NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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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 Rabbi Israel Rubin, outreach director from the Chabad House in Albany.

RABBI RUBIN: Today is the Tu B'Shevat, the New Year for Trees. In our prayer we reflect on the tree's three major parts: the roots, the trunk, and the branches.

Deeply rooted in the cities, towns and villages of our great state, the distinguished members of this body join in one central body to assure New York State's growth through the branches of government.

Almighty God, we pray that the saps stir within, that the juices flow, that the good efforts of these distinguished men and

women bear fruit so our great state can flourish and blossom with safety and security for all.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 12, the Senate met pursuant to adjournment. The Journal of Friday, February 10, 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 Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Bruno, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate 5513.

THE PRESIDENT: So ordered.

Senator Meier.

SENATOR MEIER: They gave me a heavy load today, Madam President.

On behalf of Senator Skelos, on page number 22 I offer the following amendments to Calendar Number 190, Senate Print 488, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Thank you, Madam President.

Now, on behalf of Senator Bonacic, on page 14 I offer the following amendments to Calendar Number 96, Senate Print Number 6415, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments

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

SENATOR MEIER: Thank you, Madam President.

Now, on behalf of Senator Golden, on page number 16 I offer the following amendments to Calendar Number 122, Senate Print 3828A, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: Senator Winner.

SENATOR WINNER: Thank you, Madam President.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Bill 960, 1358, 1490, and 3094.

THE PRESIDENT: So ordered.

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 75, by Senator Maziarz, Senate Print 2569A, an act to amend the Labor Law, in relation to appointments.

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, 48. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Maziarz, Senate Print 3108A, an act to amend Part E2 of Chapter 62 of the Laws of 2003, relating to establishing.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Maziarz, Senate Print 3109A, an act to amend the Labor Law, in relation to state apprenticeship.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 94, by --

SENATOR GONZALEZ: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 102, by Senator Balboni, Senate Print 931, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 126, by Senator Volker, Senate Print 194, an act to amend the Penal Law, in relation to assaults.

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, 51.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 127, by Senator Maltese, Senate Print 274, an act to amend the Penal Law, in relation to clarifying.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 130, by Senator Little, Senate Print 719A, an act to amend the Penal Law, in relation to increasing the penalties for hazing.

THE PRESIDENT: 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 SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 131, by Senator Trunzo, Senate Print 851, an act to amend the Penal Law, in relation to prohibiting stalking.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 159, by Senator Fuschillo, Senate Print 1865, an act to amend the Judiciary Law, in relation to practicing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 161, by Senator Meier, Senate Print 2507A, an act to amend the Family Court Act, in relation to orders of disposition.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 185, by Senator Larkin, Senate Print 1735, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 193, by Senator Meier, Senate Print 5392A, an act to amend the Social Services Law, in relation to termination.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 220, by Senator DeFrancisco, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

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

SENATOR SKELOS: Thank you, Madam President. If we could ring the bells to alert the members that we're going to the controversial calendar.

THE PRESIDENT: The Secretary will ring the bell, and the members should return to their seats so we can begin the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 94, by Senator Bonacic, Senate Print 1768A, an act to amend the Environmental Conservation Law.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam Chairman.

This is a bill that would require the DEC commissioner, in anticipation of a major inflow of water into the city's west of the Hudson reservoirs, to make regulations to provide that no significant overflow occurs. We want to amend Section 15-0805 of the

Environmental Conservation Law.

What I would like to do is just give a little background of why this bill is necessary. Right now, the City of New York owns six reservoirs west of the Hudson River. They own 13 small ones on the east of the Hudson River. Our legislation only is addressing the six reservoirs on the west of the Hudson River. They are, specifically, the Ashokan, the Schoharie, the Rondout, the Pepacton, the Neversink, and the Cannonsville.

The city -- my remarks now, when I say the city, this is not addressed to the City of New York. It's addressed to the DEP, the Department of Environmental Protection, who has the obligation to make sure the dams are safe and to collect, store, and deliver water to New York City residents.

They have not done well with their mission. They have said that they are not in the flood control business. And this is the problem. When those dams fill to a hundred percent capacity -- and as of Thursday, because that's the latest reading I have, five of those dams are over a hundred percent

capacity, and the Rondout is about 95 percent -- they do not take steps to release some of that water now. Because, come April, when we have the snow melt, when we have the rains, we get tremendous floods that causes loss of life and damage and destruction to the homeowners that live below those dams.

Now, why is this bill necessary? The DEP shows a lack of concern for the safety of constituents and residents of upstate counties. These words that the City of New York shows a lack of concern for the safety of residents and constituents in upstate counties are words spoken four days ago by Congressman Mike McNulty at an Assembly hearing in Schenectady.

I'm going to talk about why the bill is necessary, and I'm going to talk numbers. Number one, 30 million. That is the number of gallons of raw sewage which the DEP allowed to spill into the East River -- nothing to do with my reservoirs, our reservoirs -- the East River, because they failed to put a generator on several sewage treatment plants, something they said they had

in their design two years ago.

The number 2, the number of times a federal judge has ordered the DEP to be under court-ordered supervision for malfeasance since 2000 alone.

The number 18, the number of months a DEP dam inspector was submitting sham, photocopied dam inspection reports of the six dams west of the Hudson River. The number $55,000 is the salary of his boss of the DEP employee reviewing and approving these sham, photocopied dam inspection reports.

That goes to dam safety. We have legislation that will be before you in the near future to talk about dam safety.

Now I've already talked about the 36 million, the number of gallons per day of water leaking from the city's Delaware Aqueduct. So much for them caring about a drought.

160 is the number of litigants presently suing the DEP for flood damage in federal and state courts -- people from Delaware County, Sullivan County, and Ulster County is getting ready.

Eight, the number of people killed in the 1968 floods near the reservoirs in Delaware and Schoharie County.

Two, the number of people killed last year in Ulster and Sullivan County as a result of the April 2005 floods.

And last but not least, $80 million, which was the cost of property damage in the mid-Hudson and Catskill region from the floods.

Now, when you talk to DEP, they say: We can't control the rain, we don't know how long it's going to rain. What they can do is they can take steps to lower the reservoir levels in anticipation of snow melt and rain forecast. They have not done that intelligently. They have not even wanted to entertain it.

Now, Gilboa Dam right now, which is in Senator Seward's district, there's structural damage. They're trying to lower the level to fix it. That water they're running into the other five reservoirs, creating dangerous conditions.

Now, as to the Schoharie, called

the Gilboa Reservoir, now we know with certainty that the scandalous history of neglect on the part of New York City officials has seriously compromised the integrity of the Gilboa Dam. These are very strong, powerful words. These words were spoken by Governor Cuomo's Secretary of State, Gail Shaffer, four days ago at an Assembly hearing.

Again, quoting Gail Shaffer, the city has resisted any acknowledgment that their purview of responsibilities should have any flood control capabilities. They insist that their sole priority in law is the drinking water needs of the city. If so, we must change the law.

Now, it is not my intention for one minute to lower those levels where the city of New York would not have enough drinking water consumption. That's not the purpose of what we're doing here, because we have a partnership that started with the Watershed Agreement in 1997. But the city will not undertake flood control measures, and that's where the problem lies.

I spoke to the Downsville Fire

Company last year, in 2005. The size of the water coming over the Pepacton Dam was 13 feet high. Over the dam. Now, damage has to do with the force of the flow and how big the waives are, like a tsunami. That has caused the $80 million devastation just last year alone.

Let me tell you what some of the DEP are talking about when we try to get them to talk about flood control. Now, this is the DEP spokesman Ian Michaels: "Just because the levels are high right now, we can't just go releasing high-quality drinking water. Just because we have extra water doesn't mean we should give it up. But we do recognize the needs and concerns of people downstream. New York City would be willing to consider a reasonable flood control plan that is based on science and is based on a reasonable expectation of being able to refill those reservoirs every year." That was May 5, 2005. Nothing in terms of flood control.

Chris Ward, a former DEP commissioner, states: "Residents must remember the Pepacton was not designed as a

flood control reservoir. It is unlikely that peak flows will be much reduced. Communities downstream should take steps to improve their flood preparedness." That's what the former commissioner has said.

Now, let me just talk to you about the Pepacton and the Cannonsville. Two of those reservoirs release water into the Delaware river. There was a court decree, a United States Supreme Court decree back in 1931; it was amended in 1954. There were four states involved -- New York, Jersey, Connecticut, Delaware.

The State of New York asked that some of those waters be diverted to the City of New York to enhance their drinking water capacity for the residents. The court allowed it. And there was a river master who would be in control to -- if any of those flood levels were going to change, and flow levels, you had to go through him.

In 1961, they had a Delaware Control Basin. Now, the jurisdiction of this basin is ever if you want to release water off the top of the Pepacton or the Cannonsville,

you have to go to this commission and ask for permission with the four states.

Now, let me tell you what DEP has done. Turtle steps. But they are now saying well maybe we should be considering this. And these are the turtle steps. They have gone to this Delaware Commission and said: You know, if we anticipate we have 10 inches of snow surrounding the reservoirs and it will trigger 3 inches of filling it, we'll lower it 3 inches. The board agreed. That was a turtle step.

They have gone back, within the last week and said: If we anticipate we're going to have 6 inches of rain -- nothing to do with the snow melt -- they have a proposal: Will you let us lower the water proportionately, to get rid of some water.

What I'm telling you now about the United States Supreme Court and these restrictions has nothing to do with the other four reservoirs, only the two, Cannonsville and Pepacton.

The normal storage capacity at this time to make sure that the New York City water

needs are met is roughly 82 percent. It's spilling over today, I've told you, on five of the reservoirs. I've had several members come up last year in April and said: What's going on? We're driving up the Thruway and everything is flooded out.

Well, what's going on is we had heavy rains, we had hurricanes, which was God's act of nature, and no one controlled that. But what we didn't have, we didn't have a responsible DEP retrofitting their reservoirs to allow -- to put valves in to be releasing the waters when they get at these dangerous high levels. And believe me, many years we don't have this discussion. The water levels are lower. We don't have to engage in releasing water levels.

But lately, the past three years, they've been abnormally high. And what we're saying is we want the DEC to be able to work with the DEP in regulating the release of water when it's higher than the normal storage capacity of those reservoirs. And they're spilling over now.

April is always our dangerous

month. And, you know, in the last ten years, many people have moved up to the Hudson Valley and the Catskills, many city people. Many of them have second homes. Maybe your children, your grandchildren or your grandparents live in these areas. And I say that it is foreseeable that you could take responsible acts to lower those levels without jeopardizing the water supply capacity to New York City. That's what this bill does.

And I would want -- if I could draw an analogy. I've been thinking about being how I could make an intelligent analogy. Take a contractor in New York City with a big wrecking ball, and the purpose is to take down a building. And that contractor says: You know what? If the wind blows level or it rains heavily, I can't necessarily control the swing of that wrecking ball.

And you have constituents that live in co-ops, they live in these apartments, high apartments, high-level apartments, heavy density. They don't know, if the rain or the wind comes, whether that wrecking ball will hit their building.

That's how my residents feel every time April comes and there's going to be heavy rains, snow melt. And they live with this anxiety every day. And I just told you last year what the devastation was.

You know, April showers may bring May flowers, but in my district it brings death and destruction when those reservoirs are abnormally high like they've been since January of this year.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Yes, thank you, Madam President.

I rise in support of this because I just want to bring to attention -- you mentioned a hearing that was held in Schenectady about the Gilboa Dam which is involved with this and the potential for flooding. This is a dam that is an accident waiting to happen. And it could amount to a loss of life of thousands of people in Amsterdam and in Schenectady.

And, you know, before they had the Sacandaga Reservoir, Albany used to flood, Senator Breslin, every single year.

And should this Gilboa Dam, which is in very bad shape, not get the attention that it should -- and I think if we're asking DEC to come in here and look at flood control, there's a desperate need and an immediate need to look at this.

I know that Senator Seward, my seatmate here, has been deeply involved in this issue. But it is one that is a crisis. We know what happened with the hurricane in New Orleans and the Gulf Coast. I'll tell you, there's one with this Gilboa Dam, should that ever let go, you not only won't have drinking water in New York City, you'll have loss of life throughout this area.

And it's -- I don't know that there's any way that we could prepare for that. And they're trying to go forward with this area. But I think this is a time for EnCon to step in and look at this situation. I realize that this is somewhat of a parochial issue for New York City, and it's drinking water and so forth. But I'll tell you, all of this, this bill doesn't do anything but protect, in my judgment, the possibility of

drinking water for the City of New York. And it also brings attention to doing something about flood control.

It wasn't so long ago that the Schoharie Creek got inundated with a tremendous of amount of water and it took the Thruway bridge out right out and 10 people lost their lives, which was a huge tragedy. Some of the people have never even been found. And you have no idea the destruction that water can do, particularly when it floods.

And I think that this is a bill whose time has come and it's very, very important that we address there issue.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Thank you, Madam President.

I listened very carefully to Senator Bonacic's explanation, for which I thank him. And I have one question, if he would yield.

SENATOR BONACIC: Absolutely.

SENATOR STAVISKY: You describe the reservoirs, and I know they've been there for probably 150 years or so. What would

happen if there were no reservoirs? Would there still be a flooding problem from the runoff from the floodplain, the mountains or whatever, would there still be a flooding problem if New York City did not have reservoirs up there?

SENATOR BONACIC: I don't think there would be, because the problem is is when you put large volumes of water in a defined, limited body and you unleash it, it comes like a tsunami wave. And that is what causes the devastation.

Normally, if there were no reservoirs, whatever the natural terrains are through eight counties would absorb it, I think, and it would be more minimal. But when you collect it and put it in one spot -- and the Pepacton, by the way, is the largest of all New York City reservoir systems.

To give you an idea -- and this is not exactly, but just to give you a sense, on the east side of the 13 small reservoirs, it's about 6 billion gallons of water per reservoir; with us, on the other side, 72 billion gallons of water per reservoir.

Almost a half trillion gallons of water.

And when you put it together and you unleash it, that's where you're creating the catastrophe.

SENATOR STAVISKY: My question -- perhaps I didn't phrase. If the Senator would continue to yield.

SENATOR BONACIC: I will, yes.

SENATOR STAVISKY: I was under the impression that one of the purposes of the creation of dams was for flood control. And you're saying to me that if there were no dams in Delaware County and the surrounding communities that the snowfall and the runoff from the rainwater would then go into the streams, presumably.

SENATOR BONACIC: Yes, that's correct.

SENATOR STAVISKY: But it seems to me -- please correct me if I'm wrong -- that then the streams would overflow their banks. And the reservoirs are a form of flood control.

SENATOR BONACIC: Again, let me try to say it a different way.

If there were no reservoirs -- and keep in mind, it rains 12 months a year. And the purpose of the reservoirs is to collect water and store it where, for the rain that's coming in the spring, summer, and fall, it would naturally be emptying into the streams as -- and would be handled in that manner.

But when you collect it in one spot and you unleash it, you're creating a whole different scenario of devastation.

SENATOR STAVISKY: Thank you.

SENATOR BONACIC: You're welcome.

THE PRESIDENT: Senator Liz Krueger.

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

I listened carefully to Senator Bonacic, and I've been reading up on a number of articles about the history of the agreement of the city and the state. And I don't think this is a city versus state fight. I think this is a question of ensuring that we have an adequate, healthy water supply for everyone in the State of New York.

And also, though, the recognition

that some of these plans are fairly old and the world has changed and the environment has changed. And I'd even argue that we've made some mistakes over the years. I think the '97 decree didn't go far enough in mandating -- and I will both blame my own city and the state on this, it allowed for overdevelopment of the flood plains. That adds to the problems of flooding.

We haven't passed wetlands protection in this Legislature which would assure that we were doing more to protect the existing wetlands from development, ensuring that there were places for the water runoff to go.

And of course we all talk about whether or not we've got this global warming problem and what it means when the snows melt too fast or they don't freeze at all. But clearly we've seen a change in our environment and our weather patterns in the last decade. Which we don't know what will happen in the future, but we're seeing it now.

And so you've convinced me that we should take this step, Senator. I don't know

whether it will be upheld in relationship to the 1954 consent decree. I think it will cause consternation for my city if this passes in both houses. But I think the argument you are making, that we have to do something, we have to be concerned about the floods in your district and others, we have to ask the question what else can we do, can we pass wetlands protection to decrease a further erosion of the land causing greater flooding in future years, can we better evaluate, in 2006 terms, given what's happening in the environment, what we should do to try to decrease development or change even the patterns of uses of dams and reservoirs.

So while I know that my city is urging me not to support this bill, I do think that we have some explaining to do ourselves on our failure to meet our mandates. I think we -- we, the State of New York, and we as a Legislature -- have an obligation to look forward, evaluating the agreements we made in the past, perhaps the mistakes we made unintentionally, and the recognition that times have changed and our environmental

patterns are changing, that we have to go forward with a plan -- and this might not be it, by the way -- but we have to go forward with a plan that will protect the integrity of a clean water supply that is adequate for all of the people of New York State.

And we have to do it in such a way that you are not facing devastation whenever the water table goes too high or the weather patterns are not as we planned.

So I will support the bill. I hope you will work with me to support both expansion of wetlands protection, environmentally sound planning in all of our districts to decrease the risks of future flooding, and a serious evaluation of, in the 21st century, what do we do to make sure that we solve the problems of areas being flooded while assuring that we've got a clean water supply that's adequate for a growing population throughout the State of New York.

So I will be voting for the bill. Thank you, Madam President.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Thank you, Madam

President.

I rise in support of this legislation. I commend the sponsor, Senator Bonacic, for bringing it before us, and I am proud to join with the Senator in sponsoring the bill and supporting it.

I do so because I know firsthand as part of my district, as does Senator Bonacic, many of our constituents live in the shadow of these dams. And it has become an annual rite of spring, it seems, of far too often flooding year after year causing a great deal of devastation in property values and even, in some severe cases, loss of life.

And there is real fear and anxiety among the people who live downstream from these reservoirs because there has not been any attention paid to flood control as part of the operation of these reservoirs. Very dramatically, we're seeing it because of this Gilboa Dam, which is located in Schoharie County, my district, which has been cited for some problems. And there's going to be some temporary work done on it this spring. And in 2008 or 2009, there will be some long-term

repairs to that dam.

But in the meantime, there have been meetings in the Schoharie Valley which have attracted literally hundreds of people because they come out and they're fearful, they're afraid to go to bed at night, particularly on a rainy night, wondering whether that dam is going to fail. And we would have a major catastrophe, loss of life and property.

That's an extreme case. But on an annual basis we have this threat of flooding. So this legislation, it seems to me, strikes the right balance. It introduces to the equation an element of flood control that we all know we're going to have the spring runoff, and that all we're saying under this legislation, let's have DEC, through the commissioner, promulgate some rules and regs in terms of the operation of these facilities so that the water level can go down and then, because of the spring rains or runoff, the water level will go back up.

That's some form of flood control introduced here which I think is very, very

important, as well as balancing the desire and the need, of course, to have enough drinking water for the City of New York and the other uses for this water supply.

So I think this legislation strikes the right balance. It gives those who live near these dams some element of confidence that something is being done to alleviate these flooding conditions, as well as making sure that there's an adequate drinking supply for the downstate region.

So, Madam President, I'm pleased to support the bill and hope my colleagues will do the same.

THE PRESIDENT: Senator Schneiderman.

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

I listened, and I don't think anyone could listen to Senator Bonacic's recitation of the problems that his constituents face -- and that have been created, in some cases, by the New York City Department of Environmental Protection -- without being moved.

I do have a concern with this particular piece of legislation. I think the key point really was made by Senator Stavisky. There is no way that the current system of dams is not making things better already in terms of flood reduction. I mean, these are not designed for flood reduction, but the fact of the matter is when you live in an area with a watershed like this, there is flooding. Now, the dams reduce -- to the extent that there's overflow, there would be overflow anyway.

I would suggest that the way to resolve this problem is not with the approach taken in this bill. I also am concerned that this is a one-house bill taking a very one-sided approach. I don't think it's going anywhere in the other house. This does require DEP and the people in the watershed to work together, as they have worked together since the 1830s to resolve these problems.

The problem, as Senator Stavisky I think pointed out, is that you're going to have flooding anyway. Where you have dams, they can serve to a certain extent to do flood

reduction. The balance of exactly what you do and how you do it is a matter of science that I don't think is accurately reflected in this bill.

This bill simply states a mandate that reservoirs shall be lowered -- I'm reading from the bill -- to a level that shall ensure that no significant overflow takes place.

There's not a definition, there's not a time frame. These are not designed to be able to be lowered very, very quickly. I think that the DEP has to move forward, as they are moving forward with a program that has been instituted, to be able to respond more quickly, to release water more quickly. I think that they have to work with the community, as they have for a long period of time.

But the way for us to be good neighbors here is not to mandate that the state reach in and give -- use the blunt instrument of this sort of order, in my view.

This bill, as it is drafted, I don't think would solve the problem. I think

it would create a whole host of other problems. It does appear to be in violation of the Supreme Court consent decree.

And furthermore, I just don't think that this is the kind of approach that really moves us along towards a cooperative solution. I understand that one of the major reasons there's flooding is that there's been a lot of development in the floodplain. There's been a lot of development in the wetlands areas that used to absorb this runoff.

Maybe a more balanced approach of limiting development, along with having DEP change their policies, is required. That's the kind of thing you get when good neighbors negotiate, as they have negotiated for well over 150 years to try and do this.

I believe, and Senator Krueger I think reflected the views of a lot of those of us who benefit from this water supply, that we cannot avoid responsibility for it. You can say it's not the city, but it is a city agency. We can't avoid responsibility for misconduct by this agency. If they're not doing their job, they have to do their job.

If there are things they can do to prevent flooding, they should be doing that. I believe that they are legally required to do that now.

I just believe that this is a blunt instrument that directs the lowering of water levels in a way that the dams are not currently set up to handle and that will discourage rather than encourage the sort of negotiation and cooperation that has characterized the watershed agreement -- not always, but for most of its life, to the great benefit of all the citizens of this state.

I mean, it is, you know -- it's ironic, I suppose, that you have the greatest metropolis in the world, built because of the watershed, people are buying second homes up in the watershed. Couldn't have built it without the watershed. And now the people from the great metropolis, as Senator Bonacic pointed out, are buying second homes up in the watershed and creating problems.

But it's something that is a problem for all of us in the state to work on together. I do hope that we can do it in a

cooperative way. I'm going to vote in opposition to this bill, because I don't believe this reflects either the science or the legal solution to this in accordance with the Supreme Court's consent decree, but with the hope that we can work something out. And with the recognition that those of us from downstate do have a responsibility to our neighbors upstate to try and do something before the session is out.

And I hope that this is not the last we're going to see of this, because it would indeed be a problem if we pass a one-house bill and the Assembly passes some other one-house bill and we don't deal with the problem at all. Which, unfortunately, is what tends to occur in situations like this.

Thank you, Madam President.

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

Then Senator Bonacic, to close.

SENATOR BONACIC: Just a couple of points.

Number one, it is a science. It requires engineering. It requires

sophisticated people that have the expertise to know how to do intelligent flood control without jeopardizing the water consumption of the city's needs. The DEC has those people.

Now, the reason -- and the second point I want to make, if this legislation would become law, nothing the DEC can do could preempt the Supreme Court decree of '54. That is in place with the Cannonsville and the Pepacton inventories. That is a different avenue for flood control. It's the other four reservoirs that we want to make sure there's flood control devices.

And I will say, in conclusion, I've been with Mr. Miele, the first commissioner when I became a Senator, Chris Ward, and now Emily Lloyd. They don't listen. They are arrogant. They don't care. Now, I know these are harsh words, but I can tell you firsthand it's all rhetoric, no action.

The Gilboa, for people who have lived there, people who have done work, the congressmen, McNulty, Gail Shaffer, who are all familiar with the history of the Gilboa malfeasance. That's why they have a

structural problem now. And that water is not coming down naturally. They've created a portal, and they're dumping it in the Esopus below Shandaken and Ulster. Take a look when you take a ride. Go there. The water is raging, and we're not even in April yet.

Two instances. The Gilboa Dam, 13 feet of silt for a valve that could have released water. Total neglect. Last year the Neversink, two valves clogged, on the drawing board for three years to fix. It's Sheldon Silver's second-home district. They don't do anything. And after the floods of 2005, two months later they fixed those valves.

The problem is DEP is focused on New York City and taking -- they don't live here. And they keep saying drinking water, drinking water, that's our mission, not flood control. And I say I agree, the consumption for New York City is important. We have to make sure. But when there's spilling over and your normal level is 80, 82, there's room to release. And they don't do it. And they haven't done it for years and years.

Now, I will say, in conclusion, we

have had differences when we talk about hunting, we talk about gun control. We have regional differences for a lot of things. But when it comes to the public health and safety of our residents, we are one state. And I know you care. I know everyone cares. And I tell you that the people below those dams need this legislation, because the DEP just doesn't get it done.

Thank you very much.

THE PRESIDENT: The debate is closed.

The Secretary will ring the bell.

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 PRESIDENT: Senator Balboni, to explain your vote.

SENATOR BALBONI: Madam President, this is one of these issues that have compelling interests on both sides of the it.

On the one hand, the Watershed

Agreement guarantees to New York City the right to have control over their drinking water system. And we all understand the crucial nature of that right.

On the other hand, when you hear Senator Bonacic -- who knows probably more about this subject than anybody else in the Legislature -- talk with such passion, and then you visit the Catskills and you see how there really is a danger and abuse -- and frankly, I'm as nervous as anybody in terms of the vulnerability of the watershed. And the allegations that Senator Bonacic has outlined certainly send a clarion call that the city better change the perception and the reality of the security of the watershed.

But where do you come down on this? This bill should be seen as the request for more information, the request for a dialogue, not just with Senator Bonacic but with this Legislature, to make sure that we have taken every step -- we being government -- to ensure the security and the utility of this watershed system.

So I'm going to vote with Senator

Bonacic on this issue in the hopes that this issue comes back shortly, because this is of great concern to all New Yorkers. Because it may be your drinking water, those of you folks from New York City; it's my constituents that drink it. I vote aye.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 94 are Senators Connor, Diaz, Golden, Gonzalez, Klein, Maltese, Onorato, Padavan, Paterson, Schneiderman, and Stavisky. Also Senator C. Kruger.

Ayes, 45. Nays, 12.

THE PRESIDENT: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 220, by Senator DeFrancisco, Senate Print 55A, an act to amend the Election Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR DeFRANCISCO: Thank you, Madam President.

Back about a couple of years ago, there was a problem down in the Brooklyn area concerning a judge that ended up getting indicted and other charges against other people. And from that point forward, there's been a call for reform of the manner in which judges get selected, Supreme Court judges get selected.

And there's been generally a lot of concern about the convention, judicial convention process. And that discussion has been going on for some time.

The Assembly came up with a bill last year that basically sought to correct the inequities of the judicial convention process by creating a bureaucracy of various groups throughout the State of New York that will continue to study the qualifications of judges

before the judges ultimately are going to be appointed or nominated for office.

My feeling back then was if the difficulty is in the selection process, reviewing the merits of a judge's qualification has little to do with correcting the judicial process, the judicial convention process.

So I put a bill in in January of last year that basically says the convention process should be abolished and we should select Supreme Court judges like any other judge that's selected in the State of New York by the elective process.

Because County Court, for example, and Family Court judges, the way they get their nominations is they go before the party rank-and-file committee members who pass petitions. And if they get the nomination, they're the designated candidate. But if you don't get the nomination and you want it, you can circulate petitions to get on the ballot for a primary.

That's not the case with Supreme Court judges presently, in that the Supreme

Court judges simply go before delegates who are hand-picked by the party leaders. And generally speaking, that's done in September, no time for anyone else to have an opportunity if they're not the anointed one.

And so my bill a year ago, January of 2005, called for the abolition of that system and changing the system so it's identical to other judges that get nominations in Family Court and County Court. Which has worked for many, many years and no one has complained about it that I know of.

And that's what this bill is, with a small amendment. I amended it this year to reduce the number of signatures that are required on a petition for someone who is going to attempt to get the nomination by a petition process who has not been the party's delegate, the party's nominee through the committee process.

And that's what this bill is. And interestingly enough, a few weeks ago a federal judge determined that the system was unconstitutional, the convention system of selecting Supreme Court judges. And as a

temporary measure, the federal district court judge set aside that system and says until the Legislature does something, then we're going to the petition process in much the same fashion that this bill had suggested over a year ago. And that's what this bill is about.

Interestingly enough, it's supported by the Brennan Commission. I don't agree with everything they suggest, but they're enlightened from time to time. And on this particular case, they're very enlightened. In fact, they're the ones who brought the lawsuit and -- the lawsuit that ultimately rendered the -- in the decision that just came down stating that the convention system for judges in Supreme Court is unconstitutional.

And so that's where the bill is and that's what the bill says, and we would hope that it will be passed today.

THE PRESIDENT: Senator Dilan.

SENATOR DILAN: On the bill.

I rise in opposition to this bill. And as the ranking member on the Election Committee, I urge my colleagues to vote no on

this issue.

I also would like to commend the two chairmen, the chairman of the Election Committee and the chairman of the Judiciary Committee, because last year they did hold a public hearing of this particular bill where the district attorney of Brooklyn testified, the chairman of the Feerick Commission testified, and various professors from law universities in the state of New York.

However, at no point did anyone support this particular bill. So I have a problem with us being reactionary when it comes to presenting this bill.

And as to Judge Gleeson's recent decision, I think Judge Gleeson made that decision because the current system is unconstitutional because it is mandated by the state. The decision does not apply to political parties directly.

For example, if the law allowed the parties to decide the matter in which the candidates for justice of Supreme Court are chosen, the reasoning of the judge then would be moot.

I believe that this bill also hurts minority candidates for a position, it hurts the diversity of the bench, and I think that we should be looking for a more permanent fix to this situation.

For many years we have done the judicial conventions, and I believe that there was also the Feerick Commission which recently reported to the chief judge, and it came up with various recommendations. One of them is selecting judicial delegates for a period of three years where all candidates would have the ability to lobby these individuals. I still question that particular form, but I think that we need to study this more so we can come up with a fair way.

In regard to merit selection, I think it creates other problems. However, I just feel that this bill will only benefit --

THE PRESIDENT: Excuse me, Senator.

Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: Will Senator Dilan yield to a question, please?

SENATOR DILAN: After I finish, I will do that. Okay?

I believe that this will allow for wealthy individuals to run. For example, this year you will have incumbent judges who will be running for reelection. How much time will they have to raise money to run their campaigns? Not much. So individuals who can finance their own campaign will be able to do it immediately.

And we need to really question that diversity of the bench and where this will take New York State.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. One of the proposals, and I think Judge Kaye is in favor of it, is to have the judicial delegates appointed for three years. Can you tell me how that changed the system if the same people are appointing those delegates?

SENATOR DILAN: Well, I didn't say that I support that system, I said that that's one of the recommendations that are being made.

However, I question that myself. Because now you have these individuals that will hold a term of three years, and everyone will be lobbying these individuals. Which dinner, you know, will these individuals be taken to?

I just believe that we should study this bill further, we should study the entire situation where we can come up with a fair system that everyone will have a chance to serve as Supreme Court judge.

SENATOR DeFRANCISCO: Thank you.

The only point I'd like to raise with respect to that is now the system is primaries, and the system is in place by the federal district court judge. So if we -- and my only point simply is that we can study it a long time, but as a practical matter that system is now in place.

SENATOR DILAN: Yeah, but -- Madam President, may I?

THE PRESIDENT: Senator Dilan.

SENATOR DILAN: In regard to that point, first of all, judicial delegates are elected by the people at primaries. So the

people do have a role, because they elect currently the delegates to these conventions.

And I believe that we should just find a real solution to this, because primaries, what you will be doing is really politicizing this process even further. Why will you be doing that? Because you're going to be empowering consultants. These consultants will be making hundreds of thousands of dollars on campaigns.

These judges would be subject to petition challenges in court, where -- and for example, this bill, in the 11th District, raises the number of signatures to 7,500. In most cases, you will get three times the number of signatures so you can stay on the ballot. You would have to pay an attorney a lot of money to stay on the ballot if you're challenged.

And who would you go to to collect these signatures? You would go to the political clubs within that judicial district to get you those signatures.

So I believe that this bill would politicize the process even further.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. I rise to speak on the bill.

Since I became an elected official, first as a New York City Council member and now as a member of this great, great body, I have learned that when the President, the Governor, the Mayor, or the Legislature uses the terms "reform," "redistribution" or "reallocation," it is time for us in the minority community to open our senses and look out. Because what they're trying to do, they are going to kill us. Every time that they use those three words -- "reform," "redistribution," "reallocation" -- they kill us.

For many years, when the black and Hispanic community did not know how to vote or how to be part of the system, during those times the system was perfect and had no faults. It gave the power to others to select, to appoint, or to nominate whoever they want for whatever position they want, qualified or not. We didn't have the power.

Tammany Hall has always been there.

It is the same system that was used by others to nominate and elect others to different positions. There was no time for blacks or Hispanics. The system was perfect then.

Now, nobody questioned the system, nobody ever questioned the system during this time. Mayors, governors, judges, political appointees, everything was okay, nice and dandy. What was the difference, then? There was no difference. The system is the same, except that now blacks and Hispanics are starting to get into the system and are starting to control the system.

Ladies and gentlemen, when a black or Hispanic learns the way to the Board of Elections, when we learned the way to the Board of Elections and we started to get control of the system and we started to dictate who's going to be the mayor, the judge, or the political appointees, and when they saw that their power to control the system was being taken away by the minorities, guess what? They started to find fault with the same system and the same methods that they had been using ever since.

First case. In the City of New York there was something called the Board of Estimates. The Board of Estimates was composed of the five borough presidents, the mayor, and the comptroller. The five borough presidents, under the system of the Board of Estimates, used to control the budget of the City of New York.

But, ladies and gentlemen, when blacks and Hispanics started to get elected as the borough presidents and to have the power to control the city budget, guess what? They decided that the Board of Estimates was unconstitutional. But it was constitutional all the time before. Just when we got into power, oh, hold it, wait, something is wrong. The system is unconstitutional.

So therefore they used the word "reform." But before black and Hispanics became borough presidents, the Board of Estimates was perfect.

Second case was the way in which the Board of Education and the local boards used to choose the chancellor, the superintendents, the principals and all

patronage jobs in the New York City school system. For years, when blacks and Hispanics were not part of it, the system was perfect. The system that works for others to appoint and to nominate and to dispensate [sic] patronage jobs was okay.

But when blacks and Hispanics started to get control of the central and local boards of education and its patronage jobs, guess what? They used the words "reform," "redistribution" and "reallocation," and in that way what was good for others became no good for us.

Term limits. Thank you, my sweetheart. Term limits. They were perfect all the time before I was born. People was there forever. But when we got into power, then they decided that term limits was -- what is it -- unconstitutional, and they abolished term limits.

And now, ladies and gentlemen, for many years political clubhouses -- the machines, as they are called -- they have been the ones in charge of selecting judges in New York City. There is no difference in the

way judges were selected before and the way judges are selected now. Same thing. Fifty, 40 years, 30 years ago, the system was the same.

So what is the big problem? The big problem, ladies and gentlemen, is that the party bosses, the political clubhouses and the system is now becoming to be run by blacks and Hispanics.

So guess what? That system that worked for others as long as blacks and Hispanics and other minorities were not in charge was a good system. Now the system is rotten, it stinks. But now that the minorities have the power to nominate and elect judges, they are saying that the system is unconstitutional now and has to be reformed because it violates the First and the Fourteenth Amendments to the United States Constitution. It never violated that before. Now, when we got into power, now we start violating the Constitution.

I am a Democrat, elected to this office with the support of the Bronx Democratic county organization. I am proud to

stand here today and tell you that in the Bronx County, an emphasis has been put on equality when nominating judges. Every time there have been three openings or three vacancies in the Bronx County, the Bronx County Committee has always nominated a black, a Hispanic and a white. And women.

But, ladies and gentlemen, as they say, be careful what you wish for -- you might get it. In Bronx County, the electoral power, the majority of voters are blacks and Hispanics. It has been proven time after time that a white judge, a white person in Bronx County will never get elected if you take that route.

The only way to have this --

THE PRESIDENT: Excuse me, Senator.

Senator DeFrancisco.

SENATOR DIAZ: When I finish.

The only way to have this done is with the present system that allows the chairmen of the Bronx County Committee to nominate judges other than black and Hispanic.

So, ladies and gentlemen, as a

lonely voice in the desert, overlooking the future, I am telling you that by reforming the system to appoint judges by popular vote, you are doing a great damage to those well-qualified and well-prepared members of the small Bronx white community. Ladies and gentlemen, I am afraid that there will never, ever be a white judge elected in the Bronx County judicial system if the present system is reformed.

But as I said before, I am just a lonely voice in the desert telling you to be careful what you wish for, you might get it.

Madam President, thank you very much. And please be sure that my vote is put on the "no" column.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DIAZ: I'm not taking any questions.

SENATOR DeFRANCISCO: Oh, you're not?

SENATOR DIAZ: No, I'm not, I'm sorry.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

First let me make some full disclosure here, because it can get a little confusing. In late 2004, I testified in the case of Margarita Lopez Torres against the State Board of Elections. I testified for the defendants. I spent a day in depositions and the better part of two days on the stand before Judge Gleeson. I was testifying against the position being advanced by Margarita Lopez Torres, who was then a civil court judge.

Why I clarify that is because last fall I was retained by Margarita Lopez Torres as her attorney in the recount and postprimary challenges. I won that case, and she is now one of the surrogates of Kings County. So it can get a little confusing whose side I'm on, but I know Senator DeFrancisco, being a lawyer, understands perfectly why there's no conflict here and why I call them the way I see them.

In the course of testifying for the defendants in my deposition, Fred Schwartz,

who was one of the lawyers for the Brennan Center, said to me: "So, Senator, you support the present system of conventions?" And I said "No." He said: "But you think it's a great way to pick judges?" And I said, "No, I don't think it's a great way to pick judges, I just think it's far better than what you're proposing to do."

Because the fact is -- and actually, today I am completing my 28th year here as a State Senator -- from the day I was elected, I signed on with the Committee for Modern Courts for the merit selection of judges.

A little history, maybe. You know, the idea of electing judges goes back to the revolution. And in some states, the revolutionary -- some of the more radical states from a revolutionary standpoint were much in favor of electing judges. Why? Well, if you read the Declaration of Independence where Jefferson sets forth the reasons for declaring independence, one of the things he mentions there is that the king, His Majesty the King of Great Britain had set up among us

strangers as our judges. The king was appointing strangers from England to come here and make a good living being our judges.

So after the successful revolution, many of the early founders of the state government said: Let's elect the judges. We don't want any more of these elite strangers, Lord this and Lord that, as our judges, with the wigs and the whole thing.

Interestingly enough, New York, if you look at the early period of this country, New York tended to be more conservative than Rhode Island, which was real radical, and many other places.

New York was a mercantile state. It was federalist, hamiltonian influence. It was much more moderate and conservative. And we had appointed judges. Now, granted, we had not yet separated equity from law, so we had a chancellor as well as the law courts.

In 1847, New York went to an elected system. And as that progressed and the party system -- because remember, the party system didn't really appear in law in New York State until the Election Law of 1897,

1898, 1899, when they started having primaries, which -- mandating primaries, which were nothing more than caucuses. The Election Law of 1909 then gave us our first primary as we know it, the rank and file gets to vote.

So up until 1909, either a party caucus or, prior to the mandate of the primary being a party caucus, prior to that, in the 1850s, '60s, '70s, the party bosses got together and nominated the candidates and the voters picked in the general election. So they controlled who the judges were.

When you get to 1909 and the statute of the Election Law of 1909 mandating a primary -- the state's going to print the ballot, the Australian ballot, therefore the party has to nominate you to get -- you're guaranteed a place on the ballot, so the party must do, notwithstanding the First Amendment, what the state mandates in order to have ballot access -- we had primaries.

So they had open primaries for Supreme Court justices from 1909 to 1924, '25, when they adopted the convention system. Why did they adopt the convention system? Bar

associations, a citizens' union of good government groups screamed for a convention system because the open primary elections had been so unseemly. And money dominated, big bucks.

Now, when they talked about big money in a primary then, they probably meant somebody spent $4,000 or $5,000. But it was big money then. Because remember, Woodrow Wilson spent, I think, $12,000 running successfully for president in 1912. So the fact is that this was a reform, to have conventions.

Now, how did we get to that? In theory, in the early 19th century and even in those states that adopted it in the late 18th century, the idea of elected judges sounded good. They weren't strangers among us. Everybody in a community, everybody in Albany, everybody in New York City -- New York City was a town then. I mean, it was a city, but relatively speaking, it was small stuff -- they knew the lawyers. There weren't that many lawyers. Certainly not what we have now.

And everybody knew who the

reputable lawyers were, the ones that didn't cheat their clients, the ones that had a reputation for probity, judgment, good temperament. And so the citizens were in a position to cast a knowing vote for who they wanted to be judge.

Life got more complicated in the 20th century, and people didn't know. And so people tended to vote for the party label.

And the reality of judicial elections today, in most parts of the state -- and I'm not talking about a village justice or a town justice. It probably works pretty good there. People know who they're electing, they know them. In many cases, they're not even lawyers that they elect; they don't have to be. But they know who they are. They elect somebody they trust. They elect somebody that they're willing to have judge them.

But when you get to the higher courts, the fact is that most people don't know who they're voting for unless they happen to have been someone who was once their lawyer. Which would be a small percentage of the electorate.

So this idea of the party labels means something in an election took hold. How else to judge?

Well, there's another way to judge. Wisely, voters, from what I've seen, have been voting for the women candidates in the last couple of decades. It's probably a wise thing to do. But voters are looking for a tag line.

What's the problem with an open primary? Well, number one, people say, Well, that's how you elect civil court judges in New York City, you elect them countywide, the whole borough of Brooklyn, the whole borough of Manhattan. You have an open primary.

Well, Madam President, we had a problem in the '70s that we actually addressed in legislation. And Speaker Silver was then a young Assembly member, I remember him discussing it with me, and a bill -- we put forth a bill that passed.

There were two vacancies, there were two vacancies in a civil court district in Manhattan. There was only one incumbent. The other incumbent had aged out and retired. So what did you have in that judicial

district? You had an incumbent, a very, very fine incumbent that everyone respected, and you had an open seat.

So everybody who wanted to run in that district said, Well, I'm not running against Judge -- I think it was Judge Sachs -- I'm not running against him, everybody likes him, he's a good judge. And there were two candidates who said, No, we're not running against him, we're running against each other for the open seat. And they campaigned hard and they spent money and they did mailings and they campaigned hard against each other for the one open seat.

Except that was the law? Two vacancies, three candidates. Guess what? The two people running against each other came in first and second, and the incumbent judge lost. The one no one wanted to see lose, lost.

It makes sense. We know politics; we know elections. There's one incumbent busy being a judge. Everybody says he's great, he should be continued, nobody has an unkind word about him, and there are two people out there

yelling "Vote for me, vote for me."

How do we address that in the civil court? We have an assigned vacancy law. Look it up. In New York City civil court, each judge, when they file their petition, has to put on their petition what assigned vacancy they're running for. It afforded the contestants for the open seats the ability to file against each other and let the incumbent go free for another ten-year term.

Now, why do we do this? Why do we protect incumbents? Well, Judge Gleeson actually, in his decision, has a couple of pages on this. He says, Well, if you're just protecting incumbents, that's bad.

But he understands the rational state purpose with respect to the judiciary of protecting incumbents, because the overriding principle -- and I think we all agree on it -- is to protect the independence of the judiciary. And respect the fact that a judge who's doing his or her job has been out of politics for 10 or 14 years if they're on the Supreme Court, has not been going to club dinners, has not been buying gold pages in

ads, has not been doing politics like we all do with our two-year terms, like we all do day in and day out.

So it's not fair, then, to say nah, ha, ha, suddenly, as the ethics rules say, for one year we're suspending this halo over you, Judge, and you have to jump into the political maelstrom, go see if anybody's left in the clubhouse that you knew when you got elected 14 years ago or 28 years ago and try and get yourself reelected.

So Senator DeFrancisco's bill does not include an assigned vacancy provision, so therefore -- which was very common in the judicial districts, I think, throughout the state, where you get five seats are up this year but three are held by incumbents, two are open.

Well, in an open primary situation, if more than two people compete for the two open seats, then all -- then the three incumbents go into the pool in a six-way race and the people who come in one through five win. And guess what? One of the incumbents is most likely to lose. Guaranteed. So

that's a problem with the bill.

Another problem is the need for money. Under the canons of judicial ethics as rigorously applied by the Stern Commission, or the Commission on Judicial Conduct, a candidate for judicial office who's a sitting judge, either in a lower court -- often the case; civil court, county court, whatever -- or who's running for Supreme Court cannot -- and we say cannot raise money except for a year before the election.

Under the canons of judicial ethics, they can't raise money at all, as we understand it. They can't say "Come to my fundraiser." They can't say "Donate money to my campaign." They're not allowed to solicit any campaign contributions.

They're not -- this is brilliant -- they're not allowed to know who contributed to their campaign. It is a violation of the canons of judicial ethics. Forget the fact that it's a public record on the website of the Board of Elections and everybody else in the state knows who contributed to their campaign. They're not allowed to know.

And you know what? Now the chief judge puts a rule down, Madam President. The chief judge says no lawyer can appear before this judge who has contributed to her campaign. Except she's not allowed to know who contributed to her campaign. The rest of the world knows, but she doesn't know.

Now, guess whose name will be in the paper a day or two after a lawyer appears before this judge who contributed to her campaign? Not the -- well, the lawyer may get a mention. It will be the judge. The headline will be about the judge. The judge let somebody appear in front of her who gave to her campaign. Forget that if she is ethical and followed the rules, she doesn't know that he contributed to her campaign.

This is what we have started to do as we have the intersection of ethical rules and legal changes and federal court judges. I'm reminded of this decision that threw out a whole statewide scheme based, frankly, on evidence that dealt with kings in New York County, for the most part, with vague mentions of other judicial districts. You know, as

someone said to me, well, it shows the difference between a federal judge and God. God doesn't think he's a federal judge.

(Laughter.)

SENATOR CONNOR: But the fact is, Madam President, the fact is that there's got to be a better way to pick judges. And there is a better way to select judges. I'm not going to tell you I've quite figured it out. But I think some system of merit selection of judges is far better, far better than an open primary, the need for money.

Now, we've heard colleagues say what about the diversity on the bench, in the direct primary? Now, I know some parts of this state, and I -- look, I know this state pretty well, and I've talked to candidates all over this state. And in large parts of this state there is not really much of what we would call or political consultants would call an ethnic vote.

But in urban areas of the state, and in New York City, that's still how people tend to vote. Particularly when they don't know the individuals. And when you're dealing

with judicial elections, they don't know the individuals, by and large. But they will vote for some identity tag.

Now, we've heard Senator Diaz say: Well, it will be very hard or impossible for a white to be elected to the Supreme Court in the Bronx. But, you know, diversity, diversity embraces also some of the -- what I'd call smaller minorities in terms of their size in the electorate.

For example, in New York City we have a number of Asian-American judges. It would be very, very difficult under this system for an Asian-American candidate to get elected to the Supreme Court. Very difficult.

There is an incumbent judge in Manhattan, a very good judge, her last name is Abdus-Salaam. Can you imagine a judicial race, people don't know you, and the current temper of things post-9/11, that judge running for reelection? It'd be very, very difficult to get elected.

The convention system allowed the party leaders in both parties to build a ticket, to build a ticket for that party that

reflected the diversity of the constituency in their district. And I know you don't find a lot of diversity in a few parts of this state, but there are other parts where you do.

And the one thing the parties did well, leaving aside the issue of unfairness that's implied by the charge of bossism -- which, you know, sometimes is in the eye of the beholder, and sometimes it's real and it's not right. But the party did have an ability to represent constituency groups so that the ticket as a whole had broad appeal throughout the district. That's called democracy. That's what a political party exists to do.

And that's what won't happen with this open primary. Because another flaw in this bill, Madam President, the Wilson-Pakula law does not apply to judicial offices. You don't need to be a Democrat to run in the democratic primary for a judgeship, and you don't need to be a Republican to run in the Republican primary for a judgeship.

What you really are going to need, Madam President, if this bill became law, or if Judge Gleeson's order goes into effect for

this year, is you're not going to need party enrollment, you're just going to need green. And I don't mean the Green Party. You're going to need money.

Money will talk. Wealthy lawyers will see an opportunity, and they will take it. That's what they're trained to do.

And you're going to find, and it's really -- fundamentally, under the First Amendment, Madam President, it is not fair to a political party to think that they then become saddled with someone who could be totally antithetical to their political philosophy.

It really -- you know, it reminds me of a primary in Louisiana years ago when somebody won the Republican primary and the Republican Party -- it was David Duke -- denounced him. He was antithetical to their principles. And it was right that they did what they did with respect to that candidate. But it was wrong to have him inflicted on the Republican Party.

And I say it could be wrong to have someone of a totally foreign political

philosophy and affiliation inflicted on a political party as their Supreme Court candidate.

And by the way, if you look at ballot placements, Supreme Court, that's way up there. That's above anywhere we run on the ballot. For the upstaters, it's way over there before anything where we get listed.

So I don't want to be on a ticket that's headed up by someone who bought a nomination and who has nothing to do with my political party. And when I say "nothing to do," I don't mean in an organizational sense, I just mean in a philosophical sense.

So this is a very, very bad way to pick a judge. Certainly without a Wilson-Pakula law in place covering it, certainly without an assigned vacancy rule in place to cover it.

And as to the Brennan Center -- you know, they brought this lawsuit, brought this down on it -- it's watch what you wish for, as Senator Diaz said. They got it, and now they're saying: And we think it's great, as long as we have public financing -- and what

else did they want? Something else.

It's politically problematic. Not that I wouldn't support it, but I've been around here long enough to know that public financing is, in this house, politically problematic. And that translates into, let's face it, the Majority's not going to do it, Madam President. And so that's the excuse. This would be a great, great thing if you do all those other things.

I think we have to put our heads together and we have to come up with a better way to select judges in New York State. We have to try and figure out a way to back away from a political culture in this state that politicizes the selection of judges. And I don't just mean in the way that Senator DeFrancisco's bill would do it, and I don't mean in the way that the convention system has done it, and I don't mean in the way that we've had an appointive system. Because, let's face it, in a political culture -- none of us are political neophytes here -- politics counts. That is our system.

But I think we need to go back, we

need to look at the kind of work that the Committee for Modern Courts has done over these years and take a look at some system of merit selection. You'll never take all the politics out, but you can ensure merit, you can minimize partisanship. An alert public can do that by holding accountable the appointing authority.

And is it any different than what we did with the Court of Appeals? You know, people say, Oh, but that would take a long time. You have to amend the constitution. Yeah, it would take a couple of years. We did it for the Court of Appeals. I'm old enough to remember when Court of Appeals candidates battled it out on the airwaves and slammed jail doors and did all sorts of other things to get elected to the Court of Appeals. So -- with some irony.

But the fact is that we figured it out for the Court of Appeals. I think we can figure it out for the State Supreme Court. And I think we ought to do that. And I don't think we should jump in here.

And I do think that we ought to

give due regard, Madam President. I don't think Senator DeFrancisco suggested it, but it's sort of implied that it's a fait accompli because Judge Gleeson made his ruling. But federal judges, whatever they think about the deity, are subject to review by the Court of Appeals. There is an appeal filed, there are motions for stay filed. So it's not a done deal yet.

I think what we ought to be doing is very quickly putting our heads together and coming up with a better way to pick Supreme Court justices. I think if we came up with a true merit appointment system that had wide bipartisan support here, I think that Judge Gleeson could be persuaded perhaps to even stay his own order pending adoption of that over the next two-year cycle as a constitutional amendment.

But there are better ways to do this. This bill is not the answer. As hallowed as it is in the memories of the founders of this country, the electoral system has outgrown its usefulness on this level of the Supreme Court.

Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco, to close.

Senator Schneiderman first.

SENATOR SCHNEIDERMAN: I don't want to interrupt that closing rhythm. On the bill very, very briefly, Madam President.

I also have serious problems with the legislation as proposed. And I want to just add one or two things to what my colleagues have said before, before me.

First of all, the situation we're in now is that pending further action by the court, the federal judge has ordered primaries until the Legislature takes action. So we should be -- as Senator Connor says, we should be working on the right way to solve this problem, not simply doing a quick fix.

I know Senator DeFrancisco is sincere about this and that he's had this bill for a while.

This is not the best way to solve the problem. This is not something that we have given due consideration to. And I don't think you have to look any further than the

numerous bar association reports, good government sources -- in particular, the report of the Feerick Commission, which explicitly addressed this, and which Chief Judge Kaye referred to her in "State of the Judiciary" address.

The Feerick Commission stated, very clearly: "Given the likelihood that the introduction of judicial primary races would draw major financial contributions into the judicial elections, the commission recommends retaining judicial district nominating conventions subject to significant reforms, at least until New York State adopts public campaign financing and other reforms."

So here's the Feerick Commission, the greatest collection of good government lawyer activists that you can find, saying we should just go slow on this. There are too many unintended consequences of an open primary system.

And I respectfully suggest that the bill before us today -- look, I was a partner in a big law firm in Manhattan. There's never been a piece of legislation that would confer

greater benefits on partners of big law firms in Manhattan than the bill before us today.

You want to know who's going to be able to run for office in other counties? Because there is no requirement that you live in the district. You know who's going to be able to afford to buy consultants and the lawyers who work and, you know, are making not insignificant amounts of money? It's partners in big law firms in Manhattan.

So this is in fact -- I must say, in this case, I agree that the effect would be precisely what Senator Diaz has predicted. This is a bill that will reduce diversity, will promote the election of, you know -- and I don't know that my former partners are looking to run for judicial office, but this would make it easier for people to run for office.

It does not require you live in the district, it does not require you belong to the party in whose primary you run. And it really would be open season for those with money to take over our judiciary. There's no doubt in my mind this would reduce diversity.

And I respectfully suggest that under the circumstances where the judge has issued an order throwing this back to the Legislature and having -- mandating primaries until we take action, where there's now an application for a state pending appeal underway, let's slow this down, let's try and come up with the right way to solve this problem and not simply respond with something that may appeal to one or two reform groups who probably don't want to see the gain that they perceive they made in this decision lost.

Let's slow it down. Let's try and do something that will actually provide the kind of judiciary we need in this state. Which is a judiciary -- and in the Feerick Commission report they state, in their introduction, a judiciary that has public confidence.

Without public confidence, the judicial branch could not function. And if the judiciary in New York is going to become a judiciary dominated by wealthy white men, because that's what we're talking about, it will not be able to function because it will

lose public confidence.

Let us not throw out the baby with the bathwater. Let's do this the right way. We're under no compulsion to pass this one-house bill right now. So I would urge my colleagues to vote no on this bill, and then let's get to work on something that could actually improve the system.

Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco, to close.

SENATOR DeFRANCISCO: I was thinking of rereading the bill, because I'm not sure where all of these dire consequences come from from this bill. It basically puts into place what is in place for County Court, Family Court, and other judges.

Now, for the life of me I haven't seen all these problems of wealthy white Manhattan males from coming up to Syracuse to take over a county court judgeship and take a $500,000 cut in pay. So I'm not quite sure how we make these leaps, quite frankly.

The fact of the matter is is that this system puts in place something that's

been in place in all of these other judgeships, and all these other dire consequences have not occurred. And there are some who have seen the committee process, the convention process work with hand-picked delegates and members of these committees backing off and not voting against somebody who is a very bad candidate because there's no qualifications because they're worried about a Senate candidate that might be someone that they want to get to nomination for another, totally different office.

It's a closed shop, a convention system. It's a closed shop. It's as simple as that. And all this court decision is doing is saying open it up.

And, you know, I really take offense at Senator Diaz's comments, the claims that this is a racist bill. Especially when his ultimate conclusion is if we have this bill, you may get what you wish for. And that is all judges will be black in that county, because that's what the electorate is.

Now, how is that possible? Am I missing something again? If this bill passes,

then the majority of people or the vast majority of people will have just about the vast majority of judgeships? That's what democracy is about, I think. I think that's what democracy's about.

You know, there's a real cheap, a simple system called a dictatorship. You just select people for different positions, you don't have to pay anything.

Everybody here raises money to run for office. Does that mean we're all white males here, the only ones that could possibly raise the money in order to run a race? That's all we're talking about, that if you're not one of the anointed few by the powers that be, you have another option to get on the ballot.

And it's interesting, the most interesting part of this is there are very, very few races that I know of in County Court and Family Court where someone who is not the anointed one actually does a primary in judicial races. It's very rare. All these dire consequences? It rarely happens, because most people will say, Well, if I'm not the

candidate, I'm not going to go raise money, I'm not interested in going forward.

The solution to the Feerick Commission is sort of interesting. Let me just point out one thing the Feerick Commission did recommend, which I think shows the depth of the talent on the commission. That sometimes with great talent, you come up with absolutely foolish decisions.

One of the decisions is that if you get -- I think the number was, in the original report, if you have -- if a person has contributed $500 or more to a judicial candidate, they are precluded from appearing before that candidate because we don't want that judge in any way to be influenced because that's someone who contributed.

Think about that for a minute. Any practicing lawyer would love to pay $500 in order not to appear before a specific judge that maybe they've had some bad dealings with. So how is that reform? It's absolutely unbelievable.

So what's the reform for the problem that happened in Brooklyn that is

suggested by the Feerick Commission, adopted by the Assembly? We're going to create a bureaucracy, we're going to create another bureaucracy. Each judge will select five members -- 15 members on each commission. There's all these commissions all throughout the state, the judicial election qualifying commissions all over the state to determine qualifications.

I'm not quite sure what qualification commissions has to do with trying to open up a process so that more people have at least the opportunity to run if you're not the self-anointed one.

So this bill is just one suggestion. It's not the be-all and the end-all. But it seems to me it opens the process. And we're not going to be concerned, I don't think, about too many primaries, at least if the Supreme Court judge situation is the same as the County Court and Family Court judge.

Lastly, and I think, you know, what I believe is happening -- and the Committee on Modern Courts has been looking at this for

years -- and that is the appointed process, appointing judges. Do away with election of judges. It's unseemly. It's a horrible thing. And what I think is truly happening here with the Feerick Commission and Judge Kaye's recent suggestions as far as these judicial election qualifying commissions is because now we're setting in place the bureaucracy that will make the transition from elected judges to appointed judges.

And anybody who thinks for one moment that there's not politics in the appointment process, they don't belong in this body. They're just too naive to be in this body. There is politics all over the place, including the selection of judges for the Court of Appeals.

There's an example that I probably -- no, I'd better not give. But it was a judge that simply was, with all these qualification committees, with all these different groups that determine qualifications, one of the Court of Appeals judges in recent times was actually appointed by a governor, and that particular candidate

was the least qualified, according to the qualifying factors that you go highly qualified, qualified. And six months before that time this person was determined to be qualified, she was determined not to be qualified for the Appellate Division, the mid-level court.

Now, that's merit selection for you. That's merit selection for you. So that's just one example. It happens in every county every day of the week.

So what we're talking about, sure, it's easier, sure, it's less expensive to appoint people. But on the other hand, that's not what democracy is all about. We ought to be able to be in a position where those who are not the anointed ones at least have the opportunity, if they choose to get on a ballot, to try to become a judge.

And that's all the intent here. There is no intent here to deprive any race or creed of any opportunity. In fact, it opens opportunities for some that have been closed unless you're part of that political clique and you're involved in politics to that

degree.

So I really, truly believe that this is a good bill to start the dialogue. The Assembly has a bill in the Assembly presently dealing with all of these committees and have more judicial qualification review and all of this. That's wonderful. Maybe there is something in between. Maybe there is something that we can negotiate. But up till today, we have not had a bill pass in this house on this issue. Now both houses have it.

And quite frankly, I would call upon the leadership to try to get conference committees and start talking about these weighty issues that we're dealing with today. This is one bill. I think it's a good bill. It's not the only bill. And I think we can reach a consensus if we just don't aim for what I think many are aiming for, the abolition of election of judges. And that we truly have an election process that's fair to all and gives all the opportunity to participate.

Thank you, Madam President.

THE PRESIDENT: The debate is

closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Winner, to explain your vote.

SENATOR WINNER: Thank you, Madam President. Very briefly to explain my vote.

In the spirit of Senator DeFrancisco's assurances that this is the beginning of a dialogue, I think that it is important, in view of the fact that the federal decision is there, it is moving us toward a primary system. And in the likelihood that occurs, we certainly need to do a lot in order to move the process away from where we are now.

But there's one thing that is significantly missing from this debate, and that is in an area such as mine that comprises portions of two judicial districts. First of all, I haven't heard a lot about the quality

of judges. We universally feel that the judges that serve our judicial district in the Supreme Court are eminently qualified.

But what we do worry about is whether or not there's going to be access to justice and whether there's going to be access to the services that Supreme Court provides not only to the legal community but to the litigants. And that is something that I'm not hearing about.

And the problem that you're going to have in areas such as mine is that we have a number of rural counties that will have no access to these types of judges. In the one judicial district in the one half of my Senate district, we have total domination by a metropolitan area as to who gets elected to the Supreme Court. On the other hand is the portion of the judicial district that has an understanding that the judicial convention produces an allocation of Supreme Court judges that represent all the rural areas and provide that type of access to the justice that the Supreme Court provides.

So, ladies and gentlemen, I think

that we're missing some of the point as to assurances that we're providing the services that the Supreme Court is providing to the legal community as well as the litigants. And in that spirit, I hope as we move this debate forward that we're not going to lose sight of the services that are necessary of the Supreme Court to our rural communities that are otherwise not going to be provided with sitting Supreme Court judges to serve those rural counties.

And so, Madam President, in that spirit I vote aye.

THE PRESIDENT: You will be so recorded, Senator Winner.

Senator Connor, to explain your vote.

SENATOR CONNOR: Thank you, Madam President.

I want to thank Senator Winner for pointing out that diversity embraces more than just the complexion of one's skin or one's ethnic origins, but it includes geographic diversity, which is fostered by the convention system.

Secondly, Senator DeFrancisco, Madam President, made an allusion to me that maybe was missed by those who didn't read the decision. The judge also missed my real testimony.

What I testified was I didn't openly fight the county chairman, not because I was trying to get a nomination for someone -- I was the minority leader of the State Senate, and Senator Gentile, one of our members, already had the nomination, was engaged in an election campaign, and I needed the party's support for it.

Judge Gleeson didn't get it; I guess Senator DeFrancisco didn't get it.

Furthermore, let me point out that with respect to the rich white guys from Manhattan, you know, many of the large law firms have what they call decompression. Their compensation is stepped over time. So in their fifties, they're making a million dollars a year, and when they hit 62 or 65, their compensation suddenly goes down to $85,000 a year. You can see that in the Law Journal. There's lawsuits over it.

A 65-year-old millionaire Manhattan lawyer who suddenly has -- he's in the same firm, but his compensation went down to $65,000, just might decide he'll run for the State Supreme Court. Has he ever thought about running for the Civil Court of the City of New York before? No. Would he think about running for a County Court judge upstate? No, Madam President. And he wouldn't run for a Family Court seat.

In his mind, millionaire Manhattan Wall Street lawyer thinks the Supreme Court of the State of New York is worthy of his latter years in the profession of law. And who knows, his friends that he went to law school with who live in Idaho and Iowa and elsewhere will think he is on the highest court of the state when they get that letterhead saying "the Supreme Court of the State of New York."

So it will happen, Madam President. These people will run when money talks.

THE PRESIDENT: And you will be so recorded, Senator Connor.

Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Senator Winner made an excellent point, and that's what the whole concept is about, trying to negotiate something somewhere in the middle. Because there are rural districts that traditionally do get judgeships that they wouldn't based on the population.

And there's a solution to that if it's negotiated, and that solution would be to change the judicial districts so the judges would run in a way that would make sure that the rural areas would maintain their fair share and local access to federal judges.

As far as the reference that I made concerning what Senator Connor mentioned, all the point was is that when you're on a judicial convention as a delegate, you're in a position where you have also other political considerations. And other political considerations can tend to allow you to ignore somebody who shouldn't be nominated as a judge. That's all I'm saying.

And that's, I think, politics that would be avoided in the event that we went to a system similar to the system that this bill

calls for.

I vote aye.

SENATOR CONNOR: Point of personal privilege.

I was not a convention delegate.

SENATOR DIAZ: To explain my vote.

THE PRESIDENT: Senator Diaz, to explain your vote.

SENATOR DIAZ: Thank you, Madam President.

My name was also mentioned by the good Senator over there. And what I was talking about the bill has nothing to do with racism. The Senator said that I was calling this bill a racist bill. It has nothing to do with racism.

It has to do with something called self-preservation, preserve what you have. It has nothing to do with racism, where you're trying to preserve -- now there's another thing that they're trying to say, merit selection of judges by the governor.

Merit selection of judges by the governor, that's another option. Meaning let

the governor appoint and decide who's going to be the judge. But the time that we in the minority community get to become governor, forget about that. So to have the governor now be the one to appoint judges is another way of taking away what we already are achieving.

So, Senator, it has nothing to do with racism. It has to do with self-preservation. And we in the Hispanic community and in the black community, we have fought hard to get the same thing that all of you got before for many years. Let us have it. Let us enjoy it the same way you enjoyed it for many years.

I'm voting no.

THE PRESIDENT: You will be so recorded, Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 220 are Senators Andrews, Breslin, Connor, Diaz, Dilan, Gonzalez, Hassell-Thompson, L. Krueger, C. Kruger, Onorato, Sabini, Savino,

Schneiderman, A. Smith, M. Smith, Stachowski and Stavisky.

Those Senators absent pursuant to Rule 9: Senators Duane, Golden, Meier, Spano and Volker.

Ayes, 35. Nays, 17.

THE PRESIDENT: The bill is passed.

Senator Morahan, that completes the reading of the calendar.

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

THE PRESIDENT: Yes, there is, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Number 6434.

THE PRESIDENT: So ordered.

Senator Morahan.

SENATOR MORAHAN: Does that

complete our business?

THE PRESIDENT: There's no further housekeeping, Senator.

SENATOR MORAHAN: Being that there's no further business before the Senate, I move we adjourn until Tuesday, February 14th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Tuesday, February 14th, 3:00 p.m.

(Whereupon, at 5:10 p.m., the Senate adjourned.)