NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 22, 2005

3:04 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: With us this afternoon to give the invocation is the Reverend Andrew J. Zack, pastor of Love Joy Gospel Church in Lancaster, New York.

REVEREND ZACK: Thank you for the privilege of being with you. Would you bow with me.

Father, we are thankful for the many blessings that we enjoy at Your hand.

And, Lord, I thank You for all that is available to us, wisdom and power and strength. I thank You for each member of this Senate that serves you the way that they do. I pray for great wisdom and unity and blessing to be here in this room today.

In the name of Jesus, amen.

THE PRESIDENT: Reading of the

Journal.

THE SECRETARY: In Senate, Monday, March 21, the Senate met pursuant to adjournment. The Journal of Sunday, March 20, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we can temporarily lay aside the report of the Judiciary Committee and continue.

THE PRESIDENT: Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Nozzolio, I

move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Number 2506.

THE PRESIDENT: So ordered, Senator Farley.

Senator Skelos.

SENATOR SKELOS: Madam President, I move that we adopt the Resolution Calendar, with the exception of Resolutions 877 and 995.

THE PRESIDENT: All in favor of so adopting the Resolution Calendar, with the exceptions of Resolutions 877 and 995, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time, Resolution 877, by Senator Rath, could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Rath, Legislative Resolution Number 877, commemorating the 75th Anniversary of Cub Scouts.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Madam President, I'd like to open this resolution up for sponsorship by the entire membership.

THE PRESIDENT: Any member who does not wish to be a cosponsor of this resolution, please notify the desk.

On the resolution, all those in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a Resolution 995 at the desk, by Senator Spano. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Spano, Legislative Resolution Number 995, memorializing Governor George E. Pataki to proclaim March 22, 2005, as Diabetes Alert Day in the State of New York.

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 Skelos.

SENATOR SKELOS: Madam President, Senator Spano would like to open the resolution up for cosponsorship. If anybody wishes not to cosponsor it, they should notify the desk.

THE PRESIDENT: Any member who does not wish to be a cosponsor of the previous resolution, please notify the desk.

Senator Skelos.

SENATOR SKELOS: I have a Resolution 1014 at the desk. Can we have the

title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 1014, memorializing Governor George E. Pataki to proclaim March 25, 2005, as Greek Independence Day in New York State, and honoring the Federation of Hellenic-American Societies of Greater New York.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I'd like to put every member on the resolution. If they wish not to sponsor the resolution, they should notify the desk.

THE PRESIDENT: Any member who does not wish to sponsor this pending resolution, please notify the desk.

On the resolution, all in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is

adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could now go to the reading of the Judiciary Committee report.

THE PRESIDENT: The Secretary will read.

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

As a judge of the Court of Claims, Jill Konviser-Levine, of New York City.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

I rise to move the nomination of Jill Konviser-Levine to the Court of Claims. Her record was reviewed carefully by my staff. She appeared before the Judiciary Committee and was unanimously approved for recommendation to the full body to confirm the nomination.

And I would move her nomination to the Court of Claims.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, Jill Konviser-Levine is someone who I have known for many years, one of the brightest young people that I have known in the criminal justice area. She has a background going back many years to New York City, and of course represented the Governor in many, many negotiations over the years that I had some part in.

And I used to call her a very quick study. The problem is she was a much quicker study than I was, so that some of these issues that came across our desk very quickly, she was always much more on top of it than I was.

So I just want to say that she is one of the brighter people that I have ever known, and she'll be a great judge. And as the Governor knows very well, this is an excellent nomination to the Court of Claims.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, so oftentimes we have the people who are behind the scenes in this legislative dance, and they are truly the ones who move

issues forward.

And Jill Konviser, for years as the counsel to the Governor on criminal justice issues, would be one of those faceless, nameless people who would work day in and day out, through the night, time and time again to try to bring the parties together and advocate the position of the Governor, but at the same time come to a result.

And I had the privilege of working with Jill when we were doing the "Weapons of Mass Destruction" bill. And as many of you may or may not know, that was a very contentious issue. And what impressed me so much was that along with Joe Messina and Jill Konviser, we'd sit and negotiate for hours and talk about the most minute details of this proposal, and Jill would know about it. And the information would change, and Jill would know about it.

And she never lost her temper, she always had the eye on the ball. And frankly, in my practice, I've always wanted that in a judge. I've always wanted somebody who could have passion for the issue and for the facts,

but never lose perspective or their temper.

And I think that she's got the perfect temperament to be a justice, and she's going to be a great addition to the bench. I'm just sorry I haven't gotten the chance to do any more negotiations with her.

Thank you very much, Madam President.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I just wanted to add that, along the same lines that Senator Balboni just mentioned, I remember when Jill Konviser was with the Governor's office and she traveled to my office in Syracuse, with the Governor, to meet the Grieshaber family to start the discussions that led to a very significant piece of legislation that I know she helped to craft, Jenna's Law. A very significant piece of legislation. She was there from the ground floor.

What I didn't know was when she came, she had only been with the Governor for a very, very short time. She told me that

today. Which kind of surprised me, because she seemed to have a command of the issue.

So this is an excellent candidate, an excellent nomination by the Governor, and she's going to make a fantastic judge.

THE PRESIDENT: The question is on the nomination.

Senator Stavisky, first.

SENATOR STAVISKY: Very briefly, Madam President.

I have only heard the best things about the nominee from one of my neighbors whose judgment I respect immeasurably, and I'm delighted to support this nomination.

Thank you.

THE PRESIDENT: The question is on the nomination of Jill Konviser-Levine of New York City as a judge of the Court of Claims. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations and best wishes.

(Standing ovation.)

THE PRESIDENT: Judge Konviser-Levine is accompanied by her husband, William; her daughter, Sonya; her father, Verb; her sister, Estelle, and friends.

Best wishes for a great celebration and continued success, as we're confident you will have, Judge.

The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Jeremiah J. Moriarty III, of Franklinville.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I rise to move the nomination of Jeremiah J. Moriarty III for the position of judge of the Court of Claims.

We've reviewed in our office, through my staff, his qualifications. We had a hearing this morning in the Judiciary Committee, and this candidate was also unanimously recommended to the full body for confirmation as a judge of the Court of

Claims.

Probably the most important advocate for Judge Moriarty unfortunately cannot be here today, Senator McGee, in view of an illness. She sent a letter that she asked that I read in lieu of a seconding speech on her behalf.

"I regret that I am unable to be in the Senate chamber today to second the nomination of a man that I have known for many years as a friend, colleague and neighbor. As the representative for Southwestern New York, I am proud to give my support to Jeremiah J. Moriarty III, of Franklinville, for his nomination as a judge of the Court of Claims.

"Whether through government or charitable activity, Jerry Moriarty has touched the lives of hundreds of residents in the Cattaraugus community. Through his visionary leadership and deft understanding of the law, for more than 30 years Jerry Moriarty has dedicated his life to public service, holding various positions at all levels of government, including Cattaraugus County legislator and City of Salamanca attorney.

"Personally, I know him to be a gifted man of intellect with a fierce devotion to the law and a passionate heart for the community. I know that New York State will be well served with Jeremiah Moriarty on the bench of the Court of Claims.

"For this reason, I am pleased and proud to support the nomination of Jeremiah J. Moriarty III, of Franklinville, as judge of the Court of Claims."

And reviewing his record, these remarks by Senator McGee are right on point. And I'm proud to move his nomination.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, I hope my colleagues will excuse me. I know all four of these judges here quite well, especially Judge Moriarty.

Jerry Moriarty, I've known him since before, actually, we were in law school together. His father and my father served together in the Legislature. His father was one of the most distinguished gentlemen and legislators I've ever met. And Jerry himself, as I say, we were in law school together,

although he's a little younger than I am, and I practiced law with him.

I can only say that he's a gentleman. He's a wonderful example to the community. And I have to tell you one story. He's the only county chairman I know of who, several years ago, was able to elect a person who died nine days before the election.

(Laughter.)

SENATOR VOLKER: So congratulations, Jerry.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Madam President, I would like to echo Senator Volker's remarks. But I'd particularly like to respond and echo Senator McGee's remarks. I know how badly she feels, first of all, not being here, because of illness, but particularly today, because it has long been a dream of hers to be able to see Judge Moriarty ascend to the Court of Claims.

Those of us in Western New York all seem to know each other in Western New York, and the bench and the bar have had high regard for Judge Moriarty for a long, long time. He

will be a true addition to the Court of Claims, and I'm happy to stand up and speak on his behalf.

THE PRESIDENT: The question now is on the nomination of Jeremiah J. Moriarty III, of Franklinville, as a judge of the Court of Claims. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations, Judge Moriarty.

(Standing ovation.)

THE PRESIDENT: I'd like to also add my personal satisfaction that Judge Moriarty has been nominated. I've known him as a person of intellect, a fine lawyer, and a gentleman.

Best wishes for continued success, Judge.

Judge Moriarty is accompanied by his fiancee, Toni Litzinger; his daughter and son-in-law, Thomas and Kathleen Cristy and

children; his son and daughter-in-law John and Patricia Moriarty and children -- this is definitely a family affair -- his son Andrew Moriarty -- there's more -- his sister Mary Ellen Moriarty and nephew Nicholas Butterini; his brother and sister-in-law Daniel and Marylu Moriarty; his sisters-in-law Marianne Laine and Cindy Abbott-Letro; and his friends Dr. David and Susan Szczerbacki and Robert Sobeck.

Have a great celebration.

The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Melvin L. Schweitzer, of New York City.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Madam President, I again rise to move the nomination of another fine candidate nominated by the Governor, Melvin L. Schweitzer, of New York City, as a judge of the Court of Claims.

He also -- his qualifications were reviewed carefully by our office. He appeared before the Senate Judiciary Committee today

and also was unanimously recommended to this full body for confirmation.

He also has the strong recommendation of Senator Roy Goodman, a true legend in these chambers, who made a personal call to make certain that we did the right thing today.

So I'm proud to move the nomination of Melvin L. Schweitzer.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, I rise to second the nomination of Melvin L. Schweitzer and to commend the Governor on a fine appointment.

Melvin Schweitzer is also a graduate of Fordham Law School, joining the illustrious alumni of Fordham Law School on the bench in the Court of Claims.

Certainly his experience in government, economic development, government securities, public securities will stand him in good stead.

He was affiliated with one of the most distinguished firms in the country, certainly, if not in the world, Rogers &

Wells, which was founded by former Secretary of State Bill Rogers, who served under President Nixon. It was also a firm my long-time colleague Kierno Daugherty [ph] was associated with.

He has served for many years as a commissioner of the Port Authority and is a distinguished author and writer of many publications.

I again commend the Governor on this fine choice and second the nomination.

THE PRESIDENT: The question is on the nomination of Melvin L. Schweitzer, of New York City, as a judge of the Court of Claims. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations, Judge Schweitzer.

(Standing ovation.)

THE PRESIDENT: Judge Schweitzer is accompanied today by his family and

friends, including Maxine Schweitzer, Corinne Timor and Mitchell Friedman.

Have a great celebration, and good luck.

The Secretary will continue to read.

THE SECRETARY: As justice of the Supreme Court of the Seventh Judicial District, Matthew A. Rosenbaum, of Rochester.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I rise to move the nomination of Matthew A. Rosenbaum for the position of justice of the Supreme Court of the Seventh Judicial District.

His qualifications were also reviewed. He appeared and was unanimously recommended to this full body for confirmation. I proudly move the nomination of Mr. Rosenbaum.

Would you please recognize Senator Alesi to second.

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

This is quite an honor to welcome not only a dear friend but, from the appearance of it, the entire town of Penfield, New York, as well.

(Laughter.)

SENATOR ALESI: There's an old saying that the apple doesn't fall too far from the tree. As I look up into the gallery there, I see, just behind the nominee, somebody else that we might all recognize. Sitting next to his lovely wife, Judith, is former Justice Richard Rosenbaum and a former chairman of the Republican State Committee.

And when I think about his legacy and all of the things he has done for our community back in the Rochester area and in the entire state of New York, I think about the legacy that is about to become with his son, Matthew, who is our nominee.

He is eminently well qualified to build his own legacy, but it is true that many of the things he will bring to the bench he will bring as something that he was given as a question of heritage, not the least of which is his superb intellect.

In fact, Matthew and his father both attended the same college, although they went to different law schools. And I am sure that they both will apply -- or Matthew will at least display the same superb intellect that his father did. And he'll develop his own strength of character. And I know that firsthand from dealing with him.

He is a solid person and an upstanding member of our community. I think that the values that he will bring to the bench will be values that are a matter of learning the law but also understanding that when you apply the law, whether it is to a person or to a business, that justice deserves to be served with objectivity, but not in an impersonal way. And knowing Matt, I know that that is the kind of balance that he will bring to the bench.

Matthew Rosenbaum is, as I said, an upstanding member of our community. He was a partner in Gray Feldman & Rosenbaum, but he's also served the community in other ways -- volunteer legal services, as a hearing officer for the Department of Health, the Higher

Educational Services Corp. He's also on the board as a trustee of the Hillel School and the Jewish Community Center. He's also been recognized in our community as one of the people most likely to succeed by the Rochester Business Journal, honored as one of the 40-and-under people that were recognized this year.

But having said all of these things that come from a resume, I'd simply like to speak from my heart, recognizing Matthew and once again recognizing his family and the values that emanate from being a part of that family, a part of the community that I recognized earlier in the town of Penfield in the county of Monroe.

I don't think that the people in this state could be better served when it comes to choosing a Supreme Court justice than they will be with Matthew Rosenbaum and as they were at one time with Richard Rosenbaum.

It is true that the apple didn't fall too far from the tree, and that a great legacy will be built upon and renewed and fashioned in its own way with Matthew

Rosenbaum as a Supreme Court justice.

THE PRESIDENT: Senator Robach.

SENATOR ROBACH: Yes, Madam President. If I could just take a moment, this is a very happy day for all of us in the Rochester area.

My colleague, Senator Alesi, did a great job in highlighting all the accomplishments legally of Matt Rosenbaum, his keen legal mind. But I guess the part I would like to add to, also, Mr. Rosenbaum is not only someone who has added greatly to the legal qualities in Rochester, but he's really been a community person, someone who's involved in his faith community, in activities for young people, and someone who's really a decent person, has a strong sense of fair play, intelligent.

The best compliment I can say is not only do I think he's qualified to be a judge, I'd like him for a neighbor. He's a good, decent human being, and I think that's the kind of people we should have on the bench.

He comes from a history, a legacy

of great community service, and I know will add to it greatly as a Supreme Court justice and serve the people of not only Rochester and Monroe County but all of New York State in an exemplary fashion.

Congratulations. I'm happy to second this nomination.

THE PRESIDENT: Senator Nozzolio.

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

Madam President and my colleagues, I rise with great happiness in support of this excellent nomination to serve as a justice of New York State Supreme Court.

The Seventh Judicial District is a broad, sprawling region that is larger than many states, so Judge Rosenbaum will have many challenges ahead in serving the people of this state and the people of this district.

But I am very confident that, as Senator Alesi and Senator Robach so eloquently stated, Matt Rosenbaum is up to the task. He is a fine man, he is a wonderful lawyer, he will serve as an excellent member of the judiciary.

I could not sit down, though, by indicating that the apple doesn't fall far from the tree. That his father, Richard Rosenbaum, served with great distinction in this same capacity as a member of the New York Supreme Court.

That I think Matt is a much better boxer than his father, although his father was an excellent boxer in his day. And that certainly those people who were KO'd in his home school of Hobart and William Smith certainly remember those punches.

I am pleased, though, that this new generation of Rosenbaums are going to be serving in the judiciary. I know they will carry on this proud legacy.

I'm proud to stand here and second the nomination of Matt Rosenbaum to serve in the New York State Supreme Court.

Thank you, Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, I would be neglectful if I didn't say something about Matthew Rosenbaum, although obviously I knew his father much better. Dick

Rosenbaum was a close friend of my father's, and I knew him for many, many years. And I knew Matt, however, when he was a lot younger.

But his record is clear, and I commend the Governor. It is interesting that the talk about the family falling from the tree is so true. And in fact, the previous judge who was confirmed, Judge Schweitzer, was a friend of my father's also.

This was a day in which I knew every judge who was here. And I'm very proud of that because I want to tell you something, and we just talked about it, that this probably is one of the best group of judges from the standpoint of intelligence and ability that we have had. And I've been on the Judiciary Committee I can't remember how long -- about 25 years, I guess.

And if there's ever a time that the Governor should be commended -- but more than that, we commend the individuals who are here, their families.

And, Matthew, good luck to you. And I can assure you that I know you will continue one of the most distinguished names

in all of New York culture, and that's Rosenbaum.

Congratulations.

THE PRESIDENT: The question is on the nomination of Matthew A. Rosenbaum, of Rochester, as justice of the Supreme Court of the Seventh Judicial District.

All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations and best wishes for what we know will be excellence.

(Standing ovation.)

THE PRESIDENT: Judge Rosenbaum is accompanied by his wife, Hope; his children, Jacob, Madeline, and Lily; his mother and father, Richard and Judith Rosenbaum; his in-laws, William and Adrienne Rockwood, and many other, as we see, family and friends.

Have a wonderful celebration.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please recognize Senator Little.

THE PRESIDENT: Senator Little.

SENATOR LITTLE: Thank you.

We have a resolution before us, Number 917, commemorating the 60th anniversary of the United States Marines raising the flag on Mount Surabaci on the Island of Iwo Jima, by Senator Larkin. And Senator Larkin asked me if I would speak on this resolution.

It's a tremendous privilege to be able to speak on this very special resolution. The battle for Iwo Jima 60 years ago may best be known for the raising of the flag on top of Mount Surabaci. It is the kind of thing that the military did through the years as they conquered or accomplished a mission, was to raise the American flag.

News photographer Joe Rosenthal's Pulitzer Prize-winning photograph of the flag raising is a permanent reminder of all of the valor, courage and sacrifice that has defined one of our nation's most heroic battles. The flag raising the photograph depicted was a

moving moment in our nation's history -- but for the U.S. Marines, victory on Iwo Jima was still many weeks away, and the cost of that victory was far greater than anyone could have imagined.

Literally inching their way across the island, daily gains were measured in yards. The Marines were able to secure Iwo, an island one-third the size of Manhattan, after 36 days of brutal combat. Its two available airstrips were vital for the long-range bombing missions over mainland Japan. The success of the Allied forces in the Pacific could not be assured otherwise. And by war's end, 2400 B-29 bombers carrying 27,000 crewmen had made emergency landings on Iwo Jima.

This is a photo that is in all of our minds and something that makes all of us feel very emotional and proud to know what some of our military have accomplished and the pride with which they raise the American flag of this country.

Thank you.

THE PRESIDENT: Thank you,

Senator Little.

This resolution was previously adopted today.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 166, by Senator Balboni, Senate Print 180, an act to amend the Penal Law, in relation to nuclear powered electric generating facilities.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number

167, by Senator Balboni, Senate Print --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 168, by Senator Balboni, Senate Print 184, an act to amend the Executive Law, in relation to requiring.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Maziarz, Senate Print 2603, an act to amend the Workers' Compensation Law, in relation to the definition of employer.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 194, by Senator LaValle, Senate Print 1148, an act to amend the Education Law, in relation to the unlawful sale of dissertations, theses and term papers.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 205, by Senator Saland, Senate Print 466, an

act to amend the Penal Law, in relation to establishing.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 205 are Senators DeFrancisco and Montgomery.

Ayes, 58. Nays, 2.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 209, by Senator Padavan, Senate Print 545, an act to amend the Penal Law, in relation to making citizenship document fraud.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 209 are Senators Duane and Gonzalez.

Ayes, 58. Nays, 2.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 210, by Senator Marcellino, Senate Print 663, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WINNER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I know that this bill has been on the calendar in prior years, and I have actually voted for the bill. But I'm going to vote no today.

I'm changing my vote because I have had the occasion, in the last couple of years especially, to find so many people who have a felony conviction on their records. And it prevents them from doing a lot of things to just make a living, and especially getting a job and getting certain kinds of assistance for higher education and so forth and so on.

So I'm going to change my vote, because I don't think that we need to charge a person with an E felony for theft of dogs and cats. I certainly think that we should do something, and in fact there already is in law that that is a misdemeanor. And I think that that is correct, that they should be charged at least with a misdemeanor, but certainly not with a felony.

So I'm going to change my vote today. I'm voting no.

ACTING PRESIDENT WINNER: Senator Montgomery in the negative.

Senator Marcellino.

SENATOR MARCELLINO: Yeah, to explain my vote.

I can't believe what I just heard, that we are going to vote no on a bill to give penalties to people who commit a crime because if they commit a crime they won't be able to do something later on in life.

You commit a crime, you hurt somebody. People love their pets. Their pets are part of their families -- in some cases, in many cases, more important than some members of the family.

But to say I'm going to vote against a bill because the perpetrator of this heinous crime will be punished for it, I think that's just incredulous.

I vote aye.

ACTING PRESIDENT WINNER: Senator Marcellino will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 210 are Senators Hassell-Thompson and Montgomery.

Ayes, 59. Nays, 2.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Golden, Senate Print 1197, an act to amend the Penal Law, in relation to increasing the penalties.

ACTING PRESIDENT WINNER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 213 are Senators Andrews, Duane, Hassell-Thompson, L. Krueger, Montgomery and Parker.

Ayes, 55. Nays, 6.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 214, by Senator Winner, Senate Print 1428, an act to amend the Penal Law, in relation to the

imposition of driver's license suspensions.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: I'm voting no, not because I'm in favor of the violation of the laws concerning marijuana, I just -- and I clearly understand the intent behind the bill, because it's difficult to get fines paid for this type of offense. And there's really very little remedy that the justices have.

The only reason I'm voting no is that I just can't see a nexus between a marijuana offense and whether you should be on the road driving. And there's got to be another remedy that we could come up with that would allow town justices to collect fines.

So that's the reason I'm voting no.

ACTING PRESIDENT WINNER: Senator DeFrancisco will be recorded in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 214 are Senators DeFrancisco, Duane, Gonzalez, Hassell-Thompson, Montgomery, Parker and Schneiderman. Also Senator Andrews.

Ayes, 53. Nays, 8.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 283, by Senator Spano, Senate Print 3008, an act to amend the Labor Law, in relation to permitting employers and employees.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT WINNER: The bill is passed.

Senator Skelos, that completes the

reading of the noncontroversial calendar.

SENATOR SKELOS: Thank you, Mr. President.

I think that also completes the controversial calendar and the noncontroversial calendar.

And Resolution 917, by Senator Larkin, concerning the 60th anniversary of the raising of the flag on the island of Iwo Jima, with the consent of the Minority, we'd like to put every member on the resolution. If anybody wishes not to sponsor the resolution, they should notify the desk.

Is there any housekeeping at the desk, Mr. President?

ACTING PRESIDENT WINNER: There is not.

SENATOR SKELOS: Would you please recognize Senator Schneiderman.

ACTING PRESIDENT WINNER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I have a motion at the desk, and I would like to have it called up at this time.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: Senate Print 1576, by Senator Schneiderman, an act to amend the Education Law.

ACTING PRESIDENT WINNER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, this is a motion to put on the calendar a piece of legislation that I think is really very difficult to oppose. Unfortunately, while this bill has been passing the Assembly for years, it has been held up in this house. I hope this year we can change that. There is some support on the other side of the aisle. We need to get the bill to the floor.

The bill we're seeking to put on the Senate calendar today would make emergency contraception available without requiring that women go through the current procedure of finding a doctor, getting a prescription, finding a pharmacy and then taking it to the pharmacy.

This would provide for a supervised

regimen by which this could be dispensed. It does not make it an over-the-counter product, but it illuminates the critical barriers to women getting this product at the time that they need it.

We're talking about a product that's clearly safe. It's been in use in Europe for over 25 years. And it clearly prevents pregnancy. It is really just a high dosage of the material in birth control pills. And it prevents people from getting pregnant who would sometimes then get abortions.

The estimates are staggering of the -- according to the New England Journal of Medicine, the use of emergency contraception can prevent as many as 1.7 million unintended pregnancies that occur each year in the United States, and including as many as 800,000 pregnancies which now result in abortions.

It's been proven to reduce a woman's risk of pregnancy by 75 percent if the first dose is taken within 72 hours of the failure of a birth control method or unprotected sex.

So this is an approved product by

the FDA. It's effective. It prevents pregnancies. If you're opposed to abortion, it prevents abortions.

And last year we passed a -- last cycle we passed a piece of legislation that had also been held up that ensured that hospital emergency rooms make emergency contraception available to rape survivors. That was a great step. But there are many, many other women in New York who are being denied this product, being prevented from getting it by the failure of this house to bring this bill to the floor.

The key fact that compels us to pass this legislation this year is this. When you're dealing with emergency contraception, every hour counts. The procedure we're talking about would simply make it easier for women to get it quickly. Every hour counts when you need access to emergency contraception. If you wait another 10 hours, another 12 hours, it is less likely to be effective. We're forcing women who don't want to get pregnant to get pregnant.

This is a time of fiscal crisis.

Let's pay attention to what the Comptroller of the State of New York has said. He documented in a report issued in 2003 that improved access to emergency contraception will save New York State more than $450 million a year.

So this is a fiscal issue, it's a medical issue, but, most fundamentally, this is a moral issue. This is something that really almost rises to the level of shameful neglect, when this house refuses to put a bill on the floor to allow a safe product to be available to women when they need it so that they can avoid becoming pregnant.

This is a simple piece of legislation. I urge everyone to vote yes and bring it to the floor. And I urge my colleagues on the other side of the aisle -- and there are those here who have supported this legislation who may need a little boost from their leadership from time to time -- that this is the year to do it.

Let's not force another group of thousands of women in New York State to become pregnant because of inaction by the New York State Senate. Every year we wait forces more

people into this horrible, horrible situation.

So I urge everyone to vote yes, and let's pass this bill this year.

Thank you, Mr. President.

ACTING PRESIDENT WINNER: All those Senators in favor of the petition out of committee please signify by raising their hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Connor, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stavisky and Valesky.

ACTING PRESIDENT WINNER: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move that we stand adjourned until tomorrow, Wednesday, March 23rd, at 3:00 p.m.

ACTING PRESIDENT WINNER: On

motion, the Senate stands adjourned until Wednesday, March 23rd, at 3:00 p.m.

(Whereupon, at 3:52 p.m., the Senate adjourned.)