NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 16, 2005

3:10 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 -- no surprise -- to give the invocation is our friend and colleague the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

Reverend Young.

REVEREND YOUNG: Let us pray.

Dear God, please enter my mind, my body and my soul and walk with me through this day. Rid me of the bondage of self-centeredness, selfishness, resentments and self-pity. Rid me of fear and strengthen my faith. Give me a knowledge of Your will for me and the power then to carry it out.

Take my will and my life, dear God. Let me live this day the way that You would want me to live. Let me think the way that

You would want me to think. Let me act the way that You would want me to act. Let me be an instrument of Your love, Your peace and Your grace as a New York State Senator.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 15, the Senate met pursuant to adjournment. The Journal of Saturday, May 14, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you,

Madam President.

On behalf of Senator Saland, on page number 32 I offer the following amendments to Calendar Number 484, Senate Print Number 2501, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator LaValle, on page number 25 I offer the following amendments to Calendar Number 328, Senate Print Number 1092, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator Seward, on page 19 I offer the following amendments to Calendar 135, Senate Print Number 593, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments

are also received, and that bill will also retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Madam President, I wish to call up Senate Print Number 2197, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 288, by Senator Golden, Senate Print 2197, an act to amend the General Business Law.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the bill was passed.

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

(The Secretary called the roll.)

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: Amendments received.

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President and colleagues, this is our first session where we will be joined by our newest Senator, Senator Cathy Young, who joins us from the Assembly.

And all of us here, all of us here presently are happy to have her here in the chamber with us.

And having said that, there are some announcements that we're making having to do with chairs of committee. Cathy will chair Agriculture. And we are handing that up, along with the committee assignments, and ask that they be filed in the Journal.

THE PRESIDENT: They will be filed in the Journal, Senator.

SENATOR BRUNO: Thank you.

And Senator Paterson, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I'd like to officially welcome Senator Young to the chamber.

I hope that on the other side of the aisle that they've pointed out that when we have our fast roll call here, we have the two leaders, the Deputy Majority Leader, the chair of the Finance Committee, and the first and last names in the alphabet. That's the fast roll call. And by my calculation, Senator Young may succeed Senator Wright as being the last name called on the fast roll call.

So it just shows that I'm trying to help out in the process every way I can. In fact, the way I helped out in the process is the reason Senator Young is here. So I think I deserve some congratulations as well.

(Laughter.)

SENATOR PATERSON: Thank you.

THE PRESIDENT: Senator Young, as my friend and colleague, I would like to also congratulate you. I was delighted to hear, as I came in for session, that you'd just been sworn in.

Welcome aboard. Congratulations.

Senator Bruno.

SENATOR BRUNO: Madam President,

are there any substitutions, other than for Senator Young, at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR BRUNO: There are. Can we make those at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator Oppenheimer moves to discharge, from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 2619 and substitute it for the identical Senate Bill Number 1419, First Report Calendar 924.

On page 5, Senator Stachowski moves to discharge, from the Committee on Local Government, Assembly Bill Number 876 and substitute it for the identical Senate Bill Number 338, First Report Calendar 932.

On page 5, Senator Valesky moves to discharge, from the Committee on Local Government, Assembly Bill Number 3652 and substitute it for the identical Senate Bill Number 1738, First Report Calendar 937.

On page 5, Senator Alesi moves to

discharge, from the Committee on Local Government, Assembly Bill Number 6853 and substitute it for the identical Senate Bill Number 3587, First Report Calendar 941.

On page 7, Senator Little moves to discharge, from the Committee on Local Government, Assembly Bill Number 1351 and substitute it for the identical Senate Bill Number 4909, First Report Calendar 954.

On page 7, Senator Bonacic moves to discharge, from the Committee on Local Government, Assembly Bill Number 1683 and substitute it for the identical Senate Bill Number 5126, First Report Calendar 958.

On page 8, Senator Bonacic moves to discharge, from the Committee on Local Government, Assembly Bill Number 7625A and substitute it for the identical Senate Bill Number 5218A, First Report Calendar 965.

And on page 33, Senator Marchi moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 3469 and substitute it for the identical Senate Bill Number 2430, Third Reading Calendar 497.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time could we have Resolution 1805, by Senator Nozzolio, which was previously adopted, read in its entirety.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 1805, congratulating the Sodus High School Boys Basketball Team and Coach Jim Sergeant upon the occasion of capturing the New York State Class C State Championship.

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

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy

living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, This Legislative Body is justly proud to congratulate the Sodus High School Boys Basketball Team and Coach Jim Sergeant upon the occasion of capturing the New York State Class C State Championship, held Saturday, March 12, 2005, at the Glens Falls Civic Center; and

"WHEREAS, The Sodus Boys Basketball Team are the New York State Class C State Champions; and

"WHEREAS, It was the end of a long run for the Sodus Spartans, who went as far as they could and finished with a season of perfection; and

"WHEREAS, The Sodus Boys Basketball Team defeated Faith Heritage by a score of 76-65. The victory gave the Spartans its first state title in its initial state-tournament appearance, and it climaxed a perfect 27-0 season; and

"WHEREAS, The athletic talent displayed by this team is due in great part to

the efforts of Coach Jim Sergeant, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the Sodus Boys Basketball Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, or honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach Jim Sergeant has done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Jim Sergeant and his outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Sodus Boys Basketball Team, its members -- Greg Logins, Hauke Bruns, Dennis Gorobtschuk, Devin Wright, Roderick Johnson, Antonio Parker, Robert McDowell, Jerek Konikiewicz, Matt Sombathy, Paul Morales, Brian Hanagan, Lionel Webber, Jeff Kuhn, Johnny McCray, and Emanuel Reaves -- and Coaches Jim Sergeant, Bob Miranda, and Al Granger on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Sodus Boys Basketball Team and to the aforementioned coaches."

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Madam

President, I have another privileged resolution at the desk. I ask that it be read in its entirety, and then I wish to speak on both of them.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 1806, congratulating the Palmyra-Macedon Boys Basketball Team and Coach John "Chip" Tatro upon the occasion of capturing the New York State Class B Championship.

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

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

"WHEREAS, The Palmyra-Macedon Boys Basketball Team are the New York State Class B Champions; and

"WHEREAS, On Friday, March 11, 2005, the Palmyra-Macedon Boys Basketball Team narrowly escaped the Class B semifinals with a victory against Voorheesville. The final score was 30-28; and

"WHEREAS, The next day, the Red Raiders won their first state title with a 57-47 triumph over Carle Place; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach John 'Chip' Tatro, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the Palmyra-Macedon Boys Basketball Team, from the opening game of the season to participation in

the championship, were a brotherhood of athletic ability, of good sportsmanship, and honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach John 'Chip' Tatro has done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach John 'Chip' Tatro and these outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Palmyra-Macedon Boys Basketball Team, its members -- Michael Beck, Jared Boisvert, Jason Clair, Johnathan

Denniston, Daniel Gorman, Anthony Hall, Adam Husk, Sean McGinn, Christopher Milke, Timothy Patchett, Todd Piccola, Christopher Timbs, and Andrew Weaver -- and Coaches John 'Chip' Tatro, Joe Hill, Cory Houser, Craig Ikewood, and Nate Kenyon on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Palmyra-Macedon Boys Basketball Team and to the aforementioned coaches."

THE PRESIDENT: Senator Nozzolio.

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

I rise in support of the resolutions, to congratulate two fine communities for raising two groups of fine young men.

It's unusual for any community to have a state champion in its midst at any levels of competition. But Wayne County, a county of about a hundred thousand people, has not one but two basketball state champions that we are honoring here today -- the Sodus Boys Basketball Team, winners of the New York

State Class C Championship, and the Palmyra-Macedon Boys Basketball Team, victorious as Class B State Champions. Two communities within a few miles apart in the same county, both raising great basketball players but, more importantly, raising great community leaders.

I'm extremely appreciative of the coaching staffs, Jim Sergeant and Bob Miranda from Sodus and John "Chip" Tatro and Joe Hill from Palmyra-Macedon, for being here today.

Also, a longstanding superintendent in the Palmyra-Macedon community is retiring this year after many years of great service to Palmyra-Macedon, Dr. Jim Tobin, who's here. Coincidentally, he's also a former classmate of Senator Alesi, my colleague from Rochester.

Fred Ciaburri, director of athletics; Barbara Persia, high school principal; and Paul Maier, who came here as a chaperone and driver to be here with the young men as they are being honored for this significant accomplishment.

Sodus, a very significant accomplishment, undefeated 27-0. They beat,

I'm very pleased to say -- although he's not in the chamber to defend himself -- they beat Faith Heritage High School in Senator John DeFrancisco's district. I'm very pleased about that, and I appreciate their great success. It's all our communities' success.

Palmyra-Macedon, outstanding season. The first time a school championship had been achieved by that team. They had a tough road through the semis but cleaned the clock, absolutely cleaned the clock in the finals of Carle Place.

Now, Carle Place is represented by my great friend and esteemed colleague Senator Balboni.

But I'm extremely pleased and must point out that Carle Place is the alma mater of my fantastic friend in the Senate, Senator -- he tried to intimidate me, but his school was intimidated by my Palmyra-Macedon -- Senator Chuck Fuschillo, who is an alumni, class of '78, of Carle Place, a member of the varsity team in his day.

But I'm very pleased that you saw

the light when you played Palmyra-Macedon.

Ladies and gentlemen, we're here to recognize athletic accomplishment, but, more importantly, we're here because these fine young men have demonstrated leadership ability, have been great representatives of their community, have been wonderful teammates and understand the value of teamwork.

For that, Madam President, that's why we are recognizing these fine athletes and fine young men from a great community. Assemblyman Oaks, who has also joined us in this recognition, shares my sentiments here. We're very pleased to be hosting such fine community leaders.

Thank you, Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: You know, Madam President, a couple of years ago if someone had gotten up and talked about how they shellacked one of the teams in my district, that would have really frosted my cupcakes.

But you know what? Lately I've come to see the beauty and the talent all over this great state, and all the wonderful people

in it.

And therefore I'd just like to say how proud I am of your teams' accomplishments and what a wonderful job they've done, and we'll get you next year.

(Laughter.)

THE PRESIDENT: Both of the previous resolutions were adopted on May 10.

Congratulations and best wishes for similar success in all your endeavors.

(Applause.)

THE PRESIDENT: 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 37, by Senator Larkin, Senate Print 853, an act to amend the General Municipal Law, in relation to authorizing industrial development agencies.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 120, by Senator Maziarz, Senate Print 976A, an act to amend the Highway Law, in relation to extending the Niagara Wine Trail.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Skelos, Senate Print 2724, an act to amend the Penal Law, in relation to failure to report a sexual assault of a child.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 341, by Senator Spano, Senate Print 28 --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 346, by Senator Bruno, Senate Print 3226, an act to amend the Penal Law and the Highway Law, in relation to violence committed on school grounds.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect on the first of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Montgomery and Parker recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 429, by Senator Larkin, Senate Print 61A, an act to amend the Education Law, in relation to suspending the pay.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 448, by Senator Larkin, Senate Print 417, an act to amend the Penal Law, in relation to

obscene sexual performance by a child.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 464, by Senator Balboni, Senate Print 3509, an act to amend the Penal Law, in relation to disseminating indecent material.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 546, by Senator Saland, Senate Print 3679, an act to amend the Education Law, in relation to the provisions of school health services.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as Section 2 of Chapter 477.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator DeFrancisco, Senate Print --

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

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

THE SECRETARY: Calendar Number 619, by Senator Leibell, Senate Print 3789, an act to amend the Penal Law, in relation to unlawful defilement of a water supply.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 623, by Senator Volker, Senate Print 3909, an act to amend the Criminal Procedure Law, in relation to sealed photographs.

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, 57. Nays, 2. Senators Montgomery and Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

625, by Senator Rath, Senate Print 4036, an act to amend the Criminal Procedure Law and others, in relation to providing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 625 are Senators Duane, Hassell-Thompson, Montgomery and Parker.

Ayes, 55. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 643, by Senator Robach, Senate Print 3186, an act to amend the Civil Service Law, in relation to the authority.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Connor recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 649, by Senator Saland, Senate Print 3678, an act to amend the Education Law, in relation to involuntary transfer.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 705, by Senator Bonacic, Senate Print 3579, an act to amend Chapter 262 of the Laws of 2002 amending the Environmental Conservation Law.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 712, by Senator Alesi, Senate Print 971, an act to amend the Penal Law, in relation to the crime of false personation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This --

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 714, by Senator Maziarz, Senate Print 1160, an act to amend the Criminal Procedure Law, in relation to enacting criteria.

SENATOR SCHNEIDERMAN: Lay that bill aside, too.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Can we go to the

controversial reading.

THE PRESIDENT: The Secretary will ring the bell and the members should return to their seats, please, for the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 649, by Senator Saland, Senate Print 3678, an act to amend the Education Law.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Madam President.

Madam President, this is a bill which we have seen in this house on prior occasion.

And what the bill does, it attempts to respond to a commissioner's ruling as far back as 1998 in which the Commissioner of Education -- and when I refer to a commissioner's ruling, I'm referring to Commissioner Mills, the Commissioner of Education -- in a case coming out of the City

of Buffalo, ruled that a young man who had been involved in a physical altercation, for which he ultimately was suspended from school, could not be suspended or transferred as a disruptive student.

The purpose of this bill is it basically provides a means to transfer a disruptive student, one which takes into account the educational needs of that student and also takes into account the needs of his or her classmates.

There's little or nothing to be gained by suspending a student multiple times, returning him or her to the very same classroom in which he or she has been engaged in the activity that caused that suspension.

There is, however, where there is an alternative school available, certainly much to be gained in permitting a transfer of that student, not only to further advance that student's education, but also, it would seem to me rather obviously, to benefit the classmates of that student, who will no longer find that their lives are being disrupted and their ability to receive the education to

which they are entitled is being disrupted.

That, Madam President, is the essence of this bill. I believe there are two or three memos in support. And as far as I know, there are no memos in opposition.

THE PRESIDENT: Does any member wish to be heard on this bill?

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President. I see that I have opposed this legislation in the past, and I'm going to continue to oppose it.

I just want to be on record to say that while I am fully sympathetic, empathetic with the idea that disruptive students who disrupt the educational environment for other

students, we should have some alternatives for dealing with them.

Unfortunately, my experience has been that our system has not been able to come to terms with what constitutes an environment that allows young people, no matter what is happening with them personally, to be able to survive and to flourish. And so that's a problem with the system.

The answer that we have given our schools to date is, at least in New York City, we've put police in the schools. So the alternative right now is that they can be arrested and charged with a felony, and that is their alternative placement.

So I'm going to continue to vote no on this legislation. I think it is incumbent upon us as an institution, as well as the education system as an institution, to try and figure out how do we meet the needs of a new generation of young people who are under a tremendous amount of stress from many, many different areas in their lives and for whom we still have no net for them that protects them from themselves as well as protects us from

them.

So I'm going to continue to oppose this and hope that we can look at our system as a source of the problem as opposed to always blaming the exact victim of the system.

Thank you, Madam President. I vote no.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator.

Senator Diaz.

SENATOR DIAZ: Thank you. Thank you, Madam President.

I represent a district in the Bronx where many parents are always complaining about their children losing interest in attending school, due to the fact that there are too many disruptive students -- few, not too many -- few disruptive students and other bullies.

And these individuals, these students, are an impediment for the rest of the class, for the rest of the students that would like to come to school, that would like to learn. They drop out sometimes because the bullies, they disrupt the students and the

bully students are the ones causing them to lose their interest.

For the sake of those students that want to come to school to study, we have to be aware that we have to provide an environment where students feel free, comfortable, and they will be attending school.

So this bill, this bill is a very good bill. This bill will send a message to any bullies and to any students that come to school, if you want to come to school, you come to school to study. If you come to school to disrupt the classes and to be an impediment for the other students, you not belong there, you belong somewhere else.

So yes, I'm voting yes. This is a good bill. Thank you, Senator Saland, for that bill.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. On the bill.

Each time this bill has come before us since I've been here in the Senate, I have voted for the bill.

But I continue to be disturbed by one aspect. There is certainly a need for us to make provisions for transfers for those students that are violent. But to put the term "disruptive" and "violent" in the same legislation disturbs me a great deal.

I listened to Senator Diaz just talk about how the bully and the disruptive student should in fact be transferred. I put that student in the category of violent student, as opposed to disruptive.

We have a lot of students who disrupt the classroom. But when you're in those classrooms and you've spent some time there, part of what you learn is that students are disruptive many times because they're absolutely bored. And to have them just summarily transferred without trying to figure out what's happening, then we're really not in the business of educating children.

Because part of the boredom may have to do with what's going on in the classroom in and of itself. And I do not believe that we should be discussing disruptive students in the same bill with

violent students.

I will be voting no.

THE PRESIDENT: Senator, you will be so recorded as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 649 will are Senators Duane, Hassell-Thompson, Montgomery, Parker and A. Smith. Also Senator Andrews.

Absent from voting on Calendar Number 649: Senator Brown.

Ayes, 53. Nays, 6.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 712, by Senator Alesi, Senate Print 971, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator Alesi, an explanation has been requested.

SENATOR ALESI: Thank you, Madam President.

This bill takes the existing law of

false personation and it extends the penalties for giving false information to a police officer. And it also removes the requirement that a police officer forewarn someone who is giving their information about their identity.

SENATOR MONTGOMERY: Madam President, if I may ask if Senator Alesi would yield for a question.

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

SENATOR ALESI: Yes, I will.

THE PRESIDENT: You may proceed with a question.

SENATOR MONTGOMERY: Senator Alesi, I see that your legislation also would remove the requirement that a person be notified of their -- of the fact that they would be guilty of false personation.

SENATOR ALESI: Yes, in my explanation I did mention that, Madam President, through you.

SENATOR MONTGOMERY: And, Madam President, if I may -- if Senator Alesi would continue to yield.

THE PRESIDENT: Senator Alesi,

will you continue to yield?

SENATOR ALESI: Yes, I will.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR MONTGOMERY: Senator Alesi, why are you looking to remove that simple requirement that you inform a person that there is a criminal penalty for engaging in false impersonation?

SENATOR ALESI: The requirement is being removed simply because it's unnecessary, it's cumbersome, and it could really offer somebody a loophole of escape for giving false information if they're not forewarned by a police officer.

SENATOR MONTGOMERY: Thank you, Senator Alesi.

SENATOR ALESI: You're welcome.

SENATOR MONTGOMERY: Madam President, on this legislation.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR MONTGOMERY: As I have stated in the past -- and I voted no in the past, and I will continue to oppose it -- that

there is in my mind no apparent rationale for removing a requirement that you simply inform a person.

And particularly in cases where we're talking about teenagers, who may be inclined to do something, either by mischief or to try to avoid problems, they may not realize that they're creating more problems for themselves. And therefore are -- it is important that they understand that there is a consequence for doing such.

The legislation also changes the level of the crime from a B to an A misdemeanor, which is more serious.

And so I think because we're talking to a large extent about minors, essentially, this bill is going to hurt those young people that we would like to, if at all possible, guide them away from mischief and away from the criminal justice system.

And if a police officer is able to just say to them or is required to say to them, You are going to be charged with a misdemeanor if you are not telling me the truth, I don't see where that is a huge

problem. I can't imagine a police officer not even wanting to do that.

So I'm going to oppose this legislation, because I think it is -- one goes a little bit too far in creating another trap for young people in particular.

I vote no.

SENATOR ALESI: On the bill, Madam President, if I may.

THE PRESIDENT: Senator Alesi, on the bill.

SENATOR ALESI: From the time we're raised, most of us know the difference between right and wrong. Pretty much all of us understand that if you tell a lie, it's not the right thing to do.

And as we go through our lives, I would say almost all of us don't really need to have some kind of forewarning that if you tell a lie, there is going to be some kind of consequence. For those who believe in it, it's one of the Ten Commandments, in fact.

But I think that this gives certain protection to general society, in these days of heightened concern over security. And more

importantly, when we talk about identity theft, by removing this requirement to forewarn somebody, we're enabling police to do their job better. And if they know who they're really dealing with, it's making their job even safer.

But it also protects people who have their identity stolen by someone who gives a false name at the time of being stopped. And we all know what the pain of having someone's identity stolen is in terms of economic and emotional loss.

There isn't anyplace else where people are required to be forewarned when they are giving false information or they're about to do something that's wrong. People know that. They know it from the time that they're raised as young children.

And to require a police officer to warn somebody ahead of time if they give false information is cumbersome for the police officer, it could create an unsafe environment for him, and it would continue to provide a loophole for anybody who wants to give false information in the hopes that they'll escape

being identified in the commission of whatever it is that they were stopped for in the first place.

So I would simply urge my colleagues to understand that this is a good bill for everybody involved and urge them to pass it without reservation.

THE PRESIDENT: Does any other member wish to be heard?

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 712 are Senators Duane and Montgomery.

Absent from voting on Calendar Number 712: Senator Brown. Excuse me, Senator Brown is in attendance.

Ayes, 58. Nays, 2.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 714, by Senator Maziarz, Senate Print 1160, an act to amend the Criminal Procedure Law, in relation to enacting criteria.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I don't want to deny Senator Maziarz his chance for an explanation, but we've indicated to Senator Young -- we've bragged a great deal about how much more efficient we are than the Assembly, so we'd like to get out of here quickly today.

This is another piece of legislation that comes before us year in and year out that I would respectfully submit has to be redrafted if there's any chance of it becoming law.

This is a response to obviously a heinous crime, and it is an effort to address a problem that may very well be a problem.

But this particular statute requires -- changes the entire process for the setting of bail in this state to require that a court undertake an open-ended inquiry, with no additional funding provided for the prosecution or the defense to call witnesses and to assist the court in this evaluation -- the court to undertake an open-ended inquiry as to whether or not a person accused of a crime, not even necessarily indicted, certainly presumed to be innocent, is a danger to the alleged victim in a criminal action, members of the community, or to himself or herself.

Now, the problem that many of us have with this bill is that under the current statute governing determination of bail, the court is required to consider and take into account the principal's character, reputation, habits and mental condition, family ties, criminal record, record of previous adjudication. Everything a court needs to take into account to set bail based on the perception of a defendant's dangerousness is already in the statute.

What this bill does is impose an additional requirement on every court setting bail throughout the state to make an assessment as to the danger this person poses to the members of the community. This could be someone who's never committed a crime, who hasn't even been indicted.

And, frankly, every defense lawyer in the state is going to, you know, ask to be able to call witnesses in a situation where they're concerned that their client is going to be held based on an assessment by the court that has nothing to do with the charges brought against that person.

This takes the issue of bail away from the acts committed, the acts that are alleged to have been committed, and launches us into an unknown territory of hearings on really psychological states of people that, frankly, our local courts, prosecutors, and defense bar are not equipped to deal with.

So while I'm sympathetic to Senator Maziarz's concern that there may be a need to tighten up the requirements for bail in this state so that courts perhaps take into

account -- and it could be simply added to the list of factors that are enumerated in the existing law -- take into account the person's potential for dangerousness.

But adding the additional requirement for an open-ended inquiry I think is a major mistake. I think it prevents it from ever becoming law, it prevents it from being passed in the Assembly, and therefore makes it irrelevant as a matter of our current procedure.

But it also doesn't accomplish its goal if the goal, as I believe it has been set forth in the repeated eloquent explanations by the sponsor on this piece of legislation, is to try and prevent situations where someone who poses an extreme danger to the victim of the alleged crime for which that person is charged is allowed out without any consideration of that -- the dangerousness.

So I think this is a piece of legislation that needs more work. I am going to vote against it, as I have in the past. I would urge the sponsor that with some modifications, I think the issues that it

raises could be addressed.

This is not the way to do it. This is not going to become law. And it shouldn't become law. We should not have this sort of open-ended inquiry about people who have never been convicted of anything; in some cases, have never been charged with anything, never been indicted. That's what this bill would do.

And I'm going to vote no, Madam President, as I have in the past, and urge my colleagues also to vote no.

Thank you.

THE PRESIDENT: Does any other member wish to be heard?

Then the debate, so-called, is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Maziarz,

to explain your vote.

SENATOR MAZIARZ: Thank you, Madam President. To explain my vote.

My colleague, Senator Schneiderman, was wrong about many things. He said this bill has come up year after year after year. This is actually the second year that this bill has come before the Senate.

And this bill would expand the scope of criteria. Actually, this same criteria is used today in federal court, and it didn't cost them a whole lot of money when they expanded their criteria to implement this new way of setting bail.

What this bill would do, it would allow abusers -- particularly in the area of domestic violence, it would allow judges to use past history of an abuser in setting bail.

The case that I cite in the justification for this bill is a case that I have mentioned on the floor of this Senate several other times, and I think till the last day I serve here will always mention it. It was the case of Jill Cahill, in Syracuse, who was brutally beaten and murdered by her

husband several times.

It didn't have to happen. The criminal justice system failed Jill Cahill. It continues to fail her children today. And it failed her because her husband, after beating her numerous times, numerous times was let out on bail.

There is one thing that I do agree with Senator Schneiderman on, and I think the chances of this passing in the New York State Assembly are extremely remote. And that is really a shame.

You know, last year we had a lot of talk about the dysfunction in Albany and how we don't work very well up here. And, you know, the reality of it is that if this bill were to be put out on the floor of the Assembly, 138 members would vote in the affirmative, 12 liberals from Manhattan would vote in the negative. But they can hold it up from coming out.

And that's a shame for the Legislature, it's a shame for the Assembly, but more than anything it's really -- it's a shame for Jill Cahill.

Thank you, Madam President.

THE PRESIDENT: Senator Maziarz, you will be so recorded as voting in the affirmative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I appreciate my -- the Greek chorus behind me.

I enjoy debating Senator Maziarz on the facts that are before us. And whether I'm wrong about a great many things, like the propriety of children running through the woods being chased by wounded bears or not, we can leave for another day. I realize we disagree on some issues.

I do think, however, as long as we're correcting misstatements, this is not the rule in the federal court, where I practiced law for many years and continue to practice law.

There is a potentially huge economic impact on our local court systems from this. And I don't think for -- fiscal conservatives from Manhattan tend to be

concerned about these things.

This is creating an entire new area of inquiry, there's no denying it. And all we have are Senator Maziarz's blanket assertions that this is not going cost much money.

This turns every bail hearing into a potential evidentiary hearing on an open-ended issue. It's not the way to address this problem. I will continue to vote no.

And I'm not sure -- I will carry back to my colleagues from Manhattan his attribution of extraordinary powers to them in the Assembly.

But I think it's better to be right than to posture on an issue as serious as this, and I think that's what we're doing with this piece of legislation. So I will be voting no, Madam President.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 714 are Senators Andrews, Breslin, Connor,

Hassell-Thompson, Montgomery, Parker, Paterson, Schneiderman and A. Smith.

Ayes, 51. Nays, 9.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the reading of the calendar.

SENATOR SKELOS: Thank you, Madam President. Is there any further business to come before the Senate?

THE PRESIDENT: No, there isn't, Senator.

SENATOR SKELOS: There being none, I move we stand adjourned until Tuesday, May 17th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Tuesday, May 17th, 3:00 p.m.

(Whereupon, at 4:11 p.m., the Senate adjourned.)