ALBANY, NEW YORK

March 1, 1993

2:55 p.m.

REGULAR SESSION

SENATOR CHRISTOPHER J. MEGA, Acting President

STEPHEN F. SLOAN, Secretary

ACTING PRESIDENT MEGA: The Senate will come to order.

Will you please rise for the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

Today we're honored by the presence of the Reverend Finley Schaef, who will lead us in prayer. Reverend?

REVEREND FINLEY SCHAEF: I come to you from the United Methodist Church in the neighborhood of Park Slope in Brooklyn, and my congregation has asked me to lift up four concerns of theirs in prayer. They are people with AIDS, substance abusers and programs to help them, CUNY students and equal rights for gays and lesbians.

Trust in the Lord, and do good. May God give strength to the people. Oh, taste and see that the Lord is good. God is our refuge and strength. Let us unite our hearts and minds.

Eternal God, the Father and

mother of us all, we are Your children who gather this 1st day of March to open the session of the New York State Senate. We look up to You but we do not look down on our brothers and sisters. For all that we have and enjoy we are entirely indebted to You, our Creator, and to our forebears and ancestors who have transmitted to us the accumulated wisdom of the ages and especially to remind us of our responsibility to the poor and depressed.

We gather as earthlings, children of the planet. Please endow us with the wisdom of indigenous peoples who understand the river and its fish, the bird and its branch, the people and their laws. At night, we peer into the heavens and try to comprehend our destiny in the context of billions of years. We have grown comfortable thinking in terms of billion dollar budgets but the news is still undigested that we were fashioned over billions of years in the fire balls of the heavens and we have been put here for a purpose. We rejoice that our existence cannot be reduced to the mirthless

strike of a match in the dark, that our daily lives are meaningful, that we are chosen and precious in Your sight. Guide us as we sail through troubled waters. Stand by us when we suffer and keep us hopeful and always inclined to share our happiness.

Dear God, Moses, the great law giver told this to his people: You must observe these statutes and ordinances diligently for this will show your wisdom and discernment to other people who, when they hear all these statutes, will say, Surely this is a wise and discerning people. So let it be said of the citizens and the legislators of the state of New York, Surely this is a wise and discerning people.

May the spirit of God be with You this day and always. Amen.

ACTING PRESIDENT MEGA: Reading of the Journal.

THE SECRETARY: In Senate, Friday, February 26th. The Senate met pursuant to adjournment, Senator Bruno in the Chair upon

designation of the Temporary President. The Journal of Thursday, February 25th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEGA: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

The Governor.

Reports of standing committee. Secretary will read.

THE SECRETARY: Senator Levy, from the Committee on Transportation, reports the following bills directly for third reading:

Senate Bill Number 68, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to requiring certain information on disabled children;

Senate Bill Number 75, by Senator Levy, an act to amend the Railroad Law, in relation to minimum standards for grade crossings;

Senate Bill Number 79, by Senator

Levy, an act to amend the Vehicle and Traffic Law, and the Education Law, in relation to requiring omnibuses to be equipped with a body fluid clean-up kit;

Senate Bill Number 190, by Senator -- Senators Levy and others, an act to amend the Vehicle and Traffic Law, in relation to requiring confidentiality of certain information;

Senate Bill Number 1189, by Senator Johnson and others, an act to amend the Vehicle and Traffic Law, relation to distinctive plates for members of the lodges of the Grand Lodge of Free and Accepted Masons;

Senate Bill Number 1308, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to proof of disability;

Senate Bill Number 1911, by Senators Sears and others, the Vehicle and Traffic Law, in relation to increasing the penalties for speeding;

Also Senate Bill Number 1503, by Senators Padavan and others, an act to amend the

Public Authorities Law, prohibiting toll increases on the Triboro, Whitestone and Throgs Neck bridges; also that bill is reported with amendments.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: Without objection, all bills directed for third reading.

Senator Holland.

SENATOR HOLLAND: Yes. I'd like you to star some bills, Mr. President.

For Senator Stafford, would you please star Calendar 43 on page 4.

ACTING PRESIDENT FARLEY: Bill is starred.

SENATOR HOLLAND: For Senator Levy, bills 62 and 63.

ACTING PRESIDENT FARLEY: Bills are starred.

SENATOR HOLLAND: And for myself Calendar Number 91.

ACTING PRESIDENT FARLEY: Bills

are starred at the request of the sponsor.

Senator Cook.

SENATOR COOK: No, I just wanted to say I'm here. Aren't you glad?

ACTING PRESIDENT FARLEY: Nice to see you here, Senator Cook.

Secretary will read three more committee reports.

THE SECRETARY: Senator Bruno, from the Committee on Commerce, Economic Development and Small Business, reports the following bills directly for third reading:

Senate Bill Number 2354, by Senators Bruno and others, Economic Development Law and the State Finance Law, relation to establishing a link deposit program;

Senate Bill Number 2388, by Senators Wright and others, State Administrative Procedure Act, in relation to regulatory enforcement practices;

Also Senate Bill Number 2389, by Senators Wright and others, State Administrative Procedure Act, in relation to requiring that

agencies conduct and include a formal cost benefit analysis.

All three bills reported directly for third reading.

ACTING PRESIDENT FARLEY: Without objection, the bills are reported directly to third reading.

Senator Present, we're ready for the calendar, sir.

SENATOR PRESENT: Mr. President, let's take up the non-controversial calendar, please.

ACTING PRESIDENT FARLEY: Non-controversial, page 4, the Secretary will read.

THE SECRETARY: On page 4, Calendar Number 6, by Senator Holland, Senate Bill Number 177-A, an act to amend the Vehicle and Traffic Law, in relation to optional equipment for omnibuses.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 30, by Senator Tully, Senate Bill Number 232-A, an act to amend the Vehicle and Traffic Law, in relation to penalties for unauthorized use of parking spaces for handicapped persons.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR KUHL: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Laid aside.

THE SECRETARY: Calendar Number 37, by Senator Holland, Senate Bill Number 463 A, an act to amend chapter 779 of the Laws of 1986, amending the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 64, by Senator Volker.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 77, by Senator Holland, Senate Bill Number 43, an act to amend the Agriculture and Markets Law.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 80, by Senator Spano, Senate Bill Number 1412, an act to amend the Mental Hygiene Law, in

relation to the power of the Commissioner to review regulations.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 81, by Senator Spano, Senate Bill Number 1414.

SENATOR JONES: Explanation.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 82, by Senator Halperin, Senate Bill Number 32, an act to amend the Executive Law, in relation to publication of certain notices in the State Register.

SENATOR PRESENT: Lay it aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 92, by Senator Skelos, Senate Bill Number 565, Social Services Law, in relation to access.

SENATOR GOLD: Lay it aside for Senator Galiber.

ACTING PRESIDENT FARLEY: Lay aside.

THE SECRETARY: Calendar Number 93, by Senator Daly, Senate Bill Number 1106, an act to amend the Social Services Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

That's the first time through, Senator Present.

SENATOR PRESENT: Could we take up the controversial calendar.

ACTING PRESIDENT FARLEY: Controversial, Secretary will read.

THE SECRETARY: On page 4, Calendar Number 30, by Senator Tully, Senate Bill Number 232-A, an act to amend the Vehicle and Traffic Law, in relation to penalties.

SENATOR PRESENT: Lay aside temporarily.

ACTING PRESIDENT FARLEY: Laid aside temporarily.

THE SECRETARY: Calendar Number 64, by Senator Volker, Senate Bill Number 200, an act to amend the Penal Law, the Criminal Procedure Law, the Judiciary Law and the County Law, in relation to the imposition of the death penalty.

ACTING PRESIDENT FARLEY: Are you ready, Senator Volker?

SENATOR PRESENT: Lay that aside temporarily.

ACTING PRESIDENT FARLEY: Lay it aside temporarily.

THE SECRETARY: Calendar Number 77, by Senator Holland, Senate Bill Number 43, Agriculture and Markets Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34, nays one, Senator Smith -

SENATOR GOLD: Hold on, just one second, hold one second. All right.

THE SECRETARY: Ayes 34, nays one, Senator Smith recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Can we call up Bill 64, Calendar 64, have the last section read so that one member can vote.

SENATOR GOLD: No objection.

ACTING PRESIDENT FARLEY:

Secretary will read the last section for one member. Calendar 64. Read the title.

THE SECRETARY: Calendar Number 64, by Senator Volker, Senate Bill Number 200, an act to amend the Penal Law.

Section 16. This act shall take effect on the 1st day of November.

ACTING PRESIDENT FARLEY: Call the roll. Who -

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Vote yes.

ACTING PRESIDENT FARLEY: Senator Trunzo in the affirmative. Close the roll. Laid aside.

Continue on. We got another one?

SENATOR PRESENT: Are we done? Let's take up Calendar 64.

ACTING PRESIDENT FARLEY: Secretary will read the title of 64.

THE SECRETARY: Calendar Number 64, by Senator Volker, Senate Bill Number 200, an act to amend the Penal Law, the Criminal Procedure Law, the Judiciary Law and the County

Law, in relation to the imposition of the death penalty.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Volker.

SENATOR VOLKER: Mr. President, first of all, I guess especially for those who are new to this chamber, there are a number of people who were just elected last year and who have not -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yeah. Before you really start, Senator Volker, is this the kind of debate that the borough president of the Bronx would want to hear if he was standing around? Could be they didn't want to hear. All right. Thank you very much.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: At any rate, for

-- this is the 17th time, just to get things, I think, in historical perspective, that this house has attempted to pass legislation to restore the death penalty in this state.

In truth, there is a bill that is still on the books that I don't think many people are aware of and were even less aware of, I think, until some history that occurred last year when the Senate did some checking on legislation and determined that they -- that piece of the old death penalty on the books could be used in the context of a Constitutional Amendment which this house may well discuss later on this year depending on how things go as far as this death penalty statute is concerned.

Let me say to all my colleagues, as I've said so many times before, I don't think there's any question where I stand on this issue. In historical perspective, my father sat on the Bartlett Commission which virtually abolished the death penalty in this state back in 1964, wrote the minority report to the Bartlett Commission. He made certain

predictions about what would happen if the death penalty were abolished. The majority on the Bartlett Commission said, Don't listen to all that sort of stuff. Those are just alarmists. The murder rate is not going to go up. Violent crime in this state is not going to go up if we abolish the death penalty. That's all hogwash.

Well, unfortunately for us and unfortunately for the state of New York, all that hogwash came true. If this were a differ ent kind of issue that weren't so emotionally charged and where the media very subtly was not so much opposed to the death penalty, I think that, very honestly, it would be pretty clear that the abolition of the death penalty was a huge mistake.

In 1965, in the year 1965 the last year that the death penalty was in place -- and, by the way, the last person executed in this state was in 1963, July of 1963 -- there were 837 murders. By 1971 -- and this as you can see was six years after the death penalty was abolished -- the murder rate had risen to

1832, and by 1990 had risen to 2600. Never before in this state's history had we ever seen anything to compare with the murder rate that occurred after the death penalty was abolished.

Some people have said, well, that's because the population went up. Wrong! The population went down. That's because of all the bad times we had. Actually, we had some of the best times during that period that this state has ever seen, and the murder rate continued to rise. In fact, the interesting part of this is that the murder rate per hundred thousand per person tripled during that time. The murder rate in New York City almost went up four times, three and a half times, and in all of New York has risen about three times.

Just to put it in perspective, it took six years from 1960 to 1965 for 2,000 people to be killed. It took nine years from 1966 to 1974 for 13,900 people to be killed.

There's no question that there's been a huge escalation in murders in this state, maybe worse is what has occurred as far as the

attitude of people. As I have said many times, and I'm a former law enforcement officer in the '60s and early '70s, and we thought then that the attitude of people was bad. We thought then that we were dealing with some pretty hard case people. We thought then that the attitude of live and let live or die and let die, which was a better way of putting it, was something that was becoming abominable.

Little did we ever recognize or realize what was going to occur as the '70s and '80s have come on and now into the '90s when, unfortunately dismemberment killings, terrorist killings, mass murders have become so much a part of our society as to be almost unbeliev able.

People like myself and a lot of others like myself, will say to you, unwittingly, a lot of people are responsible for this. Some of it certainly is the times, the destruction of the family in society, violence on television and things of that nature, but make no mistake about it, when you say to a

convicted murderer, when you say to a person that the life that he took is cheap, when you say to that person that no longer do you need a death penalty because somehow you might make a mistake and that life is not as important, like it or not, we have made a declaration about our values. It's a declaration about values that's extremely frightening.

And let me just say one thing before I make some sort of statement on what's just happened here in the last few days, and I would like to take the opportunity because I think it's important with all the doom and gloom that we talk about, and certainly what happened on Friday in New York City, probably, is something that to law enforcement people and to everybody in society is something that is about as frightening and most dangerous a thing as could happen.

But I want to tell you something about what I saw and what I talked to people about because I did talk to people who were in the building, a number of people, and I saw

pictures of what was happening, and I think again, and I saw one newspaper man, I'm sorry, one television reporter who said something that should have been said by a whole bunch of those people, and that is that despite the destruction and the mayhem and the miracle, by the way, that only five people got killed, which is a complete miracle, a major reason that more people didn't get killed is that there still are people in this society who care, and because an awful lot of people, law enforcement people, firemen, first aid emergency people and ordinary citizens were willing to risk their lives to make sure that a heck of a lot of people who probably wouldn't have gotten out of that building alive did get out of that building alive and, if there's anything about what happened in New York City that I think we should say is that with all our criticism sometimes of society and in New York City, the criticism of the New York City residents, pictured as the uncaring person, and so forth, I don't think that too many people who saw some of the things that they saw should

neglect the fact that there were a heck of a lot of people still who care, and that's the reason really that that disaster wasn't a heck of a lot worse than it was, and I think that should be said because I think it's important to understand it.

But, you know, my good friend, Governor Cuomo, said some things that I just can't, I think, ignore, because -- and I felt very sorry for Mario, and I mean this very sincerely, and this is a quote from, I think, one of the New York City papers, and it says that "Governor Cuomo, his voice quaking with anger, called for prompt retaliation by the federal government when those responsible are identified. 'We need to find out who did this and we need to get the people who did it and we need to punish them and whomever they represent as severely as this tragedy deserves.'"

I agree with that. I think that's absolutely true and you realize, by the way, that as far as the federal government, there is a death penalty on the federal level.

But I would only say to the Governor, I agree with him, but on the other hand, Governor, we should deal with them very severely, but how do you deal with these people by saying that, although you were willing to kill thousands and thousands of people -- because, remember, had that bomb gone off at 4:30 or 5:00 o'clock, it certainly would have killed thousands and thousands of people -- but we, we who represent the state of New York and who represent millions of people are not willing to say to those people, to those individuals who are willing to kill thousands of people, we are not willing to give you the same kind of consideration that they would give to those kinds of people.

Do we need a death penalty in this state for terrorists? Of course, we do. What else is there to give to those kinds of people? You going to put them in jail? First place, you know, you got to realize that most terrorists believe that no jail will hold them and in Europe what they found out is more than likely that's true. It is silly to talk about

that.

Or what do we do, for instance, with a mass murderer who runs around this country killing people? So we say we're probably going to put him in jail and hope that he never gets out and hope that nothing else happens and make him an example for the next mass murder.

I think that we in this society had better understand something. It's all very well to talk about how we want to be a civilized society and watch our fellow people get killed as days go on and watch these kinds of things happen. The truth is, people who do these kinds of acts should get exactly what they hand out. The truth is that we should send the message to people that life is worth something and that, if we truly believe that we want to preserve human life, then we better be prepared to take the kind of tough stand that many places and many people have not been willing to take, and that is to say if you take a human life, you better be prepared to give up your own, and that's why we need to restore the death penalty.

ACTING PRESIDENT FARLEY: Senator Smith. She's not here? Nobody else?

I'm going to call for the last section unless there's -- oh, there's a speaker.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: I think the fact that no one else rises up to debate the death penalty is that we've gone through it so many times, I think we have all heard the arguments and, frankly, I don't think there's any belief any more in this chamber or anywhere else that the death penalty is a meaningful way to respond to violence in our society and to respond to the terrible crime of homicide.

I thought it was so ironic that Senator Volker ends up, and in a very sincere way and with -- with real depth of meaning says life is worth something. Of course, it is worth something. But isn't it ironic, Senator Volker, that that life that you say is worth something

you refer to it in the context of the bill that provides for the death penalty.

Yes, life is worth something, Senator, and government must set the example and government must not be brought down and reduced to the level of the violence that we see in our streets.

One of my real problems with this bill and this debate year after year, it has so ossified the outlook and the approach of the Legislature on dealing with the issue of crime. We have failed terribly -- terribly. Just take a look at the high level of crime in the state, the violence that exists, and your only answer year after year, you have come up with the death penalty.

You refuse to bring to a vote the punishment for first degree murder of life imprisonment without the possibility of parole. You refuse to address means by which we could reduce the level of violence and at the same time reduce the crushing burden on the taxpayers of this state in having to incarcerate what is

now approaching 60,000 people just in the jails in the state of New York. And all of that without making our streets any safer. On the contrary, they're less safe.

Senator Volker, it's interesting that all the times you get up you never address the issue that the death penalty will inevitably end up with innocent people being executed. There's no way that can be avoided, and not a month passes that we do not read of somebody who was sent to jail unjustly.

Now, let me say I think by and large we have as good a system as the human mind can fashion, but I think all of us understand and appreciate the likelihood of error being committed. But once somebody is dead, that error can never been contradicted.

Senator, you never address the statistics which show that the death penalty, where it is applied, is invariably applied in a racially biased way. It's applied against those people who are considered less favored by society, whether because of the color of their

skin, because of the language they speak, because of the religion they practice or because of their economic status.

Senator, you never address all the statistics which show the countries of western Europe which have such a much lower homicide rate and which do not apply the death penalty nor, for that matter, states that have applied the death penalty since they were permitted to by the Supreme Court and have seen their murder rate increase at a much greater pace than the state of New York.

Senator, you never address the incredibly high cost of capital crime trials. I notice the New York State Bar Association said, throw out all the other arguments against it and just look at the burden that would be put on us if we had to, under this particular bill with its bifurcated trials and punishment section or provision, try capital crime cases.

Senator, you never address the problem of guns on the street. You never address the problem that you have one of the

most dangerous organizations in the United States that has done more harm to the fabric of our society than the National Rifle Association which is out there continuously fighting to put guns into people's hands in an irresponsible fashion.

Do you really think that the death penalty, if it were ever enacted, would have any meaning on these foolish young people, the disturbed young people that we have in the cities of our streets, and we see them in Chicago. We see them in L.A. We see them in New York. I imagine they exist in Buffalo, age 14, 15, even younger, with guns, that go out and shoot and resolve disputes that when you and I were in school maybe would be solved by a name or by somebody pushing each other, by pulling out a gun and shooting.

Do you think the death penalty will deter that? Of course not. But I'll tell you what would deter it is a good tough national gun control law, and I'd like to see you support that, and then, frankly, I'd find a lot more

credibility in your getting up and deploring the high rate of homicide in this state.

Senator, we can go through this. I think you said it is the 17th time you've done it and, if you and I are fortunate or unfortun ate enough to be here next year, I guess you'll do it the 18th time, and it will be the same anecdotal presentation and deploring a condition which, granted, is terrible.

But I'd like to ask you when you as chairman of Codes Committee are going to address some of the real issues, some of the real factors that cause the high rate of crime that we have in this state, and when are you going to be willing to let out life imprison ment without parole, something that we know would pass both houses, would be signed into law?

Senator, it's almost as if you're so fixated and obsessed with the death penalty that it's blinded you from doing anything else in dealing meaningfully with what I think the people of this state want us to deal with, and

that is to make this a safer society.

This bill doesn't do it. In fact, this bill is an obstacle to our doing this.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise today to speak against, for the first time, the imposition of the death penalty in New York State.

Now, this is the first time I've heard Senator Volker's description and -- of his reasons behind, underlying the death penalty and, Senator, one thing that I think you did convey, and I think it's something that we all share in this chamber, is the sense of personal rage at violent crime, whether it's crime that occurs in New York City under the World Trade Center, the violent crimes that occur in our neighborhoods through neighbors killing one another, or the terrible crimes that occur through serial murders even in my own community.

I think the fundamental question -- and Senator Leichter also echoed that rage, that sense that we as a society have to do something to stop the epidemic of violent crime. But I think the reason why I speak against the death penalty today is, despite that rage, the one thing we can't do, in my judgment, is embark on a course that will not bring an end to the rage.

The death penalty, for all of its characteristics -- and Senator Volker properly points out that there are federal death penal ties, death penalties for drug offenses, extens ive drug offenses under a federal law for capi tal offenses. There are extensive death penal ties and broad death penalties in other states.

But I think the one fact of empirical science that remains absolutely unchallengeable in the death penalty debate is that it hasn't worked. It hasn't stopped capital crimes. The states that have the death penalty still have the highest murder rates. Obviously those who are inclined to commit

capital offenses are not stopping to read the codes and the laws in their states to find out whether there's a death penalty before they commit a capital crime. And I think to all of my colleagues, the fact that it doesn't work is reason enough not to invoke it.

But there's one other critical factor that I think we have to look at and it ties back with the point that Senator Volker made about our rage and the personal horror that we feel about violent crime. How do we as a society respond? I think Senator Leichter points out that there are other alternatives to deal with the problem -- life imprisonment without parole.

But even more so than that, what message do we send our society when we simply use violence against violence? I thought that that was one of the things for which civilization was designed not to adhere to.

What do we tell our children? I have three young children, and what happens when they beat up their brother and sister? I'm told

that the thinking and the message I have to give them is that that's not acceptable conduct and, therefore, I spare the rod. I don't think that, in this state, by not having a death penalty we are sending a message that life is cheap. We are, instead, sending a message that we as a society entering the 21st Century believe that the problem of violent crime finds its origin in poverty and in despair, and that sometimes in the horrors of personal existence.

I would only join Senator Leichter, it's not just life imprisonment without parole. It's attacking the real problems that underlie the societal propensity to violence. If we can eliminate despair and eliminate poverty and give everyone real opportunity, if we commit ourselves to those far more difficult tasks, we will have a much better chance to decrease violent crime in our society and in our state.

I, for one, when this issue came up in my campaign, concluded that my job was not to take New York State back to the dark ages,

not to take us back to an age when the death penalty was used to deter people's thinking, when you could be burned at the stake for having an idea that was inconsistent with that of the majority. It didn't stop the growth of ideas. It didn't stop the development of society, just as the imposition of the death penalty in this case will not deter violent crime.

I would ask all of my colleagues to simply look at that part of political science. If it doesn't work, don't bother to use it. Instead walk out of this chamber today absolutely convinced that we have a far more formidable task to eliminate violent crime. I know that we can do it. I know that, if we have the will, as much will as some members of this chamber have had to impose the death penalty, if we have the same will to eradicate violent crime and the despair and hopelessness that breeds it, we can achieve that.

Don't use the death penalty as the easy answer. Let's commit ourselves to the far more difficult task, but one that will be

rewarding for not only this generation but for those in the future as well.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Thank you. Mr. President, this is a bill that I have heard the expression, certainly if not on the floor I hear it in the side chambers, it's an "old hat". It's an annual, and many of the members understandably take the position that, you know, why don't we go and let's just do it, get it over with, do the vote and get on to more or other tasks.

And while we may walk in with an inclination not to want to speak on the issue, the answer is you really can't. It may be old hat. It may be something that Senator Volker brings up every year, but if, God forbid, one year it were to become a law, there will be many people who would say, my God, if it became a law, I guess everybody figured nobody cared any more, and let's get rid of it; so it can't be

handled that way.

It is important that people speak their minds on this issue and, if it's repetitious to some of us who have been here more than a day and a half, well, that's the way it works, and it's just got to be dealt with along that line.

It doesn't mean, however, that we can't be humane, and I will try to be humane and I won't repeat the arguments made by Senator Leichter and Senator Dollinger. I adopt them all. I do believe the use of the death penalty is racially -- is racist in the way it's done. It is not a deterrent; it is inhumane.

The figures do bear out the argument of Senator Dollinger. I think Texas, for example, in the last statistics I have has the most people executed, and Florida is next and those states have been totally unsuccessful in terms of what happens with regard to murder.

I thought we might have taken care of some of the naive arguments about how you handle crime when we just examine the

Rockefeller drug laws. And my God, we had a governor, and I tell you, he was a -- he was an interesting rascal, that he didn't want to deal with the problem that we needed more prisons because, after all, if Rockefeller ever admitted he needed more prisons he'd have to admit that he couldn't solve every crime and the reasons for every crime that ever happened in the state. So the answer was we were going to -- we were going to set forth penalties and nobody was going to deal with drugs in the state of New York, and we all know how successful that was. Right? Wrong! What a failure!

The answer is yes, we have the capacity to put people in jail for long periods of time, and the drug problems today are just as terrible or worse than they've ever been.

We had another answer. We were going to put people in jail for a minimum of a year if anybody went near a gun and, if you take a look at the statistics, you know what happened to that. All these simplistic answers go nowhere.

But, Senator Volker, you got me thinking. You and I have another annual. We have another annual bill. There was one case up in your neighborhood, Senator Volker, where somebody didn't swear in somebody properly and some terrible criminal got off the hook, and you been trying to pass a law to take care of that situation for years, and I look at you and I say, Senator Volker, one assistant D.A. made a mistake. Why do we have to change the whole legal system? And your attitude, as I understand it, is that, well, you know, you want to avoid that one mistake or any other mistake.

Well, Senator Volker, I want to avoid some mistakes also. I want you to use your same logic today. I've showed you this before: Wrong man jailed for 28 months, D.A. accuser ex-wife admits killing. I showed that a lot of times because that was 1984. But, Senator, if you're bored with 1984, I can show you 1992. This is just since the last time. What are we, on the 17th? This is since the 16th debate. Wrong man got the death needle.

The attorney who prosecuted the first death by injection execution, claimed yesterday Texas had got the wrong man. That's 1992.

Senator, I got a case for you. Why don't we legislate against this one wrong by not having the death penalty, so we don't make this kind of mistake again?

You had one case, Senator; I have more than one. June 7th, 1992, How cop killer nabbed the wrong man. Senator, you're a former policeman. I don't think there's anything as - more outrageous and maybe some things as outrageous but certainly nothing more outrageous than cop killers and people who assault policemen, and we know what happens to society in those cases. Society goes crazy because nobody ought to be able to abuse a police officer, no less kill a police officer in our society. One of the most honorable jobs there is, and they deserve our sympathy, our compassion and certainly our legislative support.

But what happens in the

investigation? Society has gone crazy. The media which starts out crazy gets double crazy, and there's this big push to get somebody and, believe it or not, in a lot of those cases where we really want to do our best, we wind up doing our worst, because there's such a crunch and a push.

Here's another one, May 20th, 1992. An innocent man executed. Another nightmare. Here's one, a Brooklyn man $1.9 million from the Court of Claims, convicted of murder he didn't commit. I'm sure the state of New York could have done better things with that $1.9 million than give it to somebody who we wrongly convicted for murder.

Here's one in Newark, prosecutor faulted as judge overturns a murder conviction.

So, Senator, I know and you know that, if you really want to analyze logical debate, you'll find that conservatives and liberals often use the same expressions, they just use them in different cases. Logic is the same way, Senator. Your logic for introducing

some of your bills is that something went wrong, one case. I'm telling you I got more than one case.

But I want to close in the same vein, but I want you to all think. Is there anybody here that never saw a movie or heard a story or read a report, there's a little child who falls into a hole and not only is the media out there but the drills are out there and the fire departments and the ambulances and there is no amount of money, no amount of money that society will not spend while the media is covering that accident in order to save the life of that one child, and as I say so many times, if we asked for the same amount of money so that these children could get pre-school education or maybe there'd be some safety barriers around these holes, people wouldn't pay any attention.

Senator, in this situation that we're talking about today, there are more than just the one life, the one child. We have a society which has a different criminal philosophy than other countries. There are

countries where we arrest people and, if they can't prove their innocence, you kill 'em. But we've made a conscious decision in this country and our penal system has built into it the fact that we want to protect the innocent.

Are we now going to take the most serious situation of all and then enact into law the one alternative which can't protect the innocent because you can not give that life back? The individual that got the 1.9 million may not have been alive to get the 1.9 million and, believe me, I'm sure his estate would rather have had him alive than the money.

It is just the wrong answer, and it pains me that this issue is so politicized - not Republican/Democrat, but so politicized within our own districts and communities that people are afraid to just look at the issue, deal with it once and for all, and see to it that criminals don't get back on the street but that society maintains its humane quality.

It is my hope, Senator Volker, for your very good health and that next year I

can hear this debate once again on the theory that it will not become a law this year.

ACTING PRESIDENT FARLEY: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, on the bill.

I rise to support this measure. I supported it for ten years as a member of the New York State Assembly. It's the first time I rise here to lend my support and comment to this procedure. I specifically, though, would like to reference those of my colleagues who discussed the issue of life without parole as an alternative to the measure we are debating today.

Life without parole, my colleagues, is a form of death penalty. It's a form of death penalty to the tens of thousands of men and women who work in our correctional facilities across the state, those correction officers and other prison personnel who are entrusted to work behind the walls to keep us

safe, to run the prison system in this state.

SENATOR LEICHTER: Excuse me. Mr. President.

SENATOR NOZZOLIO: They will be sentenced to death.

ACTING PRESIDENT FARLEY: Senator Leichter, why do you rise?

SENATOR LEICHTER: Would the Senator yield to a question?

ACTING PRESIDENT FARLEY: Would you yield to Senator Leichter, Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR LEICHTER: Senator, are you aware that now the statistics nationwide of people who serve long sentences, 25 years or longer, in some instances, serve life imprison ment without parole, do you know that they commit within the prison less crimes? And I believe that there may only be one case that's known of a murder having been committed by somebody under that sort of a sentence. Are you

aware of those?

SENATOR NOZZOLIO: Senator, was Lemuel Smith one of those that you referenced?

SENATOR LEICHTER: That's exactly the one I'm referencing. That's one, and it is far less than people who serve much lower sentences or lesser sentences in prison. They happen to be, and anybody who's in the correction system will tell you, by and large happen to be the most peaceable of inmates.

SENATOR NOZZOLIO: Thank you, Senator.

Lemuel Smith is all but the most peaceable of inmates, and Donna Payton, the correction officer that Lemuel Smith brutally murdered, and her family would certainly disagree that your statistics should override the protections that this body and our state government should give to those who work in very stressful conditions.

Senator, as many of your constituents, particularly those from New York City, many of your constituents reside in my

Senatorial District. I have four prisons in my Senatorial District. Auburn Correctional Facility, the largest or one of the largest maximum security facilities in the state has many of your citizens, your constituents rather, residing in that facility. Many in that facility have committed murder first degree and many would have been put to death as a result of this bill.

But I believe to use life without parole as the ruse, as the Trojan horse, if you will, to show an alternative to the death penalty is wrong, and it does not -- it ignores those prison personnel who we must do all we can to protect.

Those incidents so eloquently mentioned by Senator Gold, those incidents where an individual may have been found innocent or not guilty after some review, I wonder if, in those states those incidents were mentioned, any of those states have a death penalty similar to the bill sponsored by Senator Volker here today where there is a two-jury system, a two-tier

system, one to decide guilt and the other to decide penalty.

I think that is a relevant factor in analyzing the merits of Senator Gold's comments. In effect, this measure has done all possible to screen as much as we possibly can set in law a screening device to ensure as best as we possibly can those who are not guilty, those who are innocent are not put to death.

The New York State seal, which is placed behind the President's rostrum, is one that I am very honored to be in a body that respects that seal as a symbol of what we are as a state, and the lady on the right of that state seal is Lady Justice, and in her hands is the scale of justice. That scale, my colleagues, unfortunately, is tilted, I believe, too far in excess of those who are accused and not balanced enough to respect those who have been victimized by crime.

But this bill does not end crime. It does not pretend to end crime. It does not pretend, and Senator Volker does not

pretend that this is the sum and substance of the efforts we must take to end crime in New York. But right now, the accused has a right to be free of illegal searches and seizures, a Fifth Amendment right of protection against self-incrimination, a right to counsel, a right to trial by jury. The accused has those rights and that is the way it should be. However, the victim's rights end in this heinous crime upon his or her death.

Those scales need to be placed in better balance, my colleagues, and that's why I support this bill and that's why I will be cast ing my vote in favor of the death penalty, in favor of the process Senator Volker is proposing.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Thank you.

Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

I rise -- you should know I am

not a lawyer; I can't speak or make any effort to delve into the constitutional aspects of this argument; have never, never been around here in the last 20 years that this matter has been debated. But I think it important to note that I grew up in the South Bronx. I was raised up in the South Bronx, areas of the state where this kind of violence that is spoken of, this kind of problem lives day to day.

You should know that when I talk to the young people, when I talk to those that live in the South Bronx, to those that, in a disproportionate way, would be impacted by this measure, they tell me that they oftentimes seek to live out their life and prove their manhood not through going to school, not through getting a job, but through the use of a 9 millimeter or an Uzi.

Take such a young man and confront him with this argument or a young woman, and they will tell you that they have no fear of what this chamber or the Assembly would do with regard to this matter because they're

already living a state-imposed death penalty. You see, if you're illiterate, if you have no hope, if you have no job, if you have no one that will listen to your pain and your anguish, you might as well be dead. And so, when we talk about values, when we talk about this argument being as powerful as the allocation of resources on an annual basis, billions of dollars that are spent by this state, and we don't consider that in between passing such a budget and declaring this particular issue to be equally as important as the allocation of resources, you miss the whole thing. You simply don't get what the argument should be about, and until we galvanize as a legislature to provide equal opportunity, justice, economic parity to these areas that I represent, then this can only be an argument about what is politically correct in certain circles.

It cannot be confused with the legitimate argument that would bring relief against violence in our inner cities.

Thank you very much.

ACTING PRESIDENT FARLEY: Let's see. Senator Oppenheimer, and Senator Saland is next.

SENATOR OPPENHEIMER: O.K. It's me.

Senator Nozzolio was talking about not using life without parole as an alternative, but I would be very interested in hearing at a later date what the alternatives are that he thinks might be available as the death penalty apparently is not going to be available to us, because I do not believe that the other house or the Governor would ever sign it. Therefore, I am very interested in listening to other alternatives.

I would also like to say, commenting on what he was saying before, Senator Nozzolio, that statistics don't lie, that if you ask any correctional officer, they will tell you that it is not the long-term convicts that are their problem. They are, for the most part, fairly peaceable. They've learned to live in the system because they know

they're going to be there indefinitely. It is the short-termers that are causing them to have to react against violent attacks.

I would like to mention a few things that I have mentioned in prior years, but for me they are the most meaningful. We -- it is highly likely that, were we to adopt a death penalty in New York State, that we would not use it. There are a great many states that have the death penalty that do not use it. Therefore, it's there for political comfort, but it's not there for reality. And why is that true? It's true because of the cost of the death penalty. We have so many things burdening us now, things that ought to be financed more than we are capable now of financing them, and, therefore, to expend a million dollars, let's say, which is not a high figure, a million dollars for -- to put someone to death, is a great cost when you consider that very often the cases are not upheld and, therefore, the state loses the case. To explain to our citizens that we have just thrown away a million or two million

dollars in an effort which more than likely is going to fail is a very difficult one for people and why most other states are not using the death penalty, even though they have it on the books.

There are other arguments which bear more weight with me, though, and one and perhaps the two that I would say the most significant to me is that there is no other country in the industrialized world, in Europe, throughout many of the other industrialized nations, that has a death penalty. A single country that does is South Africa and, while I admire the moves that they are trying to make now, it is not a country whose system I would like to replicate.

Also, we have heard from all religious leaders, Catholic, Jewish, Protestant, the leaders of our religion, tell us that this is wrong, that this is not something that we should be doing, and I feel strongly it is not something I would want to be associated with and, therefore, I will be voting no.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I rise in support of Senator Volker's bill, which I happen to be a co-sponsor, and let me just see if I can hit a couple of things which perhaps some of my other colleagues have addressed.

First, Mr. President, if anybody who is a proponent of this measure thinks that somehow or other this is going to be a panacea that's going to eliminate crime, violent crime, they're certainly looking to the wrong vehicle, because it just isn't that simple.

That's not to say that this measure is not appropriately what I would term a weapon in an arsenal against crime. I'm concerned when I hear mention of life without parole as an alternative. Now, I don't want to play a semantic game or get into wordsmanship, but an alternative implies a choice. Death without -- life without parole is offered not as

an alternative but as a substitute. It's a "take it or leave it" proposition. That's not by anybody's definition an alternative.

If the Governor wants to propose a bill whereby he says, under certain circumstances, consideration can be given to either the death penalty or life without parole, that provides an alternative, but please, Governor, and please, those who so passionately and ardently support life without parole, for which I do not begrudge anybody holding their position, don't tell me it's an alternative when it's a substitute.

I hear some comment about what goes on in other states and what goes on in other countries. The interesting thing that seems to be most singularly lacking from the death penalty debate, any death penalty debate that I've ever sat in, in this chamber or the other chamber, is that nobody ever discusses the bill.

Now, I heard at some length Senator Gold make reference to some incidents in

which some individuals were wrongfully found guilty of what would turn out to be a capital crime. Now, the last time I looked at the Texas statute, which was some two or three years ago -- and I assume it hasn't changed much -- I think it was approximately two pages long. It might have been only the one-pager that I saw which was either Georgia or Florida.

The difference between that bill and this bill is the difference between night and day. As recently as several years ago, and I have the publication here, the Civil Liberties Union put out a piece, and I'll just give you the substance of what it says. There were no reported instances basically since the line of Gregg v. Georgia and Furman v. Georgia cases under which the United States Supreme Court in the mid- and early '70s set out the guidelines under which, if you wanted to have a death penalty on your books, you had to adhere to certain requirements.

What are those requirements? Those requirements are a so-called bifurcated

trial, under this bill, as you would have to have, you would have to have the possibility of having 24 jurors, 12 to get into the question of guilt or innocence, 12 to get into the question of whether the death penalty should be applied.

You have to show that mitigating circumstances, not merely outright, but substan tially outright mitigating circumstances. There is no nation on the face of this earth that has ever bent over further to accommodate the rights of individuals, and I'm not aware of any death penalty proposal, either proposed, not on the books or actually on the books, that in greater detail accommodates the rights of defendants than does this measure.

You have the right of an immediate appeal to the Court of Appeals. You're guaranteed experienced counsel and you're guaranteed that your fees will be paid. In addition, there's language in this bill that attempts to get away -- forget the Babson vs. Kentucky cases under which you can play with the jury examination and eliminate people based upon

their race, the U.S. Supreme Court said you can't do that. They did that three or four years ago for those who might not have caught the decision.

But this bill -- this bill says very clearly, if you go to the Court of Appeals, it says the court shall determine whether the sentence of justice was imposed under the influence of passion, prejudice or any other arbitrary factors and whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases.

Now, you would think that the application of those kinds of standards, particularly by the Court of Appeals of the state of New York, unquestionably the most liberal in terms of criminal justice decisions of any of the highest appellate courts of any state within the 50 states, you would think you would be hard-pressed to find that a Court of Appeals in this state would not, under the ammunition given them, reverse any decision in which for some reason a jury had come to a

decision wrongfully or a death penalty had been imposed wrongfully.

Now, the opponents of the death penalty say that it's not a deterrent. However, the contrary would seem to be at the very least true, the death penalty has not been a deter rent. The numbers have certainly skyrocketed, and I'm still waiting for the one person who opposes the death penalty who tells me how you prove a negative. Please tell me how you prove a negative.

How in the world do you get into the mind of an individual who contemplates killing his partner, contemplates killing his unfaithful spouse, contemplates killing the lover of the person who he or she is madly in love with, and then says, wait a minute, I don't want to take this risk because of the death penalty? How do you prove that, folks? Who in the world can prove a negative? Never has been proven, never will be able to be proven. Sort of takes, I would think, at least some of the wind out of the sails of those who say the death

penalty isn't a deterrent.

The cost of the death penalty, another argument. Well, the cost of the death penalty, the cost of the death penalty has been determined by basically one study, one study done by the Defenders' Association approximately a decade ago, a study which I think in part is self-serving, by advocates, people who oppose the imposition of the death penalty, a study which is derived by data available from other states.

At that time, which I believe was somewhere between '80 and '82, the Defenders' Association said a capital trial will cost you somewhere in excess of a million dollars. The State of Texas will tell you that it costs closer to a quarter of a million dollars. The state of Alaska will give you similar numbers. I've spoken with my own district attorney. He wonders where that number comes from. If he had to handle a capital case, it would be one quarter of the number given by the Defenders' Association, not just his cost, the total cost,

and the Defenders' Association study does not count the cost of the trial that you're going to have in any event, and nowhere does it factor in the cost of what it takes to incarcerate an individual.

I mean if you want to do it on a cost/benefit analysis which I think is the crassest way to deal with an extraordinarily difficult subject, I think you ought to have your head examined. But I'm just saying don't play with those numbers.

The reality is it's not an easy decision. I've never demeaned anybody for opposing me. I've always believed that there are sets of circumstances under which people could agree that the crime is so vile, the crime is so heinous, that we could all get a consensus. Remember, this bill -- this bill does not deal with someone who is jaywalking. This bill does not deal, excuse me for being flip, but it doesn't deal with someone who may be intoxicated, hops up on a curb and happens to kill somebody who happens to be an innocent

pedestrian.

This bill enumerates a number of specific classifications of capital crimes where someone has premeditatedly chosen to take the life of another. This isn't an accident. This isn't an act which was committed negligently. This is where you premeditated, you determined to take somebody's life and chose to fulfill that act, not where you backed off for fear of the death penalty. You pulled the trigger, you plunged the knife, you used the poison, whatever it is. You planted the bomb, just like the bomb that was planted down in New York City this past week.

I mean, these are bad folks. These aren't -- well, these aren't Sunday school kids. These are the real thing, folks; these are really bad guys.

I don't -- I don't think that anybody could disagree, going back to the Lemuel Smith case -- and that happened in my county - this man didn't kill once, he didn't kill twice, he didn't kill three times, he didn't kill four

times, he killed five times, and when he killed the fifth time he took out a woman correction officer. Five times the guy killed.

Is there any justification whatsoever for permitting that person, for permitting that man, if you want to call him that, to have killed four human beings and given him the opportunity to kill a fifth?

Now, let me share with you something. A member of my family was the victim of an attempted murder. I would settle for nothing less than a death penalty if that person had taken my son's life, and he wouldn't deserve anything better than that, and society would be well-served by it. You may disagree, but we ought to talk about the bill, and we ought to compare apples and apples, not oranges and oranges.

We ought to be comparing similar bills dealing with similar subjects, and it's nice that we have our opinions and they're fervently held and passionately spoken about, but the reality is that this bill is clearly

head and shoulders above most that I have seen and I've seen a lot of them, and this bill, as I said earlier, bends over backwards to accommodate the rights of defendants.

Will it make crime go away? It certainly will not. But there are some people that commit acts that are so vile that they, by their acts, not because of anything that you have done, not because of anything that I have done, but society has the right to say, You have forfeited your life. And you know what? These other countries, if they had the kinds of murder rates that we have, whether they're in western Europe, whether they're -- wherever they may be located, you can rest assured that they wouldn't look down and frown upon the death penalty the way so many of them seem to.

Thank you.

ACTING PRESIDENT FARLEY: Senator Marchi.

SENATOR MARCHI: Mr. President, I was born in the year 1921. That year was the last year that a -- it was a felony murder that

an individual who had committed homicide was sentenced by a jury on Staten Island, and it never happened again right up to the time of 1963 when -- when the penalty was abolished in this state, and I was here at the time that the debate was held.

The question of deterrence in this country had been decided against the death penalty simply because it was simply not applied any more. There were very, very few states in this country that awarded the death penalty and the ebb and flow of criminal and violent actions controlled by factors far beyond the severity of a punishment, and I know that the distinguished sponsor mentioned the fact that there is no evidence really, that it's difficult to prove one way or the other, and that there is reasonable grounds to believe that it can be a deterrent.

Charles Dickens observed that there were thousands and thousands of people who went to witness the -- the hanging of criminals and it was a great festive occasion, and there

were thousands, tens of thousands of people that would gather, and it was conducted publicly on the assumption that the fact that it was public and that everybody saw it, it would act as a deterrent. So he interviewed 267 consecutive homicide killers who were -- before hanging, he interviewed them, and said, Have you ever witnessed a prior homicide? Out of 267, Charles Dickens reminds us that 264 had witnessed a prior hanging.

I don't know whether that's overwhelming or persuasive, but to me it tells one story, I think, that -- one message, that in those circumstances you also trigger a morbid propensity. That's why I, many times when you have a heinous crime, several of them appear and are committed. This is in states that never had capital punishment along with states that did and that fact, I think, speaks very eloquently to the -- to the notion that we are stimulating and provoking that morbid propensity when we visit the public with an execution; and it can only -- it cannot elicit the best in people. It

can only enlist the very worse in some of -- in some people.

But I -- most of the advanced nations of this world who have had extensive experience, and England had many, many execu tions before they finally abolished it altogether, but today with the fraction of the crimes that we have, they are -- they do not have them, and I don't believe that those states that have the death penalty have shown any significant progress in the advance of human sentiment or tenderness with respect to life.

The example of Florida is not one to be hailed. I remember when they sentenced an individual by the name of Spenalunk, a radio announcer was frying bacon over a radio show and he said that that was Spenalunk frying for his crime, and people were cheering outside. I'm not saying that this necessarily has to happen in every state, but I think most people realize that this is -- this is pretty tough business.

We introduce resolutions for people who have rendered significant public

service, and at the time that we debated this thing in 1963, I challenged anybody to produce the example of any public servant who had acted as an executioner who was the object of a citation, a testimonial dinner or a resolution by the Legislature.

I think it was the feeling, a gut feeling, that this is dirty business, and I have certainly, if I were inclined to vote that way, I have the highest respect for the sense of fairness and the professional respect that I hold for sponsorship of this legislation, this would be a bill that is safeguarded. But the end product is negative, I believe, in terms of its impact on a society in which we live, and I -- I would hope that we -- we confirm the wisdom that sensitive people around the world have gravitated to because it has proved itself as a far better way and a far better -- a way that is in greater -- identifies much more closely with the dignity that we attach to life and that this bill not prevail.

ACTING PRESIDENT FARLEY: Senator

Volker, to close the debate. Oh, I'm sorry. Senator Paterson. I didn't see you. Oh, Senator Smith, you were there behind the lamp. She was on the list also. You're next.

SENATOR PATERSON: Thank you, Mr. President.

Before Senator Volker concludes the debate, I'd like to congratulate him and thank him for raising this issue over and over again. I don't agree with it, but I think it's a significant issue that is on the minds of a great number of citizens of our state, and I think it needs to be revisited as many times and this is the 17th time and I'll be back for the 18th time hopefully, because I hope it doesn't pass. But nonetheless it's an example, I think, of a myriad number of issues in this state that need to come before this body, and I certainly think that a great deal of effort has gone into it.

I can't support this legislation. I think that some of the comments that Senator Marchi made were most apropos. It

has something to do with the notion of coalesced dreams, that violence begets violence, that this public outcry about violence, this condemnation of death but yet it is actually the front page headline, the consistent winner of grasping public attention, the savage brutal murder of an individual.

Just a few days ago, we had the savage bombing of the World Trade Center. There were five lives lost in that conflict. I received a telephone call about two hours before that bombing that a family member of mine would be in the World Trade Center having lunch with someone. It was three hours before I knew that this family member was safe. It doesn't matter that it was my particular family member. There were five families that lost members that particular day.

I would be happy to say that the way I was feeling Friday afternoon, if I knew exactly who'd been involved in that conflict, I likely would have killed them. But the reality is that, when we come to the Legislature and

pass laws, we are hopefully bringing with us the sobriety of the opportunity to look at legislation with a clear thought pattern and without the pressures or the exigencies that are caused by such a lugubrious circumstance as we witnessed just in our own state right in front of our own state edifices last Friday.

The issue of the death penalty which is -- was rendered unconstitutional in Furman vs. Georgia in 1972 which held that the death penalty was unconstitutional - unconstitutional through the cruel and unusual clause, through the Eighth and Fourteenth Amendments, is really not the issue that we would be considering because the awareness of time as it impinges upon the concept of justice will determine whether or not our Supreme Court supports or upholds the death penalty.

It really is the outcry of the public that will determine whether or not we have or don't have a death penalty, and I'm sure that those who advocate for either side can find a constitutional reason why we should or

shouldn't have it.

The fact is that we don't have any sympathy for the people who commit the stark crimes that we've heard described here today. In many respects, even those of us who morally may be opposed to the death penalty probably in our hearts could care less about what happens to individuals who kill four different people and then make the fifth victim of their savage wrath a correction officer.

But the fact is that the death penalty as it is constructed right now and as it has been practiced in the state of New York has been unconstitutional not as much for its validity but because the dispensation of it has never been fair. It has always discriminated against the poor. It has always had a sexual case proclivity in one direction and it has always been racially unfair. We know that the number of executions in this country held between 1930 and 1990 were 4,016, that 2,129 of them were African-Americans. That's 53 percent. Those who were executed for the crime

of murder counted the number of 3,343. The numbers who were African-Americans in that case were 1,669.

But it's not just those who are being prosecuted but even the rights of the victims that are not properly executed through our Constitution when it comes to the death penalty. In the McCloskey vs. Kemp case that was argued before the Supreme Court in 1987, the statistics bore out that in Georgia that prosecutors sought the death penalty 79 percent of the time when the defendant was white and only 37 of the time when the defendant was not.

From 1977 to 1992, there have been 168 executions in this country. Only 29 of them when the victim was non-white and in only one case where the victim was non-white and the perpetrator was actually white. That was until the case of Gary Gilmore, who was executed on January the 20th, 1977 for killing a -- two African-Americans, but also was on death row for killing two white Americans at the same time.

Prior to that case, there had

never been an instance in the United States history where the -- an African-American victim or a non-white victim had ever had a white defendant sentenced and executed for that particular crime.

So the discrepancy in the dispensation of the death penalty is so out of proportion with any population statistics or even viable conviction statistics, that it makes it highly impossible for us to discharge this penalty in any kind of a fair way.

What does that leave us? A very inadequate system called life without parole where individuals will have to be attended to for the better part of their lives at a point that they are convicted of murdering or some other crime that creates the death penalty along with it.

This is not a perfect solution, but it is a solution that should be considered on the floor of this house along with the death penalty so that those of us who resist the death penalty as a remedy can exercise this option so

that we can make sure that individuals who are committing such heinous crimes never see the light of day or the crowdedness of our streets again, and I certainly hope that that will be considered by the sponsors as an alternative at a point that we have a stalemate such that we can not pass the death penalty as it is now.

ACTING PRESIDENT FARLEY: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Let me first apologize for being out of the chamber at the time that my name was called. But I was dealing with something that I feel was totally discriminatory in practice and, because of that, I am asking that the remarks that I made in 1992 be recorded in the record on behalf of the mentally retarded and because of what I am experiencing today as a member of this body and a minority, I'd like to follow up what my colleague David Paterson has said.

Until the criminal justice system is equally and fairly dispensed, we have no

place for this bill. Until the victims of poverty are no longer forced to live under conditions that they live under, there is no place for this bill. Until we have dealt with gun control and bias-related crimes, we can not deal with the death penalty. And until people who look like Joe Galiber and Olga Mendez and Senator Montgomery and David Paterson and I are treated fairly in this city, the state, this country, and in these chambers, there is no place for a death penalty.

And I think that sometimes we may seem to over-react, but it's people like us who live in our communities and with their vote they gave us the responsibility for looking out for their well-being and the well-being of their children and, therefore, it is with sadness that we have to come to this point and that we must be forced to vote no on an issue that I understand most of you are sincere about.

I think we need to look at ways of combatting crime rather than trying to kill more people.

ACTING PRESIDENT FARLEY: Senator Volker to sum up or close debate.

SENATOR VOLKER: Mr. President. Mr. President, I realize -- I realize first of all, that, first of all, obviously whenever you're talking about life and death, clearly and unequivocally you're talking about emotional issues, and I also realize that we live in a political society as well as a society that is dominated by a media that sometimes is a little bit selective in what they report.

For instance, I'd just like to mention that, Senator Gold, you and I know that a convicted murderer that is able to get a new trial after ten years, the chances of that person being reconvicted are so slim for all sorts of reasons in our system, whether that person is under a death penalty warrant or any kind of a conviction.

By the way, Senator, I said to you before, under our system, if a person is found innocent, they're innocent. That doesn't mean they didn't commit the crime. A lot of

friends of mine who are prosecutors, when I heard that people had been found innocent, I'd say to them, just one question: Did they do this, did they do the deed? Very often they'll say yes.

But one of the problems, you know, and I was in Canada here some years ago up in Montreal. I used to do quite a bit of traveling years ago when I was doing a lot more security information for the Legislature, and the commander of the Montreal police said to me, The problem with your system down there is your people are innocent until proved guilty. You ought to have our system. We're gettin' that way. You know, up here they're guilty until proved innocent, and I said to him, Yeah, I guess you're right, but, I said, I'll tell you something, I still like our system better.

I watched some of the cases in the Montreal courts. It was sort of interesting. I know there are people, I suppose here, certainly some of my constituents who say now that's the way to move these cases. I mean

the judge sits there and looks at them and says, How do you plead? And the police officer says, This guy did this. Just about that was it for the most part.

So, if you think our system is unfair, you think our system in some places is slanted, you ain't seen nothin' until you see some of the other countries in this world.

There was a mention here about civilization. It's always fascinated me that, in a society that kills its young sometimes, in a society where bullets are flying all over the place, not just bullets, but knives and bombs - Senator Leichter, I'd like to know what gun control would have done for the people in the World Trade Center. I'm not exactly sure what gun control would do to stop that bomb. I'm not exactly sure what gun control would do for the young girl nearby here who was dismembered by a fellow with a knife. In fact, that's one of the problems.

Senator, I'd like to ask a question. You talked about police officers.

Ask any police officer in this state what he would really like to have. What is it, what is his highest priority, and I think he'll tell you the death penalty, and he'll tell you, Ah, with the gun control is because we don't know what else to do. It's our frustration with the newspapers and everything else. I hear that all the time. They don't really believe gun control is going to do anything.

Senator, we got the -- we got a state that's supposed to have the toughest gun control statute except in D.C., of course, where nobody gets killed because they got such a great gun control statute. We all know there's no killings in D.C.

Let me just correct a few things, and you talk about we don't get into the issues. Senator, we brought in these issues. We have debated the issue of cost of prosecu tion, that was 1987 I believe we debated that issue, and showed that the Defenders' Association, either they fabricated a bit or they outright lied, because the cost -- we

couldn't find any cases even rivaling anything even close to their stupid study, and I hate to use that word.

The most expensive death penalty case in the United States of America was the Ted Bundy case where they dragged Ted Bundy all over the country and the reason they did it is they were pickin' up dead bodies as they went, because as they went around Bundy was pointing out graves, and finally they executed him, by the way, because finally he was giving them such bad information and they got fed up with him because he was leading them in circles. There's no telling, by the way, how many people Ted Bundy killed because, in fact, one of the victims that either he or one of his partners killed ended up being from western New York. They believe that either his compadre -- they believe it was his compadre -- may have killed somebody in the Buffalo area, maybe even in Rochester. There is no way of telling how many people he killed.

Senator -- go ahead.

SENATOR LEICHTER: Will you yield?

SENATOR VOLKER: Yes.

SENATOR LEICHTER: Senator, I just want to say that the reference to the cost of the trials and how extremely expensive they would be, and clearly that cost-effectiveness doesn't come from the Defenders' Association, it comes from the New York State Bar Association and they repeated it just in a letter dated February 9th, 1993.

SENATOR VOLKER: M-m h-m-m.

SENATOR LEICHTER: So I just thought you'd want the record corrected to that extent.

SENATOR VOLKER: No, the issue - let me just say that the bar association also is referring to the Defenders' Association report which I'm telling you, and it was mentioned here, by the way, not by you, by someone else, what I'm telling you that the bar association, frankly, didn't pay much attention, just keep repeating this report which I'm telling you is

fabricated, is nonsense. We checked it out. We couldn't come up with any numbers even close to what they were talkin' about.

Remember for a second, if you really want to talk about life without parole, incarcerate a maximum security inmate today costs pretty close to $70,000 a year. You better take a look at the numbers. If that person is going to be there for a long time I don't think I have to tell you how quickly that amount totals up.

I only point that out because I don't think we should, frankly, use that as an issue. Senator Paterson, some years ago we did a study and it's -- in fact, it's in the memo, the death penalty memo, if you look, dealing with the issue of race.

What we found is in New York - and these were death penalty cases, we took the -- they studied every death penalty case in this state's history, and I won't give you the exact numbers because they're in the death penalty memo, but they showed that in New York

the balance was very good. The balance was pretty good of those who were executed as blacks, whites, Indians, and so forth, but the ratio was a ratio that was generally accepted to be one that certainly no one would complain about.

I want to point that out because although there had been some numbers that have been floated in certain parts of the country and, by the way, as I've said many times, I don't dispute that there were discrepancies in the south, Georgia, for instance, I believe it was had death penalty for burglary and the only people executed were eight blacks. Certainly there's a clear example, and that's why the death penalty was thrown out nationwide, by the way, and those kinds of states should have had the death penalty thrown out. There isn't any question about it, and I'd be the first one to tell you that.

The issue of the fact that there's no indication or that the issue that there have been states where, after the death

penalty was reinstituted, there were more murders. I'm sorry, there's no state in the Union like New York. That's why the national death penalty people are so worried about New York. There is no state in the Union where the murder rate has surged the way it did in New York after the death penalty was abolished, although all over the country the murder rate moved up dramatically after the Supreme Court abolished the death penalty.

And keep in mind something about Florida. People keep citing Florida; they got a death penalty. Yeah. The whole state was out of control then and there. All sorts of problems that occurred in Florida that have completely got that state out of control and all law enforcement people and a lot of people that oppose the death penalty admit there are factors there that have tripped that state out of control.

Let me just finish by saying this. I understand very well the emotions that are involved in this kind of issue and the fact

that we have a lot of local issues that enter into these sorts of things, and we talk about civilization, and we talk about courage. I can only say this. What do I know? I just -- I'm just a person who lives in an area that once thought it was an area reasonably free of crime, although it wasn't entirely free of crime as people thought it was, but one of the things I think that people have begun to realize is, as people in Buffalo, for instance, somebody mentioned Buffalo -- Buffalo just had the second highest murder rate for last year, for 1992, in the history of the city of Buffalo.

Let me tell you when the highest was: Two years after the death penalty was abolished, the murder rate suddenly surged in Buffalo. Somehow that didn't get mentioned in the paper. I didn't see that in the paper anywhere. In fact, all across the state there isn't too much mention of what happened right after that, because I don't think it would fit into some little cubicle some place.

I can only tell you this: I'm

not saying, and, Senator Saland, I want to compliment him for his reading of the bill, for the fact that he obviously studied it very closely, and I know there are people in this chamber, by the way, who over the years have done some very thorough research on it, and we have had very technical debates on it, but I also know that these issues are issues that are not issues of technicality.

If this bill becomes law, it is not going to solve the crime problem. I'll be the first one to tell you that. If this bill becomes law, it's not going to stop murder, that's for sure. But I will tell you this, once again: You can say all you want about the fact it will make no difference. You can tell me from now until the end of this session that it will make no difference, but I tell you, if you want to start to truly make a difference in the criminal justice system, if you want to start to truly say to those people that hit in New York City with that bomb or to those people who in this state have killed wantonly, if you want to

send them a message, this is the most prime message you can send them. This is the message that we can send that, if you take a life, especially if you take multiple lives, because this bill, by the way, is clearly designed so that those people have a big problem, I'll be the first, to be honest with you, there's three sections in this bill that would deal with people who kill multiple people and who are involved in terrorism.

Somebody said to me, Why don't you put in the bill terrorism? I said, I don't have to; it's there. If we want to really say to the people who would murder, You'd better be careful if you want to do it in New York, then this is the bill to do it. You may not believe that, but I'll tell you right now, if you want to send a message to the street, this is the message to send.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT FARLEY: Slow roll call. Read the last section.

THE SECRETARY: Section 16. This

act shall take effect on the 1st day of November next succeeding the date on which it shall have become a law.

ACTING PRESIDENT FARLEY: Roll call. Go ahead. Ring the bell. Sergeant, would you try to round up the members?

THE SECRETARY: Senator Babbush excused.

Senator Bruno.

ACTING PRESIDENT FARLEY: Senator Bruno, how do you vote?

SENATOR BRUNO: I vote yes.

THE SECRETARY: Senator Connor excused.

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

(There was no response.)

Senator DeFrancisco.

SENATOR DeFRANCISCO: Explain my vote.

ACTING PRESIDENT FARLEY: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I intend to vote yes on this legislation. I know there's many different theories behind justification for punishment. I know rehabilitation isn't appropriate in this particular case. Nobody has been rehabilitated from the death penalty and I'm not so sure that it's such a strong de terrent. I don't think mass murderers think too much about what state they're going to commit their crimes in or people who plant bombs think about that too much either.

On the other hand, one thing that death penalties do, and that's incapacitate. Unfortunately, no matter how humane we want to be, there are some people in society for which there is simply no better remedy for the conduct that they have chosen to take. If it were not, however, for the strong procedural safeguards that are found in this bill, I would vote no, but I feel very strongly that much of the concern that many of the legislators have raised concerning the discrimination issues, concerning poverty issues, and the like, are dealt with in

the very carefully drawn procedural safeguards that are contained in this bill and, for those reasons, I intend to vote yes, or I do vote yes.

ACTING PRESIDENT FARLEY: Senator DeFrancisco is in the affirmative. Continue the roll.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President, I just want to explain my vote.

ACTING PRESIDENT FARLEY: Senator Gold to explain his vote.

SENATOR GOLD: Senator Volker, if you're doing this because you believe that the

punishment -- punishment for taking human life should be the death penalty, fine, but Senator, I have -- I respect you much too much.

This bill is going to send a message to terrorists. You said that. You ought to have that deleted from your speech. A message to terrorists? A terrorist gets in a plane and he doesn't like the way the coffee smells, he blows up the plane with himself.

I mean this is a message to terrorists? This would have stopped anything that happened yesterday?

I vote no.

ACTING PRESIDENT FARLEY: Senator Gold in the negative. Continue the roll.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Halperin.

SENATOR HALPERIN: No.

THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
SENATOR HOFFMANN: Yes.
THE SECRETARY: Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Jones.
SENATOR JONES: No.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Mr. President, to explain my vote.

ACTING PRESIDENT FARLEY: Senator Maltese to explain his vote.

SENATOR MALTESE: Mr. President, when I was elected to represent my constituents, I made them a promise, and that promise was one of the promises that I made was that I would do everything in my power to help enact a death penalty for the state of New York.

Now, I previously served as an assistant district attorney and deputy chief of the homicide bureau and in that capacity, I had occasion to speak with not only the families of victims, but with the perpetrators and in some cases, since they had not expired at the time of my arrival, with the victims themselves, and I say this crime is a terrible crime. Everyone that has spoken, no matter which side of the

aisle, has indicated that they agree it is the most heinous crime, the taking of a human life.

Mr. President, I feel that a person who takes a human life should pay with the ultimate penalty. That is retribution. It is also simple justice. We in this chamber, as all legislators, have taken a sworn -- have taken an oath to do the best we can for our constituents, to do our duty. There were statements made about the willingness to take a human life. There is a distinct difference, Mr. President, in taking a life on behalf of government to save other lives and the act of taking a life as a murderer.

Mr. President, I feel that we who represent the city of New York have even a more -- a more onerous burden. That burden is watching the death rate from murder skyrocket so that New York is becoming the capital, the murder capital of the United States of America. My own county, Queens County, which was known as the bedroom of New York and a home owners' county, is part of that gigantic increase in

homicides.

Mr. President, I feel we should send a message, a message of deterrence and, yes, even a message of retribution and justice.

I vote aye.

ACTING PRESIDENT FARLEY: Senator Maltese is in the affirmative. Continue the roll call.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Marino.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Masiello.

SENATOR MASIELLO: No.

THE SECRETARY: Senator Mega.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Mendez.

SENATOR MENDEZ: Mr. President.

ACTING PRESIDENT FARLEY: Senator Mendez to explain her vote.

SENATOR MENDEZ: To explain my vote, and to request that my statement from last year in this same debate be included in the record.

I just want to mention after everything is said and done, the bottom line as far as I'm concerned, is presumed in that same quote that I used last year and that is, quote, "the constant emphasis on capital punishment is preventing us from giving real attention and resources to the problem of crime in a modern democracy," end of quote, and that was the statement made by British Prime Minister Edward Heath long, long ago, Mr. President.

I vote no. Thank you.

ACTING PRESIDENT FARLEY: Senator Mendez is in the negative. Continue the roll.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT FARLEY: Senator Montgomery, where is she?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT FARLEY: Oh, I'm sorry, Senator Montgomery to explain your vote.

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

Briefly, I just would like to remind my colleagues that, in addition to the number of other reasons that have been raised by other colleagues to vote against this bill, I'd like to remind Senator Volker that the bill is opposed by the Council of Churches of New York State and the Catholic Conference, and there was a statement made by the bishop at that time, Francis Mugavero, that the death penalty is a savage act. He made that statement in 1989 before he died, and the council on this side of the aisle has -- has put together some information which I find incredible, and they refer to a number of states in the south as the "southern death belt".

So I gather that Senator Volker

is going to have the "southern death belt" plus one, that's us. We will be joining Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina and Virginia, where 93 percent of all of the executions, I understand, have been done since 1977.

We will also be joining the illustrious nations of Iraq, Iran, Libya, South Africa, Syria, China, Vietnam and Cuba, the former Soviet Union, who also have the death penalty, and I left out Texas because right now, as we speak, unless that has been resolved, there is a gentleman by the name of Jesus Christ -- at least he refers to himself as Jesus Christ, my understanding is -- holed up in a town called Waco, Texas. This is where they have the death penalty, and the death penalty is used so frequently that the attorney general of Texas has said that it is not a deterrent because people pay no mind to it any more, they have used it so much that this isn't a deterrent at all, and Jesus Christ has killed four federal agents in -- over the last three days in Waco,

Texas.

So clearly I'm not -- I'm not convinced at all, Senator Volker, that your bill is going to accomplish any of the things that you say and, in addition, between 1977 and 1988, of 2,951 offenders, only 81 were executed with 725 having their cases reversed in the appellate courts or their sentences commuted, so there's very likely cause that there will be mistakes that we will be not intending to make and we have any number of instances where people have been released from a death penalty because of some error in the judicial system.

So I am voting no on this. I think it is a mistake. We certainly need to deal with the crime, the issue of crime, I agree. No one speaks more and excitedly about it than me on this floor, but I don't believe this is the way to go about it.

I vote no, Mr. President.

ACTING PRESIDENT FARLEY: Senator Montgomery is in the negative. Continue the roll.

THE SECRETARY: Senator Nolan.

SENATOR NOLAN: Explain my vote.

ACTING PRESIDENT FARLEY: Senator Nolan to explain his vote.

SENATOR NOLAN: I, too, vote in the negative, and I -- you know, this is really kind of -- I hadn't really planned on speaking today, because I have quite a sore throat, but I think that to bring this issue up year after year after year, with no hope that the Governor is going to sign it or that it's going to be overridden by the Legislature has really become a real waste of time. I've been in the Senate here 19 years, and certainly for the last 16 or 17 years, we've wound up wasting days, hours, on the subject.

Nothing is going to change. The Governor is not going to sign this bill. The Legislature is not going to override this legislation, or override the Governor's veto. Senator Montgomery was quite elegant in so many of the reasons she pointed out as to why it's certainly not a deterrent.

You mean somebody wouldn't have blown up the World Trade Center if they knew they were going to be executed as they got caught. As she pointed out, in Waco, Texas yesterday, four federal agents were killed and they do have a death penalty in Texas. It's certainly no question that every civilized country in the western world has gotten rid of the death penalty.

The whole question of minorities being prejudiced by the death penalty since it turns out that there's an abnormal percentage of minorities wind up in death row. It's not right and for all of these reasons, I'm opposed.

ACTING PRESIDENT FARLEY: Senator Nolan is in the negative. Continue the roll call.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein.

(Negative indication.)

THE SECRETARY: No.

Senator Onorato.

SENATOR ONORATO: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Pataki.

SENATOR PATAKI: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Paterson will explain his vote.

SENATOR PATERSON: Mr. President, I would like the record to reflect that in 1984 I was in the Queens District Attorney's office when we investigated the case of Nathaniel Carter, who had been convicted of murder and two years later the case was thrown out when it became clear that he was not the perpetrator of that crime.

Otherwise, I'd just like to point

out to Senator DeFrancisco and to Senator Volker, that the discrepancy of racial discrimination is addressed in the legislation. It's not rising to a threshold that I feel I can vote for the legislation, but I think that there was some sensitivity to that in this legislation. I don't think it's enough, but I would ask that Senator Volker again consider some of the alternatives we've raised today and, again, I am happy that he raised the issue. In fact, I'm so sure that this legislation won't pass and that Senator Volker will be in good health and will be back to raise it again in 1994, Mr. President, that I'd like my statement from 1994 put in the record awaiting the legislation.

ACTING PRESIDENT FARLEY: Senator Paterson votes no. Continue the roll.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Saland.

(There was no response.)

Senator Santiago excused.

Senator Sears.

SENATOR SEARS: Yes.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Sheffer.
SENATOR SHEFFER: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
ACTING PRESIDENT FARLEY: Senator Smith to explain her vote.
SENATOR SMITH: I would just like to rise so that everyone can hear me say no.
ACTING PRESIDENT FARLEY: Senator Smith is in the negative. Continue the roll.
THE SECRETARY: Senator Solomon.
SENATOR SOLOMON: No -- oh, yes.
ACTING PRESIDENT FARLEY: Senator Solomon is in the affirmative, I believe.
THE SECRETARY: Senator Spano.
(Affirmative indication.)
THE SECRETARY: Aye.
THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Aye.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Nope.

THE SECRETARY: Senator Trunzo voting in the affirmative earlier today.

Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Waldon to explain his vote.

SENATOR WALDON: Listening to my colleagues here today, Mr. President, one could conjure up reasons to go along with this legislation. For example, if I were Biblical, I

would say, well, it's good to have an eye for an eye, a tooth for a tooth. If I were being very tribal, I would have the philosophy that if someone injures one of my tribe, I must take vengeance against their tribe.

If I were about fairness, which I think is the real issue here when we deal with the death penalty, I would say that African Americans arrived at this nation's shores in 1619, a place now called Jamestown, Virginia as 20 indentured servants upon a boat, and we've paid our dues since that time.

Symbolically, we're held out as the first to die in the Revolutionary War in the person of Crispus Attucks. We have fought val iantly in the Civil War on the side of the North, the 54th, the Fighting 54th from Massachusetts. Every one knows of the exploits of the 369th in the first World War, never lost a battle, never took a backward step. Dorrie Miller, one of the first to receive the Congressional Medal of Honor in the second World War, comported himself with valor -- valiantly,

even though he was not a trained gunner but a cook who filled in as a gunner. This nation also saw come from its African-American people the likes of Benjamin O. Davis, Sr. and Jr. who both rose to the rank of General.

We've paid our dues. We have now as the Joint Chiefs of Staff chairperson Colin Powell. So one could say that African-Americans have paid their dues to be rightfully respected and to be treated fairly. But when we look at the data, we see that, though we are but 12 percent of the people in this nation, we have been found guilty of the crime of murder and executed disproportionately in excess of 50 percent.

So when we think about the death penalty, we have to be aware that it has never, ever been applied fairly where certain people are concerned. What troubles me is not so much the death penalty, but it is all else that we do in this body, and that which is done in bodies across this country similar to ours. No sense of fairness.

An example as a quick aside. Education. We need a Constitutional Amendment in this state so that not only will we be required to give a free education to our students, but that it will be uniform and efficient so that there can be equity, so that the students in my district who have text books that are 30 years old would not be in that position, so that the students in my district who have to have 10 and 12 students using but the one computer, would have a computer per child as in other districts of members who are in this body.

We need to have equity so that something like what is being proposed by our Lt. Governor, the Career Pathways concept which would force Latins and African-Americans and Caribbean-Americans much too early make a choice about their education. One, that would force them into a philosophy that was O.K. when Booker T. Washington was making his stand on behalf of his people, our people, which would force those students who make the decision too early to end

up in a vocational situation. Perhaps worse than that is the Goldstein report which was commissioned by Chancellor Ann Reynolds of CUNY which will have students at York College not have available to them a four-year liberal arts education, but will take that school and down grade it to where it will be no more than a technical school, that is unfair, and as the education of this state as we apply it here in this chamber is unfair to African-Americans, also is the death penalty unfair to African Americans.

If somehow equity could be brought about in the conjuring up of the death penalty statute and at the same time equity could be done regarding education, I might be able to reconsider my position.

But considering those two things juxtaposed to each other, both inherently unfair, I must vote as I did last year, as I did the year before, as I did in '83 and '84 and '85 and '86; I must vote in the negative.

ACTING PRESIDENT FARLEY: Senator Waldon is in the negative. Continue the roll.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT FARLEY: Absentees.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Ayes 39, nays 19.

ACTING PRESIDENT FARLEY: The bill is passed.

There's a motion on the floor. Who has it? Senator Gold, do you have a motion?

SENATOR GOLD: Yes, that's a great idea. On behalf of Senator Babbush, on page 5, Calendar 54, Senate Print 725, I ask that -- offer the following amendments, ask the bill retain its place on the Third Reading

Calendar.

ACTING PRESIDENT FARLEY: Without objection.

Senator Present.

SENATOR PRESENT: Take up Calendar Number 30, please.

ACTING PRESIDENT FARLEY: Calendar 30.

THE SECRETARY: Calendar Number 30, by Senator Tully, Senate Bill Number 232-A, an act to amend the Vehicle and Traffic Law, in relation to penalties for unauthorized use of parking spaces for handicapped persons.

ACTING PRESIDENT FARLEY: Last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

SENATOR KUHL: Mr. President.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Yes. Would the

sponsor yield to a couple questions?

ACTING PRESIDENT FARLEY: I'm sure he will. Senator Tully, will you yield?

SENATOR TULLY: Yes, I will.

SENATOR KUHL: Senator Tully, can you tell me whether or not -- or excuse me. Tell me briefly what the bill does, would you, sir?

SENATOR TULLY: The bill deals with handicapped parking, Mr. President, and provides that in the case of a third or subsequent violation of the handicapped parking spaces that you could have points if determined to be necessary by the Commissioner as well as increased fines for unauthorized parking in those spaces.

ACTING PRESIDENT FARLEY: Senator Kuhl.

SENATOR KUHL: Yes, Senator Tully, can you tell me whether or not the bill specifically defines the number of points that would be allocated to a conviction for this violation of the V and T Law?

SENATOR TULLY: Mr. President, the bill provides that, in the discretion of the Commissioner a point or points.

SENATOR KUHL: And Senator Tully, is it possible that a person could have his license suspended or revoked as a result of this non-moving violation?

SENATOR TULLY: Yes. The answer simplistically is yes, if there were other points.

SENATOR KUHL: And one other question, Senator Tully. Are you aware of any violation of the Vehicle and Traffic Law which is a non-moving violation which would potentially subject a person who is convicted to suspension or revocation of their license?

SENATOR TULLY: No, I'm not.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day after it shall have become a law.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays 2, Senators Kuhl and Present recorded in the negative.

ACTING PRESIDENT FARLEY: That bill is passed.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Can we go back to the controversial calendar.

ACTING PRESIDENT FARLEY: Controversial, the Secretary will read the bills that have been on the calendar.

THE SECRETARY: Calendar Number 81, by Senator Spano, Senate Bill Number 1414, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Halperin, Senate Bill Number 32, an act to amend the Executive Law.

SENATOR HALPERIN: Lay it aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 92, by Senator Skelos, Senate Bill Number 565, an act to amend the Social Services Law.

SENATOR GOLD: Last section.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 93, by Senator Daly.

SENATOR DALY: Lay aside for the day, please.

ACTING PRESIDENT FARLEY: Laid aside for the day.

Senator Present, that concludes the calendar.

SENATOR PRESENT: Mr. President, on behalf of Senator Levy, I'd like to call an immediate Conference of the Majority in Room 332.

ACTING PRESIDENT FARLEY: Majority. O.K. There will be an immediate conference of the Majority in Room 332.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: There being no further business, I move we adjourn until

tomorrow at 3:00 p.m.

ACTING PRESIDENT FARLEY: The Senate stands adjourned until tomorrow at 3:00 p.m.

SENATOR LEICHTER: Mr. President. Could I have unanimous consent to be recorded in the negative on Calendar 81, please.

ACTING PRESIDENT FARLEY: We adjourned. Before we adjourn formally, Senator Leichter will be in the negative on Calendar what?

SENATOR LEICHTER: 81.

ACTING PRESIDENT FARLEY: 81.

SENATOR MONTGOMERY: I also.

ACTING PRESIDENT FARLEY: Senator Montgomery also.

SENATOR MONTGOMERY: I ask unanimous consent to be recorded in the negative on Calendar 81.

ACTING PRESIDENT FARLEY: Senator Montgomery in the negative on Calendar 81. Before I adjourn, is there anybody else?

The Senate stands adjourned.

(Whereupon at 5:07 p.m., the Senate adjourned.)