

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ALBANY, NEW YORK

March 1, 1993

2:55 p.m.

REGULAR SESSION

SENATOR CHRISTOPHER J. MEGA, Acting President

STEPHEN F. SLOAN, Secretary

1 ACTING PRESIDENT MEGA: The
2 Senate will come to order.

3 Will you please rise for the
4 Pledge of Allegiance.

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

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

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

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

23 Eternal God, the Father and

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

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

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

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

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

19 ACTING PRESIDENT MEGA: Reading
20 of the Journal.

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

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

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

7 Presentation of petitions.

8 Messages from the Assembly.

9 The Governor.

10 Reports of standing committee.

11 Secretary will read.

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

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

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

23 Senate Bill Number 79, by Senator

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

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

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

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

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

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

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

5 All bills reported directly for
6 third reading.

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

10 Senator Holland.

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

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

15 ACTING PRESIDENT FARLEY: Bill is
16 starred.

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

19 ACTING PRESIDENT FARLEY: Bills
20 are starred.

21 SENATOR HOLLAND: And for myself
22 Calendar Number 91.

23 ACTING PRESIDENT FARLEY: Bills

1 are starred at the request of the sponsor.

2 Senator Cook.

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

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

7 Secretary will read three more
8 committee reports.

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

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

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

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

1 agencies conduct and include a formal cost
2 benefit analysis.

3 All three bills reported directly
4 for third reading.

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

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

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

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

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

21 ACTING PRESIDENT FARLEY: Read
22 the last section.

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT FARLEY: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 33.

6 ACTING PRESIDENT FARLEY: That
7 bill is passed.

8 THE SECRETARY: Calendar Number
9 30, by Senator Tully, Senate Bill Number 232-A,
10 an act to amend the Vehicle and Traffic Law, in
11 relation to penalties for unauthorized use of
12 parking spaces for handicapped persons.

13 ACTING PRESIDENT FARLEY: Read
14 the last section.

15 SENATOR KUHL: Explanation.

16 ACTING PRESIDENT FARLEY:
17 Explanation. Laid aside.

18 THE SECRETARY: Calendar Number
19 37, by Senator Holland, Senate Bill Number 463
20 A, an act to amend chapter 779 of the Laws of
21 1986, amending the Social Services Law.

22 ACTING PRESIDENT FARLEY: Read
23 the last section.

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

3 ACTING PRESIDENT FARLEY: Call
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 34.

7 ACTING PRESIDENT FARLEY: That
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 64, by Senator Volker.

11 SENATOR GOLD: Lay aside.

12 ACTING PRESIDENT FARLEY: Lay
13 that bill aside.

14 THE SECRETARY: Calendar Number
15 77, by Senator Holland, Senate Bill Number 43,
16 an act to amend the Agriculture and Markets
17 Law.

18 SENATOR GOLD: Lay aside.

19 ACTING PRESIDENT FARLEY: Lay
20 that bill aside.

21 THE SECRETARY: Calendar Number
22 80, by Senator Spano, Senate Bill Number 1412,
23 an act to amend the Mental Hygiene Law, in

1 relation to the power of the Commissioner to
2 review regulations.

3 ACTING PRESIDENT FARLEY: Read
4 the last section.

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

7 ACTING PRESIDENT FARLEY: Call
8 the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 34.

11 ACTING PRESIDENT FARLEY: That
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 81, by Senator Spano, Senate Bill Number 1414.

15 SENATOR JONES: Explanation.

16 SENATOR GOLD: Lay it aside.

17 ACTING PRESIDENT FARLEY: Laid
18 aside.

19 THE SECRETARY: Calendar Number
20 82, by Senator Halperin, Senate Bill Number 32,
21 an act to amend the Executive Law, in relation
22 to publication of certain notices in the State
23 Register.

1 SENATOR PRESENT: Lay it aside,
2 please.

3 ACTING PRESIDENT FARLEY: Laid
4 aside.

5 THE SECRETARY: Calendar Number
6 92, by Senator Skelos, Senate Bill Number 565,
7 Social Services Law, in relation to access.

8 SENATOR GOLD: Lay it aside for
9 Senator Galiber.

10 ACTING PRESIDENT FARLEY: Lay
11 aside.

12 THE SECRETARY: Calendar Number
13 93, by Senator Daly, Senate Bill Number 1106, an
14 act to amend the Social Services Law.

15 SENATOR GOLD: Lay it aside.

16 ACTING PRESIDENT FARLEY: Laid
17 aside.

18 That's the first time through,
19 Senator Present.

20 SENATOR PRESENT: Could we take
21 up the controversial calendar.

22 ACTING PRESIDENT FARLEY:
23 Controversial, Secretary will read.

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

5 SENATOR PRESENT: Lay aside
6 temporarily.

7 ACTING PRESIDENT FARLEY: Laid
8 aside temporarily.

9 THE SECRETARY: Calendar Number
10 64, by Senator Volker, Senate Bill Number 200,
11 an act to amend the Penal Law, the Criminal
12 Procedure Law, the Judiciary Law and the County
13 Law, in relation to the imposition of the death
14 penalty.

15 ACTING PRESIDENT FARLEY: Are you
16 ready, Senator Volker?

17 SENATOR PRESENT: Lay that aside
18 temporarily.

19 ACTING PRESIDENT FARLEY: Lay it
20 aside temporarily.

21 THE SECRETARY: Calendar Number
22 77, by Senator Holland, Senate Bill Number 43,
23 Agriculture and Markets Law.

1 ACTING PRESIDENT FARLEY: Read
2 the last section.

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

5 ACTING PRESIDENT FARLEY: Call
6 the roll.

7 (The Secretary called the roll.)

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

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

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

14 ACTING PRESIDENT FARLEY: The
15 bill is passed.

16 SENATOR PRESENT: Mr. President.

17 ACTING PRESIDENT FARLEY: Senator
18 Present.

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

22 SENATOR GOLD: No objection.

23 ACTING PRESIDENT FARLEY:

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

3 THE SECRETARY: Calendar Number
4 64, by Senator Volker, Senate Bill Number 200,
5 an act to amend the Penal Law.

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

8 ACTING PRESIDENT FARLEY: Call
9 the roll. Who -

10 THE SECRETARY: Senator Trunzo.

11 SENATOR TRUNZO: Vote yes.

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

15 Continue on. We got another one?

16 SENATOR PRESENT: Are we done?

17 Let's take up Calendar 64.

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

20 THE SECRETARY: Calendar Number
21 64, by Senator Volker, Senate Bill Number 200,
22 an act to amend the Penal Law, the Criminal
23 Procedure Law, the Judiciary Law and the County

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

3 SENATOR GOLD: Explanation.

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

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

12 SENATOR GOLD: Mr. President.

13 ACTING PRESIDENT FARLEY: Senator
14 Gold.

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

21 ACTING PRESIDENT FARLEY: Senator
22 Volker.

23 SENATOR VOLKER: At any rate, for

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

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

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

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

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

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

1 1832, and by 1990 had risen to 2600. Never
2 before in this state's history had we ever seen
3 anything to compare with the murder rate that
4 occurred after the death penalty was abolished.

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

17 Just to put it in perspective, it
18 took six years from 1960 to 1965 for 2,000
19 people to be killed. It took nine years from
20 1966 to 1974 for 13,900 people to be killed.

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

1 attitude of people. As I have said many times,
2 and I'm a former law enforcement officer in the
3 '60s and early '70s, and we thought then that
4 the attitude of people was bad. We thought then
5 that we were dealing with some pretty hard case
6 people. We thought then that the attitude of
7 live and let live or die and let die, which was
8 a better way of putting it, was something that
9 was becoming abominable.

10 Little did we ever recognize or
11 realize what was going to occur as the '70s and
12 '80s have come on and now into the '90s when,
13 unfortunately dismemberment killings, terrorist
14 killings, mass murders have become so much a
15 part of our society as to be almost unbeliev
16 able.

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

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

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

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

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

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

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

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

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

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

1 that.

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

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

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

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

6 SENATOR LEICHTER: Mr. President.

7 ACTING PRESIDENT FARLEY: Senator
8 Leichter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that is to make this a safer society.

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

5 ACTING PRESIDENT FARLEY: Senator
6 Dollinger.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 SENATOR GOLD: Mr. President.

4 ACTING PRESIDENT FARLEY: Senator
5 Gold.

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

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

1 handled that way.

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

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

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

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

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

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

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

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

14 Well, Senator Volker, I want to
15 avoid some mistakes also. I want you to use
16 your same logic today. I've showed you this
17 before: Wrong man jailed for 28 months, D.A.
18 accuser ex-wife admits killing. I showed that a
19 lot of times because that was 1984. But,
20 Senator, if you're bored with 1984, I can show
21 you 1992. This is just since the last time.
22 What are we, on the 17th? This is since the
23 16th debate. Wrong man got the death needle.

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

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

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

23 But what happens in the

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

8 Here's another one, May 20th,
9 1992. An innocent man executed. Another
10 nightmare. Here's one, a Brooklyn man \$1.9
11 million from the Court of Claims, convicted of
12 murder he didn't commit. I'm sure the state of
13 New York could have done better things with that
14 \$1.9 million than give it to somebody who we
15 wrongly convicted for murder.

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

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

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

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

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

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

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

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

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

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

3 ACTING PRESIDENT FARLEY: Senator
4 Nozzolio.

5 SENATOR NOZZOLIO: Thank you, Mr.
6 President.

7 Mr. President, on the bill.

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

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

1 safe, to run the prison system in this state.

2 SENATOR LEICHTER: Excuse me.

3 Mr. President.

4 SENATOR NOZZOLIO: They will be
5 sentenced to death.

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

8 SENATOR LEICHTER: Would the
9 Senator yield to a question?

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

13 SENATOR NOZZOLIO: Yes, Mr.
14 President.

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

1 aware of those?

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

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

11 SENATOR NOZZOLIO: Thank you,
12 Senator.

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

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

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

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

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

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

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

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

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

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

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

17 Thank you, Mr. President.

18 ACTING PRESIDENT FARLEY: Thank
19 you.

20 Senator Espada.

21 SENATOR ESPADA: Thank you, Mr.
22 President.

23 I rise -- you should know I am

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

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

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

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

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

23 Thank you very much.

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

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

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

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

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

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

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

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

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

1 ACTING PRESIDENT FARLEY: Senator
2 Saland.

3 SENATOR SALAND: Thank you, Mr.
4 President.

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

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

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

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

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

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

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

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

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

22 What are those requirements?

23 Those requirements are a so-called bifurcated

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

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

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

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

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

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

1 decision wrongfully or a death penalty had been
2 imposed wrongfully.

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

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

1 penalty isn't a deterrent.

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

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

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

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

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

1 pedestrian.

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

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

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

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

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

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

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

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

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

18 Thank you.

19 ACTING PRESIDENT FARLEY: Senator
20 Marchi.

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

1 an individual who had committed homicide was
2 sentenced by a jury on Staten Island, and it
3 never happened again right up to the time of
4 1963 when -- when the penalty was abolished in
5 this state, and I was here at the time that the
6 debate was held.

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

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

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

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

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

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

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

22 We introduce resolutions for
23 people who have rendered significant public

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

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

23 ACTING PRESIDENT FARLEY: Senator

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

5 SENATOR PATERSON: Thank you, Mr.
6 President.

7 Before Senator Volker concludes
8 the debate, I'd like to congratulate him and
9 thank him for raising this issue over and over
10 again. I don't agree with it, but I think it's
11 a significant issue that is on the minds of a
12 great number of citizens of our state, and I
13 think it needs to be revisited as many times and
14 this is the 17th time and I'll be back for the
15 18th time hopefully, because I hope it doesn't
16 pass. But nonetheless it's an example, I think,
17 of a myriad number of issues in this state that
18 need to come before this body, and I certainly
19 think that a great deal of effort has gone into
20 it.

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

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

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

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

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

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

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

1 shouldn't have it.

2 The fact is that we don't have
3 any sympathy for the people who commit the stark
4 crimes that we've heard described here today.

5 In many respects, even those of us who morally
6 may be opposed to the death penalty probably in
7 our hearts could care less about what happens to
8 individuals who kill four different people and
9 then make the fifth victim of their savage wrath
10 a correction officer.

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

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

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

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

23 Prior to that case, there had

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

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

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

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

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

8 ACTING PRESIDENT FARLEY: Senator
9 Smith.

10 SENATOR SMITH: Thank you, Mr.
11 President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Senator -- go ahead.

1 SENATOR LEICHTER: Will you
2 yield?

3 SENATOR VOLKER: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 I can only tell you this: I'm

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

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

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

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

20 SENATOR GOLD: Slow roll call.

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

23 THE SECRETARY: Section 16. This

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

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

7 THE SECRETARY: Senator Babbush
8 excused.

9 Senator Bruno.

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

12 SENATOR BRUNO: I vote yes.

13 THE SECRETARY: Senator Connor
14 excused.

15 Senator Cook.

16 SENATOR COOK: Yes.

17 THE SECRETARY: Senator Daly.

18 (There was no response.)

19 Senator DeFrancisco.

20 SENATOR DeFRANCISCO: Explain my
21 vote.

22 ACTING PRESIDENT FARLEY: Senator
23 DeFrancisco to explain his vote.

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

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

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

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

8 THE SECRETARY: Senator
9 Dollinger.

10 SENATOR DOLLINGER: No.

11 THE SECRETARY: Senator Espada.

12 SENATOR ESPADA: No.

13 THE SECRETARY: Senator Farley.

14 SENATOR FARLEY: Aye.

15 THE SECRETARY: Senator Galiber.

16 SENATOR GALIBER: No.

17 THE SECRETARY: Senator Gold.

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

20 ACTING PRESIDENT FARLEY: Senator
21 Gold to explain his vote.

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

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

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

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

13 I vote no.

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

16 THE SECRETARY: Senator
17 Gonzalez.

18 SENATOR GONZALEZ: No.

19 THE SECRETARY: Senator Goodman.

20 SENATOR GOODMAN: Yes.

21 THE SECRETARY: Senator
22 Halperin.

23 SENATOR HALPERIN: No.

1 THE SECRETARY: Senator Hannon.
2 SENATOR HANNON: Yes.
3 THE SECRETARY: Senator
4 Hoffmann.
5 SENATOR HOFFMANN: Yes.
6 THE SECRETARY: Senator Holland.
7 SENATOR HOLLAND: Yes.
8 THE SECRETARY: Senator Johnson.
9 SENATOR JOHNSON: Aye.
10 THE SECRETARY: Senator Jones.
11 SENATOR JONES: No.
12 THE SECRETARY: Senator Kuhl.
13 SENATOR KUHL: Aye.
14 THE SECRETARY: Senator Lack.
15 SENATOR LACK: Aye.
16 THE SECRETARY: Senator Larkin.
17 SENATOR LARKIN: Aye.
18 THE SECRETARY: Senator LaValle.
19 SENATOR LAVALLE: Aye.
20 THE SECRETARY: Senator
21 Leichter.
22 SENATOR LEICHTER: No.
23 THE SECRETARY: Senator Levy.

1 SENATOR LEVY: Aye.

2 THE SECRETARY: Senator Libous.

3 SENATOR LIBOUS: Aye.

4 THE SECRETARY: Senator Maltese.

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

7 ACTING PRESIDENT FARLEY: Senator
8 Maltese to explain his vote.

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

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

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

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

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

1 homicides.

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

5 I vote aye.

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

9 THE SECRETARY: Senator Marchi.

10 SENATOR MARCHI: No.

11 THE SECRETARY: Senator Marino.

12 (Affirmative indication.)

13 THE SECRETARY: Aye.

14 Senator Markowitz.

15 SENATOR MARKOWITZ: Yes.

16 THE SECRETARY: Senator

17 Masiello.

18 SENATOR MASIELLO: No.

19 THE SECRETARY: Senator Mega.

20 (Affirmative indication.)

21 THE SECRETARY: Aye.

22 Senator Mendez.

23 SENATOR MENDEZ: Mr. President.

1 ACTING PRESIDENT FARLEY: Senator
2 Mendez to explain her vote.

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

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

17 I vote no. Thank you.

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

20 THE SECRETARY: Senator
21 Montgomery.

22 SENATOR MONTGOMERY: Mr.
23 President.

1 ACTING PRESIDENT FARLEY: Senator
2 Montgomery, where is she?

3 SENATOR MONTGOMERY: Yes.

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

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

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

23 So I gather that Senator Volker

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

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

1 Texas.

2 So clearly I'm not -- I'm not
3 convinced at all, Senator Volker, that your bill
4 is going to accomplish any of the things that
5 you say and, in addition, between 1977 and 1988,
6 of 2,951 offenders, only 81 were executed with
7 725 having their cases reversed in the appellate
8 courts or their sentences commuted, so there's
9 very likely cause that there will be mistakes
10 that we will be not intending to make and we
11 have any number of instances where people have
12 been released from a death penalty because of
13 some error in the judicial system.

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

20 I vote no, Mr. President.

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

1 THE SECRETARY: Senator Nolan.

2 SENATOR NOLAN: Explain my vote.

3 ACTING PRESIDENT FARLEY: Senator
4 Nolan to explain his vote.

5 SENATOR NOLAN: I, too, vote in
6 the negative, and I -- you know, this is really
7 kind of -- I hadn't really planned on speaking
8 today, because I have quite a sore throat, but I
9 think that to bring this issue up year after
10 year after year, with no hope that the Governor
11 is going to sign it or that it's going to be
12 overridden by the Legislature has really become
13 a real waste of time. I've been in the Senate
14 here 19 years, and certainly for the last 16 or
15 17 years, we've wound up wasting days, hours, on
16 the subject.

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

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

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

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

18 THE SECRETARY: Senator
19 Nozzolio.

20 SENATOR NOZZOLIO: Aye.

21 THE SECRETARY: Senator
22 Ohrenstein.

23 (Negative indication.)

1 THE SECRETARY: No.
2 Senator Onorato.
3 SENATOR ONORATO: Senator
4 Oppenheimer.
5 SENATOR OPPENHEIMER: No.
6 THE SECRETARY: Senator Padavan.
7 SENATOR PADAVAN: Yes.
8 THE SECRETARY: Senator Pataki.
9 SENATOR PATAKI: Yes.
10 THE SECRETARY: Senator
11 Paterson.
12 SENATOR PATERSON: Mr. President.
13 ACTING PRESIDENT FARLEY: Senator
14 Paterson will explain his vote.
15 SENATOR PATERSON: Mr. President,
16 I would like the record to reflect that in 1984
17 I was in the Queens District Attorney's office
18 when we investigated the case of Nathaniel
19 Carter, who had been convicted of murder and two
20 years later the case was thrown out when it
21 became clear that he was not the perpetrator of
22 that crime.
23 Otherwise, I'd just like to point

1 out to Senator DeFrancisco and to Senator Volk
2 er, that the discrepancy of racial discrimina
3 tion is addressed in the legislation. It's not
4 rising to a threshold that I feel I can vote for
5 the legislation, but I think that there was some
6 sensitivity to that in this legislation. I
7 don't think it's enough, but I would ask that
8 Senator Volker again consider some of the
9 alternatives we've raised today and, again, I am
10 happy that he raised the issue. In fact, I'm so
11 sure that this legislation won't pass and that
12 Senator Volker will be in good health and will
13 be back to raise it again in 1994, Mr.
14 President, that I'd like my statement from 1994
15 put in the record awaiting the legislation.

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

18 THE SECRETARY: Senator Present.

19 SENATOR PRESENT: Aye.

20 THE SECRETARY: Senator Saland.

21 (There was no response.)

22 Senator Santiago excused.

23 Senator Sears.

1 SENATOR SEARS: Yes.
2 THE SECRETARY: Senator Seward.
3 SENATOR SEWARD: Yes.
4 THE SECRETARY: Senator Sheffer.
5 SENATOR SHEFFER: Yes.
6 THE SECRETARY: Senator Skelos.
7 SENATOR SKELOS: Yes.
8 THE SECRETARY: Senator Smith.
9 ACTING PRESIDENT FARLEY: Senator
10 Smith to explain her vote.
11 SENATOR SMITH: I would just like
12 to rise so that everyone can hear me say no.
13 ACTING PRESIDENT FARLEY: Senator
14 Smith is in the negative. Continue the roll.
15 THE SECRETARY: Senator Solomon.
16 SENATOR SOLOMON: No -- oh, yes.
17 ACTING PRESIDENT FARLEY: Senator
18 Solomon is in the affirmative, I believe.
19 THE SECRETARY: Senator Spano.
20 (Affirmative indication.)
21 THE SECRETARY: Aye.
22 THE SECRETARY: Senator
23 Stachowski.

1 SENATOR STACHOWSKI: Aye.
2 THE SECRETARY: Senator
3 Stafford.
4 SENATOR STAFFORD: Aye.
5 THE SECRETARY: Senator
6 Stavisky.
7 SENATOR STAVISKY: Nope.
8 THE SECRETARY: Senator Trunzo
9 voting in the affirmative earlier today.
10 Senator Tully.
11 SENATOR TULLY: Aye.
12 THE SECRETARY: Senator Velella.
13 SENATOR VELELLA: Yes.
14 THE SECRETARY: Senator Volker.
15 SENATOR VOLKER: Yes.
16 THE SECRETARY: Senator Waldon.
17 SENATOR WALDON: Mr. President.
18 ACTING PRESIDENT FARLEY: Senator
19 Waldon to explain his vote.
20 SENATOR WALDON: Listening to my
21 colleagues here today, Mr. President, one could
22 conjure up reasons to go along with this
23 legislation. For example, if I were Biblical, I

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

6 If I were about fairness, which I
7 think is the real issue here when we deal with
8 the death penalty, I would say that African
9 Americans arrived at this nation's shores in
10 1619, a place now called Jamestown, Virginia as
11 20 indentured servants upon a boat, and we've
12 paid our dues since that time.

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

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

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

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

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

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

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

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

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

23

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

3 THE SECRETARY: Senator Wright.

4 SENATOR WRIGHT: Aye.

5 ACTING PRESIDENT FARLEY:

6 Absentees.

7 THE SECRETARY: Senator Daly.

8 SENATOR DALY: Yes.

9 THE SECRETARY: Senator Saland.

10 SENATOR SALAND: Aye.

11 ACTING PRESIDENT FARLEY:

12 Results.

13 THE SECRETARY: Ayes 39, nays
14 19.

15 ACTING PRESIDENT FARLEY: The
16 bill is passed.

17 There's a motion on the floor.

18 Who has it? Senator Gold, do you have a motion?

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

1 Calendar.

2 ACTING PRESIDENT FARLEY: Without
3 objection.

4 Senator Present.

5 SENATOR PRESENT: Take up
6 Calendar Number 30, please.

7 ACTING PRESIDENT FARLEY:
8 Calendar 30.

9 THE SECRETARY: Calendar Number
10 30, by Senator Tully, Senate Bill Number 232-A,
11 an act to amend the Vehicle and Traffic Law, in
12 relation to penalties for unauthorized use of
13 parking spaces for handicapped persons.

14 ACTING PRESIDENT FARLEY: Last
15 section.

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

18 ACTING PRESIDENT FARLEY: Call
19 the roll.

20 SENATOR KUHL: Mr. President.

21 ACTING PRESIDENT FARLEY: Senator
22 Kuhl.

23 SENATOR KUHL: Yes. Would the

1 sponsor yield to a couple questions?

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

4 SENATOR TULLY: Yes, I will.

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

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

17 ACTING PRESIDENT FARLEY: Senator
18 Kuhl.

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

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

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

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

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

17 SENATOR TULLY: No, I'm not.

18 SENATOR KUHL: Thank you.

19 ACTING PRESIDENT FARLEY: Read
20 the last section.

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

1 ACTING PRESIDENT FARLEY: Call
2 the roll.

3 (The Secretary called the roll.)

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

7 ACTING PRESIDENT FARLEY: That
8 bill is passed.

9 SENATOR PRESENT: Mr. President.

10 ACTING PRESIDENT FARLEY: Senator
11 Present.

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

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

17 THE SECRETARY: Calendar Number
18 81, by Senator Spano, Senate Bill Number 1414,
19 an act to amend the Mental Hygiene Law.

20 ACTING PRESIDENT FARLEY: Read
21 the last section.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT FARLEY: That
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 93, by Senator Daly.

6 SENATOR DALY: Lay aside for the
7 day, please.

8 ACTING PRESIDENT FARLEY: Laid
9 aside for the day.

10 Senator Present, that concludes
11 the calendar.

12 SENATOR PRESENT: Mr. President,
13 on behalf of Senator Levy, I'd like to call an
14 immediate Conference of the Majority in Room
15 332.

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

19 SENATOR PRESENT: Mr. President.

20 ACTING PRESIDENT FARLEY: Senator
21 Present.

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

1 tomorrow at 3:00 p.m.

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

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

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

12 SENATOR LEICHTER: 81.

13 ACTING PRESIDENT FARLEY: 81.

14 SENATOR MONTGOMERY: I also.

15 ACTING PRESIDENT FARLEY: Senator
16 Montgomery also.

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

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

23 The Senate stands adjourned.

1
2
3
4
5
6
7
8
9
10

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