ALBANY, NEW YORK

April 27, 1993

3:35 p.m.

REGULAR SESSION

SENATOR CHRISTOPHER J. MEGA, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEGA: Senate will come to order. Please stand for the Pledge of Allegiance.

(Whereupon, the Senate joined in the Pledge of Allegiance to the flag.)

In the absence of clergy, may we bow our heads for a moment of prayer.

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 26. The Senate met pursuant to adjournment. Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Sunday, April 25, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

Member of the State Medical Advisory Committee to the Department of Social Services, Randall D. Bloomfield, M.D., of Brooklyn.

Member of the State Camp Safety Advisory Council, Meir Frischman, of Brooklyn.

Member of the Small Business Advisory Board, Paul Kessler of Island Park.

Member of the Central New York Regional Transportation Authority, Robert C. Sprague of Syracuse.

Member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford, Lily Bishop, of Brooktondale and Mary Smack of Binghamton.

ACTING PRESIDENT MEGA: On the nominations. All those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The nominations are carried.

SENATOR DALY: Mr. President.

ACTING PRESIDENT MEGA: Senator Daly.

SENATOR DALY: Mr. President. On page 16, I offer the following amendments to Calendar Number 346, Senate 3860, and ask that said bill retain its place on the Third Reading Calendar. I do that for Senator Skelos.

ACTING PRESIDENT MEGA: Without objection.

SENATOR DALY: On behalf of Senator Levy, on page 25, I offer the following amendments to Calendar Number 186, Senate Print Number 2000, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEGA: Without objection.

Senator Saland.

SENATOR SALAND: Mr. President. On page 22, Calendar Number 456, Senate 3286, I

would like to place a sponsor star on that bill.

ACTING PRESIDENT MEGA: The bill is starred.

Senator Present.

SENATOR PRESENT: Mr. President. I move that we adopt the Resolution Calendar with the exception of Resolution 1135.

ACTING PRESIDENT MEGA: All those in favor, aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Tully.

SENATOR TULLY: Mr. President. I believe I have a resolution at the desk, 1135.

ACTING PRESIDENT MEGA: Secretary will read.

THE SECRETARY: Legislative Resolution 1135, by Senator Tully, recognizing the week of May 6th through the 12th as Nurses Weak in New York State and honoring the eight

individuals selected as Regional Nurses of Distinction.

SENATOR TULLY: Mr. President. May I have the resolution read in its entirety.

ACTING PRESIDENT MEGA: Without objection.

THE SECRETARY: Whereas, the week of May 6th to May 12th, 1993 is Nurses Week in New York State.

The nurses of New York have, by dedicating their lives to the health and dignity of their fellow New Yorkers, contributed significantly to the well-being of the citizens of our state.

The New York State Legislature developed the Nurse of Distinction Award Program to pay tribute to New York State's registered professional nurses for their steadfast commitment in the support of the health and betterment of fellow New Yorkers.

The outstanding achievements of thousands of our state's registered professional nurses have been acknowledged through the 1993

Nurse of Distinction Award Program, and 319 distinctive nurses were nominated for the award.

Eight Regional Nurses of Distinction were selected by nursing peers from throughout the state for their professional excellence and unequivocal dedication in support of the health and betterment of their fellow New Yorkers.

Now, therefore be it resolved, that this legislative body pause in its deliberations to express its deep respect and appreciation to all New York State's distinguished nurses and to recognize the unique contributions made by the eight Regional Nurses of Distinction:

Dorothy A. Pezzoli, Department of Veterans Affairs Medical Center, Northport;

Leah Epstein Harrison, Montefiore Medical Center, Bronx;

Sharon Paul, Brooklyn Hospital Center, Brooklyn;

Johanna Lee, Nyack Hospital

Certified Home Health Agency, Valley Cottage;

Laurie J. Murphy, Ellis Hospital, Schenectady;

Sondra O. Pruden, Broome County Health Department, Binghamton;

Karen Hibbard, Highland Hospital, Rochester; and

Marilyn R. Englert, Department of Veterans Affairs Medical Center, Buffalo.

And, be it further resolved, that this legislative body seek to encourage statewide recognition of those valued nursing professionals serving our communities in both institutional and noninstitutional settings; and

Be it further resolved that this legislative body pause in its deliberations to acknowledge the week of May 6 through May 12, 1993 as Nurses Week in New York State; and

Be it further resolved, that copies of this resolution, suitably embossed, be transmitted to the eight 1993 New York State Legislature Regional Nurses of Distinction with our pride and gratitude.

ACTING PRESIDENT MEGA: Senator Tully.

SENATOR TULLY: Yes, Mr. President. A group of more than 400 very special New Yorkers is with us here in Albany today and tomorrow for the fifth New York State Legislators Nurse of Distinction Conference.

The conference culminates the Nurse of Distinction Award Program year. I have been honored to be one of the legislative sponsors for the program since its inception in 1989, and am very pleased to have been named by Senate Majority Leader Marino earlier this year to become the legislative coordinator.

Over the course of the five years of the program, more than 2,000 of our state's professional nurses have been recognized for the important contributions they have made in establishing the excellent standards of medical care we share in New York State.

On the Senate calendar today is the resolution previously read acknowledging the up coming Nurses Week in New York State and all

of the 319 nurses from throughout our state being honored at the Nurse of Distinction Conference.

Eight of the 319 nurses nominated by their facilities for this recognition have been chosen as Regional Nurses of Distinction. They represent eight geographic areas of our state, and I would like to introduce them to you at this time.

From Long Island, Dorothy Pezzoli, from the Northport V.A. Medical Center.

From Greater New York Region 1, which includes Richmond, New York and Bronx Counties, Leah Epstein Harrison, from Montefiore Medical Center in the Bronx.

From Greater New York Region 2, which includes Kings and Queens counties, Sharon Paul, from the Brooklyn Hospital Center.

From the Northern Metropolitan Region, Johanna Lee, from the Nyack Hospital Certified Home Health Agency.

From the Northeastern Region, Laurie Murphy, from Ellis Hospital in

Schenectady.

From the Central New York Region, Sondra Pruden from the Broome County Department of Health in Binghamton.

From the Finger Lakes Region, Karen Hibbard, from the Highland Hospital in Rochester.

And from the Western New York Region, Marilyn Englert from the Buffalo V.A. Medical Center.

Congratulations to each of you and our deepest thanks for the excellent work you are doing to enhance the quality of life for our state's residents.

Mr. President. At this time, I would like to offer to any and all of my colleagues the opportunity to join me in sponsoring this resolution, and I would hope you would extend the full greetings of the house to our wonderful Nurses of Distinction.

ACTING PRESIDENT MEGA: Thank you, Senator Tully.

Senator Stachowski.

SENATOR STACHOWSKI: I rise joining with Senator Tully in wishing all of the Nurse of Distinction winners our congratulations.

And I would like to make one comment to them that I made to them out in the hallway. I have always felt that nurses are underpaid and in some cases underappreciated. And I only hope some day the rest of us will all appreciate that and we'll be able to get them more money.

Thank you.

ACTING PRESIDENT MEGA: Thank you, Senator Stachowski.

Any other Senator who would wish to speak on the resolution?

The resolution is open at the desk. All Senators who wish to be on the resolution will indicate to the Secretary that they wish to be on the resolution.

Senator Tully, thank you for the resolution and thank you for presenting the Distinguished Nurses to this body.

And on behalf of the entire body and on behalf of the Majority Leader, Senator Marino, we welcome you. We congratulate you for what you do. You are on the front lines of health care in a service that is needed and given to our constituents. So we welcome you and wish that you continue to be in this profession as long as you desire, and we give our best wishes not only to you but to all the nurses of the state that you represent, and congratulations.

(Applause)

All those in favor of the resolution, signify by saying aye.

(Response of "Aye.")

All those opposed, nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Present.

SENATOR PRESENT: Mr. President. I believe there are some reports from standing committees at the desk. May we have those read,

please.

ACTING PRESIDENT MEGA: Yes. Secretary will road.

THE SECRETARY: Senator Mega from the Committee on Judiciary reports the following bill directly for third reading:

Senate Bill Number 4595, by Senator Marino and others, proposing an amendment to the constitution in relation to filling a vacancy in the office of the Comptroller and Attorney General.

ACTING PRESIDENT MEGA: Without objection, the bill is reported to Third Reading Calendar.

THE SECRETARY: Senator Goodman from the Committee on Investigations, Taxation, and Government Operations reports the following bill directly for third reading:

Senate Bill Number 4596, by Senator Marino and others, an act to amend the Public Officers Law and the Election Law, in relation to providing for a referendum of preference by electors for candidates to fill

vacancies.

ACTING PRESIDENT MEGA: Without objection, the bill is reported to Third Reading Calendar.

THE SECRETARY: Senator Larkin from the Committee on Local Government reports the following bill directly for third reading:

Senate Bill Number 4541, by Senator Spano, an act to authorize the village of Tuckahoe, Westchester County, to finance a deficit, its general fund, by the issuance of serial bonds.

ACTING PRESIDENT MEGA: Without objection, the bill is reported to the Third Reading Calendar.

Motions and resolutions.

Secretary will read.

THE SECRETARY: On page 6 of today's calendar, Senator Velella moves to discharge the Committee on Insurance from Assembly Bill Number 6187 and substitute it for the identical Calendar Number 493.

On page 7, Senator Hannon moves

to discharge the Committee on Insurance from Assembly Bill Number 6927 and substitute it for the identical Calendar Number 497.

On page 22, Senator Volker moves to discharge the Committee on Codes from Assembly Bill Number 6457 and substitute it for the identical Third Reading 458.

ACTING PRESIDENT MEGA: Substitutions ordered.

Senator Present, that concludes the house cleaning business. We are now ready for the calendar.

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

ACTING PRESIDENT MEGA: Non-controversial calendar. The Secretary will read.

THE SECRETARY: On page 10, Calendar Number 52, by Senator Maltese, Senate Bill Number 92, an act to amend the Public Authorities Law, in relation to the appointment of members of the New York City Water Board.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay it aside.

THE SECRETARY: Calendar Number 53, by Senator Padavan, Senate Bill Number 134, Public Authorities Law and the State Finance Law, in relation to revenues.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay it aside.

THE SECRETARY: Calendar Number 421, by Senator Saland, Senate Bill Number 3197, an act to amend the Family Court Act.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 422, by Senator Saland, Senate Bill Number 3759, Domestic Relations Law, in relation to orders for child custody and support.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 423, by Senator Saland, Senate Bill Number 4331, Family Court Act, in relation to authorizing fees for probation services in Family Court.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 425, by Senator Babbush, Senate Bill Number 904,

authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT MEGA: There is a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 426, by Senator Velella, Senate Bill Number 1280, authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT MEGA: There is a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEGA: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 427, by Senator Nolan, Senate Bill Number 3438, an act to amend the city charter of the city of Cohoes.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 428, by Senator Skelos, Senate Bill Number 3727, General Municipal Law.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 429, by Senator Padavan, Senate Bill Number 116, Education Law, in relation to authorizing instruction regarding child development.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: Senator Jones to explain her vote.

SENATOR JONES: No, Mr. President. I would like to ask a question.

ACTING PRESIDENT MEGA: Lay the bill aside. Withdraw the roll call and lay the bill aside.

THE SECRETARY: Calendar number 430, by Senator Saland, Senate Bill Number 2243A, Education Law, in relation to use of

school buildings for child care services.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 433, by Senator Holland, Senate Bill Number 3451, Education Law, in relation to reorganization incentive building aid.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 435, by Senator Daly, Senate Bill Number 1098, Environmental Conservation Law, in relation to the definition of an inactive hazardous waste disposal site.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 437.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number

438, by member of the Assembly Brodsky, Assembly Bill Number 4009, Environmental Conservation Law.

SENATOR JOHNSON: Lay it aside for amendment, please.

ACTING PRESIDENT MEGA: Lay the bill aside for amendments.

SENATOR JOHNSON: Don't take it up any more today.

ACTING PRESIDENT MEGA: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 439, by Senator Johnson, Senate Bill Number 4307, Environmental Conservation Law, in relation to wild life management.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 440, by Senator Johnson, Senate Bill Number 4376, Environmental Conservation Law, in relation to authorizing the Department of Environmental Conservation to dispose of surplus products.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 441, by Senator Holland, Senate Bill Number 464, Social Services Law and the Tax Law, in relation to evaluating employment and training programs.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Will the sponsor be kind enough to let us have a day on this, please?

SENATOR HOLLAND: Yes.

SENATOR GOLD: Thank you. Lay it aside for the day.

ACTING PRESIDENT MEGA: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 444, by Senator Seward, Senate Bill Number 3372, an act to amend the Energy Law, the Environmental Conservation Law, and the Transportation Law.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 448, by Senator Johnson, Senate Bill Number 2372.

SENATOR HALPERIN: Lay it aside.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 449, by Senator Sears, Senate Bill Number 2459, an act to amend the Penal Law, in relation to unauthorized use of an emergency vehicle.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 450, by Senator Volker, Senate Bill Number 2732A, Civil Practice Law and Rules, in relation to the elimination of fees in connection with service of information subpoenas.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 451, by Senator Cook, Senate Bill Number 2990.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 452.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay that bill aside.

THE SECRETARY: Calendar Number 453, by Senator Sears, Senate Bill Number 3106, an act to amend the Penal Law.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 454, by Senator Volker, Senate Bill Number 3165, an act to amend the Penal Law.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 455, by Senator Marino, Senate Bill Number 3237.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 457, by Senator Volker, Senate Bill Number 3323, an act to amend the Penal Law, in relation to including criminal sale of a controlled substance.

ACTING PRESIDENT MEGA: We're on Calendar 457.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MEGA: Lay it aside.

THE SECRETARY: Calendar Number 459, by Senator Holland, Senate Bill Number 3371, Criminal Procedure Law, in relation to

including day constables of the village of South Nyack.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays 2. Senators Gold and Leichter recorded in the negative. Also Senator Galiber recorded in the negative.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 460, by Senator Volker.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT MEGA: Lay it aside.

THE SECRETARY: Calendar Number 461, by Senator Maltese, Senate Bill Number 3793, Civil Rights Law.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator Larkin.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

Senator Present, that concludes the non-controversial calendar.

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

ACTING PRESIDENT MEGA: Controversial calendar. Secretary will read.

THE SECRETARY: On page 10,

Calendar Number 52, by Senator Maltese, Senate Bill Number 92, Public Authorities Law, in relation to the appointment of members of the New York City Water Board.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MEGA: Senator Maltese, explanation requested.

SENATOR MALTESE: Mr. President, the purpose of this legislation is to change the manner in which members of the New York City Water Board are appointed.

The summary of the provisions: The Public Authorities Law would be amended by allowing five members of the Water Board to be appointed by the City Council, one member to be appointed by the Mayor, and one member to be appointed by the president of the City Council.

Mr. President, the main purpose of the bill would be to expand the authority of the board from simply being appointees of the Mayor to being appointees of the City Council, and to have the Water Board as a more responsive agency to the people and to remove it somewhat

from the control of the Mayor. The Mayor would still have one appointee on the Water Board.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Yes. Will Senator yield to a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEGA: Senator, do you yield? Senator yields.

SENATOR GOLD: Senator, the bill is really pretty straightforward; but, as you know, there is obviously a memo in opposition by the Mayor, and I'm sure the bill is supported roundly by the City Council, but in terms of governance in the City, Senator, I mean why? Why are we doing this?

The Mayor is certainly a representative of the people of the city of New York, and we talk about changing the board so that it reflects the will of the people. I don't want to put words in your mouth. Whatever you said, something like that I thought. I mean right now, this is a function that's being

carried out. We have a Mayor in the City, and he appoints a board.

Is the board acting improperly? Has there been a problem? Why are we doing this other than to sort of spread the wealth politically to give people appointments?

SENATOR MALTESE: Mr. President, in response to Senator Gold's query, there have been many complaints of constituents in various parts of the city of New York with relation to water and sewer rates.

The theory behind the legislation is that by making the members of the City Council participate in the appointments of the board, it would give the people easier access to have their complaints handled. I have myself as of other Senators representing constituents in the City spoken to the Mayor with reference to these complaints. He has been responsive to some of the inquiries that I have made on behalf of the constituents. At the same time I do feel that with the onerous responsibility of the entire city of New York to have to appeal

directly to the Mayor on matters of this kind would be circuitous, and it would facilitate the decreasing of water and sewer rates in order to put the City Council in a position of responsibility as far as the appointment of the members.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Mr. President, I don't think this is the overwhelming issue of the year, but -- and certainly, I don't think that the president -- sorry, the Majority Leader of the City Council, the Speaker of the City Council has a greater fan in New York than me. I think he is terrific, and I think that Peter Vallone has taken the City Council through this metamorphosis of the new charter and made it a very, very viable body. I don't think that's an issue at all.

I do think, however, that Senator Maltese's arguments really do stretch it a little bit. I'm delighted that Senator Maltese

in his usual frank way, said that when there was a problem and he contacted the Mayor, they were responsive. But the board ought to be responsive whether it is appointed by the Mayor or whether they are recommendations from the City Council.

I would imagine that many of us should be embarrassed when we see over and over again articles written about, "It's not what you know; it's who you know," and whatever; and if there is something not right, it shouldn't be a question of always having to know somebody to get it taken care ever.

We are talking now about water/ sewer rates. One of the concerns that the Mayor raises in his memo is whether or not this is a flag to the bondholders in the investment community because you are dealing with issues of rating.

Senator Maltese, I would not stay awake at night if this bill passes. I won't have sleepless nights one way or the other, but I do think that the City Council under the

leadership of Speaker Vallone has done very important things for the City and is growing. I just don't see the necessity of making this particular change. I don't see where it helps the City, and I just want to point out to the members that there is in fact a memo in opposition from the Mayor's office.

ACTING PRESIDENT MEGA: Senator Padavan.

SENATOR PADAVAN: Mr. President, in regard to the bill before us.

If there is one single issue that I receive a great deal of constituent input on and complaints, it is relevant to the actions of the Water Board in the city of New York, with regard to their cavalier and almost arbitrary procedure in establishing rates, mistakes that are made ad nauseum.

Just two weeks ago, I received a visit from a constituent that had in her hand a bill from the Water Board for their one-family home in the amount of over $10,000. It will take weeks if not months to straighten that mess

out.

Now, when we tell people and we urge people to contact their City Council because it fundamentally is a City issue, the response we get back is, "The City Councilman says he can't do anything about it because these people are all appointed by the Mayor over which they have no control."

Now, I don't mean to imply that when we contact the Water Board they don't eventually respond and do their best, hopefully, not in every instance but in many instances to correct the problem. But if the City Council under charter revision which we authorized and which the people sustained by referendum is to have the authority to deal with those City services, particularly with regards to fiscal matters -- indebtedness, as an example. This authority floats an awful lot of bonds. It's a quasi-governmental agency in the sense that it is an independent agency, with no control by the City Council and no input.

We did pass a bill yesterday in

this chamber which will allow the City Council to have oversight over many of these independent agencies like OTB and the Water Board and so on, but that is yet to become law. The fact remains, we feel the sponsors of this legislation and many representatives within city government, that if the makeup of this board is reflective to some degree of the wishes of the people in the various counties, boroughs, of the City by virtue of input from the City Council, then the degree of arrogance -- and on occasion it is just that -- that taxpayers, homeowners, business owners, feel with regard to the Water Board will be somewhat diminished. Hopefully, substantially diminished.

We have an apartment house in the city of New York who are now getting water bills that are greater than their property tax bills. You have heard from some of them, those of you in the city of New York, and they are telling us they are going to have to abandon their property. We say, "Well, go to the Water Board; something has got to be done about this."

"Well, we have and we get a blank stare, a blank wall, no response."

Now, I don't suggest to you that this bill alone in terms of an appointment process will be the solution to all those difficulties, ameliorate all those problems, but I certainly think it's a step in the right direction.

And the precedent is set. There are many state boards and authorities where members are there either by recommendation or selection or nomination from the Legislature, this Legislature, and they are confirmed by the Senate. So this is not an obtuse or unusual procedure or mechanism that we are suggesting should be in place. There is more than enough precedent for it.

We are hopeful that if that board becomes more sympathetic, representative, and responsive to the people of the city of New York that that can be accomplished through this mechanism. So I strongly support this bill and urge all of you, particularly those outside the

city of New York who may not be aware of the kinds of problems we are experiencing to support it.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 52 are Senators Galiber, Gold, Stachowski, and Waldon. Ayes 54, nays 4.

ACTING PRESIDENT MEGA: The bill is passed.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT MEGA: Senator Padavan.

SENATOR PADAVAN: Mr. President. With regard -- on page 18, Calendar Number 429, may I have the vote by which that bill passed reconsidered, please.

ACTING PRESIDENT MEGA: 429 was laid aside, Senator Padavan.

SENATOR PADAVAN: Thank you very much.

ACTING PRESIDENT MEGA: Secretary will continue the calendar.

THE SECRETARY: Calendar Number 53, by Senator Padavan, Senate Bill Number 134, an act to amend the Public Authorities Law and the State Finance Law.

ACTING PRESIDENT MEGA: There is a local fiscal impact statement at the desk.

Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 423, by Senator Saland, Senate Bill Number 4331,

an act to amend the Family Court Act.

SENATOR SKELOS: May I ask a question of the sponsor?

ACTING PRESIDENT MEGA: Senator Saland, do you yield to Senator Skelos?

SENATOR SKELOS: Senator Saland, it's my understanding that this bill would allow local probation departments to charge fees for the study in private placement adoption cases. Is that correct?

SENATOR SALAND: Correct, on a scale of $50 to a maximum of $500 based upon the means of the petitioner.

SENATOR SKELOS: Presently, can the probation department -- and I really don't know the answer to this -- charge fees in other types of investigative matters that they conduct?

SENATOR SALAND: Not in all, but I do believe that they can in some. But I could verify that for you if you'd like to put this over until the end of calendar, and I can tell you what those proceedings are. I do believe

they can in some.

SENATOR SKELOS: That's up to you. Do you want to lay it aside now?

SENATOR SALAND: If that's your interest, I would certainly like to answer that for you unequivocally.

SENATOR SKELOS: Okay. And just one other question. Under this legislation, I understand that the money would go to the local probation district, and it would not affect their state aid in the future.

SENATOR SALAND: Correct.

SENATOR SKELOS: Would this money within the local probation department then have to be targeted towards whatever adoption type services and investigations they conduct or would it just go into their general fund?

SENATOR SALAND: I believe as it's drafted, it goes into their general fund for their general use.

SENATOR SKELOS: So we are going to now charge for their services in private placement adoptions.

SENATOR SALAND: On a sliding scale, this would enable that to happen. But let me lay this aside until the end of the calendar so I can answer your other question.

ACTING PRESIDENT MEGA: The bill is temporarily laid aside at the request of the sponsor.

THE SECRETARY: Calendar Number 428, by Senator Skelos, Senate Bill Number 3727.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT MEGA: Lay the bill aside.

THE SECRETARY: Calendar Number 429, by Senator Padavan, Senate Bill Number 116.

SENATOR PADAVAN: Lay that aside, please.

ACTING PRESIDENT MEGA: The bill is laid aside at the request of the sponsor.

THE SECRETARY: Calendar Number 437, by Senator Cook, Senate Bill Number 2632, Environmental Conservation Law and the State Finance Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MEGA: Explanation requested.

SENATOR COOK: Mr. President, can we come back to that?

ACTING PRESIDENT MEGA: The bill is temporarily laid aside.

THE SECRETARY: Calendar Number 448, by Senator Johnson, Senate Bill Number 2372, an act to amend the Penal Law, in relation to possessing an obscene sexual performance by a child.

SENATOR GOLD: Hold on one second. 448?

ACTING PRESIDENT MEGA: 448, Senator Johnson's bill, page 21.

SENATOR HALPERIN: Explanation.

ACTING PRESIDENT MEGA: Explanation requested. Senator Johnson.

SENATOR JOHNSON: Mr. President. This bill makes it illegal to knowingly possess any material containing sexual performance of a child under 16 years of age. Makes it a class E felony.

This bill has been with us before for several years. It was passed each time. Perfectly legal and constitutional and should be adopted by this house.

ACTING PRESIDENT MEGA: Senator Halperin.

SENATOR HALPERIN: Mr. President. Yes, I believe there is an amendment at the desk.

ACTING PRESIDENT MEGA: Yes.

SENATOR HALPERIN: I waive its reading, seek to explain it.

ACTING PRESIDENT MEGA: Senator Halperin to explain his amendment to Senator Johnson's bill.

SENATOR HALPERIN: As Senator Johnson just indicated this legislation has been debated now for two or three years. And when the issue was first raised, the point that I tried to make is that when an individual purchases a magazine, that individual may know that there are other individuals depicted in the nude in that magazine and that perhaps they are

depicted in a pornographic manner, but in many cases, there is really no way to determine the age of the individuals who are being depicted. Now, clearly, if the individuals being depicted are of a very, very young age and are obviously undeveloped children, then a purchaser of a magazine would have every reason in the world to understand what it was that they are purchasing. But there is a certain area, a certain age at which one does not know whether an individual is a child or an adult, and this bill is properly targeted at that age in the sense in an anyone under the age of 16 would serve as the basis for a conviction under this bill, but one does not always know from looking at at a photograph whether the individual being depicted is under the age of 16 or over the age of 16.

Now, we are not dealing here with pornographers. We are not dealing here with people who are purveying sexual magazines. We're dealing with individuals who are purchasing a magazine in many cases solely for

their own use. And to end up throwing some of these people in prison because they happened to purchase a magazine that had someone under the age of 16 in it when they didn't even know that, to me, should not be the purpose of our criminal justice system.

The intent behind this bill, as explained in years gone by, is to discourage individuals from buying child pornography. Now, how do we discourage somebody from doing something when they don't know what it is they are doing?

So my bill -- or my amendment, rather, which is in fact a bill but which I'm offering up as an amendment, states that it is up to the prosecution to prove as an element of the crime that the individual who purchased the magazine or whatever other material we're discussing knew or should have known that the individual depicted was under age.

The way the law is written now, these individuals who are purchasing a magazine have the burden thrown upon them to somehow

prove that they did not know the age of the person. Now, to subject otherwise honest people, law-abiding people, to arrest and indictment even if not eventual conviction is, to my mind, both an injustice and a waste of our criminal justice resources unless the stated purpose of the legislation as offered is being realized; and that is, to discourage people from doing something that they know they are doing.

So the first thing that my bill does is to make as an element of the crime the knowledge of the age of the individual.

The second thing the bill does is to create a situation where, under the first offense, there will be a penalty of an "A" misdemeanor, and should there be a second offense within five years, then the "E" felony would be applicable. I think that that's more reasonable, once again, dealing with people who are not producing this material, because they are covered by another section of law which has even harsher penalties and properly so -- I voted for that bill when it came up -- or

individuals who are selling it on an ongoing basis who are also then subject to another more harsh provision of law.

I agree that those harsh provisions of law should be imposed upon those who would seek to benefit from taking advantage of youngsters, but that is not necessarily what this bill is getting at. The way that I am suggesting that the bill be amended would get at that, I think would make it more acceptable to the other house of this Legislature without which this could not become law and has not become law, and perhaps even an eventual signature by the Governor.

So I would urge everyone in this house to vote for the amendment, and I would hope that it would pass and that we can send the bill across to the Assembly that makes much more sense than the one that is being presented to us.

ACTING PRESIDENT MEGA: On Senator Halperin's amendment. All those in favor, signify by saying aye.

(Response of "Aye.")

All those opposed, nay.

(Response of nay.)

The nays have it. The amendment is defeated.

On the main bill, read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: I don't really want to repeat the debate. We had it last year and Senator Halperin offered his amendment last year, and Senator Connor and Galiber and myself, Halperin, and Leichter, Montgomery, Ohrenstein, Smith, Stavisky, and Waldon, understood the problems in the bill and voted in the negative.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of November next succeeding the date on which it shall have become law.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 448 are Senators Connor, Galiber, Gold, Halperin, Leichter, Montgomery, Ohrenstein, Paterson, Santiago, Smith, Stavisky, and Waldon. Ayes 47, nays 12.

ACTING PRESIDENT MEGA: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up Calendar 423 that was laid aside earlier.

ACTING PRESIDENT MEGA: Secretary will recount 423.

Senator Leichter.

SENATOR LEICHTER: Mr. President. Just before the next bill is read, may I have unanimous consent to be recorded in the negative on Calendar 52, which passed earlier today?

ACTING PRESIDENT MEGA: Without

objection.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT MEGA: Senator Mendez.

SENATOR MENDEZ: May I please be recorded in the negative on Calendar 52.

ACTING PRESIDENT MEGA: Without objection.

Senator Paterson.

SENATOR PATERSON: Mr. President. The same, without objection, in the negative on Calendar 52. There is such a crescendo building up in this chamber.

ACTING PRESIDENT MEGA: Without objection on the crescendo.

Secretary will read.

THE SECRETARY: Calendar Number 423, by Senator Saland, Senate Bill Number 4331, Family Court Act, in relation to authorizing fees for probation services in Family Court.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold?

SENATOR GOLD: Will the Senator yield to one question?

ACTING PRESIDENT MEGA: Senator Saland, will you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT MEGA: He yields.

SENATOR GOLD: Senator, the way I understand it, this isn't anything philosophical. This is just a straight issue of trying to raise money for the courts or the state or whatever; right?

SENATOR SALAND: What this is doing is basically saying that instead of having to -- this would enable a prospective adoptive parent to have the option of doing what they do currently, which is paying for an outside home study perhaps through a CSW or permitting the county probation department to do that, and the fee would be fixed, depending upon the means of the person, anywhere from $50 to $500.

The question that Senator Skelos had asked a bit earlier in which I told him I

thought that there were some other areas in which probation had the authority to charge a fee, but didn't want to tell him that unequivocally until I could verify that area, that area is in child custody investigations. Probation has the ability to charge a fee.

SENATOR GOLD: So will Senator yield to a question, one more question?

SENATOR SALAND: Yes, sir.

SENATOR GOLD: So it's not just a strict money-making situation. As I understand it now, something must be done; and if it's done in one situation, the adopting parents would pay for it through that situation. This is allowing them to have it done through a different situation and having a fee set for it. Is that correct?

SENATOR SALAND: Correct.

SENATOR GOLD: Thank you.

ACTING PRESIDENT MEGA: Senator Skelos.

SENATOR SKELOS: Mr. President. I'm going to vote against this bill, only

because I think it is wrong to be charging a family that is doing something quite wonderful which is the private adoption of a young child. We are going to charge them a fee for this service. Yet in instances where non-indigent people who have perhaps violated the law and are going through probation type services are not charged fees. So I think it just sends in my opinion a wrong message; that we should not be charging a fee in the instance of a wonderful social thing of private placement adoption.

ACTING PRESIDENT MEGA: Last section.

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

ACTING PRESIDENT MEGA: Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Mr. President. I'm happy to join Senator Skelos in opposing this bill because I think, though Senator Saland may have every good intention, this really is, I think, one of those

bills this sends a very, very strong negative signal to people in this state, particularly like people in my district who agree to adopt children, especially hard to place children.

I have three relatively new adoption agencies that are minority agencies, that the state has taken great pains to set aside funding specifically in order to help those organizations establish themselves and be able to function, because they target a very important sector of my district and that's blacks and/or Hispanic parents, in particular, to adopt children. And I think that this bill will, in fact, penalize them for wanting to do a very good social -- good and positive and socially responsible action.

So I think this is a very bad bill, and I hope that my colleagues will vote against it because it is well-intentioned, but I think it is ill in its outcome and in its message to the people in this state.

ACTING PRESIDENT MEGA: Senator Jones.

SENATOR JONES: Will Senator Saland yield to a question, please?

SENATOR SALAND: Yes.

ACTING PRESIDENT MEGA: Senator Saland yields.

SENATOR JONES: I was confused after I listened to Senator Skelos' remarks. I'm of the opinion that part of the budget that we passed included a large cut for the probation department; and, in turn, they were given the option to charge fees. Is that not correct? Did I miss something?

SENATOR SALAND: What occurred in the budget has absolutely no relationship whatsoever to anything that is intended to be done in this bill.

SENATOR JONES: Senator Skelos just said that criminals, et cetera, we were not able to charge fees. I was of the opinion we could.

SENATOR SALAND: I think Senator Skelos -- and I certainly can't speak for Senator Skelos -- may be referring to bills that

have been considered in this house at one time or other in which Senator Skelos and others have sought to enable probationers in criminal cases to be charged fees, and that has not been accepted either in the other house or by the Governor. I am assuming that's what his reference was to.

SENATOR JONES: Okay. Would the Senator yield to another question?

ACTING PRESIDENT MEGA: Senator yields.

SENATOR JONES: To clarify for me. This is a separate issue as far as adoption, and we did not pass anything -

SENATOR SALAND: There's absolutely nothing in the budget that dealt with this topic.

SENATOR JONES: Not only this topic but fees at all, is that what you're saying?

SENATOR SALAND: No. No. If you can recall, when the budget was adopted, the Governor had attempted to zero out last year's

$45 million appropriation. We in this house were successful in restoring approximately $28 million of those monies, and the local probation departments certainly would like to be held, in effect, harmless if they could by having the balance of those monies restored. That's a separate issue.

SENATOR JONES: Okay. Thank you, Senator.

ACTING PRESIDENT MEGA: Are there any further questions?

SENATOR SALAND: I would just -

ACTING PRESIDENT MEGA: Senator Saland, on the bill.

SENATOR SALAND: I just would like to address Senator Montgomery's comments, and I would call her attention to lines 13 through 15, and anybody who might have shared her concerns, in which the bill provides that that fee can be waived on the discretion of the court when the adoption would be delayed because the petitioning party lacks sufficient means to pay the fee. And I would assume that would

certainly be a consideration in the types of cases that Senator Montgomery was referring to.

Thank you.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 2. This act shall take effect the first day of October.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar 423 are Senators Galiber, Kuhl, Montgomery, Onorato, Pataki, Paterson, Santiago, Skelos, Solomon, Stavisky and Waldon. Ayes 48, nays 11.

ACTING PRESIDENT MEGA: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, will you call up Calendar 437, Senator Cook's bill, laid aside earlier.

ACTING PRESIDENT MEGA: Calendar 437. Secretary will read.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Yes. If I can impose, before you do that, could you recognize Senator Santiago for a moment.

ACTING PRESIDENT MEGA: Senator Santiago.

SENATOR SANTIAGO: I would like to vote no on 52, please.

SENATOR GOLD: Unanimous consent requested for her to be recorded in the negative on Calendar Number 52.

ACTING PRESIDENT MEGA: Without objection.

SENATOR GOLD: Thank you very much.

ACTING PRESIDENT MEGA: Secretary will read.

THE SECRETARY: Calendar Number 437, by Senator Cook, Senate Bill Number 2632, Environmental Conservation Law and the State Finance Law.

ACTING PRESIDENT MEGA: Senator Cook. Senator Gold has requested an explanation.

SENATOR COOK: Mr. President. One of the reasons why -

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Yes. If Senator Cook would yield, I prefer not to have an explanation.

ACTING PRESIDENT MEGA: Senator Cook, will you yield?

SENATOR COOK: Sure.

ACTING PRESIDENT MEGA: Senator Cook yields.

SENATOR GOLD: I want everyone to know that I have a document in front of me which mentions the name of this bill, 2632, and it says that the Department of Environmental Conservation strongly opposes the bill. Do you

know the reasons why, Senator? I don't.

Last section.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of January.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 451, by Senator Cook, Senate Bill Number 2990, an act to amend the Criminal Procedure Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEGA: Senator Cook. Explanation requested.

SENATOR COOK: Mr. President. This bill that many of us of discussed on previous occasions is a bill that deals with a very serious problem that we continue to have in

this state, and that is the problem of persons who are convicted of serious crimes where they are crimes to the person, assault, murder, rape, where they are subsequently charged with the same crime. They may serve a period of time and be subsequently charged with the same crime, and they are released back on the street, and they go out and they commit other crimes while they are waiting for trial.

And we had one instance some years ago where I had a hearing in Buffalo on the subject, where the police department actually indicated that between the time of an original arrest of an individual and the time when the trial was finally held that 32 subsequent arrests were made on the same person charged for other crimes of violence.

This bill simply says that the judge at the point when in individual is arraigned shall consider the safety of the public, consider the record of this individual either on previous convictions or, if they indeed are awaiting trial on one or more similar

charges, that the judge does not grant bail. And there are remedies available in the law for the individual who is charged to try to get that overturned.

But the real purpose of the law is to say when we've got dangerous people and we know that they are dangerous people that the public deserves the right to be protected from this type of individual being on the street.

ACTING PRESIDENT MEGA: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a question?

SENATOR COOK: Sure.

ACTING PRESIDENT MEGA: Senator Cook yields, Senator Dollinger.

SENATOR DOLLINGER: One of the questions that I raised on the deliberation of this item is what impact this bill would have on the populations in the county jails, such as of the Monroe County Correctional Facility, when pre-trial release is prevented in instances when

a judge might think it was warranted.

My question is about how many prisoners statewide do you think this would affect; and what do you think the additional stay in a correctional facility would be as a consequence of this bill?

SENATOR COOK: Mr. President, of course, we get this question asked all the time, and I'm really kind of wondering why we just don't establish a state prison that's not X number of vacancies; and then when it gets full, we don't convict anybody else of any more crimes. I mean that's the logic you are using, Senator.

The point is that's not the direction we come from. We look at what the need is, and we provide whatever space we have to provide. Our responsibility here is to protect the public, and if there has to be a cost to that, so be it. That's the cost.

The point is these are dangerous people. They are committing multiple crimes. One instance which I am, unfortunately, all too

well acquainted with, a person was actually murdered by someone while that individual was out on bail awaiting trial on a rape charge, and that was an individual who had a previous conviction of violent crime.

These are the kinds of people that have to be kept off the street, and what the cost is, I don't know. How many of them there are, I don't know, any more than I know how many people are going to be convicted of crime in a given year. All I know is we make whatever space we have to make available to make it available.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEGA: Senator Dollinger.

SENATOR DOLLINGER: On the bill.

ACTING PRESIDENT MEGA: Senator Dollinger, on the bill.

SENATOR DOLLINGER: In the Codes Committee discussion about this, I supported this item.

My concern with my question to Senator Cook was quite simple. Before we mandate that judges don't have the discretion to exercise their authority in a given instance to put someone out on pre-trial release because, in their judgment, they feel that given all the circumstances that we currently have in the law they meet the standards for pre-trial release. What we're doing is taking away their discretion to do that to some extent. We are limiting their discretion to do that.

But to another extent, what we are doing is we're mandating to places like Monroe County that they keep more prisoners in the jails. And the consequence of that, as I understand it -- and I understand the purpose of this legislation. I understand it's a public safety purpose. But from my point of view what we're doing is we're mandating that the counties, once again, keep more and more people in their jails.

That's going to have a direct cost to the people that live in my county

because it's going to require that they increase their cost of public safety service. My concern is that before we do mandate this, before we again get accused, as Lord knows, I've only been here four months, have already been accused of mandating to local communities what they can and cannot do, that what we are doing here is we are mandating that these prisoners -- no matter what other circumstances may be available, we are mandating that they stay in the facilities and that the taxpayers pick up the cost even though, in certain instances, the judge presiding over the case might determine that they qualify for pre-trial release.

I'm simply trying to highlight to the Senator that I understand the purpose. I understand the need to protect the public safety. We do have safeguards under the system currently. But one of the effects, and all of my colleagues should recognize this, that what we're doing is we're telling the local communities again, "We're not going to let your judges let these people out," and that's going

to have a direct financial consequence to the community facilities.

I don't know how many people this is going to affect. That's why I had hoped that perhaps Senator Volker, when it was raised in the Codes Committee, might have some additional information as to how many people this involves. But we should recognize that this is a mandate. This is telling someone that they can't do something that they might be otherwise inclined to do, and that this is going to have a cost, a real taxpayer cost associated with it.

ACTING PRESIDENT MEGA: Senator DeFrancisco.

SENATOR DeFRANCISCO: On the cost, I believe there's a finite number of cells in each community, and all this bill says is that these prisoners, the most dangerous, have to be detained. And if it means that some other prisoners who are less violent and less a threat to society have to be let out under less stringent grounds, then so be it. That's the financial point.

The other thing I wanted to mention about the bill is that it is a good bill, and it's not a unique bill for those who are maybe on the fence on it, in that the federal government already has this type of system in place in the federal criminal justice system, and it works there. There is procedural safeguards. I have participated in it privately in my law practice, and I think it would work in the state as well, not only to promote what Senator Cook mentioned but also to safeguard the rights of the individual.

ACTING PRESIDENT MEGA: Last section.

THE SECRETARY: Section 11. This act shall take effect on the 1st day of January.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: Senator Galiber to explain his vote.

SENATOR GALIBER: Yes, to explain my vote.

Mr. President. No one has mentioned about what this bill really does, and we start talking about preventive detention never mind what it costs us, but we're dealing with the constitution here. We haven't outlived the embarrassment of putting 140,000 Japanese Americans in barbed wire around a fence under the guise of preventative detention.

This is a bad piece of legislation. It does violence to our constitution. And whether we do it on a federal level or no, doesn't make it right. What we're doing here are mere suspicions. Someone comes in the second go-round. What happened to due cause, the due process clause that we have in our constitution? Somebody comes in again we suspect that they might maybe do something; therefore, we're going to hold them. So never mind the cost of it.

The fact is that this piece of this legislation again goes right back to some basic rights that we have under the constitution which took us some time to get it working. And

slowly but surely, we have been grinding away at people's basic constitutional rights and this just is another extension of that.

This is a bad piece of legislation. I vote no.

ACTING PRESIDENT MEGA: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: I share Senator Galiber's concern. The reason why I raised the cost issue is simply because it's one that I think before we take any step to involve constitutional issue, we all ought to know what the fiscal issue will be for the local communities, and I guess I'd just point out that Senator DeFrancisco's point about this only affecting a finite number of people is inconsistent with the purpose announced in this legislation, which Senator Cook says was to strike at the core of one of the most serious threats to public safety today, the failure to recognize public safety as a criteria in deciding pre-trial release matters.

Well, if it's such a critical

issue as Senator Cook points out, Senator DeFrancisco says it's only a finite number; it's not really such a serious problem. I think there's problems with this from a cost point of view. When I supported it in the Codes Committee, it was my hope we'd have a better definition of exactly who this would affect.

So I think there's some technical problems, and I'm going to vote no.

ACTING PRESIDENT MEGA: Results.

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Yes. I didn't say that it only affects a finite number of people. What I said was that there are finite number of cells in a community. And what this bill will do will make certain that those that are most dangerous are required to be kept in those cells. And if we run out of them, then the people who are of less danger to society will be the ones that will have to be let out on the streets by the judges.

ACTING PRESIDENT MEGA: Results.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MEGA: Senator Leichter to explain his vote.

SENATOR LEICHTER: I think you can argue on the issue of how many people this would affect, whether it creates a safer community or not. I think to a marginal extent it probably does, as it would if you went into some neighborhoods and just arrested everybody. I imagine you would be able to show that crime would go down.

But there is something so basic that distinguishes America from most other countries in the world, and that is the presumption of innocence, and you don't go to jail if you are presumed innocent. And granted, there are people that you will give that presumption to. You will let them out and, by the way, people are only let out on bail. The judge is certainly there to set reasonable bail, but some will go out and will commit a crime. But I think that we've been led to where we would tinker, not only tinker but do damage

to what makes America great and our constitution is great, which is the presumption that we accord people because the one thing that we don't want to do is to send an innocent person to jail or keep somebody who hasn't been found guilty in jail. And that's what's involved here.

And I'm really saddened that we've been brought to the point where we would throw away that basic American right. And that's what this bill does, and you can't justify it by saying, well, it's going to create safer communities.

You know, Mussolini justified dictator ship, because he made the trains run on time. There is no justification for departing from basic principles of liberty.

Mr. President, I vote no.

ACTING PRESIDENT MEGA: Does anyone else wish to explain their vote?

Senator Gold.

SENATOR GOLD: I will be brief, but what I think we're doing is we're saying

something that offends all of us, Senator Cook, and I mean all of us. I'm very proud of the fact that there's the word "Liberal" that's associated with my name. It helps some of my colleagues on the other side write it adversely in the newsletters, but I'm very proud of the word. But I'm still upset, Senator Cook, when I read the papers, and I have read some of it this week, of someone who was convicted, convicted, convicted, convicted and they don't go to jail and they keep walking the streets.

I'm offended for a number of reasons. One reason is that I'm a member of the Legislature and people in the community think we're not doing anything. And the fact is we are, and there are judges who don't follow the law when it comes to sentencing. But that's not the issue in this bill. If we're mad at the judges who don't put people in jail when they are convicted of crime, why get into a completely different issue, one of preventive detention, which is a terrible, I think, anti-American concept. And I don't mean that

anybody who supports this is anti-American. Believe me, Senator Cook, I'm not saying that. But I think, as Senator Leichter says, this just flies in the face of our philosophies.

The one thing we should be doing is making sure that these wonderful judges, who are my friends and your friends and all of our friends, obey the law. It's embarrassing to read these things in the paper. I don't think how somebody's out on the street with a car in New York with 46 suspensions, and then runs over a kid and he dies. I mean the judges ought to enforce the law.

But that's not the issue of preventive detention, and I think there's a confusion. I vote in the negative.

ACTING PRESIDENT MEGA: Results.

THE SECRETARY: Those recorded in the negative on -

ACTING PRESIDENT MEGA: Senator Waldon.

SENATOR WALDON: Mr. President. I really want to -

ACTING PRESIDENT MEGA: Senator Waldon. I didn't mean to cut you off.

SENATOR WALDON: Yes, if I may.

There are two dangers I see with this bill. One is that it usurps the authority of the judge who should have the right to exercise the genius that he or she may have when someone comes before the bar of justice. We would, in effect, with this piece of legislation if it were to become law, replace the freedom that a judge has to do what should be done in the courtroom.

The other piece of it, though, which really disturbs and distresses me is that it gives credence to a creeping activity in this nation in certain communities, in certain inner city communities, where it is not the person who has committed the crime who is necessarily being arrested but someone who fits the profile of a person who may have committed a crime.

We have too many officers in this country, and having been a police officer, I

recognize what I'm saying and I'm not accusing all law enforcement personnel, but there is in this nation now and in New York City on occasion an attitude which allows for young black males and young Latino males to be unnecessarily arrested simply because they fit a profile, the jacket they have on, the type of sneakers they may be wearing, the kind of manner in which they cock the cap that they have upon their head. If they should appear at a moment when some crime or a suspicion of a criminal activity has occurred, all too often they are arrested and falsely arrested on occasion, and I think we don't need to compound that mistake with this mistake.

ACTING PRESIDENT MEGA: Senator Padavan to explain his vote.

SENATOR PADAVAN: I had not planned to speak to you, but these last few explanations have just prompted me to stand and comment.

First, in reading the bill, we seem to overlook the fact that the person who

would be subject to this provision is someone who has been indicted for a very serious crime, murder, rape, and so on.

Secondly, the person in question must have been convicted of a prior serious felony.

Thirdly, the request must be made by the district attorney.

There are a number of protective components in this proposal, in this bill that Senator Cook has presented to us, which fly in the face of various comments that have been made in the course of explaining this bill or their vote. We are dealing with very dangerous people, not by presumption but by prior conviction. We're talking about district attorneys who I believe by and large are responsible individuals who, based on their knowledge, feel there is a dangerous person here in front of us, and we must keep this person out of our communities.

Yes, Senator Leichter, I'm proud of our constitution, but I'm not proud of the

fact that in New York City over 2,000 people were murdered last year, and that every day we pick up the paper and we read about another violent crime committed by someone who is out on bail, out on parole, and it's not just a casual, occasional occurrence. It's regular. It's routine.

There is a delicate balance between defending the constitution and defending the people against violent crime. I think this bill meets that criteria of balance. It is not severe. It is well constructed, and it's reasonable. I vote aye.

ACTING PRESIDENT MEGA: Results. Unless there is anyone else who wishes to explain his or her vote?

(There was no response.)

Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 451, are Senators Dollinger, Galiber, Gold, Leichter, Markowitz, Montgomery, Ohrenstein, Paterson, Santiago, Smith and Waldon.

Ayes 48, nays 11.

ACTING PRESIDENT MEGA: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 452, by Senator Johnson, Senate Bill Number 3059, an act to amend the Penal Law, in relation to chemical agents and chemical agent weapons.

ACTING PRESIDENT MEGA: Explanation requested, Senator Johnson.

SENATOR JOHNSON: Mr. President. Before this day is out, there will be six people murdered in this state, a dozen women raped, 230 people assaulted, another 300 people robbed. Every day more than five hundred people in this state are victims of violent crime.

Government is set up, among other purposes, to protect people and their property. And the laws are in place to protect them, courts and policemen and so forth are put in place to protect people against these type of crimes, and yet they happen every day.

Unless a person is willing to go

through the procedure and is lucky enough to be rewarded, I might say, by having a pistol permit and having a desire to carry it, people are essentially not permitted in this state to carry any means of self-defense, personal self-defense.

In 48 other states, they are allowed to do that but not here. In fact, in 48 states plus the District of Columbia, you are allowed to defend yourself by carrying mace. In this state, you get arrested if you carry mace. It's a violation of the law.

We're trying to change that. We're trying to decriminalize the possession of mace so that a person has a means, a non-lethal means by which to defend themselves.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Mr. President. My notes indicate that there is an opposition from the city of New York, and I do have some literature from Senator Johnson which would

indicate that the New York State Federation of Police supports this. Right?

SENATOR JOHNSON: Many other organizations, Senator, as well.

SENATOR GOLD: Pardon me.

SENATOR JOHNSON: There are quite a long list of supporters, including the major police organizations which support this.

SENATOR GOLD: Will you yield to one question?

SENATOR JOHNSON: Yes.

SENATOR GOLD: I had in my notes that at one point the Police Conference of the state of New York was in opposition. Have they taken a position this year?

SENATOR JOHNSON: Yes. They have withdrawn their opposition and are now supportive of this legislation.

ACTING PRESIDENT MEGA: Last section.

Senator Hoffmann.

SENATOR HOFFMANN: Mr. President. I rise in support of this bill. I would like to

thank Senator Johnson for once again bringing it to our attention, and I also appreciate the hard work that he has done in order to clear up some misconceptions that some members of police organizations had about this bill.

He correctly stated the importance of allowing this option to people in this state, particularly to women in this state who would like to be defended -- be able to defend themselves at all times but would prefer not to carry a different type of weapon.

Certainly mace is an important, modest deterrent in regard to other types of weapons which are, in fact, legally available right now. There is nothing to prevent a woman who goes out jogging from carrying a butcher knife or a hunting knife with her. And should she want to get a pistol permit and go through the arduous process, she's certainly entitled to do so, and many of us who enjoy jogging in this state or like to be able to feel free to wander comfortably anywhere that we like to wander, choose on occasion to carry some form of

protection.

This is certainly a legitimate form of self-defense. It is a moderate form of self-defense in relation to fire power, and it certainly is one that women in this state should be allowed to take advantage of when we know that in 48 other states people are allowed to use mace.

So I am very happy, once again, to support this bill, and I would urge all of my colleagues on both sides of the aisle to vote in favor of this important measure of equality.

Thank you, Mr. President.

ACTING PRESIDENT MEGA: Senator Padavan.

SENATOR PADAVAN: Mr. President. I just want to repeat something I did last time -- said the last time we discussed this bill, and that there are men and women in the state of New York legally carrying mace. They are called mailmen or mailwomen. And in talking to them, obviously, they carry it to defend themselves against angry dogs who may attack them as they

are going in someone's yard, but also in many communities they are happy to have it in their possession because of the criminal element that they might have to face.

So, obviously, if we are allowing it by federal law in the state of New York for that category of our citizens, that same right and prerogative and opportunity ought to be allowed for everyone else.

I vote aye.

ACTING PRESIDENT MEGA: Last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

ACTING PRESIDENT MEGA: Call the roll.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MEGA: Senator Leichter.

SENATOR LEICHTER: I'd like to explain my vote. Mr. President. I have

always -

ACTING PRESIDENT MEGA: Senator Leichter, we'll call the roll and then we'll have you explain your vote.

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: Senator Leichter to explain his vote.

SENATOR LEICHTER: Mr. President. I've debated against this bill in the past, but I want to say I have become convinced that under present circumstances that it probably is a right that we ought to give to people of this state. I think, as Senator Padavan said, many are using it anyhow.

Unfortunately, we have reached the state where this sort of protection seems to be not only desired, but I think can be justified. Obviously, it's not as dangerous as a gun and so on.

So I want to say, Senator Johnson, it took you three, four years but you convinced me.

I'm going to vote in the affirmative, Mr. President.

ACTING PRESIDENT MEGA: Results.

Senator Volker to explain his vote.

SENATOR VOLKER: Mr. President.

Senator Leichter, I -- I have now got a problem. I can't believe -- that since you switched your vote, I better check to make sure I'm voting the right way.

It is a momentous occasion, and I congratulate you on your -- on your -- in any case, since Senator Leichter is voting in the affirmative, I will vote in the affirmative also.

ACTING PRESIDENT MEGA: Senator Tully to explain his vote.

SENATOR TULLY: Yes, Mr. President, on the bill and to explain my vote.

I, too, feel as Senator Volker does. I was wondering if it was the same bill, but when Franz changes his mind, anything can happen in this Legislature. And it's a good

thing. It shows that the spirit of debate works.

I see last year it passed by a vote of 52 to 8, and hopefully it will pass this year unanimously because I don't think there is a person in this chamber that doesn't know that in circumstances the way they exist today that just about every woman in this state, if she doesn't carry it now, will be carrying it. In any event, it's not legal for them to do it, and I think it's only right that we legalize something that is necessary.

I support the bill and vote in the affirmative.

THE SECRETARY: Those recorded in the negative on Calendar 452 are Senators Connor, Mendez, Montgomery, Paterson, Smith and Waldon. Ayes 53, nays 6.

ACTING PRESIDENT MEGA: The bill is passed.

Secretary.

THE SECRETARY: Calendar Number 455, by Senator Marino, Senate Bill Number 3237,

an act to amend the Criminal Procedure Law, in relation to pre-sentence investigations.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 30. This act shall take effect immediately.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: We're on a roll call on Calendar Number 455.

THE SECRETARY: Ayes 57, nays 2. Senators Leichter and Ohrenstein -- ayes 56, nays 3. Senators Leichter, Ohrenstein, and Santiago recorded in the negative.

ACTING PRESIDENT MEGA: The bill is passed.

Senator Mendez, may I recognize you for a clarification. You wish to be voted in the positive on which vote?

SENATOR MENDEZ: Calendar 452, I want to be recorded in the positive. I believe we must have mace to defend ourselves.

ACTING PRESIDENT MEGA: Senator is a yes vote on Calendar 452, Senator Johnson's bill. Thank you.

THE SECRETARY: Calendar Number 457, by Senator Volker, Senate Bill Number 3323, an act to amend the Penal Law, in relation to including criminal sale of a controlled substance as a felony.

ACTING PRESIDENT MEGA: Read the last section.

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

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT MEGA: The bill is passed.

THE SECRETARY: Calendar Number 460, by Senator Volker, Senate Bill Number 3639, an act to amend the Penal Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MEGA:

Explanation requested.

Senator Stavisky, why do you rise?

(There was no audible response.)

Thank you, Senator Stavisky.

SENATOR VOLKER: This bill is what's known as the "proper cause bill." It was originally sponsored by Senator Schermerhorn for a number of years, and I have carried this bill for several years.

What it basically says is -- and I think we have debated this bill -- I don't want to say ad nauseum. At nauseum, okay. What it says is that a -- there's a presumption that a person of clean, moral criminal and mental record, mental character, has proper cause for the issuance of a license. What it basically does is, in a sense, reverse the process and says that unless there is a demonstration that a person has a criminal reported or has a mental problem, or whatever, that they have the right to be approved for a pistol license.

ACTING PRESIDENT MEGA: Senator

Stavisky.

SENATOR STAVISKY: Mr. President. This is the week when the nation's attention was riveted on the events in Waco, Texas, and I dare say that some of the people who are members of that cult and blindly followed Mr. Koresh to oblivion, had no known record that would have disqualified them from obtaining access to weapons. As a matter of fact, under the laws of the state of Texas, there are very few disqualifications for obtaining firearms.

And so what this bill proposes to do is to presume that anyone walking in should have access to a handgun regardless of the need, and I think that we are now going on dangerous terrain. I voted for the mace bill because that is a limited deterrent and defensive weapon that can be used without fatality. But I have no understanding why this Legislature after we witnessed the aberration of Waco, Texas, should want to put handguns in the possession of individuals who may have no need for these

weapons and whose reliability, mental as well as criminal, may not have been checked out in advance of the issuance of the permit.

This is extremely dangerous, Senator Volker. You are now no longer giving mace to individuals to defend themselves. You are enabling individuals such as those who unfortunately perished in Waco, Texas, to be armed. And what was the reason for the federal government's intervention there? The feeling that the cache of arms in the possession of these individuals could endanger life and safety. And we saw the standoff, over 50 days of impasse.

And I'm surely not defending the efforts by the federal government to rush in there without consideration of the consequences, nor am I condemning them. That is not the purpose of this legislative debate. I am simply saying the ready availability of weapons to individuals who might feel that they can take upon themselves that they are the law, that vigilante justice is the law, that should not be

the standard of New York State.

The memo from the mayor of the city of New York speaks about vigilante justice. It's not coming from someone not in a position of responsibility. And he quotes the vigorous opposition of the police commissioner of the city of New York. Commissioner Kelly is not a kook. Commissioner Kelly is a responsible law enforcement official. The police commissioner of New York City opposes this legislation for a jurisdiction of more than 7 million people, and we do not have the right here legislatively, precipitously, presumptuously to say that the police commissioner of the city of New York has no understanding of law enforcement and the protection of the citizens' lives and safety.

You have achieved with the enactment -- hopefully, with the enactment of the mace bill a measure of defense and protection, but we do not have to arm people in urban areas -- and I'm not talking about a rural area. If you want to have a bill that applies

to the rural sections of New York State and you can prevail upon enough members of both houses to support it, that's a different matter. But do not mandate upon a city of 7 million against the strenuous objections of a mayor and the police commissioner that this arming of civilians without any real cause, not simply with rifles and shotguns for hunting purposes but with handguns, is in the public interest.

Pistols are not normally used by the hunters in the field, and pistols are not necessarily the most reliable means of self-defense nor civilians who may not be trained, for civilians who may leave the pistols for other members of the family to use during a family argument, for civilians who may allow the pistols, loaded, to be used by children in an act of play.

There is no play when a gun is discharged. There is only in an urban environment in a household when someone is simply careless and will say, "Oh, my God, we didn't expect that to happen." Well, I'm saying

it does happen, far too frequently for us to close our eyes to it.

I don't think this is a responsible piece of legislation. I think you should accept the support of this house on the mace bill and allow that to take effect and not push upon us this radical -- and I do mean radical - opening the doors to gun possession by civilians who should not be required to use them.

Look, if the police department cannot protect, if the military cannot protect us against violence, then why do we pay taxes? Let us stop paying taxes until police departments and national guards and the military are able to protect our citizens domestically as well as in foreign situations, but don't make of civilians an armed camp squaring off against one another. I hope you would reconsider the sponsorship and the movement to adopt this bill in this house.

ACTING PRESIDENT MEGA: Senator Volker.

SENATOR VOLKER: Mr. President.

Oh, I realize that some of the so-called anti-gun people are going to try to take advantage of the Waco, Texas, situation, and because the media has not told the whole truth, as is usually the case. Senator, let me tell you something. The ATF didn't go in there, and the FBI didn't go in there because of handguns.

If you think that it was because of so-called legal weapons, bazookas, rifles that will shoot three miles, automatic weapons, are illegal in virtually every state in the Union. Clearly, the military weapons in that place wouldn't be legal under any law in this state and, to my knowledge, they are not even legal in Texas. The illegal weapons that were in that place was the reason. They didn't go in because of handguns. That had nothing to do with it. Nor for any guns, by the way, that the average citizen uses did they go in there.

The reason fire trucks couldn't get near the scene wasn't, I can tell you, because of any weapon that are legal any place in this state or in this country.

And, Senator, you live in a city that has the toughest gun laws, supposedly, other than Washington, D.C., and you live in a city that is riddled with crime. We understand that. It's also a city, by the way, that promised to raise all sorts of new police officers, and didn't. And we understand you've got fiscal crisis and all sorts of other things.

But, Senator, don't try to tell me that because we passed a mace bill -- a bill, by the way, that we have a heck of a time convincing members of the Assembly because a couple people, I guess, are afraid that maybe some people will use it against innocent civilians, as if innocent civilians aren't being killed every day by the very weapons that they are refusing to allow the average citizen to use. Every criminal in New York City, as someone said, has a way of obtaining a gun. They don't need to go through a procedure to get a gun. Unfortunately, they can tend to find a gun some way.

And I realize that the media of this country, in many ways, has been trying to say we'd like to blame everybody else but the people responsible for the problems in this country, and it's very easy to blame the NRA and innocent gun owners and all that stuff for the problems of this country. But if we are going to tackle, if we are genuinely going to tackle the crime rate in this country, we've got to deal with it on a more rational basis.

You know, we had a debate here earlier on Senator Cook's bill, and I would be the first to admit to you that that's a very tough bill. That bill resulted from a period back in the early '80s when a whole bunch of people that were let out on bail on both the federal and state level killed a whole bunch of people. And what happens is, by the way -- and some of those judges, by the way, some of the things that drove us in this state -- most of them that drove us were New York City judges, New York City judges who left people out in the street with no bail who killed people.

Now, they don't do that any more. They rarely will ever do that any more, and the reason is because this Legislature and a lot of people around this town, some people in this chamber on both sides of the aisle, passed some legislation and put so much pressure on those people that they, for the most part, don't do that any more.

Senator Cook's bill really doesn't involve that many people today because it rarely ever happens that people who commit serious crimes are let out without very high bail or, in some cases, no bail at all. But it happens occasionally, and that's one of the reasons why Senator Cook's bill, frankly, is still around. That's a model, by the way, of a federal statute. In fact, it's in law right now on a federal level.

The only reason I point that out to you -- and I understand the emotion of this issue. This bill, by the way, has been around for some time. In a sense, it stands as a symbol of almost the outrageousness of our

positions around here; and that is, that to say that if we can only clean up the innocent people having guns, somehow the criminals would not get guns.

Now, Commissioner Kelly, by the way, who I have met a number of times, is a very nice fellow. He is a good policeman. He does as he's told. The mayor has told him guns are bad, so he thinks guns are bad. His people, by the way, have been going to almost outrageous actions to keep guns away from people. They have been going after some of their enemies in the Pistol Permit Bureau by refusing to give them applications and all sorts of things.

Frankly, you know, as I have told Commissioner Kelly's people, I think that is really undignified for the police department to to that. Because as many law enforcement people have privately acknowledged, the drive in this country for gun control has done little or nothing to stem the tide of criminal conduct. The real truth is what has been stemming the tide is better law enforcement and in some cases

better treatment, and we are beginning slowly is to make a difference.

But to my knowledge, Senator, there isn't one iota of evidence any place in this country that gun control has done one single small thing to deal with the criminal element. There just isn't any evidence. And, Senator, I understand your emotions on these issues, and I feel it, too.

I feel that we should act responsibly. But, Senator, I just don't think that we should think for any one moment and especially the Waco, Texas, situation that nut, whether he had guns or not -- it was guns that drove him, but not the kind of guns that we're talking about here, I can assure you. The kind of weapons, by the way, that killed those FBI agents coming in were high-powered weapons that are not covered by this legislation because they are not allowed by this legislation or any other legislation in this state, to my knowledge.

Automatic weapons are illegal, not just by state law but by federal law. You

can only get them in certain very restricted situations -- and in many cases you can't get them at all -- for very restricted licensing for certain very restricted persons. In other words, you and I couldn't get them because they are not legal any place in this country.

That's why the media always confuses semi-automatic weapons with automatic weapons. The weapons that have been used, the high-powered weapons used are not the kind of weapons that are used, for instance, to rob banks and some of these terrorists use. Those are not allowed. They are illegal already. The only reason I point that out -- and I should point out that I'm not a gun nut, by any means. I don't have all sorts of guns like many people have, you must realize. To say that we can solve the crime problem in New York City or any city in the state by merely restricting the use of innocent people to use guns, I think just doesn't hold water, and it's never been proven.

ACTING PRESIDENT MEGA: Senator Gold.

SENATOR GOLD: Mr. President. The only reference I want to make to Waco, Senator Volker, and I understand the way it was used by Senator Stavisky, but I wasn't going to bring it up, but you made me think of it because, Senator, if you read the newspaper stories, one of them that I read, that reference to a device called the "hell fire".

It's a device which costs about 20 or $30 and, if you put it behind the trigger of a semi-automatic weapon, it would allow you to fire that weapon as fast as if the weapon was fully automatic and, as I need to tell you, I mean if the result is the same the name doesn't mean anything; and they pointed out that the interesting thing was they used this by name.

I found out about the "hell fire" because in doing the work I do with guns, I buy some of these gun magazines to see what's around, and apparently in America everybody who is a gun type person knows about this, and it goes on the weapon in literally minutes. I

bought one and took it over to the State Police so they could see what it looked like, and so when you say that this is legal and that's legal and not legal, the "hell fire" is so American, through magazines, it's touted as being legal because theoretically you have not converted the weapon, but you can fire that weapon as quickly with the "hell fire" as if it was automatic.

Senator, when you say New York City has these rigid gun lawns but we have such a terrible crime problem, let me tell you what the problem is, Senator Volker. It's you. It's upstate New York. It's Connecticut -- not Connecticut, it's Vermont, it's Florida.

I mean we have a situation where we are trying to regulate guns in the city, but as I showed in some of the buying that I do and have done, you walk across our border and in literally five or ten minutes, you walk out with a Mosberg shotgun, an AK-47. I mean the people in Albany can sell me the AK-47 in ten minutes. It was incredible. I don't know the first thing about the gun, and I walk out with the AK-47 and

two clips, et cetera, et cetera.

Not only that, Senator Volker, you talk about buying guns in New York and, yeah, you can go on the streets of New York, you can go on the streets around the state and buy handguns illegally for a few hundred dollars but, Senator Volker, forget about that. That's -- that's you and I talkin' at a cocktail party.

You know what goes on in this state? This is what goes on. These are photographs I took less than three weeks ago right up here in Albany at the State Police. You don't have to go in the streets of New York. All you have to do is go to Service Merchandise, like I did, for $69 you get a shot gun, you take two saw cuts and you got a weapon that they're using in the 7-11s, et cetera, which is as -- almost as small as a handgun. This one was about 13 inches long, fits under your coat. They've got a whole cadre of altered weapons.

So, Senator, you talk about New

York City. Don't blame us for everything. You can't buy these weapons in New York City without a license. You can't alter a shotgun or a rifle in New York City. You can't -- you can't get it. You can't get the weapon in order to alter it.

Now, you're right, Senator Volker, these guns have been altered illegally, but we're talking about a criminal element any way. But in New York City, you can't buy the weapon in order to alter it. You've got to go to Nassau, Suffolk, Westchester and around the state. So stop blaming New York City with its gun laws. We're trying.

The problem is that, if you go five minutes out of the city and buy all this weaponry, read the advertisements in our New York City newspapers, dragging people into Nassau County for all the gun bargains.

Now, Senator, I was wondering. The big hype that they -- that they have, for example, the shotgun in this photograph, they sell to women and they say, You don't want your

wife to have a pistol, you know, for insurance in the house. Give her one of these pistol grip shotguns and she'll blow away whoever is in the house.

I say to myself, it's terrific advertising, but is anybody really doing this? And the first thing I found out is, it's really hard to get numbers on whether anybody really is firing and protecting themselves with these guns. There's a guy down in Florida whom I am trying to hire as my accountant because he's come up with such outrageously ridiculous figures on the number of people that are using guns in America, I figure maybe he can do something with my budget, I don't know.

But I got a letter here two weeks ago from the police commissioner of the city of New York, and this letter really is interest ing. First of all, how many times have I heard on this floor that it isn't the people with the licenses that commit crimes. They -- you know what I mean, that they are crime-free; it's the other guy.

Well, Senator, I will acknowledge that most of the people who commit crimes, the overwhelming number that commit crimes are not your licensees. But Senator, in 1992, 60 licensees were arrested to begin with, with unlawful possession of weapons and 59 of them were arrested committing felonies with firearms, so it's not exactly like nobody who -- who gets a license ever commits a crime. In terms of -

SENATOR VOLKER: Mr. President.

SENATOR GOLD: No, I won't yield.

In terms of the numbers of crimes -

SENATOR VOLKER: Senator.

SENATOR GOLD: No, I won't yield.

Senator, in terms of the numbers of crimes in New York, I will acknowledge to you that 60 possessions and 59 felonies is not the thing, but on the other hand let's not make the silly argument on the other hand that everybody who gets a gun license is exempt from committing

crime. It is not true. It just isn't true.

Another figure which I think would be very interesting: New York is a city of millions of people, and there are a lot of guns in New York City, legal guns, and a lot of illegal guns. In calendar year 1992, the total number of incidents where a licensee actually discharged a firearm to protect themselves was 49. 49.

I mean I -- I have no problem with an individual who wants to carry a gun and they feel safer and, if they are a proper person to have a gun, that's O.K. with me, but let's put it in perspective. We don't have people all over this city of New York grabbing their guns to protect themselves, their houses and everything else. Burglars like empty houses. They don't like houses where they get shot at.

The problem, Senator, I think, is a very obvious one, and I spoke about it on an earlier bill today. I know a situation in the city of New York, Senator Volker, where a man was charged with actually shooting somebody, not

having a gun, actually shooting someone. The circumstances of that shooting were ridiculous, impossible, and in my opinion the person should not have been convicted, but the person did get convicted. A judge found that the individual not only had a gun but he fired it at a human being, injured the human being. I don't know why the guy went to trial. The sentence was less than three months. Three months, Senator Volker.

Now, if you read this law as I - the strictest gun laws in the state, if you have mere possession of a gun, you go to jail for a year puh-puh!. Puh-puh! A year no less, possession shooting somebody.

Senator, the problems, we know the problems. They're in the courts. It is not -- we're not going to solve the crime problem and -- God bless you. We're not going to solve the crime problem in New York by just opening up the marketplace to more and more guns. I mean let's at least in this chamber look each other in the eye and try to have a little logic

to what we're talking about.

Now, lastly, Senator Volker, I want to say this: I think that there are some very, very fine people who want to carry a gun that never had any trouble in their lives and probably should be able to get a gun a lot easier than it is in the state of New York today.

But there's another side of the coin, Senator. The people who have the political power in this state, the NRA, and I acknowledge publicly that political power, don't want to talk about anything. I have meetings with them on little issues, little things like having to take a class before you get a gun. You have to take a class before you get a driver's license. You have to take a class before you get a hunting license but, if you want to kill human beings in your house, then you don't need a class. They'll tell me, no, there's a crack in the door.

The day after they have a meeting I'll start to get private phone calls

and people say, You have a good idea. Well, help me with it. Well, we can't come out and say it. A simple thing like a waiting period for rifles and shotguns. Simple. There are some people out on Long Island who would be alive today with a waiting period. There are some students on a campus in Massachusetts who would be alive today if there was a waiting period.

So what I'm saying, Senator, is there's a huge credibility gap. The NRA says to everybody in -- that they have influence over, that they're afraid of every little crack in the door. Well, if you can't have any legitimate negotiations on the one side, why should there be negotiation on the other?

So the only thing we're left with, Senator Volker, is why should we make it easier to help people -- honest, legitimate people, get the handguns when that same organization won't help us on the other side bring some meaningful easy legislation in that would save lives?

Now, Senator Volker, I admit to you that some place in America, there was an individual who woke up in the morning, planned to do 85 other things, decided to go hunting, didn't have a gun and had to get a license. But that's not what happens all over the place. If people are going to go hunting and they don't have guns, they got a day or two. It's not so terrible to say to somebody, you goin' to go hunting, you'll buy your guns three days before or five days.

None of these ideas I've spoken about or other people have spoken about, the Brady bill in Washington, none of these are terrible, but you can't get anybody to talk about them and, Senator, if the only -- if the only thing they want to discuss are bills like yours, there's never going to be a resolution.

So, Senator Volker, I said as I've said so many times before, that you come to this floor with a pure heart but, Senator, you're going to have the honor of carrying this bill for more years because the entire subject

has to be dealt with and nobody wants to deal with the entire subject.

ACTING PRESIDENT MEGA: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT MEGA: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEGA: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, thank you, Mr. President. To explain my vote.

I wanted to, just for the record, correct Senator Volker who says accurately that -- not inaccurately, I believe, excuse me, that this will -- removing guns from the streets will not deal with the crime issue and, while I agree with that, I do not accept that fully, but even if I accept the premise that removing guns will not eliminate the crime problem, it certainly will eliminate the problem that we have of

children killing children, innocent bystanders being killed accidentally on the streets who have nothing whatsoever to do with crime, children being killed in school and New York City having to spend millions of dollars for detectors so that students can be -- can go through a metal detector before entering school, and on and on.

So while it's not the final solution, I think it is a very important issue for us to resolve, and that is to remove this level of violence from the streets so that innocent people won't have to fear for their lives, and we can deal with the other crime. I'm certainly happy to work with you for many years to come on that. But this, I think, we can do right now.

And, Senator Volker, I wish you would consider that as you look to expand the availability of guns in this state and in the City.

I'm voting no.

ACTING PRESIDENT MEGA: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 460 are Senators Connor, Gold, Halperin, Jones, Leichter, Marchi, Markowitz, Masiello, Montgomery, Nolan, Ohrenstein, Onorato, Oppenheimer, Paterson, Smith, Solomon, Stavisky and Waldon, also Senator Dollinger. Ayes 40, nays 19.

ACTING PRESIDENT MEGA: The bill is passed.

We'll return to reports of standing committees.

SENATOR MARKOWITZ: Mr. President.

ACTING PRESIDENT MEGA: Senator Markowitz.

SENATOR MARKOWITZ: Yes. With the permission of the President, I'd like to vote in the negative on Calendar Number 455.

ACTING PRESIDENT MEGA: Without objection.

Reports of standing committee.

THE SECRETARY: Senator Maltese, from the Committee on Crime Victims, Crime and

Corrections, reports the following bill directly for third reading:

Senate Bill Number 4651, by the Senate Committee on Rules, an act to amend Chapter 79 of the Laws of 1989, amending the Correction Law and other laws.

ACTING PRESIDENT MEGA: Without objection, third reading calendar.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On page -- excuse me. On page 26 I offer the following amendments to Calendar Number 395, Senate Print 3414, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEGA: Amendments received and adopted. So ordered.

SENATOR KUHL: Thank you.

ACTING PRESIDENT MEGA: Senator Velella.

SENATOR VELELLA: Yesterday I was out of the chamber when Calendar Number 132, Senate Print 1938, was voted on. Had I been

present, I would have voted no, and I'd like the record to so reflect with unanimous consent.

ACTING PRESIDENT MEGA: Without objection, Senator Velella.

Senator Present.

SENATOR PRESENT: Mr. President, can we stand at ease for a moment.

ACTING PRESIDENT MEGA: At ease for a moment.

SENATOR PRESENT: Or two. Or two.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEGA: Senator Mendez.

SENATOR MENDEZ: May I be recorded in the negative on Calendar Number 460.

ACTING PRESIDENT MEGA: Without objection.

SENATOR MENDEZ: Thank you.

SENATOR GOLD: Wait a minute, wait a minute.

(Whereupon the Senate stood at ease.)

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Yes, Mr. President. I'd like to announce there will be a Majority Conference tomorrow at 11:00 a.m. promptly. There being no further business, I move we adjourn until tomorrow at 11:30.

ACTING PRESIDENT SPANO: The Senate will stand adjourned until tomorrow at 11:30.

(Whereupon at 6:10 p.m., the Senate adjourned.)