NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:05 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will 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.)

ACTING PRESIDENT MARCELLINO: The invocation today will be given by Reverend James Barker, pastor of the Bible Baptist Church of Elmont.

REVEREND BARKER: Let's pray together.

Our heavenly Father, we're thankful for Your goodness to us, we're thankful for Thy mercies, Thy grace, Thy kindness towards us.

We do pray for all the legislators gathered here today in the State Senate. We pray to give them wisdom, we pray to give them discernment, we pray to give them courage so they can make the right decisions, decisions based not on expediency or on opinion polls, but on biblical principles. Help them get

their wisdom from the word of God, from the Bible.

So, Lord, we ask that Your will be done in this Senate and in our great country, for it's in Jesus' name we pray.

Amen.

ACTING PRESIDENT MARCELLINO: Thank you very much.

Can we have the reading of the Journal, please.

THE SECRETARY: In Senate, Monday, April 23, the Senate met pursuant to adjournment. The Journal of Sunday, April 22, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: 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 Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolutions 1607, 1625, 1657, 1671, 1682 and 1706.

ACTING PRESIDENT MARCELLINO: All in favor of adopting the Resolution Calendar, with the exceptions noted, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Those opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted, Senator.

SENATOR SKELOS: Mr. President, please recognize Senator Fuschillo. I believe he has a motion to make at this time.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you have a motion to make at this time?

SENATOR FUSCHILLO: Thank you, Mr. President. Thank you, Senator Skelos.

On behalf of Senator Golden, on

page number 16 I offer the following amendments to Calendar Number 266, Senate Print Number 2818, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered, Senator.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT MARCELLINO: Thank you.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a Resolution 1657 at the desk by Senator Bruno. If we could have the title read, move for its immediate adoption, and open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 1657, celebrating the life and career of Kitty Carlisle Hart, legendary entertainer and one of New York State's greatest champions of the arts.

ACTING PRESIDENT MARCELLINO: The resolution will be open for cosponsorship, as

per the usual procedure. Anyone not wishing to be on the resolution notify the desk.

On the resolution, Senator Maltese.

SENATOR MALTESE: Mr. President, I'm proud and honored today to speak on Senator Bruno's resolution on Kitty Carlisle Hart.

Mr. President, as all of us know in government, she was a legendary entertainer and one of New York State's greatest champions of the arts. She was an arts advocate, an actress, a singer, and she was in the tenth decade of her life when she passed away April 17th at the age of 96.

Born Catherine Conn in New Orleans, she attended the Sorbonne, the London School of Economics, and the Royal Academy of Dramatic Art. In 1946 she married Pulitzer Prize winner Moss Hart. The marriage lasted some 15 years until he passed away in 1961.

Kitty's career spanned much of the 20th century and came into the 21st. She was an advocate for the arts, and a true advocate, from the grassroots to the Metropolitan Opera.

One of her most famous roles was as

Rosa Castaldi in the famous 1935 Marx Brothers movie "A Night at the Opera." She was capable of humor and drama. Her film credits include being opposite Bing Crosby, Woody Allen, and her operatic debut was at the Met, with "Die Fledermaus."

She was familiar to all TV watchers, the new generation. She went effortlessly and seamlessly into the TV generation, and many of the younger generation remember her as a regular on the game shows "To Tell the Truth" and "What's My Line?"

She was a member of the board of directors of the New York State Theater Institute, and in 1997 she was recognized by having the theater named the Kitty Carlisle Hart Theater, on the eve of her one-woman show "Here's to Life."

She was a member of the New York State Council on the Arts for 25 years and served for 20 years as its chairman, for her lifetime passion, the arts. She was responsible for the increase in funding both at the state level and at the federal level.

She is survived by her son, Chris;

her daughter, Dr. Catherine Hart; and three grandchildren.

I'd like to just take a moment more to say that this was a legendary lady. So often we talk about somebody that's passed away and we say, Well, they're legendary, they'll be long remembered. But missing Kitty Carlisle Hart in the fields of theater, drama, opera, and the arts in New York is a hole that will not be filled in a relatively short time.

Just last November, she sang George Gershwin's "The Man I Love" at the annual gala fundraiser at Lincoln Center.

As a young girl she was taken around the capitals of Europe by her mother, and she wrote an autobiography and she spoofed herself -- she had a great sense of humor -- and she said that her mother had hoped that she would be married to a prince, which was why she gave her the education she did. There were piano lessons, voice lessons, and a grounding in the dramatic arts. She told her daughter: "You're not the prettiest girl that I've ever seen, you don't have the best voice that I've ever heard, and you're not the best

actress. But put them all together, and we may be able to get you a prince."

As a practical matter, she married a prince of the theater, Moss Hart, in 1946. A lot of people, maybe, here today don't know Moss Hart, but he was very famous. He was a director, he was a famous songwriter, he did a great deal.

And the collaboration with the Marx Brothers was one that she particularly delighted in, because it gave her an opportunity to exercise her great sense of humor.

But she took jobs during the war years wherever she could to help the war effort, and she sang at many World War II bond rallies. She appeared in the 1944 film -- which is a film classic now -- "Hollywood Canteen."

Until the end of her life, she would burst into warm laughter. She had grace, she had charm. And she used to like to say she wanted to be considered somewhat eccentric because, she said, it gave her a lot of leeway.

She called herself a Johnny Appleseed for culture, and that's truly what she did, going into many of New York's 62 counties. She enjoyed the fact that she had been termed a living landmark by the New York Landmarks Conservancy the same year she was inducted into the Theater Hall of Fame.

She wrote that her mother, when she had realized that she was not the prettiest, not the best actress, and not the best singer, she said: "My dear, we've made a ghastly mistake," indicating that she perhaps shouldn't have pointed her toward the arts. But she delighted in proving her mother wrong. She said a career takes more than talent, it takes character and perhaps stamina.

Just a few months ago, she said: "I'm 96, and I'm loving it." Truly missed by all of us, Kitty Carlisle Hart.

Mr. President, I'm proud to cosponsor this resolution with Senator Bruno and open it up to cosponsorship.

ACTING PRESIDENT MARCELLINO: As we said earlier, Senator, the resolution has been opened up to cosponsorship in the usual

way.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Very briefly, I know that Kitty Carlisle Hart was so important as far as the arts is concerned and promoting the arts in our state. But I wanted the members of this chamber to understand that I performed with her on one occasion.

There was a fundraiser in Syracuse, by the Syracuse Stage, and the fundraiser was an old-time radio show. And we each had our various parts. As it turned out, Kitty Carlisle Hart and I were lovers in this radio program. Clearly, you'd have to have a lot of imagination for that.

But it was a lot of fun, and she was a wonderful, wonderful lady. And no one promoted the arts more strongly than she did. And she definitely will be sorely missed.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 1671 is at the desk, by Senator Bruno. If we could have it read in its entirety, move for its immediate adoption, and open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 1671, memorializing Governor Eliot Spitzer to proclaim April 24, 2007, as Senate Disabilities Awareness Day in the State of New York.

"WHEREAS, The New York State Senate Committee on the Disabled is sponsoring the 27th Annual Senate Disabilities Awareness Day in Albany, New York; and

"WHEREAS, Members of this Legislative Body have selected residents from

their districts who embody the celebrated spirit of perseverance and determination to 'achieve through adversity' to be honored as 2007 Senate Achievers; and

"WHEREAS, The special guest at the 27th Annual Senate Disabilities Awareness Day is FLAME, the Lexington, New York, rock band made up of 11 talented musicians with developmental and physical disabilities, including blindness, autism, and Down's syndrome. Since 2003, FLAME has captivated their audiences throughout New York State and beyond; and

"WHEREAS, In addition, a Technology Fair will be held, with exhibitors from across the state displaying their programs; and

"WHEREAS, It is the sense of this Legislative Body that persons with disabilities merit our recognition as they realize the goals of inclusion and equality in our communities and society at large; and

"WHEREAS, It is the intent of this Legislative Body to recognize persons with disabilities, accentuating, in turn, the benefit to New York State of their

contributions to our economic, educational, and social growth; and

"WHEREAS, Senate Disabilities Awareness Day so clearly labors for the positive and salutary definition of the communities of the State of New York; and

"WHEREAS, Senate Disabilities Awareness Day provides individuals with an opportunity to acknowledge and understand the legislative process; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor Eliot Spitzer to proclaim April 24, 2007, as Senate Disabilities Awareness Day in the State of New York, fully confident that such procedure mirrors our shared commitment to the efflorescence of human dignity; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Honorable Eliot Spitzer, Governor of the State of New York; members of FLAME, Lexington, New York, and selected representatives of persons with disabilities."

ACTING PRESIDENT MARCELLINO: On

the resolution, Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President.

The resolution really says it all, and that resolution will become part of the permanent record of this Senate.

And it is fitting and proper that we do pause to recognize that this is the 27th year that the New York State Senate has been honoring the disabled community in the State of New York by having this Disability Awareness Day.

It's truly inspiring when you read the stories of the nominees and the honorees that we honored earlier today -- overcoming disabilities, not even knowing that they're disabled, doing things that ordinary people like you and I probably could not accomplish. But their fortitude and their courage is outstanding.

One story after another of each honoree is one that should give hope to all those who may find themselves someday disabled, and those that are out there today, that you can be anything you want to be,

despite disabilities, when you stick to it, when you get your education, get productive, don't take no for an answer, just get things done and serve as a role model for all the people in the State of New York that clearly indicates that our disabled are people, they're people who have overcome great hardships and challenges, and notwithstanding those challenges and those hardships they have been successful.

They have contributed to the community in not-for-profit work, they have contributed to their counties by being employees, doing computer work, doing so many amazing things that those of us who are fortunate not to be disabled, who have not had the challenges put in front of us, can now benefit from.

So I believe that the disabled nominees that we honor today serve as a tribute to the courage of the human spirit, that now we can be further encouraged to encourage others, and that they serve to all the people in the State of New York to share the glory in their accomplishments.

Thank you, Mr. Chairman.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

If we could have some order in the house, it would help.

Senator Robach, on the resolution.

SENATOR ROBACH: Yes, Mr. President. I too rise to support this resolution. And not only the resolution; really, the ceremony that we had today.

When you hear these stories, as Senator Morahan has pointed out -- not only Shelly Perrin from my district, but all these stories -- it really is a happy occasion. It is really the personification of not what challenges each and every one of us may face to whatever level, but really the beauty and joy of overcoming whatever you have to overcome to accomplish your goals.

And every one of these winners, the stories behind them, not only have they gone on to achieve what they want, what's so exemplary is they have all even gone above and beyond that to then give back and help our people in our community in so many areas.

And I do have to say, it may be old-fashioned, it's an honor and privilege to have this job. But each year when I see these stories of inspiration, great human interest, great joy, I am always inspired and I think that they are really, truly role models to everyone in society -- not only us in the Legislature, but our communities -- that we can accomplish good things. And certainly with some severe challenges, if they can overcome it, certainly we all can.

And I want to congratulate each and every one of the winners, and also Senator Morahan and Senator Bruno for having this great, great day and highlighting disability awareness.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: All of Central New York is very proud of Kara VanderVeer, who's over here, from our district.

But even more than that, this day

is incredible. When I stood there watching each person come forward, and listening to their stories, it was absolutely unbelievable.

We come here and we complain about various things, we battle about various issues, we worry about the most minor, minor things. And here are people that have overcome very, very major things and then gave back to the community by helping other people. I don't know what more that can be said about that.

And, secondly, what it does, it truly inspires all of us and makes us understand how important our job is to deal with the issues that they tell us about and that they're facing. Because the least we can do is to make sure that they have the opportunity to be the best that they can possibly be.

Thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator DeFrancisco.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I rise to pay tribute to my nominees. Everybody is speaking of these incredible people and what they've accomplished in their lives, through their handicaps and so forth. I have the FLAME, which was the band that provided all the music for this group. They have been here before, last year. There's 11 of them. They're so terrific, you can't believe it. Every single one of them are performers of great ability.

And we have with us here this afternoon Tim Fiori, who is the public relations person for the Lexington group that brought them here. And, Tim, you're going to get them on the Tonight Show, as I understand. We'll see what happens there.

But let me just say how proud I am of our group. You never heard -- they had everybody jiving and moving with this music that they were providing for everyone. And I'm very, very proud of every single member of these. I'll spare you the reading the 11 names. But let it be said that I'm grateful to them and honored that they came down here and entertained us.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Farley.

Senator Maziarz.

SENATOR MAZIARZ: Thank you Mr. President.

I just want to add my name to the chorus and thank Senator Morahan for sponsoring this day, and to recognize my nominee, David Holly. David is here today with his family.

David is an accomplished artist. He visited my office earlier today and saw the artwork of another very accomplished artist, Constance DelVecchio Maltese, and pronounced it not bad art.

(Laughter.)

SENATOR MAZIARZ: David has overcome a lot of challenges. He works closely with Opportunities Unlimited, an organization within my Senate district, and does great work and is a great role model for all the other individuals out there with special challenges.

Thanks, David, for being here.

ACTING PRESIDENT MARCELLINO:

Thank you, Senator Maziarz.

Senator Rath.

SENATOR RATH: Thank you, Mr. President.

I rise also to thank Senator Morahan for putting this day together, where we all have stopped and paused in our deliberations to congratulate some folks throughout this state who don't have quite as easy a day as most of us have every day. You have some very special challenges and have had them for a while.

I want to congratulate particularly Dave O'Bryan, my honoree. He's joined by Mayor Pilozzi from the City of Tonawanda. And Dave as well as all of you have given some very special gifts back to your communities because you are disabled, because you have the time, and because you have the sensitivity to what the needs are.

And let me digress just a little bit as you're here in this beautiful and very historic room. Now, you can't see it from where you're sitting, but over the chair where Senator Marcellino is sitting, above the chair

of the President of the Senate, is the Great Seal of the State of New York. It's in stained glass.

And when you leave the room, be sure to take a look at it. It's beautiful. It shines in here every day. The sun comes in, and there's the Great Seal. It reminds us of something.

There are two mythological women aside the Great Seal. One is Justice, and the other is Liberty. And what is Justice as she stands and holds the scale in her hands? She's blind. There is a blindfold on Justice.

And so justice was felt, in this wonderful rendition and the wonderful understanding of the Great Seal of the State of New York, justice would not be possible unless it was blind and could not see.

And so those of you who are disabled see and feel and understand things that the rest of us maybe are too busy, we're running too fast, we're moving too quickly, we don't see it, we don't hear it. But justice -- Justice, here -- is blind and contributing justice to our people in the

State of New York and indeed all over our world.

You have contributed so much. Thank you, and please be sure to look at the beautiful seal of the great State of New York. And remember that in the future -- that without being blind, justice might not be delivered. And without you having to slow and pause your pace a little bit, the wonderful achievements that you have achieved might not have been possible.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Seward.

SENATOR SEWARD: Thank you, Mr. President.

I too want to rise to, first of all, thank Senator Morahan for sponsoring this Awareness Day and to rise in support of this resolution congratulating all of our achievers here today.

This is, no question, one of the most inspiring days of the year, as we listen to the stories of what has been achieved by

these very brave individuals who have overcome great challenges in their lives.

I particularly want to congratulate Katherine -- Kate -- Pavlacka, of Oneonta, who, due to a disease, turned blind by the age of 15. But since that time, she's gone on to be a college student at SUNY Oneonta, she's an accomplished swimmer, a very competitive one. She writes a newspaper column. And it's interesting that she also works part-time for Springbrook, which is an organization and facility in my area that serves developmentally disabled individuals.

So Kate spends her time working, serving, and helping those who are developmentally disabled. That's truly an inspiration to us all, Kate. And my congratulations to you, to your family, and to all of our achievers this year.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Seward.

Senator Nozzolio, on the resolution.

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

I rise with great honor and happiness in associating myself with the tremendous comment of my colleagues, particularly Senator Rath and her inspiring discussion of our New York State seal and all that represents.

That each year, as the Senate conducts this very important day, I become more and more inspired. And I wish to thank Senator Morahan for again taking a leadership role in ensuring that we focus on those who are so successful and who have had to overcome so much.

On a personal aside, I want to thank Bob Greco for being here today and sitting here with us. But Bob, I should add very quickly, is no stranger to Albany this session. This is the second time he's been here. The first time was as the co-captain and coach of the New York State Class A Football Champion Geneva Panthers.

That Bob has worked with the team for many years, and that someday he's going to come back and be a coach, official full-time coach himself. And that that, ladies and

gentlemen, was an inspiring -- is an inspiring story, as Bob inspired the Geneva Panthers to the state championship this year.

Bob, great to have you back with us again, and that it is an honor to be before all those who were honored today.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Nozzolio.

Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President.

As we close this day of celebration for our disabled citizens, let me just call to mind that this started 27 years ago by Senators who have served before us. And thank you to Senator Bruno for continuing that tradition.

And thanks to my colleagues for your support and your recognition of those who have faced hurdles and challenges back in your own district -- as my nominee, Preston Hollander, has as a quadriplegic, and to turn out to be a department head for the County of Rockland and doing all those great things.

So I want to thank everybody who participated, thank all the families and friends who came in support, and thank you again. And hopefully next year we will continue this tradition and again we'll honor New Yorkers who, to me, are great achievers.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: All opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The ayes have it. The resolution is passed.

And it is open for cosponsorship from everyone in the usual manner. Anyone not wishing to be on the resolution should notify the desk.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there's a resolution by Senator Breslin at the desk. And could that be read

at the present time, please, in its entirety.

ACTING PRESIDENT MARCELLINO:

Yes, sir, it's at the desk and it can be read.

The Secretary will read.

THE SECRETARY: By Senator Breslin, Legislative Resolution Number 1607, congratulating Rose Delehanty upon the occasion of celebrating her 100th birthday on April 27, 2007.

"WHEREAS, This Legislative Body is justly proud to congratulate Rose Delehanty upon the occasion of celebrating her 100th birthday on April 27, 2007; and

"WHEREAS, Senior citizens bring a wealth of experience and knowledge to the increasingly active roles they play in today's society. Their past contributions and future participation are vital parts of, and valuable assets, to the fabric of community life and activity; and

"WHEREAS, On April 27, 1907, Rosina Micari, the daughter of Italian immigrants Pasquale and Angela Micari, was born in her parents' home on Lansing Street in Albany, New York; and

"WHEREAS, The third of 12 children, Rosina attended St. John's Catholic School in Albany, and there her name was changed to Rose Micari."

ACTING PRESIDENT MARCELLINO: If we could have some order in the house, please.

The Secretary will continue to read.

THE SECRETARY: "WHEREAS, Upon graduation from eighth grade, Rose went to work to help support her family. On September 26, 1926, at the age of 19, she married Joseph Delehanty; and

"WHEREAS, in 1947, Rose Delehanty earned her high school equivalency diploma. After working a few years at Montgomery Ward, in 1953 she took a position with the Office of the New York State Comptroller in the retirement system; and

"WHEREAS, Widowed in 1955, Rose Delehanty retired from New York State in 1969 and began traveling extensively throughout the United States and Europe; and

"WHEREAS, Living on her own and still very independent, Rose Delehanty is

active in the Senior Citizens of Albany, the Salvation Army, and the Church of the Blessed Sacrament; and

"WHEREAS, The mother of two beloved children, John Joseph and Marilyn, Rose Delehanty has 10 blessed grandchildren and 19 great-grandchildren; and

"WHEREAS, This exceptional centenarian, with her zest for life, has inspired and enhanced the lives of her family and friends; and

"WHEREAS, This distinguished woman, who has experienced the incredible joys and sorrows characteristic of and reserved for those with the stamina and courage to savor a full life, has inspired all those around her; and

"WHEREAS, This beloved senior citizen has enriched the lives of those who have been privileged to know her, through her joyous and sincere love for others and through the quiescent charm and wisdom which comes only from a fullness of years; and

"WHEREAS, It is the intent of this Legislative Body to publicly recognize those

who have reached such a remarkable age and witnessed and who have celebrated the innovations, cultural developments, and awesome achievements of this country during the last century, while themselves contributing to the growth and excellence of this great Empire State; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate Rose Delehanty upon the occasion of her 100th birthday; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to Rose Delehanty."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

It's my honor, and I believe the first time that I can recall, that we are celebrating the wonderful life of a young woman who will be 100 years old this Friday and is in the gallery with us.

Rose, would you stand up?

(Applause.)

SENATOR BRESLIN: And, you know, I think of Rose living independently, by herself, who's spent the entire hundred years in the city of Albany. And she's joined here by her son, John, and her daughter, Marilyn. Ten grandchildren are here, from all over the Northeast, 12 great-grandchildren, and other relatives, all because they know the inspiration that they've received from their grandmother.

And it's just wonderful for me. I know that when Rose was up in my office and I had difficulties getting out of my chair, she was able to help me.

(Laughter.)

SENATOR BRESLIN: And that's not a joke, either.

So it's my honor to celebrate you, Rose, to wish you a very happy birthday, to a wonderful Delehanty family.

Thank you very much, Mr. President.

(Applause.)

ACTING PRESIDENT MARCELLINO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I believe there's a resolution at the desk, Number 1625, by Senator Farley. And if that could be, please, read in its entirety.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Farley, Legislative Resolution Number 1625, honoring the Junior League of Schenectady upon the occasion of celebrating its 75th anniversary.

"WHEREAS, The State of New York takes great pride in acknowledging significant milestones in the distinguished histories of its esteemed entities; and

"WHEREAS, The Junior League of Schenectady will celebrate its 75th

anniversary during a gala at the Glen Sanders Mansion on May 4, 2007; and

"WHEREAS, The Junior League of Schenectady is an organization of women committed to promoting volunteerism, developing the potential of women, and improving the community through the effective action and leadership of trained volunteers; and

"WHEREAS, The Junior Workers League was organized in 1929 by 12 charter members who founded Family and Child Services of Schenectady; and

"WHEREAS, in 1932, the Junior League of Schenectady was incorporated and became a member of the Association of Junior Leagues of America; and

"WHEREAS, The Cerebral Palsy School at Pleasant Valley was established with the assistance of the League in 1947. The school later became known as Camp Clover Leaf; and

"WHEREAS, The League launched the Next-to-New Shop in 1948. The popular store remained open until 1996; and

"WHEREAS, In 1956, the League

established the Junior Museum, or Halls of Adventure, at the Schenectady Museum; and

"WHEREAS, The League published an award-winning 125-page tour guide, Trip Tips, in 1962. More than 5,000 copies were sold; and

"WHEREAS, Between 1967 and 1970, the League established Dominion House, a temporary residence for those recovering from mental illness; and

"WHEREAS, In 1972, the League began the Schenectady Theater for Children and the Environmental Clearinghouse; and

"WHEREAS, The Human Services Planning Council, now called the Council of Community Services, was established in 1973; and

"WHEREAS, The League established the Schenectady Community College Human Services in 1977; and

"WHEREAS, The League helped to launch Community Hospice in 1980; and

"WHEREAS, In 1985, the League began its immensely popular Home for the Holidays House Tour and also founded its Organization

of Past Presidents; and

"WHEREAS, The League established a task force in 1988 on the court-appointed special advocate, now part of the Law, Order and Justice Center; and

"WHEREAS, The Children's Grieving Center at Haven was founded in 1990; and

"WHEREAS, The Community Voicemail Project was launched in 1995. In 1997, this program was awarded the BMW Community Impact Award; and

"WHEREAS, The League began its mentoring program at Northeast Parent and Child Society in 2000; and

"WHEREAS, In 2001, the League began its Family Caregiver Education and Training Program; and

"WHEREAS, The President's Award for Community Service was established in 2002; and

"WHEREAS, The League began two exciting programs in 2003, Operation Back to School and the Times Union Holiday Fund, a partnership with Schenectady County that provides money to seniors in need; and

"WHEREAS, In 2006, the League

partnered with the Boys and Girls Club of Schenectady to help combat childhood obesity; and

"WHEREAS, The Junior League of Schenectady has a long and distinguished history of providing extraordinary community service, and its members have touched many lives through their remarkable dedication; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor the Junior League of Schenectady upon the occasion of celebrating its 75th anniversary, and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Junior League of Schenectady."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I rise to -- if you listen to that resolution of all the things that this Junior League has accomplished, it is absolutely remarkable what they have done. This is not

just a social organization, it's a vibrant group of women who have made such a difference in our community.

You know, they have been committed to volunteerism, they've been committed completely to educational and charitable organizations. They're nonpolitical. They've been a recipient of my member items. And my daughter Susan was very active with the Junior League.

But let me just say that we have with us today five of the shakers and movers of this organization, including its president, Denise Murphy McGraw, who many of the members must know, who's been around this Capitol a lot; Martha Auster; Amy Raimo; Patricia Rowledge; and Deneen Palmateer, all of whom are in the gallery.

Let me just say, as your Senator, how proud I am of everything that the Junior League of Schenectady has accomplished. It's one thing after another that you've really made a difference in our community. I'm very, very grateful.

You know, it's often said -- at

least my wife has said -- that if you want something done, get a woman to do it, because they're so efficient and so active and so vibrant. And the Junior League of Schenectady is a perfect example of this. I'm very proud of you. And a happy 75th anniversary.

Of course, none of these people that are up there in the gallery were around at any time during that 75 years.

(Laughter.)

SENATOR FARLEY: But we're grateful to have you here, and we're very pleased to honor you. Congratulations.

ACTING PRESIDENT MARCELLINO: Senator Rath, on the resolution.

SENATOR RATH: Thank you, Mr. President.

I would not rise to speak on Senator Farley's resolution were it not for the fact that I'm a past president of the Junior League of Buffalo. So I had to stand and send my congratulations to the Schenectady League.

And when you get to be sustainers, you know how we're supposed to go out and take

what we learn out into the community. I expect to see all of you in the Legislature at some point.

Congratulations, Schenectady.

ACTING PRESIDENT MARCELLINO: All in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

(Applause.)

ACTING PRESIDENT MARCELLINO: Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there's another resolution at the desk, Number 1682, by Senator Fuschillo. And could we have that, please, read in its entirety.

ACTING PRESIDENT MARCELLINO: I'm sure we can find it and read it, Senator.

The Secretary will read.

THE SECRETARY: By Senator

Fuschillo, Legislative Resolution Number 1682, memorializing Governor Eliot Spitzer to proclaim April 2007 as Autism Awareness Month in the State of New York.

"WHEREAS, A complex developmental disability that typical appears during the first three years of life, autism is the result of a neurological disorder that affects the functioning of the brain. Autism impacts the normal development of the brain in the areas of social interaction and communication skills; and

"WHEREAS, The most common of the pervasive developmental disorders, autism affects an estimated 1 in 250 births. As many as 1.5 million Americans today are believed to have some form of autism; and

"WHEREAS, Four times more prevalent in boys than girls, autism knows no racial, ethnic or social boundaries. Children and adults with autism typically have difficulties in verbal and nonverbal communication, social interactions, and leisure or play activities; and

"WHEREAS, Over the past 30 years,

significant progress has been made in the areas of research, medicine, diagnostic issues and therapies for autism, resulting in improved quality of life for those with autism and their loved ones; and

"WHEREAS, An organization devoted to raising autism awareness, Autism Speaks was founded by Bob and Suzanne Wright in 2005. Since then, it has evolved into a multifaceted organization dedicated to funding global biomedical research into the causes, prevention, treatments and cure for autism; raising public awareness about autism and its effects on individuals, families and society; and bringing hope to all who deal with the hardships of this disorder; and

"WHEREAS, It is the sense of this Legislative Body to recognize the achievements made and to continue these efforts by promoting the awareness and fostering the understanding of autism; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor Eliot Spitzer to proclaim April 2007 as Autism Awareness Month in the State of

New York; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Honorable Eliot Spitzer, Governor of the State of New York; the Autism Coalition of the Empire State; and Autism Speaks."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Fuschillo.

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

First I'd like to open this up to sponsorship by members of this esteemed body.

The recent incident and legislation that the body recently passed last week and the Assembly did yesterday, Jonathan's Law, with respect to the young boy, Jonathan Carey, who recently passed away, an autistic 14-year-old boy, further heightened the awareness of the issue of autism throughout New York State.

You heard some figures in here, 1 in 250, and that's statewide. But nationwide, Autism Speaks says it's 166 at the start of this year. Now it's down to 1 in 150.

I want to commend Autism Speaks and

other advocacy groups throughout the state and throughout the nation that promote the awareness and research and treatment and just the issue of autism as a whole.

We've made significant strides in this state with respect to autism. Just last year we enacted a new law that took effect that would require insurance companies to cover the diagnosis and treatment of autism. We've established and recognized the Cody Center, under the leadership of Senator Ken LaValle.

But the issue of autism is still an issue that's too quiet from New York State as a whole. And I think Senator Libous said it best during the hearings that we held with respect to Senator Morahan's bill, Jonathan's Law, that the state really fails the families. In this case we know they failed the family. But we don't do enough as a state to put more dollars into research, more dollars into treatment, more dollars into support for the families.

I've met so many families, as so many of my colleagues have in their districts,

of children and young adults that have autism. We don't do enough to provide educational facilities for the children throughout this state, and we certainly don't do enough to give peace of mind to the families when the children get older. When the children get older, what's going to happen to those to those kids when the parents are no longer around? Are there enough residential facilities in this state?

So I'm glad that this resolution will unanimously be passed and hopefully all the members will go on it to declare April "Autism Month" in the State of New York.

Thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Fuschillo.

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

I rise to thank Senator Fuschillo for opening this up, because I'd like to join on this resolution.

I, this past weekend, attended a benefit thrown by three separate organizations

in Long Island who are dedicated to finding a cure for autism, finding more treatment for children with autism, and helping parents and grandparents who deal with autistic children.

I attended -- and I have to tell you, there were over a thousand people, young people, parents and grandparents, attending this ball in Long Island in Senator Hannon's district, all dedicated to the cause. These weren't just parents with autistic children, but it was their friends, their relatives. Because we are seeing really a growing crisis when it comes to autism.

We don't know how it's caused. There are a number of theories out there, but right now we just don't know what's going on with autism, and we need to do more.

I applaud Senator Fuschillo for sponsoring this resolution. We need more dollars from New York State to go into not just finding how autism comes about, but really treating it and growing the options and treating these children with such a terrible disease.

So I thank you, Senator Fuschillo,

for sponsoring this resolution, and I join this resolution.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

The resolution will be opened, at the request of the sponsor, in the usual manner. Anyone wishing not to be on the resolution must notify the desk.

All in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted. Thank you.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe we have one more resolution at the desk, Number 1706, by Senator Savino. And could we please have that read in its entirety.

ACTING PRESIDENT MARCELLINO: Thank you.

The Secretary will read.

THE SECRETARY: By Senator Savino, Legislative Resolution Number 1706, commending the Staten Island High School Girl Scouts upon the occasion of their visit to the New York Capitol in Albany on April 24, 2007.

"WHEREAS, It is the sense of this Legislative Body to honor the youth of today and leader of tomorrow whose character and achievements best exemplify the ideals and values cherished by this great state and nation; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions" --

ACTING PRESIDENT MARCELLINO: If we could please have some order in the house. Thank you.

The Secretary will continue to read.

THE SECRETARY: -- "this Legislative Body is justly proud to commend the Staten Island High School Girl Scouts upon the occasion of their visit to the New York State Capitol in Albany on April 24, 2007; and

"WHEREAS, Girl Scouting has cultivated in our state's young people the goals of building solid values of sisterhood and the importance of working with others, stimulating both mind and body, instilling pride, and encouraging community service and success; and

"WHEREAS, an American and international institution, Girl Scouting has expanded the horizons of the countless hundreds of thousands who have participated in scouting programs; and

"WHEREAS, The founder of Girl Scouts of USA, Juliette Gordon Low, exemplified a lifelong willingness to learn and to serve, and a desire to equip others to do so. In developing the Girl Scout movement in the United States, she brought girls of all backgrounds into the out-of-doors, giving them the opportunity to develop self-reliance and resourcefulness; and

"WHEREAS, Quite contrary to the societal mores of southern America in 1912, Juliette Gordon Low encouraged girls not only to prepare for roles as homemakers but for

active citizenship and possible roles as professional women in the arts, sciences and business; and

"WHEREAS, Active citizenship is something that today's Girl Scouts know about. Girls nationwide embrace making the world a better place as part of the Girl Scout experience, whether it's a Brownie Girl Scout troop singing to residents at an assisted living facility or teen girls donating their Girl Scout cookie proceeds to hurricane survivors; and

"WHEREAS, Thousands of girls ages 8 to 14 earn their Girl Scout Bronze and Silver Award for improving their community through service. Each year a very special set of teen Girl Scouts pursue the Girl Scout Gold Award, the leadership development project requiring at least 70 hours of community service, after completing a rigorous ladder of preparation steps; and

"WHEREAS, Poised eagerly with enthusiasm and determined purpose, the Staten Island High School Girl Scouts now stand honorably and in eager anticipation of future

challenges, understanding and appreciating the caring counsel and support provided by their teachers, coaches and parents; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commend the Staten Island High School Girl Scouts upon the occasion of their visit to the New York State Capitol in Albany on April 24, 2007, and to extend to them the best wishes of this Legislative Body for a future of purposeful success and well-being, fully confident of their response to a promising future and appreciative of the model they represent for all aspiring young people of the Empire State; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the Staten Island High School Girl Scouts."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

I rise today to join my colleague Senator Andrew Lanza in welcoming the Staten

Island High School Girl Scouts to Albany for their first trip up here.

The Girl Scout Council of New York is the largest girl-serving organization in New York City. In fact, it represents 22,000 young ladies and 7,000 adult volunteers. On Staten Island, 19 percent of girls belong to the Girl Scouts.

I want to thank their troop leaders, Christine Battaglia and Jill Bowers, for suggesting this trip and making it possible, and for allowing myself and the other Staten Island members of the delegation to bring these young ladies to Albany.

The Girl Scout program is a continuous adventure in learning that offers a broad range of activities to help girls learn new skills, gain self-confidence, make new friends, provide service to their communities, all while having fun and forming friendships. The goal of the program is to help girls grow into capable and responsible young women who have respect for themselves and for others.

Thousands of Girl Scouts have grown up to have careers in public service, whether

they be politicians, actresses, athletes, news reporters. Some of them are U.S. Senator Hillary Rodham Clinton; U.S. Senator Elizabeth Dole; Dr. Sally Ride, the first female astronaut; Barbara Walters; Janet Reno, the former Attorney General of the United States; Lucille Ball; Peggy Fleming, the great skater; and Kitty Carlisle Hart, who we spoke about earlier today.

In addition, in this room, Senator Suzi Oppenheimer, Senator Toby Stavisky, Senator Andrea Stewart-Cousins was a Brownie, Senator Cathy Young, Senator Betty Little, Senator Mary Lou Rath, Senator Shirley Huntley, and, after Senator Mary Lou Rath created a legislative troop, Senator Ruth Hassell-Thompson joined at a little late stage in her life.

But I want to just thank the young ladies for coming up, for participating today. And I hope that we have inspired you to think about a career in public service. We know you're already community-minded. And we hope that today we've caught your attention and some of you will think about a career in

public service.

So I want to thank you all for coming to Albany, and hope this won't be the last trip here.

Oh, yes. We would love to open this up, Mr. President, open this up for sponsorship to all of the members of the State Senate. Thank you.

ACTING PRESIDENT MARCELLINO: The resolution will be opened up to all for sponsorship. And all those wishing not to be on the resolution please notify the desk. We don't anticipate any volunteers in that category.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: All opposed.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted unanimously.

(Applause.)

ACTING PRESIDENT MARCELLINO: Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there are some substitutions at the desk that need to be read.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: On page 30, Senator Trunzo moves to discharge, from the Committee on Codes, Assembly Bill Number 2407 and substitute it for the identical Senate Bill Number 3536, Third Reading Calendar 523.

And on page 34, Senator Volker moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 5985 and substitute it for the identical Senate Bill Number 3212, Third Reading Calendar 567.

ACTING PRESIDENT MARCELLINO: The substitutions are ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we now begin the noncontroversial calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 164, by Senator Rath, Senate Print 1755, an act to amend the Penal Law, in relation to endangering the welfare of a child.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Flanagan, to explain your vote.

SENATOR FLANAGAN: Thank you, Mr. President, to briefly explain my vote.

I want to congratulate Senator Rath on this legislation. It's part of a package of bills that the Majority is advancing to deal with the issue of domestic violence.

This is an issue that affects all of us, all walks of life, every corner and section of the state. It's an area where we've done some good work but, frankly, we have a lot more work to do.

I want to congratulate Senator Rath, and in that context, I want to recognize somebody who is here today helping advance the interests of this cause.

And this is a representative and an emissary, an ambassador, for everybody in this room. She happens to come from the district that I represent. But Mrs. New York is here with us today, Lori Donaudy, with her husband, Don. And she is representing State of New York in the national pageant in the latter part of this year.

And part of what they do in terms of reviewing the criteria for their candidates is to look at their record. Mrs. New York is much more about what you do and how you do it, and your activities and volunteerism are extremely important.

Her area is in the area of domestic violence. She spends a lot of time going to our schools in all sections of the state, talking to young men and women, probably about 200 at a time, to talk about the warning signs, the signals, and how to prevent domestic abuse and domestic violence.

There are a lot of people who work after the fact and do the right thing and help in many different ways. Here's someone who is very articulate, very sincere, and very effective in delivering the message because she's hit a lot of kids. And she's truly made a difference.

Working with us, I hope that we can get some of these bills that we're talking about chaptered into law. Senator Rath's bill is a very positive step in that direction.

And I just again want to congratulate Mrs. New York as being a true ambassador for all of us here in New York State.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Flanagan.

Announce the results, please.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

165, by Senator Golden, Senate Print 2034, an act to amend the Penal Law, in relation to endangering the welfare of a child.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, you'd like to explain your vote?

SENATOR MONTGOMERY: Yes, please.

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

SENATOR MONTGOMERY: Yes, thank you, Mr. President. I just want to explain.

I know that it may be misperceived as me being against the welfare of children and the safety of children in the State of

New York. But I just would like to go on record to explain that neither of these bills are in fact necessary as it relates to the welfare of the child being endangered.

It really relates to the fact that if there is a physical assault that takes place in a home or in -- inside wherever, this is presumed to be a domestic violence situation where there are children present. The situation with the domestic violence is taken care of already in law. So it's not that we are condoning or supporting domestic violence.

What I am opposed to is creating still an additional penalty not related to domestic violence but related simply to the fact that a child is present. And so if a child were not present, the situation would be taken care of. If a child is present, the situation will be taken care of; it's just that one of the parties or both of the parties will be additionally charged.

And as my record will show, I traditionally and consistently oppose adding on more and more charges which puts the weight

much more heavily on anyone who already has a prison sentence awaiting them. So I'm voting no on this bill too.

ACTING PRESIDENT MARCELLINO: Senator Montgomery will be recorded in the negative.

The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 195, by Senator Volker, Senate Print 2010, an act to amend the --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 454, by Senator Volker, Senate Print 894, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to the duration of orders of protection.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 456, by Senator Golden, Senate Print 3717, an act to amend the Executive Law, in relation to making representative.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator DeFrancisco, Senate Print 3739, an act to amend the General Obligations Law, in relation to the impact of litigation settlements.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 497, by Senator Larkin, Senate Print 3880, an act to amend the Surrogate's Court Procedure Act, in relation to expanding.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first of January.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

499, by Senator DeFrancisco, Senate Print 4036, an act to amend the Surrogate's Court Procedure Act, in relation to hearing requirements.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 511, by Senator Maziarz, Senate Print 252, an act to amend the Executive Law, in relation to creating and authorizing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 512, by Senator Larkin, Senate Print 427, an act to amend the Tax Law, in relation to partial eligibility.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 513, by Senator Larkin, Senate Print 572, an act to amend the Agriculture and Markets Law and others, in relation to granting partial deduction.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 519, by Senator Leibell, Senate Print 3646, an act to amend the Family Court Act and the Domestic Relations Law, in relation to the issuance of orders of protection.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

521, by Senator Rath, Senate Print 1761, an act to amend the Penal Law, in relation to establishing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 523, substituted earlier today by Member of the Assembly Sweeney, Assembly Print Number 2407, an act to amend the Criminal Procedure Law, in relation to authorizing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 528, by Senator Nozzolio, Senate Print 3668, an act to amend the Penal Law, in relation to the crime of aggravated harassment.

ACTING PRESIDENT MARCELLINO: Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: If everybody could just take a seat, in their seats, so we can get an accurate head count. With people moving in and out, we don't get an accurate count, and we don't want to do that.

So if everybody could sit in their seats, please. And could you raise your hands if you're voting no, so we can take a count. Please put your hands up if you're voting no

on this particular bill.

THE SECRETARY: Those recorded in the negative on Calendar Number 528 are Senators Adams, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker and Perkins.

Ayes, 52. Nays, 9.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Morahan, Senate Print 3894, an act to amend the Penal Law, in relation to designating.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

538, by Senator Volker, Senate Print 3949, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to delivery.

ACTING PRESIDENT MARCELLINO: Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 552, by Senator Little, Senate Print 1126, an act to amend the Environmental Conservation Law and the County Law, in relation to county responsibility.

ACTING PRESIDENT MARCELLINO: There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 561, by Senator Robach, Senate Print 4166, an act to amend the Retirement and Social Security Law, in relation to disability benefits.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 567, substituted earlier today by Member of the Assembly Schimminger, Assembly Print Number 5985, an act to amend the Tax Law, in relation to sales and compensating use tax.

ACTING PRESIDENT MARCELLINO: There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

SENATOR LIBOUS: Thank you, Mr. President.

Can we now go to the controversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: Will the Secretary please ring the bell. And all the members in their seats, please.

The Secretary will read.

THE SECRETARY: Calendar Number 195, by Senator Volker, Senate Print 2010, an act to amend the Criminal Procedure Law, in

relation to police officer statements.

SENATOR KLEIN: Mr. President, can we get an explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Volker, an explanation has been requested by Senator Klein.

SENATOR VOLKER: Mr. President, there is already in the law provisions for business records being submitted to the grand jury by use of affidavits. The reason for this has to do with the fact -- in fact, to tell you the truth, some prosecutors are not sure they like this. There's a reason.

You must understand, those of you who are not lawyers, that grand jury proceedings do not have lawyers. What happens is the person who is to be questioned or wants to go before a grand jury, if they want to, the defense can send them in.

As a result, in a grand jury, what happens is that the person is there, if he wants to be, without a lawyer.

What's happened is that a lot of police officers -- and I'm the first to admit it, this is not the most popular bill among a

lot of troopers and police officers because they like going in, because of course they get paid for it. But what this says is that you can get a sworn affidavit on business records rather than, as happens now, that a trooper or a local police officer has to actually go into the grand jury and submit that this is the proper record and so forth.

The reason I say some DAs have a little bit of a problem with this is the fact that the trooper or the police officer is there, some DAs believe, has a potential impact on the grand jury itself.

This bill, actually there's mixed feelings about it. Because some people believe, some defense attorneys would rather not have the troopers in there making the testimony. So they would almost prefer to have the affidavits.

On the other hand, many troopers obviously would like to go in, because they get paid for it. In fact, according to the numbers on this, the estimate is that it would save the state about $150,000 a year just on the State Police.

It's a fascinating issue. Some defense attorneys just oppose it because when they hear affidavits, they get nervous. But let's remember here that they're not in the grand jury.

And by the way, we checked this up. And any grand juror can say "I don't accept that affidavit, I want a trooper or an officer to come in." We checked this up. The prosecutor can ask for it, in fact. The prosecutor has the right, if he doesn't believe the affidavit would be sufficient, to ask a police officer or a trooper to come in to verify the document.

And there's somewhat complicated rules here. This says "permits." Now, in most proceedings there's no reason for the police officer or trooper to come in to verify a document. Remember, this is not confessions or statements, this is basically business documents.

So personally, I myself have mixed feelings, in a way, because I've heard some friends of mine who are in the police profession have said they don't necessarily

like this bill because it will cost them some money. But on the other hand, it will save the state money and save local governments a considerable amount of money.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

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

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: This is an oldie but goodie. It is a bill we have seen here before. And it's a bill that, as Senator Volker acknowledges, has two sections.

One section, I think, I strongly support, and I think everybody strongly supports, allowing business records to be received accompanied by a written statement, an affidavit, testifying as to their validity and that they're kept in the ordinary course of business. That would save the small businesses of New York State a lot of money.

Unfortunately, every time we see this section of the bill, it's attached to a particularly insidious poison pill, which is

the part of the bill that allows prosecutors, as Senator Volker stated, to call police officers to testify in a grand jury when they want to, but to allow the evidence to be presented by affidavit when they maybe think the police officer wouldn't make such a good impression, that maybe the police officer doesn't look credible.

And as Senator Volker -- again, I appreciate his candor, his usual candor -- points out, defense lawyers aren't in grand juries. It's true that grand jurors can ask questions, but they aren't familiar, ordinarily, with procedures and wouldn't think, in the ordinary course, to stop a district attorney and say, "I don't want to accept the affidavit from a police officer, I want to be able to see the person and examine their credibility."

And I think that it's really completely unnecessary to link the first section of this bill to the second section year after year.

So what I would suggest is there is enough doubt about our system of criminal

justice in this state. There are large communities in the state, whether you agree with them or not, who feel that the system is stacked against people of color, poor people, residents of certain communities.

And particularly in cases where there are issues that relate to police conduct or allegations of police misconduct, I would suggest that it is the wrong way to save money for us to say that a prosecutor can decide: This police officer really makes a good witness, I'm going to bring him in, but the other police officer looks suspicious, I'm not going to bring him in when he's saying "these are the circumstances when I arrested the defendant."

We want confidence in our system of criminal justice. We want people to believe that police officers are subject to the same standards of conduct, the same standards of credibility as other ordinary citizens. And I would suggest that this part of the bill is never going to become law, it should never become law. Police officers should show up in a grand jury so that their credibility can be

evaluated, so they can be asked questions by grand jurors if they want to, like every other witness.

And let's do what we can do to bolster the confidence of the public in our criminal justice system, not further undermine it. A grand jury proceeding is little enough protection if a prosecutor really wants to get you as it is. Let's not further weaken it.

So I would urge Senator Volker once again -- and I think in a prior year he said would we help him get the section about business records through the Assembly. And I tried to be candid myself and said the Speaker doesn't listen to me all the time -- you know, sometimes he doesn't do what I ask him to do -- but I'm sure we would be as helpful as we can be in trying to pass it.

But let's separate these two portions of the bill. It is wrong to give prosecutors the discretion to call some police officers and not others in order to work a case. Let's take that out. I'm voting against this bill as long as it contains that provision.

But I would urge the sponsor once again, let's separate out the two provisions, because the second one can save the small businesses of the state a lot of money.

I'll be voting no. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Diaz, did you want to speak on the bill?

SENATOR DIAZ: Thank you, Mr. President.

Will the sponsor yield for one question or two, please?

ACTING PRESIDENT MARCELLINO: Senator Volker, will you yield to a question?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DIAZ: Senator Volker, I'm going to play Columbo here.

SENATOR VOLKER: You're going to what?

SENATOR DIAZ: I'm going to play Columbo.

SENATOR VOLKER: Okay.

SENATOR DIAZ: I forgot my raincoat, but I'm going to play Columbo here.

Could you please tell me what is a grand jury and what is the purpose of convening a grand jury?

SENATOR VOLKER: In our system, a grand jury is a group of ordinary citizens that are empaneled.

And what happens is they are set up there to make decisions not as to whether a person is guilty or innocent, but to decide whether they should be criminally bound over; that is, there's enough evidence or sufficient evidence to put that person, to indict that person -- in other words, send it through the system to a regular jury.

They don't decide guilt or innocence, they just decide whether there is enough evidence. And not only enough evidence, but whether the evidence is such that it's in the -- it's supposed to be in the best interests of the system to move ahead and make --

SENATOR DIAZ: Mr. President, would the sponsor yield for another question?

SENATOR VOLKER: I certainly do, yes. Go ahead.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR DIAZ: And I'm going to ask him to be brief in the response.

ACTING PRESIDENT MARCELLINO: Well, the sponsor will answer the questions as he sees fit, Senator, but --

SENATOR VOLKER: No, that's okay.

SENATOR DIAZ: Senator Volker, would you say that when a grand jury is dealing with a person, every single detail or piece of information that that grand jury receives might put the life or the freedom of that individual in jeopardy?

SENATOR VOLKER: No. And the reason I say no is that the real jeopardy comes after that person is put before the real jury -- that is, the jurors who are to make a decision -- and the prosecutor moves on. And that's when you have an attorney. There's no attorney in the grand jury.

SENATOR DIAZ: Mr. President, will the sponsor yield for another question,

please?

SENATOR VOLKER: Certainly, yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DIAZ: If a grand jury decides that the evidence presented to that grand jury are no good, that person will go free; right?

SENATOR VOLKER: Exactly.

SENATOR DIAZ: May I continue?

SENATOR VOLKER: Go ahead.

SENATOR DIAZ: So that means that the information that that grand jury receives in a way, in a way, might have the freedom or the life of that individual in jeopardy, because that grand jury could decide that information or that paper has nothing to do, send them home?

SENATOR VOLKER: Yeah --

SENATOR DIAZ: So the grand jury is so important for the life or the freedom of that individual that we cannot -- you agree with me that we cannot put that in dollar figures, we have to be careful what we're doing. Don't you agree?

SENATOR VOLKER: No question of that, that you can't put it in dollar figures.

SENATOR DIAZ: I have the go ahead?

ACTING PRESIDENT MARCELLINO: Go right ahead. He yields.

SENATOR DIAZ: So, Senator Volker, then when a person, a police officer goes in front of that grand jury, as Senator Schneiderman said, the facial expression, the credibility, the mannerisms, the way in which that officer could present the evidence might carry a lot of weight into that grand jury?

SENATOR VOLKER: The answer is no. And the reason it's no is if he has a statement to make, he's got to go before the grand jury. We're talking about business records. This has nothing to do with statements.

SENATOR DIAZ: No, I'm sorry. I'm sorry. The business records, he already said, is another side of the bill. Which we approve, which we support, the business records.

SENATOR VOLKER: I think maybe

you got a little bit confused here.

If a police officer is making a statement that's part of the proceeding, he has to go before the grand jury. You can't just -- but what you can do is as far as business records are concerned, affidavits and like accident reports or whatever it is, the person does not have to go before the grand jury.

I think people get confused over this. If you've got evidence to present before a grand jury and if the police officer, for instance, has to testify as to what actually happened, he has to go before the grand jury.

This is only business records. This is not -- you can't just say -- you know, I mean, that's the way it is. This is not a trial. All this is is a -- and I think sometimes Senator Schneiderman, as much as I love Senator Schneiderman, he's a little confused.

And, you know, I hate to say it, but obviously if a police officer has a sworn statement to make -- that is, an oral

statement -- he has to go before them.

SENATOR DIAZ: Senator Volker --

ACTING PRESIDENT MARCELLINO: Hold on. When did we lose control here?

Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes, I yield. And I'll tell you what the problem is.

When you say a written or oral statement, that kind of statement, if it gets actually to -- and this is where the Assembly got confused also.

Now, you want us to clear that up --

SENATOR DIAZ: Senator Volker --

SENATOR VOLKER: Let me finish, please.

ACTING PRESIDENT MARCELLINO: Let him answer the question, please.

SENATOR VOLKER: Let me finish.

The problem is any statement that gets to the very nature of the grand jury issue, you cannot allow a police officer not to appear. The DA would certainly want that person to appear.

When you say an oral or written statement -- by the way, it's misleading. It's got to be a written statement. The written statement is the only way you could probably do this. I guess what they're talking about is that if there was an oral statement that was in some record or something.

But normally speaking, if this gets right to the heart of the crime, you have to go before the grand jury, there's no question.

SENATOR DIAZ: Senator --

SENATOR VOLKER: And by the way, the opposition to this is not from defense attorneys, it's from the police, I can tell you.

SENATOR DIAZ: Senator Volker, you're telling me that the Assembly and all of us are confused except you? Everybody else is confused? Because I'm reading, Senator Volker --

SENATOR VOLKER: All right. Okay. I'm telling you the way the grand jury situation works.

And I can tell you what this is all

about, but I'm reluctant to get into it because your party is -- you're standing for the police, and I understand that.

But in all honesty, the way a grand jury works -- and I've been before a grand jury. Most people haven't. I've been in a grand jury, because I testified. The truth is, there's no way that -- if a testimony, an oral testimony gets to the heart of a case, you've got to go appear. There's no way around it.

This is really a matter of statements that don't get to the heart of the -- you know, we could knock that out, the oral situation. But the truth is, what they're talking about here is if you know about grand juries and how they operate, if it's an oral situation, it's written down somewhere or whatever, then it's probably that the person doesn't have to testify.

SENATOR DIAZ: Senator Volker, before we get more confused, let me clarify your statement.

You say that I'm here for the police? I'm not here for the police. On the

contrary. On the contrary. Because I know what the police could do, what a police officer could do to our community. That's why I'm standing here. I just want to be clear --

SENATOR VOLKER: Let's lay the bill aside. Lay the bill aside.

SENATOR DIAZ: Mr. Chairman, I have the floor now.

ACTING PRESIDENT MARCELLINO: The bill is laid aside for the day at the request of the sponsor.

SENATOR DIAZ: Oh, laid aside? Okay.

ACTING PRESIDENT MARCELLINO: Senator Libous, that completes the reading of the controversial calendar.

SENATOR LIBOUS: Thank you, Mr. President.

Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: There is no further business at the desk.

SENATOR LIBOUS: If there's no further business at the desk, Mr. President, I would say that the Senate will adjourn until

Wednesday, April 25th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned until Wednesday, April 25th, at 11:00 a.m.

(Whereupon, at 4:32 p.m., the Senate adjourned.)