our current Majority Leader, that being Senator Joe Bruno. Senator Bruno, when he was elected to become the Majority Leader in 1995, told many of us who were parts of this chamber that in fact we're going to devise a new process called, quote, unquote, joint conference committees, that essentially we're going to take a proposal from the Assembly and one from the Senate which really were different, maybe, in details but were similar in concept, and bring those together by sitting members down in open, in public, and essentially debating the issues within the

four corners of each -- what we call the four corners of each bill that was there.

I was lucky enough to be appointed by Senator Bruno to serve on the very first joint conference committee. Many of you may remember that. That conference committee dealt with raising the speed limit from 55 miles an hour on many of our state and federal highways in this state to 65 miles an hour, and that came as a result of authorization from the federal government where we were no longer penalized for doing that.

Well, that joint conference committee came to a conclusion, a successful conclusion, and we raised over a thousand miles of highways from 55 miles an hour to 65 miles an hour.

There have been many joint conference committees since then, and many successful. And we've actually implemented that process into the budget adoption process. And many of you remember that, where we have debated the issues on the budget where there were differences of opinion between the houses, and we've done that successfully to

conclusion.

Well, this is perhaps the most historic joint conference committee's report, and that is dealing with what we call a concurrent resolution before us right now, at this moment, which will change the method by which we adopt a budget forever. So that there will no longer be the ongoing criticism of this house and the other house for late budgets, because that will be ended, once adopted, forever. In other words, we will have a budget in place on time all the time after this.

I think it's probably the most historic moment really on the floor of this house in the 24 years that I've served in the State Legislature. And it all comes from the leadership that we have sitting here in the chair right ahead of me, Senator Bruno. And certainly Senator Johnson has done a wonderful job, Senator Libous, and the other members of the joint conference committee.

But, you know, while this joint conference committee was successful in succeeding in concept, there's a tremendous

amount of detail that's involved. And all you have to do is to pick up one of the bills, the concurrent resolution or the bill on implementation, and you can see that there's a tremendous amount of detail that's involved in this. And we've had staff on this now for about three months. So they have been very, very good at dotting the Is, crossing the Ts, and they've done a wonderful job in both houses bringing this to conclusion.

So I stand here before you today to compliment all the people that have been involved in this process, starting back with Senator Bruno's initiation of the joint conference committee and leading right up till today's adoption.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Thank you, Mr. President.

I stand here to eliminate a misapprehension which I shared with some others that this process began eight or ten years ago in this house and the other house.

And looking over my notes, I found out that Senator Bruno introduced this default budget procedure back in 1985, which is a lot more than ten years ago. So he's always been a leader, and I think he has waited more than anyone to get this process done.

And I commend him for appointing myself, which I appreciate, Senator Velella, Senator Kuhl, Senator Libous, and Senator Suzi Oppenheimer to work with the Assembly and try to get this together.

The fact that we've been successful, there's been a lot of moral support from everyone in both houses, both parties, and we're today almost at that historic moment where the process will lead inevitably to a reform process.

I want to just praise the Senate Finance Committee director, Mary Louise Mallick, and her staff for all the work they've put in, not just giving us advice or checking in with them over the six weeks or eight weeks of discussion, but for finally putting this bill together with the Assembly.

It is a historic achievement. I'm

pleased to be a part of it. And you all should take pride in it as well, because you're all going to be lauded by your constituents for finally getting budget reform going.

So thank you very much, and let's go on.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President and colleagues.

This is an exciting moment. And thank you to the chair of this conference committee, and all the members, and Senators Kuhl and Velella and Libous. This was extremely difficult -- and Senator Oppenheimer -- to get an agreement on, because we have been at this for ten years, literally, all of us in some way or other, trying to get this done.

We have it done. And we have it done in a way that I believe meets all of the requirements that a constituency out there would have for good government. And that's a credit to everyone in this chamber and to

everyone in the Assembly, that we could close on something as complicated as this and have a resolution on the floor to change the constitution of New York State and a bill that then implements a constitutional change.

So this truly is a credit to the whole process of governing. And what is so important for all of us to recognize is that we must get a constitutional change in order for the law, the bill that we're going to take up as part of what we're doing to be implemented. So it's a cart and horse, the chicken and the egg, but they go together.

And if life goes the way we would like to have it go, this resolution will be passed this year, and with the bill, the implementing language, it will pass second passage next year, and that's in '05, it will go before the voters in November. The voters approving that, the language will be in place.

Then the cycle starts to move the fiscal date to May 1st, which is part of this, create the independent budget conference committee, so to speak, that will help with the numbers that we always get hung up on in

some objective way, and it starts the whole process early. From the Governor through the amendment period, it shortens that, the public exposure. And it also deals with the contingency that when last year's budget goes into place, if we fail to agree on a budget and the revenues aren't there, this deals with that contingency.

And I'm sure the chair of Finance can talk about the ramifications of that. Because the intent is that if that's the case, there will be uniform cuts, with exceptions like those that are mandated in health care and in school aid and things like that, that we will then deal with separately and independently.

But the constitutional change allows us to have a contingency budget upon the failure of our agreement. Now, that's not to say that all of us won't be diligent in trying to get a budget agreed on legislatively and signed by a governor. This is not the intent.

In fact, when you examine this closely -- and I'm sure all have you have and

will -- you'll find that there's compulsion built into this, for us as a Legislature and with the Executive, to change the budget that goes into place in a contingency so that we still have to negotiate and agree as an elected, representative body. And that's critical to, I believe, all of our lives.

So again, I want to just thank the chair, Senator Johnson, and the committee members and all of you, my colleagues, and the Speaker and the Assembly for their diligence in staying with this. Because we had a very difficult time in getting what we all thought was agreed on policywise into print, word for word. That's always a challenge for all of us, because the spoken word is interpreted many times in different ways.

So we are here, and I'm grateful to all of you for your diligence, for your patience, and for your support.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I too would like to thank Senator Bruno for putting this conference committee together, to the members, especially Senator Libous, who -- he claims that he has been agonizing over the budget for twenty years. But, Tommy, we've only been here 16.

(Laughter.)

SENATOR ADA SMITH: But I'm extremely pleased because the amendment takes into consideration all of the things that we have been saying over the years about the budget. And finally we are at the crossroads where we can go home and proudly say to our constituents: We have done the job, hopefully it is up to you, you must go out and vote and make sure that it becomes law.

Thank you.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

I have tremendous respect for the amount of work that went into this process. This is extremely complicated. I think it does show the success of the conference

committees.

But I would like to caution my colleagues we have a long way to go before making this resolution a reality. Constitutional amendments, there are a lot of complex issues. And there is another participant in the process who I hope we can get engaged, and that is the Governor, who has as yet been silent on this issue.

And I hope that the Executive branch will note the bipartisan unanimity on this -- both houses, both parties -- and get involved, because we do need his support if we are to make this resolution into a reality that has been sought by so many of my colleagues for so many years.

As Senator Bruno knows, on our side of the aisle we're in strong support of this as well. And I would offer to use my influence with the Governor to get him on board, but I'm not sure that would be of assistance. But I will do whatever I can do.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

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

I'm also very pleased to stand up today and say that I am proud of both of our houses, both parties, for moving forward with agreements on some significant changes to budget reform, both through the constitutional amendment and through the enabling legislation that I believe we'll be moving forward with.

I too agree we still have a long way to go. We have to get this passed two sessions of the Senate and the Assembly and bring it to the voters. And I think we'd all agree that perhaps from no one's perspective are they perfect bills. But it is an opportunity to significantly improve the budget process in the Legislature, something that I have only been fighting for for about 3 years, 2½ years here in the Senate.

And so I'm very pleased, after all of my raising this issue and in fact sometimes criticizing my colleagues -- where are we, why isn't this coming -- to be able to stand here and thank both houses, both parties for working together.

I'd also just like to highlight, and I think Senator Kuhl said it before, when we come together, when we have standing conference committees, when we sit down and we negotiate out differing visions of the same goals, we make progress. This year we've seen a number of conference committees; not only the budget reform conference committee, we have the ongoing HAVA, Help America Vote Act, conference committee that I think is making some progress in both houses. We have the Rockefeller Drug Law reform conference committee that's just started. We might have a lobbying reform conference committee before the year is out.

And I would just like to offer up to my colleagues to review a bill that I've submitted, S498, which would call for the appointment of an ongoing standing committee on conference to resolve differences between similar but not identical bills between the houses.

Certainly the budget reform progress we're making today is a reflection of when both houses, both parties, sit down and

try to work out differences. I think it's been an excellent model and a success -- thank you, Senator Bruno -- and hope we can use it more often, because I think we make progress with it.

So I'm very pleased to be here today to participate in this event, and hope that we will bring this to completion with passage of the constitutional amendment over the next year and a half.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: Twelve years ago I ran for this office pledging that I would end late budgets. It's a little late, but we're ending late budgets. And I'm sure anybody who has been elected to this office in the last 16 years made the same pledge to voters -- over and over and over again.

And quite frankly, for all of us, it's probably been the most embarrassing part of this job, to go back home and try to explain a system that made absolutely no sense.

And because of the determination, I think, of Senator Bruno primarily, year after year, passing our budget bills, having news conferences, inviting the Assembly to show up for a meeting, to keep pushing the issue and pushing the issue, now the issue at least has been passed for the first time, budget reform.

In fact, I had one of those contingent budget bills; it was one of my first bills that I introduced. And everybody had their own version of it. But the fact of the matter is that's the lynchpin of the whole process, I think, that something goes into effect if we fail to meet that May 1 deadline by a new budget.

So I am very pleased that this day has happened, has occurred. And I know Senator Bruno has pledged to again pass this bill next year, and I'm sure the voters will see the wisdom of this new system.

Secondly, as Senator Kuhl mentioned, I think it's important to recognize the importance of the conference committees. Because it's pretty easy to hide behind the position when the discussions are really

behind closed doors.

But being a member of the Rockefeller Drug joint commission, when you have to debate things publicly and put your positions out on the table for the public to scrutinize, I believe there's a much stronger, a much greater chance of coming to a resolution.

So that process has also been extremely helpful, and hopefully it will be expanded.

So this is a good day. I'll be more relieved once the voters pass it next November.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yes, I also would like to stand and speak on behalf of this bill, which has been long in coming. And the leadership should be thanked on both sides of the aisle for working it out before December 31st of this year.

As one of my colleagues said, constitutional amendments are difficult to pass and go through. It needs the support of

everybody in this house over the next two years, and a major endeavor to convince the voters that this is superior, though not perfect, to what we've had before.

I also would like to bring to your attention the fact that conference committees are important, but they cannot resolve all issues. There should be complete transparency in the workings of the conference committees, as all other committees in this house of the Legislature.

Thank you.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I just wanted to congratulate all the leaders and the members of the conference committee. It's something we've talked about for a long time, and it's something that we've finally proven really does work. Sometimes you get a few different voices in on the discussion. Both sides have goodwill, but perhaps both sides just need a different perspective, and maybe that's what we saw

here.

And so we are now starting to ratify the agreement that was reached by the Speaker and the Majority Leader -- who sits right here, proudly -- on March 31st. And we are quite happy to support it. We appreciated the opportunity for many of us to be part of the legislation. This is what I think we all signed up for when we got into public service. And I think this is a real great day, not only for the Senate but for the Legislature.

And we have other conference committees, one that was called by the Majority Leader of this house on the Rockefeller Drug Laws issue. And I appointed myself to the committee to demonstrate how important we think that issue is. But there are several others, relating to the Help America Vote Act, lobbying reform, and other areas that I hope we'll address before we get out of here.

But this is certainly a step in the right direction and one that demonstrates that in spite of the fact that we have campaigns, and it's our duty really as Americans to

present a different point of view and to let it be voted on biannually, in our case, and our quadrennial referendum on leadership and presumably policy from Washington, that we would oppose each other in that way as we present our different views to the public, but here in this chamber that we can work together on both sides of the aisle.

Thank you.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you, Mr. President.

The actions that we take here on this floor define the relatively short period of time that any of us are here. May we be remembered for putting in place an important piece of legislation long overdue, as all of you have said.

My sincerest thanks to the members of the conference committee, the leaders of the conference committee in both houses for making it possible to be a part of this landmark piece of legislation.

The victory here today is maybe not

ours. I think maybe the people of New York have finally won one, and the democratic process has also won one.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, I too join my colleagues in recognizing that this is a historical day.

And I certainly intend to vote for this here. But I'm also a little bit disappointed in the fact that we had to get to this process. Because I've been here for 21 years; I was fortunate enough to vote on one budget that was on time.

And it goes to prove that if we put our heads and shoulders together with these conference committees, if we had started them right from the get-go, perhaps we wouldn't require a constitutional amendment to make us do what we're all elected to do, to pass a budget on time. I don't think there's any other state in the union that has this passed to get their budget done.

So it's a step in the right direction, and I hope that next year that this

committee meets a lot sooner so that we get the budget done ourselves, not one passed by the constitution.

I intend to vote yes.

ACTING PRESIDENT MEIER: Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

You know, when Senator Bruno became the leader of this house, he promised each and every one of us that we would do what was in the best needs of the people of the State of New York. More than one time in our discussions he reminded us that local governments have a responsibility to have a budget in place, and if it doesn't happen, then a previous budget falls into place.

He's tried for many, many years to forge both houses together to look at what was going to go on and how we would do it.

This, as my colleague Senator Kuhl said a few minutes ago, is a most historic date for us in this state. We are finally going to give the people of the State of New York an opportunity which they are solely

entitled to, to vote to tell us that this is the way it must run.

But, you know, without leadership and without dedication, none of this would happen. Yes, I'm sure there's days when the Majority Leader would have liked to kick each one of us in the britches -- just the men I'm speaking of -- and get us in line to make some of these moves.

But this is important. We also must make sure that we go out and we let everybody know that this is finally the end of twenty years, that we are now going to put something in place that's going to take care and focus on government just as it does at towns, villages, cities, and counties.

I commend the Majority Leader. I know the hours that my colleagues -- Senator Kuhl, Senator Johnson, Senator Libous -- put together on this were time-consuming and at times probably frustrating. But thank you for keeping your eyes on the wheel and the goal. And thank you, Senator Bruno, for your leadership.

ACTING PRESIDENT MEIER: The

Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Calendar Number 1404.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1404.

THE SECRETARY: Calendar Number 1404, by Senator Bruno, Senate Print 7318, an act to amend the State Finance Law, in relation to establishing a procedure.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 39. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1405.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 1405.

THE SECRETARY: In relation to Calendar Number 1405, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11277 and substitute it for the identical Senate Bill Number 7332, Third Reading Calendar 1405.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1405, by the Assembly Committee on Rules, Assembly Print Number 11277, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of necessity and appropriation signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested by Senator Schneiderman with regard to Calendar 1405.

SENATOR JOHNSON: Mr. President, this is another emergency appropriation bill which will pay the bills from May 24th through May 31st.

It appropriates $2.3 billion: $600 million for Medicaid; $368 million for

temporary disability assistance programs; state payroll requirements, $196 million; $112 million for school aid payments and other incidental items.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

I've spoken before about my objection to this process of us doing one-week budget extenders. And we are now approaching the Memorial Day weekend and another holiday for legislators. And frankly, I feel that we don't really deserve a holiday this year because the most fundamental part of our job, which is passing a budget to provide funds for all the programs that we purport to care about, seems to be beyond us.

And I have voted no on these extenders. I've been joined by a dozen or so of my colleagues on this side of the aisle. This is the appropriation bill; I'll vote no on this and on the language bill.

But I would urge my colleagues that in my district, at least, people are not

buying the notion that we can't pass a budget because we can't figure out a way to fund the high-needs school districts identified in the Campaign for Fiscal Equity case.

And everyone seems to be saying that, oh, there are technical reasons, there are problems, there are reasons we can't fund it. On March 31st, Senator Paterson rolled out our conference's proposal for the budget. And I have broken out of that, or had the staff break out of that our proposal for education funding.

We identified sources of revenue explicitly. We identified how we can have a $20 billion capital program over five years. We identified how we can provide a billion dollars in operating aid for this year and $10 billion over five years without going over the total number of the budget that was proposed by the Governor in the Executive Budget.

So we're proud of our work on this and our staff's work and Senator Paterson's proposal. I would urge my colleagues that the excuse that we can't pass a budget because we

can't figure out a way to provide money for schools that have children being taught in bathrooms and in hallways, we can't find money to provide enough books so that students have up-to-date textbooks, we can't provide enough money so that the poorest districts aren't saddled every year with the least experienced, most poorly trained teachers, is just not cutting it.

We can provide the money. The money is there. We have identified specific sources of revenue. I'm going to vote no because we should be staying here until we resolve this issue. It is time for us to provide funding for the schools.

The plaintiffs in the Campaign for Fiscal Equity case have scheduled a conference for June 4th with the judge. They have already made a request to appoint the master early so he can get up to speed before -- or she, before the July 30th deadline.

We should not allow the school funding formula of the State of New York to go to a special master appointed by the judge. It is really a shame that we've come this far

and that we're going into the Memorial Day recess without addressing the issue.

Once again, you're all welcome to any help we can give you. Senator Paterson laid this out on March 31st, and the numbers, if anything, look even better today as some of the sources of revenue have actually grown.

So I will be voting no again, Mr. President. There's no reason we can't pass a budget and provide fair funding for schools, and we should do so before we leave town.

Thank you.

ACTING PRESIDENT MEIER: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

I would suggest to the speaker representing the Minority, and to the Minority Leader, several things.

First, the Senate is prepared with a plan that would do exactly what you say, provide a reasonable amount of money for those districts statewide where needs have been identified that are unmet, within the existing stream of revenues that we can anticipate this

year and in the coming years over which the plan would be appropriately applied. There's no doubt we can do that. And we're prepared to do that.

I would suggest to you, however, that you take a walk over on the other side of this Capitol and advise the Speaker that we're prepared to do that and for him to put in place his plan that is compatible with what you just said and what we are saying.

Now, this message has been conveyed time and time again. But for some reason, we're not getting a response back. The last thing in the world we want to have happen is for this issue to be turned over to a master, preempting our responsibilities and doing those things that would only relate to the City of New York and not to many other districts throughout this state where there are identifiable needs, whether it's Rochester, whether it's Yonkers, whether it's Albany, Buffalo, wherever it may be.

You should know, if you don't already, that we want to do that in this house. And our impediment at this point in

time is the Assembly. So if you have any influence with that leadership or members of that house, get them to put down, as we have already done, before those individuals who meet, a plan of action that would respond to your well-stated aim as well as ours.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I certainly believe that opening up the process a little more would be helpful in this particular case. And I'm having all sorts of requests for influence I don't have today with the Governor and with the Speaker, but I'm happy to do whatever I can do.

I do think that it would be very helpful if the Senate has a plan for us to get it out in the open and talk about it. I think that the difficulty here is that everyone claims they want to fund the high-needs school districts. And Senator Paterson's proposal does address the statewide need to expand the CFE decision, essentially, to include Buffalo and Yonkers and Syracuse and other areas.

And Senator Padavan rightly points out that if we go back to the master, that master will only have the jurisdiction to order additional funding for New York City schools. So all of those other school districts will be the biggest losers.

But everyone seems to say we want to do this -- and we hear some of the same sort of references from our colleagues in the Assembly -- but no one wants to put their plan out in the open and show where we're going to get the money to do it. And I think we're in a -- sort of a game of reverse chicken here.

We have to get a proposal on the table. We have to get something out there so we can say to the public we're fighting about this. I would love for us to start -- if you want to just edit and mark up Senator Paterson's proposal, we have said what people are afraid to say: here's where we're going to get the money.

We're going to close corporate loopholes that would raise $310 million. It was done in New Jersey, raised hundreds of millions of dollars. So the people whose ox

would be gored by that move could identify it, criticize us.

Empire Zone reform, $75 million a year; Bottle Bill expansion, $168 million a year. Enacting combined reporting for taxes, which is just ludicrous that we don't have this -- other states do -- $450 million a year.

We've got a proposal. If my colleagues on the other side of the aisle in this house have a proposal, let's put something on the table. We're not getting anywhere waiting for the other house to come out with a proposal and, you know, identify their sources of revenue. And maybe we should just bite the bullet and go first.

We will certainly do whatever we can do to encourage our colleagues in the other house to step up to the plate. They have expressed their willingness to significantly expand funding for high-needs school districts. But this game of reverse chicken where no one wants to move forward is not working. So perhaps an approach of getting some more of this out in the open

would be appropriate.

I think that at least for what we can do in the Senate Minority, we have tried to do so. We've identified sources, we've subjected ourselves to the criticism of those who would pay the taxes. And I think it's time for some of the Majority members in this house and the other house to join us in acknowledging the fact that we're going to need to fund the high-needs school districts somehow, whether we do it ourselves or whether we're ordered to do so by the court.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, would Senator Schneiderman yield.

SENATOR SCHNEIDERMAN: I would be honored to yield.

SENATOR SKELOS: Just -- you identified some of the sources of revenue. Out of curiosity, under the Minority's plan, would the existing formula that has been developed on aid to education be maintained?

SENATOR SCHNEIDERMAN: This is

actually a budget proposal that identifies the funding. And it does not specifically addressed the funding formula. We also have proposals to support changing the funding formula, but that's not included in the proposal.

My point is simply is that the excuse for not passing a budget is the claim that we can't identify the revenue.

I certainly also support reform of the funding formula, but that is not an issue that's addressed specifically in the plan that I was referring to.

SENATOR SKELOS: But you would look to handle the so-called CFE issue, but you do not have a total education package yet prepared by the Minority in terms of what the suburban schools would get, Long Island, the City? You work within the formula, or do you work outside of the formula?

SENATOR SCHNEIDERMAN: We did not identify the changes to the formula that we would seek to make. Obviously, under the CFE decision, we have to change the formula.

We have, however, identified the

sources of revenue, which appears to me to be the biggest stumbling block.

If your suggestion -- what I'm getting from this question is that in fact the Senate Majority is also able to identify sources of revenue, thus, you know, teeing up the issue of addressing the funding formula, maybe that is a way to move it forward.

I agree that there are still are difficulties on the issue of the funding formula. But I don't think there's any reason why we should delay all the other operations of the state and keep school districts in limbo by not passing a budget when the money is there to provide a down payment, even if we don't have a final agreement on the reform of the founding formula.

Our obligation under the Court of Appeals decision is to identify sources of revenue, assess the cost of a sound, basic education, and enact whatever reforms are necessary -- it's not just limited to appropriating money -- to see that every student in the state receives a sound, basic education.

So the requirement is that we have a plan in place prior to July 30th. I would suggest, as we come closer to that deadline, it might be necessary for us to appropriate some money this year by way of a down payment, which has been requested by the plaintiffs, have a provisional resolution, if we can't have a final resolution of some of these issues related to the funding formula, and avoid the imposition of a special master.

Because again, we disagree about a lot of things and we probably -- given the nature of your district and my district, we may disagree about how a formula should be drafted. But I think we all agree that a master taking over this process would be a very unfortunate result.

And I gather from the briefs in the case and from the arguments that have gone on so far and from the Court of Appeals decision that a provisional solution, as long as we're enacting appropriate reforms, might be -- it's not the ideal decision, but it may be necessary.

SENATOR SKELOS: Senator

Schneiderman, if you'd continue to yield, I appreciate a long answer to a very short question.

I guess my question really is, does the Minority's plan -- you plan to raise money, but you do not have a total plan in terms of education spending this year in terms of the City, upstate, and the Island and whether the formula will be maintained?

SENATOR SCHNEIDERMAN: No, that's correct. They're two separate issues.

SENATOR SKELOS: That's a perfect short answer.

SENATOR SCHNEIDERMAN: We have not issued a comprehensive plan for that.

We have, however, bitten the bullet on the first step, which is identifying the sources of funds.

SENATOR SKELOS: Thank you.

SENATOR SCHNEIDERMAN: Thank you.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1405 are Senators Andrews, Breslin, Duane, Hassell-Thompson, L. Krueger, Lachman, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 47. Nays, 12.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I would like unanimous consent to be recorded as a no negative on Calendar 1138, S963.

ACTING PRESIDENT MEIER: Without objection, Senator Liz Krueger will be recorded in the negative on Calendar 1138.

Senator Skelos.

SENATOR SKELOS: Mr. President, if you would lay aside Calendar Number 856, by Senator Volker, for the day.

ACTING PRESIDENT MEIER: Calendar 856 will be laid aside for the day.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: Yes, we have some housekeeping, Senator.

SENATOR SKELOS: Just -- I'd urge the members that we're not finished. We're going to do housekeeping, but we're then going to stand at ease.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Bruno, I wish to call up his bill, Print Number 6023, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 303, by Senator Bruno, Senate Print 6023, an act to amend the Public Authorities Law.

ACTING PRESIDENT MEIER: Senator McGee.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: Senator McGee.

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

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator Andrews.

SENATOR ANDREWS: I rise to sit back down.

ACTING PRESIDENT MEIER: All right.

SENATOR ANDREWS: Mr. President.

ACTING PRESIDENT MEIER: Senator Andrews.

SENATOR ANDREWS: Actually, Mr. President, I request unanimous consent to be recorded in the affirmative on the last bill that we just voted on, Calendar 1405.

ACTING PRESIDENT MEIER: Without objection, Senator Andrews should be recorded in the affirmative on Calendar 1405.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could just stand at ease.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 5:25 p.m.)

(Whereupon, the Senate reconvened at 5:55 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there's not.

SENATOR SKELOS: On behalf of Senator Bruno, I hand up the following committee change and ask that it be filed in the Journal.

ACTING PRESIDENT MEIER: The committee change will be received and filed.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 25th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, May 25th, at 11:00 a.m.

(Whereupon, at 5:57 p.m., the Senate adjourned.)