ALBANY, NEW YORK

March 8, 1994

3:25 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: Senate will come to order. Senators please find their places.

Please rise with me for the Pledge of Allegiance to the flag.

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

Today, we're please to have with us The Reverend Peter G. Young, Pastor of the Blessed Sacrament Church of Bolton Landing, New York.

Father Young.

THE REVEREND PETER G. YOUNG: Let us pray.

Almighty and eternal God, may Your grace enkindle in all of us a love for the many unfortunate people whom poverty and misery reduced to a condition of life unworthy of human beings; arouse in the hearts of those who call You Father a hunger and a thirst for social justice, for fraternal charity in deeds and in truth.

Grant, O Lord, peace in our days, peace to all in this great State of New York and peace among nations.

Amen.

ACTING PRESIDENT FARLEY: Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Monday, March 7. The Senate met pursuant to adjournment. Senator Farley in the chair upon designation of the Temporary President. Prayer by the Reverend Finley Schaef of Brooklyn, New York. The Journal of Friday, March 4, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read.

The order of business:

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On behalf of Senator Spano, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. Those Senate Print Numbers are: 1005B, 1006, 1007, 1009, 1411, 1415, 3013A, 3381, 3382, 3922, 4466, 5512A and 5809.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Senator Mendez.

SENATOR MENDEZ: Mr. President. A group of my constituents who are blind, have formed a union of Spanish speaking blind association, were adopted by the Lions Club of Washington Heights, are here visiting us. I would appreciate very much you welcoming them.

ACTING PRESIDENT FARLEY: On

behalf of the Senate, welcome to the Senate chamber and come back and visit us again.

We have a substitution.

THE SECRETARY: On page 8 of today's calendar, Senator Stafford moves to discharge the Committee on Finance from Assembly Bill Number 8651 and substitute it for the identical Calendar Number 222.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: Also on page 8, Senator Goodman moves to discharge the Committee on Investigations, Taxation and Government Operations from Assembly Bill Number 7736 and substitute it for the identical Third Reading 241.

ACTING PRESIDENT FARLEY: Substitution is ordered.

No more motions on the floor.

Senator Present.

SENATOR PRESENT: Mr. President. I move that we adopt the Resolution Calendar with the exception of Resolution 2813.

ACTING PRESIDENT FARLEY: All in favor of adopting the Resolution Calendar, please say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Resolution Calendar is adopted with exceptions.

Senator Present.

SENATOR PRESENT: Mr. President. Would you recognize Senator DiCarlo.

ACTING PRESIDENT FARLEY: Senator DiCarlo.

SENATOR DiCARLO: Mr. President. At this time, I would like to request the reading of Senate Resolution 2813.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator DiCarlo and others, Legislative Resolution Number 2813, commending Dr. Vernon E. Lattin, President of Brooklyn College.

Whereas, it is the sense of this

legislative body that those who give positive definition to the profile and disposition of the communities of the State of New York do so profoundly strengthen our shared commitment to the exercise of freedom.

Attendant to such concern and fully in accord with its longstanding traditions, it is the intent of this Legislative Body to convey its compliments and felicitations to Dr. Vernon E. Lattin, President of Brooklyn College for his exceptional contributions to the pursuit of higher learning.

Dr. Lattin has demonstrated his commitment to public higher education and he leads a fine institution of higher learning that provides a model of ethnic and cultural diversity for all to emulate.

Dr. Lattin has inaugurated at Brooklyn College a planning process that would meet the challenges and opportunities of the 21st century.

That process begun by Dr. Lattin has culminated in an ambitious blueprint for the

future of Brooklyn College and it will make it a model for urban higher education.

Under his guidance, the Brooklyn College community is developing new strategies for learning and research, emphasizing critical thinking skills for students, and creating new models for responding to the intellectual, ethnic, gender, and generational diversity of the cultures that make up our city and the world.

The "Brooklyn College 2000" plan will make the college a more active participant in the neighborhoods of Flatbush and Midwood, the Borough of Brooklyn, the City of New York, and the State of New York.

Now, therefore, be it resolved, that this Legislative Body pause in its deliberations and most joyously commend Dr. Vernon E. Lattin for his dedication to higher learning and for his farsighted commitment to the integration of Brooklyn College and its surrounding communities; and be it further.

Resolved, that a copy of this

resolution, suitably engrossed, be transmitted to Dr. Vernon E. Lattin, President of Brooklyn College.

ACTING PRESIDENT FARLEY: On the resolution.

Senator DiCarlo.

SENATOR DiCARLO: Yes. Thank you, Mr. President. I would just like to personally congratulate Dr. Lattin and Brooklyn College for the great work that they do there, and we commend them as a Senate.

I would also like to add, for my Republican colleagues, for those who don't know, to show you how great a school Brooklyn College is, it was attended by a young military officer who came back from World War II and who was wounded overseas, and he went on to great things, and that is our Republican Minority Leader of the United States Senate, Bob Dole.

So congratulations.

ACTING PRESIDENT FARLEY: Senator Markowitz.

SENATOR MARKOWITZ: Thank you

very much. I want to thank Brooklyn's newest colleague, just about, Senator DiCarlo for introducing this commendable resolution.

You know, Dr. Lattin, our beloved President of Brooklyn College, represents the best -- really the best in the country. Here's a man of proud -- proud of his Mexican-American heritage, who has that rich Mexican culture, and then moves to Phoenix, Arizona, and does something that we don't hear too often about.

We hear about people, unfortunately, leaving New York as snowbirds down in Florida or bicoastal out in California or Phoenix. But we've got somebody that came from Phoenix to the garden spot of New York State -- Brooklyn, New York.

And so to Dr. Lattin, who is leading Brooklyn College in a superb way -- and, by the way, he joins us in the Senate chamber today.

We are fortunate, because not only has Brooklyn College made its mark for so many years in every field of higher education

and professional standing but actually the College has contributed throughout the country in graduating the top scholars, top business leaders. In every field, Brooklyn College has been the incubator, the creator, and very often the deliverer of some of the finest minds in America today. Dr. Lattin continues that fine tradition of educational excellence.

To you and your colleagues, I am fortunate to say that I'm a graduate of Brooklyn College and proud of it. Thank you for being here with us today.

ACTING PRESIDENT FARLEY: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. I would like to rise as a Brooklyn representative to also commend Dr. Lattin for his leadership at Brooklyn, Brooklyn College. That is a school that has, under his leadership, continued to plan and work toward a school that is all-inclusive of all cultures and that reaches out to people who are not traditional students but who are very much

nontraditional students, and who -- that school has embraced, in fact, the needs of women as students, minority people as students.

It really represents what the best institutions are in the State of New York; and that is, it's an institution that seeks to bring us as a people into the next century with the knowledge and understanding that we are right here and right now international in every respect, and the school is responding accordingly.

So I am very pleased to rise and join my colleagues, Senator DiCarlo and Senator Markowitz, in complimenting and commending and celebrating this wonderful educational leader; because if we're ever going to solve the problems of elementary schools and junior high schools and high schools, we're going to have to look to people like Dr. Lattin, who will be working to produce leaders at every single level so that we can improve our educational system from top to bottom.

So, Dr. Lattin, my compliments to

you. I appreciate the work that you are doing. And though we may not be present with you on many occasions, even when you invite us, you should know that we fight for Brooklyn College. We know how important it is, and we want to have you assume that we are partners with you as you seek to realize your vision of the blueprint of the future.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator DiCarlo.

SENATOR DiCARLO: Mr. President, I would like to make a motion to open up the resolution for co-sponsorship.

ACTING PRESIDENT FARLEY: Everyone will be on it. If you wish to be an exception, please notify the desk; but, otherwise, every Senator will be on the resolution.

On the resolution. All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The resolution is adopted.

Dr. Lattin, we're pleased to have you with us today. Welcome and congratulations. We're very proud of you and Brooklyn College.

(Applause.)

Senator Present, I think.

SENATOR PRESENT: I think Senator Daly would like to be recognized.

ACTING PRESIDENT FARLEY: Senator Daly.

SENATOR DALY: Mr. President. I want to star Calendar Number 289, please.

ACTING PRESIDENT FARLEY: 289 is starred at the request of the sponsor.

Senator Padavan.

SENATOR PADAVAN: Lay aside Calendar Number 263 for the day subject to an amendment.

ACTING PRESIDENT FARLEY: 263 is laid aside for today subject to an amendment.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Volker.

SENATOR VOLKER: Mr. President. On page 9, Calendar Number 258, I want to lay that aside also subject to -- for an amendment.

ACTING PRESIDENT FARLEY: 258?

SENATOR VOLKER: Yes.

ACTING PRESIDENT FARLEY: 258 on page 9 will also be laid aside for the whole day subject to an amendment.

Are there any other motions or housekeeping on the floor?

(There was no response.)

Senator Present.

SENATOR PRESENT: Will you recognize Senator Goodman.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: Mr. President. A moment ago, while I was out of the chamber, the Senate passed unanimously a resolution honoring a very familiar and much beloved figure in New York City and its region, Mr. Jim Jensen,

who is the anchorman of the CBS six o'clock news.

This resolution recognizes the fact that he has just celebrated a major anniversary. He has been in this news business probably longer than any other operating anchorman in our area and has fulfilled his responsibilities for honest and objective reporting to the public in an exemplary manner.

Indeed, at various moments in hot spots around the earth when lesser figures, less courageous figures, would be willing to go for on-the-spot reporting, whether it's an outbreak of hostilities in the Middle East or various other areas where we are all too familiar with the tragic happenings and bombings and the like, Jim Jensen has always been on the spot to give us an eye witness account of what has occurred, and he has done it with great fidelity to the highest principles of journalism.

It's for that reason, Mr. President, that its been my pleasure to sponsor that resolution in this house and to share in

the warm salute both we and the Assembly have paid to this unique asset for the City and the State of New York.

ACTING PRESIDENT FARLEY: Thank you, Senator Goodman.

Any other housekeeping motions?

Senator Present.

SENATOR PRESENT: Mr. President. Can we take up the noncontroversial calendar, please.

ACTING PRESIDENT FARLEY: The Secretary will read the noncontroversial calendar, starts on page 5.

THE SECRETARY: On page 5, Calendar Number 48, by Senator Johnson.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 58, by Senator Velella, Senate Bill Number 2232B, an act to amend the Insurance Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 59, by Member of the Assembly Grannis, Assembly Bill Number 6289B, an act to amend the Insurance Law.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 82, by Senator Kuhl, Senate Bill Number 6215C, Education Law, in relation to school building aid for refunding bond issues.

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

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Stafford.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 157, by Senator Padavan.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 181, by Senator Volker.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number

191, by Senator Volker.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay itaside.

THE SECRETARY: Calendar Number 242, by Senator Larkin.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 247, by Senator Tully, Senate Bill Number 961A, An act to amend the Public Health Law, in relation to the establishment of a special care program.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 250, by Senator Tully, Senate Bill Number 6771, an act to amend the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 251, by Senator Farley, Senate Bill Number 997, Executive Law, in relation to designation of August 7 as Family Day.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 252, by Senator Hannon, Senate Bill Number 4907A, an act to amend the Public Officers Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 253, by Senator DeFrancisco, Senate Bill Number 6578, Executive Law, in relation to the designation of certain days.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 254, by the Assembly Committee on Rules, Assembly Bill Number 9565, making an appropriation to pay Sylvia Weprin, widow of the late Saul Weprin.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 255, by Senator Bruno, Senate Bill Number 240, General Obligations Law, in relation to additional liability of a drawer of a dishonored check.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 256, by Senator LaValle, Senate Bill Number 600, Domestic Relations Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 257, by Senator Levy, Senate Bill Number 999A, General Obligations Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 259, by Senator Saland.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it

aside.

THE SECRETARY: Calendar Number 260, by Senator Farley, Senate Bill Number 1664, Judiciary Law.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 261, by Senator Daly, Senate Bill Number 4583B.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 262, by Senator Farley, Senate Bill Number 4673, an act to amend the Domestic Relations Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56. Ayes

55. Nays 4. Senators Jones, Libous, Pataki and Rath recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 2 -- also recorded in the negative on Calendar Number 262 are Senators Larkin and Saland.

ACTING PRESIDENT FARLEY: The bill is still passed.

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: With unanimous consent, I would like to be recorded in the negative on Calendar 257.

ACTING PRESIDENT FARLEY: 257, Senator Holland will be in the negative.

SENATOR SALAND: Mr. President. I too would request unanimous consent to be recorded in the negative on Calendar 257.

ACTING PRESIDENT FARLEY: Without objection, 257.

THE SECRETARY: Calendar Number

265, by Senator Levy, Senate Bill Number 1707, an act in relation to requiring the Department of Motor Vehicles to compile information.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 266, by Senator Skelos, Senate Bill Number 4183A, an act to amend the Public Health Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 271, by Senator Sears, Senate Bill Number 1911, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57. Nays 2. Senators DeFrancisco and Johnson recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 272, by Senator Levy, Senate Bill Number 6603, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 273, by Senator Pataki, Senate Bill Number 1983A, an act to amend the Education Law and the Transportation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 278, by Senator Saland, Senate Bill Number 2138, an act to amend the Real Property Tax Law, in relation to authorizing counties, cities and towns and villages in certain school districts.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 279, by Senator Wright.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

SENATOR PRESENT: Lay that one aside for the day.

ACTING PRESIDENT FARLEY: 279 for the day.

THE SECRETARY: Calendar Number 280, by Senator Marino.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 281, by Senator Larkin.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 283, by Senator Kuhl, Senate Bill Number 1190, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58. Nays 2. Senators Leichter and Pataki recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 284, by Senator Johnson, Senate Bill Number 1844, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 287, by Senator Stafford, Senate Bill Number 4853, Environmental Conservation Law.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 288, by Senator Saland, Senate Bill Number 5093, Environmental Conservation Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 291, by Senator Skelos, Senate Bill Number 29B, an act to amend the Penal Law, in relation to carjacking.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 293, by Senator Levy.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it

aside.

THE SECRETARY: Calendar Number 294, by Senator Levy, Senate Bill Number 648, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Senator DeFrancisco to explain his vote?

SENATOR DeFRANCISCO: This is 294; correct?

ACTING PRESIDENT FARLEY: Yes, it is.

SENATOR DeFRANCISCO: I'm going to vote in the negative. And before the teachers of the State of New York mount a campaign against this vote, I want to explain exactly what my position is. Presently, the assault provisions in the State of New York provide special protection for police officers; in that, a normal assault upon anyone other than on a police officer -- there may be one other

exception -- is generally a misdemeanor unless there is physical injury. If it's a police officer it's elevated to a felony.

Now this bill chooses to create that same situation in the event that the victim happens to be a teacher. And I believe, on Calendar 300, we'll be dealing sometime with another bill raising the punishment from a misdemeanor to a felony to transit workers.

And I guess the point I'm trying to make is victims are victims, and I can see the special protection for a police officer who is the last line of defense in many cases to the common citizen for criminal activity on the street; and when he is affecting an arrest or she's affecting an arrest, special protection might be needed to cause someone not to assault a police officer; but when we are creating law after law that provides special protection for individuals depending upon what their occupation may be, I think maybe the general rule is being eaten up by all of the exceptions.

If it's important to raise an

assault third to an assault second, it should be across the board and not pick away at various categories in various occupations.

So as far as this bill is concerned, I'm voting in the negative for those reasons and hope to be consistent on other bills that create special protections for individuals based upon what their occupation may be.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 294 are Senators DeFrancisco, DiCarlo, Galiber, Leichter, Mendez and Montgomery. Ayes 54. Nays 6.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 295, by Senator Tully, Senate Bill Number 776,

an act to amend the Penal Law.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Calendar Number 296, by Senator Volker, Senate Bill Number 2173, Penal Law, in relation to consecutive terms of imprisonment.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT FARLEY: Lay it aside. Don't read the last section.

THE SECRETARY: Calendar Number 297, by Senator Volker, Senate Bill Number 3323, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 299, by Senator Padavan, Senate Bill Number 4166, an act to amend the Penal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Excuse me. Ayes 59. Nays -- in relation to Calendar Number 299: Ayes 58. Nays 2. Senators Galiber and Montgomery recorded in the negative.

THE SECRETARY: Calendar Number 306, by Senator Saland, Senate Bill Number 2242, Domestic Relations Law and the Surrogate's Court

Procedure Act.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. I think erroneously Calendar 296 was laid aside. Can we try that one, then go to regular order.

ACTING PRESIDENT FARLEY: Call up 296.

THE SECRETARY: Calendar Number 296, by Senator Volker, Senate Bill Number 2173, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59. Nays 1. Senator Galiber recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

Controversial, Senator Present?

SENATOR PRESENT: Controversial calendar, please.

ACTING PRESIDENT FARLEY: Controversial calendar, page 5.

THE SECRETARY: On page 5, Calendar Number 48, by Senator Johnson, Senate Bill Number 3059, an act to amend the Penal Law, in relation to chemical agents and chemical agent weapons.

SENATOR GOLD: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for.

Senator Johnson.

SENATOR JOHNSON: Mr. President. This is our Mace bill which has been before this body before and has been adopted overwhelmingly on several instances.

I would like to explain this bill by reading a short piece of testimony which was delivered by a young lady in November '91 at a hearing I had in New York City. She said here:

"I was recently, in early June, a victim of a crime in which I used Mace in order to save myself. I would like to tell you my story.

"I was downtown in a parking lot. I was with a gentleman friend who was there for the sole purpose of walking me to my car for my own safety. While we were talking outside the car, we were approached by two men. I saw them approaching; and as I did, I took my can of Mace out of my purse and held it by my side.

"At this point, I was still unsure as to whether the men were going to approach us

or what their intentions were. The two men did approach me. Within two feet of us, they pulled out a gun. They demanded our money, our purse -- my purse, his wallet. I was, of course, still holding my Mace which they didn't see.

"I was turned around, placed against the car, frisk for money and any possible weapons that I might be carrying, I suppose. So was my friend. At this point, the gentlemen decided they would like to take me along with them. They proceeded to make me get down on my hands and knees. They put my gentleman friend in the trunk of the car. This whole time I still had my Mace with me.

"They put me inside the car. They decided then that I was going to drive the car. I was put in the driver's seat of the car. Needless to say, they were not being very gentle. They were being very forceful. They were assaulting me. They were using a lot of profanity. They were scaring me. The gentleman sat beside me in the passenger seat."

The gentleman, I don't know why

she calls these people gentlemen she's a very polite girl.

"The gentleman with the gun sat behind me holding the gun to my head. At this point in the car, I turned around. I still had the Mace with me. I looked at the man. I wanted to use it. I, of course, was very scared. He was asking me what I wanted, 'Why are you looking at me? Turn around and drive,' in very profane terms.

"He told me to shut the door completely. I had the door a little bit ajar. I got my confidence up. Used my Mace, sprayed him, temporarily incapacitated him. He had the gun at his left. He was covering his face. He was swearing at me. I got out of the car and I ran. He pulled the gun. He shot at me. I hid behind a dumpster. He shot at me again. I ran and I got away.

"Had I not Maced the man, he most likely would have hit me. I was definitely within range when I heard the first shot. I was no more than maybe ten feet from the car when he

proceeded to get out and shoot. He was shooting blindly. Obviously, I'm not sure whether the second shot came from him or the second man.

"I ended up escaping. The men ended up leaving, and my friend was later taken safely out of the trunk."

And she says, "I have come to tell you my story in order that it might persuade those that are not as of now in support of this bill." She's talking about my bill.

"I believe that because of the nonlethal nature of this device, it gives citizens like myself who would be very hesitant to be carrying a lethal weapon, a gun, a knife, et cetera, it gives you a comfortable means of defense. I think that the ramifications of this type of defense mechanism are far less than that of any other type of defense mechanism."

This young lady was from Ohio, and she came to tell the story. Now, in this state, that young lady would not have that ability because of our laws. She would not be permitted to possess Mace to defend herself.

Though in this state, a postman can carry a can of pepper spray, which is equivalent, to defend himself against a dog bite. But a young lady in New York State can not protect herself with a can of Mace.

If that's not a travesty, if that's not an aberation of the law that cries out for correction, I don't know what is.

And, you know, when I first introduced this bill, there were three states in the union which did not permit this ownership of Mace to defend oneself. Now we're the only state. The other states got the message. In every state, you can have this to protect yourself but not in New York State.

It's time for a change. That's about all I have to say. This bill should be adopted.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I believe there is an amendment at the desk.

ACTING PRESIDENT FARLEY: Yes, there is.

SENATOR DOLLINGER: I waive the reading of the amendment and ask that it be considered by the house.

ACTING PRESIDENT FARLEY: Senator Present.

SENATOR PRESENT: Mr. President. I would like a point of order. Senator Dollinger's amendment, after review, his amendment to Senator Johnson's bill is out of order since it violates Rule 6, Section 4(b), in that it is not germane to the original object or purpose of Senator Johnson's bill.

Senator Johnson's bill is concerned with the possession of Mace. Senator Dollinger's amendment offers nothing on that subject; however, it seeks to amend completely different sections of the law than that addressed by Senator Johnson's bill; therefore, I ask that you rule Senator Dollinger's amendment out of order.

ACTING PRESIDENT FARLEY: Senator

Dollinger.

SENATOR DOLLINGER: How do you so rule, Mr. President?

ACTING PRESIDENT FARLEY: Senator Dollinger, unfortunately for you, I rule that it is out of order.

SENATOR DOLLINGER: Okay. I'd like to appeal the order of chair, Mr. President, and be heard on the issue.

ACTING PRESIDENT FARLEY: Senator Dollinger moves to overrule the chair and to be heard on the issue.

You can be heard. Go ahead.

SENATOR DOLLINGER: Mr. President. I'll try again. I tried with germaneness a couple of times, and I seem to be failing.

Mr. President. I stand in support of Senator Johnson's bill, which will take a category of weapon which is currently illegal in this state and make it legal. I understand the underlying issues that Senator Johnson talked about in his letter and the

importance of making this small weapon available as a deterrent for those who feel that they need Mace as a way of thwarting off attackers.

What I seek to do, however, Mr. President, is to deal with another issue that involves weapon, and those are weapons that are generally known under the category as assault weapons, and it seems to me that since we're dealing with weapons -- what we're doing is allowing a new weapon to become more available -- we should also take one off the shelf, one that is currently available, that currently can be purchased without a permit, without any authority whatsoever. Certainly if you've got the money, you can do it.

If you got the money now in this state, if Senator Johnson's bill is passed, you can buy Mace to protect yourself. I'm simply suggesting that we amended other portions of the Penal Law to take one weapon which is currently available and restrict access to it so that only pistol permit holders can have it.

That's the Assault Weapon Bill

that passed the Assembly. That's what the amendment seeks to do. It does deal with weapons. It deals with access to weapons. It deals with the public safety, the same germane issues that are involved in the proposal from Senator Johnson.

And it seems to me while the message that comes out of today is that it's okay for you to have Mace, but it's also okay for you to continue to have the kinds of weapons that have been used on the bus in New York City -- on the van in New York City. If the Court -- or if the President will recall, a review of the weapons that were available in the cashe of the assailant or the alleged assailant were all kinds of assault weapons.

We should get those weapons off the shelf. We should restrict access to those weapons, while we're making another form of weapon, the Mace, available to our constituents.

So this deals with public safety. It's certainly germane to the issue of public safety, and we ought to take this step,

amend the bill. Consider the bill in its totality and deal with the problem of weapons in this state in a rational way.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Thank you very much.

Mr. President. It is not new to this chamber that Senator Dollinger has been attempting, very, very diligently to bring certain issues to the floor. And while I understand the obligation of the chair to rule in a manner that supports our rules, and I appreciate the difficult job Senator Present has in upholding the rules, I do sometimes get perplexed.

There isn't an individual in this chamber who didn't cringe a little bit when I announced last week that two Lubavitcher youths were in critical condition -- at this point, as you know, one of them passed away -- and that someone in a car sprayed bullets at a van

containing innocent students.

There is a story in today's Daily News by Michael Daley, which traces the actual weapon used in that particular crime, and I commend the story to you. We talk about so many things in the abstract that I think it's important that sometimes we get away from the abstract and we talk about something that has touched our lives and that we know about in recent days.

That particular gun had paperwork filed at Glock, which as you know is a manufacturer, in Georgia. It then was imported by Glock from Austria and shipped to a dealer in Jefferson, Indiana. That was October 8th of '91. A week later it was sold to a gun shop in Ohio. Ten days later, it was bought by a firearms dealer in Florida. This is all in October of '91. Then it turns up in New York City on the streets of New York City on March 2 of 1994 and kills people.

I am one of the first to concede that there is an obligation on the part of our

federal government. I'm one of the first to concede that the Brady law meant nothing in New York State. You can't get a handgun in New York State in five days. It's an irrelevant law for us.

But on the other hand, on the other hand, the whole nature of violence has really changed. There were those of us who made speeches years ago about how murder was a friendly crime. People killed their lovers, their spouses. They killed their bosses. They killed people whom they knew, and that was the major part of murder. That is not the case any more.

Now we have such random violence that it is even worse from the point of view of the mentality of the average citizen as it was years ago, and we have to do something. Now, this is not an anti-hunters speech. It is not an anti-sportsmen speech. It is not an anti-recreational shooters speech. It is, I hope, a realistic statement of what we have to do.

I know the politics of the NRA and I respect the NRA, and I respect its constituency, but they are wrong on this issue. They are just wrong on this issue. It doesn't make them bad. It doesn't make them evil.

SENATOR VELELLA: Mr. President. Point of order.

ACTING PRESIDENT FARLEY: What's your point of order, Senator?

SENATOR VELELLA: It is my understanding that we are supposed to be debating whether or not Senator Dollinger's amendment was relevant to the proposed bill by Senator Johnson. Now we have gotten into a discussion on the NRA, the Brady bill, federal legislation. I think the Senator is out of order. The issue that we're supposed to be discussing is whether or not Senator Dollinger's amendment is relevant.

ACTING PRESIDENT FARLEY: Senator Gold, the chair has been very patient, and I think you realize that. We are on a motion to overrule the chair as to whether Senator

Dollinger's amendment is germane to Senator Johnson's Mace bill.

SENATOR GOLD: Yes.

ACTING PRESIDENT FARLEY: And I would ask and -

SENATOR GOLD: I was getting to the logical connection just at the point when Senator Velella interrupted.

SENATOR VELELLA: I withdraw my objection and wait for the logical connection.

SENATOR GOLD: Your timing was extraordinary.

ACTING PRESIDENT FARLEY: We wait with baited breath for the logical point. Go ahead.

SENATOR GOLD: Good. Don't hold your breath too long.

Mr. President. The point I'm making is really a very, very, very simple point; and that is, that I believe that we have an obligation -- and I think Senator Dollinger has been outstanding in bringing this out -- we have an obligation. And the rules of our house

which are meant to conduct business in an orderly way should not be a weapon to suppress free and open debate on necessary and important issues, and this issue is necessary and important.

If, in fact, the anti-assault ban lobby is right, or some of you think it is that correct, then that's the way you will vote, and I'm sure that the constituency which you reflect will reward you properly, but it's a debate that ought to take place.

And I suggest to you, Mr. President, that under our rules that you could very well have ruled that Senator Dollinger's amendment is germane. We could have had a free and open debate, and I would urge that people vote against the ruling of the chair.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. I have nothing to add to Senator Gold's eloquent substance. I'm just interested in some day knowing what germane means so that I

can inform my grandchildren.

I guess at some point I'd love to see an amendment attached to a bill that is considered germane, and then I will have some guidance as to what it means.

I know what it doesn't mean, or I'm learning what it doesn't mean, but I'd like to know some day what it does mean.

ACTING PRESIDENT FARLEY: I'm confident that Senator Present will discuss that with you.

There is a motion on the floor to overrule the chair. Those that are in favor of overruling the chair, say aye.

(Response of "Aye.")

Those that are in favor of sustaining the chair, say nay.

(Response of "Nay.")

I believe the nays have it.

Read the last section of Senator Johnson's bill.

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold to explain his vote.

SENATOR GOLD: Yes, thank you. I just wanted to point out that there were some Senators who had opposition to this in the past including Senator Connor and Montgomery and Paterson, Smith, and Waldon.

I vote in the affirmative.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Sorry. I'm in the negative.

SENATOR HOFFMANN: Mr. President.

ACTING PRESIDENT FARLEY: Senator Hoffmann.

SENATOR HOFFMANN: Could I ask the sponsor a question before you announce a vote on this?

ACTING PRESIDENT FARLEY: Without objection. Senator Johnson, Senator Hoffmann has question for you as we're on the roll call.

SENATOR HOFFMANN: Perhaps you can refresh my memory, Senator Johnson. As a supporter of this bill for a number of years, I believe that in the past it had been offered for co-sponsorship to some members on this side of the aisle. I thought that I had been a co-sponsor at least once in previous years. I remember speaking on it several times. And I'm curious to see the list of sponsors today includes only Republican members of the Senate.

I wonder if you would be so kind as to add my name to that list, as well. I would like to be a co-sponsor on the Mace bill.

SENATOR JOHNSON: Fine, Senator.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 48 are Senators Connor, Espada, Galiber, Gold, Montgomery, Ohrenstein, Smith and Waldon. Ayes 42. Nays 8.

(Whereupon, Senator Libous was in the chair.)

ACTING PRESIDENT LIBOUS: Bill is

passed.

Senator Present.

SENATOR PRESENT: Mr. President. Would you call up Calendar 191, have the last section read, so Senator Solomon could cast his vote, and then put it back on the calendar where it is.

ACTING PRESIDENT LIBOUS: Secretary will read Calendar 191.

THE SECRETARY: Calendar Number 191, by Senator Volker, Senate Bill Number 6350, an act to amend the Penal Law, the Criminal Procedure Law, and the Judiciary Law, in relation to the imposition of the death penalty.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Senator Solomon, how to you vote?

SENATOR SOLOMON: Yes.

ACTING PRESIDENT LIBOUS: Lay the bill aside.

SENATOR PRESENT: Regular order.

ACTING PRESIDENT LIBOUS: Secretary will read.

THE SECRETARY: Calendar Number 59, by Member of the Assembly Grannis, Assembly Bill Number 6289B, an act to amend the Insurance Law.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT LIBOUS: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Stafford.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT LIBOUS: Lay that bill aside.

SENATOR PRESENT: Temporarily.

ACTING PRESIDENT LIBOUS: Temporarily.

THE SECRETARY: Calendar Number 157, by Senator Padavan, Senate Bill Number 3248, Education Law.

ACTING PRESIDENT LIBOUS: Read the last section.

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

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Hold on one second, please.

Mr. President.

ACTING PRESIDENT LIBOUS: Senator Gold.

SENATOR GOLD: Just to explain my vote.

ACTING PRESIDENT LIBOUS: Senator Gold to explain his vote.

SENATOR GOLD: I would like to refresh the recollection of Senator DeFrancisco,

who joined with Senator Smith and Paterson, Connor, Galiber, Leichter, Montgomery, in the negative last year.

I'm in the affirmative.

ACTING PRESIDENT LIBOUS: Results.

Senator Stachowski. Senator Stachowski to explain his vote.

SENATOR STACHOWSKI: Mr. President. I just wanted to thank Senator Padavan for laying this aside for one day for me, and that I spoke to my Mayor, and he gave me no indication that his position has changed. So since I voted "No" two years ago and then he convinced me when he was the candidate for Mayor to vote for this, and since he gave me no reason to vote against it yet, I'm going to support my Mayor and vote yes again, and I hope he is happy.

ACTING PRESIDENT LIBOUS: Excuse me, Senator Gold. Senator Gold, did you say you were in the affirmative?

SENATOR GOLD: Yes. I'm with the

distinguished gentleman from Buffalo.

THE SECRETARY: Those recorded in the negative on Calendar Number 157 are Senators DeFrancisco, Galiber, Leichter, Montgomery, Smith and Waldon.

SENATOR GALIBER: How was I recorded on this vote.

THE SECRETARY: "No."

SENATOR GALIBER: Yes.

ACTING PRESIDENT LIBOUS: Senator Montgomery is in the negative. Senator Montgomery, how do you wish to be recorded?

SENATOR MONTGOMERY: I'm in the affirmative.

ACTING PRESIDENT LIBOUS: Senator Montgomery in the affirmative.

Senator Present.

SENATOR PRESENT: Mr. President. Will you recognize Senator Saland, please.

ACTING PRESIDENT LIBOUS: Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Unfortunately, when the session

began, I was detained, unable to be here on the floor a bit earlier. What I would like to do is very briefly interrupt the proceedings.

ACTING PRESIDENT LIBOUS: Senator Saland, can we just finish the results on this bill? Please.

SENATOR SALAND: Certainly, Mr. President.

THE SECRETARY: Calendar Number 157, those recorded in the negative are Senators DeFrancisco, Leichter, Smith and Waldon. Ayes 56. Nays 4.

ACTING PRESIDENT LIBOUS: The bill is passed.

Senator Saland.

SENATOR SALAND: Thank you again, Mr. President. As I had started to say, I wasn't on the floor at the moment the session began a bit earlier, and what I would have done at that point, I would like to have the opportunity to do now, which is recognize a young woman who is "Miss Teen New York" who resides in my Senate district.

She is here with her mother. The young lady's name is Heather Mahar. Her mother is Jan Mahar, who just happens to be the president of my school district, Spakenkill School District, and they are seated in the chamber here to my rear.

I appreciate your recognizing them.

ACTING PRESIDENT LIBOUS: Heather and Jan, on behalf of my colleagues here, members of the Senate, we certainly welcome you to the chamber this afternoon. We hope you and your mother have a very enjoyable visit, and we congratulate you on being "Miss Teen New York," and welcome to the chamber.

(Applause.)

THE SECRETARY: Calendar Number 181, by Senator Volker.

SENATOR PRESENT: Lay it aside temporarily.

ACTING PRESIDENT LIBOUS: Lay 181 aside temporarily.

THE SECRETARY: Calendar 191, by

Senator Volker, Senate Bill Number 6350, an act to amend the Penal Law, the Criminal Procedure Law, the Judiciary Law, and the County Law, in relation to the imposition of the death penalty.

ACTING PRESIDENT LIBOUS: Senator Volker, explanation please.

SENATOR VOLKER: Mr. President. Let me just start out by saying that this is the -- unfortunately, the eighteenth time that I have attempted this process since 1977. As I said on many occasions, I would always hope that this would be the end of this process, which I am convinced, unfortunately, the lack of a death penalty in this state has unquestionably created part of the climate that we find ourselves faced with.

For those of you that are new or -- several people here, of course, are very new. This process has gone on for a number of years. The bill that we have here is basically the same bill that we have had for a number of years. There were some changes made in various sections here several years ago, but it is

basically the same bill that was drafted a number of years ago in response to a federal court decision and state court decisions on the issue of the death penalty.

It is a bifurcated jury system bill which complies with the Supreme Court restrictions. By that I mean the way the process works is that first the person who is involved would be convicted of -- convicted of the crime -- in other words, murder -- and then, assuming that there was one of the so-called aggravating circumstances that are included in this bill, then a second trial would commence on the issue of the death penalty or a life term.

There are a number of protections in this bill. At times, I think, that unfortunately over the years because this debate has gone on so long, there are not a lot of people outside this chamber that ever read this bill. In fact, I'm constantly questioned as to the fact that I should add something in the bill that would protect defendants.

For instance, we should do

something about counsel fees. That's in the bill. This bill waives all restrictions on counsel fees, enables a judge in a capital case to award fees to not only the counsel but also to investigators and so forth way over and above anything that is in normal cases, and the reason is obvious, because of the type of case.

It also says that people who represent individuals in these capital cases must have at least five years -- one of the attorneys must have at least five years experience in the trial of felony cases and five years experience, if there should be appeals, on the appeals side.

There is a provision in here for a direct appeal to the Court of Appeals, and the reason for that is -- and that's on the issue of -- the various issues that are characteristically the most controversial, such as proportionality. That means whether the sentence is proportionate to the crime and whether other crimes are sentenced in the same way, the issue of race, and emotional kinds of

issues of those kinds.

The reason for that is, is to give that defendant a quick and immediate option to reach the Court of Appeals and make decisions should it turn out that there is something in that trial that stands out as improper or unnatural as far as the case is concerned. It does not restrict the ability of that defendant, obviously, to make further appeals. But many people who are practiced in that kind of field say that what that will do is, it will probably will work two ways. One, it will give the defendant an opportunity to make his case even more quickly; but, in a second front, it will also move death penalty cases along much more quickly. And, presumably, should a person be clearly guilty and the trial be done properly and the decision be made, very honestly would presumably allow executions on a much more rapid basis.

Now, there has been a lot of talk here. In fact, a lot of the emphasis in this session on crime, unfortunately, has been on

guns. I say it's unfortunate because it fits right in with what's happened in this country and in the state. Instead of zeroing in on the individuals, we blame everyone else. We blame implements. We blame all sorts of things for crime.

If you watch the spectacular trials on television these days -- and by the way, I must be honest with you as somebody, some of you know here, who has had great misgivings over the years on trials on television and the use of television in courtrooms, I'm afraid I've taken an extremely dim view of some of the things that I've seen in some of these trials.

No one is going to tell me that the Menendez trial wasn't affected by television -- or a number of these other cases. But the thing I think that was most disconcerting was that the victims were on trial, and most of these victims were dead. The victims were on trial. It was almost as if what was being said was, well, these were not nice people; and, therefore, the people who killed them shouldn't

be brought to justice, shouldn't be made to pay, because somehow these weren't particularly nice people.

And, you know, I thought about that. And, ladies and gentlemen of the Senate, it fits right in, unfortunately, with what's been happening in this country and this state; and, unfortunately, it fits in with the decision that other people made. And there is only one person here in the Senate who was here when the decision was made in 1965 to virtually abolish the death penalty. It fits in with the unfortunate part, and it was never meant to be that way.

The abolition of the death penalty was meant to be a decision -- at a time, by the way, when the murder rate was low and violent crime was fairly low. People thought there ought to be another way. There ought to be a better way to do it.

It was meant to send a message of peace and of security and to say we really don't want to do that. The state shouldn't do that.

"Unfortunately," people like my father and other people said, "that's not the message you are going to send." You mark my words. The message you will send is that life is cheaper, that we don't blame people for their actions, that we don't make people accountable.

If you look at over the years what's happened -- and that's the problem, by the way, with gun laws. They don't make the people accountable. They try to make the guns accountable. The death penalty says to those who would kill, "Look, if you take a life, you better be prepared to face the strong possibility that you may have to give yours."

By the way, people ask me all the time, would the Long Island Rail Road shooting be included under this bill? Absolutely. Would the World Trade Center bombing be included under this bill? And by that I mean would it be subject to it? Naturally, it would be up to the jury. Would the World Trade Center bombing? Of course. Would the shooting on the Brooklyn Bridge of the Hasidic students, would that be?

Absolutely. The bombing upstate, the bombings of the same -- or family, the killings in that family, would that have been included?

Absolutely. They would have all been included.

In fact, the interesting thing about the World Trade Center bombing is that those people technically could be tried under either state or federal law, obviously; but, of course, under federal law, they could be subject potentially to the death penalty; but in this state at this point, they could only be subject to life terms.

I think that we have to face up to something in our society, something that I think maybe the press is unable to do. The press is unable to face up to the fact that our society has reached a crisis stage of accountability. You can't say it's somebody else's fault. You can't say that that killing was not my fault. It's my parents' fault. It's because I was an abused child. It's because I was this or who I am or what I am.

Because what we're beginning to

realize I think in society is that wherever you are or whoever you are, a strong possibility is that you can be the subject of a violent crime, and the person who commits that crime is not an identifiable race, creed or whatever, because it could be anybody.

You know, I listen sometimes to people who want to blame all sorts of different races and sexes and all sorts of things. It's really foolish when you think about it. Because what has happened is our disregard for human life has descended to the point that we now have the situation where universally -- universally, wherever you live in this state -- it is true that there are parts of this state that are more dangerous than others, but the truth is that wherever you live, the possibility is that you could be subjected to a situation where your life could be taken away from you.

I was talking to a gentleman here a couple of weeks ago from india, and we were talking about a completely different subject. It was in regard to health care and, suddenly,

the issue turned to the death penalty. And he said, "I know you people in Albany are not going to do the death penalty because," he said, "you don't have the courage or the understanding."

He said, "You still think that somehow you can play around with these kinds of people with this kind of issue." "You have to live in a country like India," he said, "to understand that you can't do that."

He made an interesting point. His point was that we really haven't had the courage in this country to deal straight up with this kind of issue.

I said to him, you may be right. I will say this. The majority of both houses of the State Legislature, Senate and Assembly, have had the courage. You can certainly argue that maybe the Governor of this state hasn't had the courage; and that, for various reasons, we have not over the years been able to accumulate enough people who have had the courage or just enough people to override and to send that message out to the street because wherever I go

-- I must tell you a story.

A very prominent law enforcement officer -- this is right at the time when all the frenzy was going on over guns -- said to me privately -- he said, "Senator, you know, it would be a shame if the only thing we did this year is some restriction on guns, which you and I know is not going to do much of anything. If you don't do the death penalty or do some sort of huge message out there to the criminal element, it will be a tragedy."

Because the public is ready for it. The public wants it. Because while we were up here talking about esoteric criminal issues, the public back there was saying, What's the matter with you people? Why aren't you doing the kinds of things that need to be done, putting people in jail for long periods of time?

And they say, "Well, we've heard that this doesn't work."

"Well, we think it better work. We think it has to work. Yeah, you can deal

with the ills of society, but with the issue of killing," people have said to me, "look, Senator" -- it's not even the issue of deterrence, because I still argue -- because I look at the numbers. I still argue on the issue of deterrence.

But many people have said to me this is an issue of justice. You are going to tell me that some of these vicious killers should be stored in our prison system, that we should take another prisoner from another state who killed two people, one of whom he choked to death with a Christmas tree, with the wire from a Christmas tree, that that killer should be in our prison system who said he wants to be executed?

Seems to me that we had better evaluate our priorities. We try to protect people wherever we can. Certainly there are things we haven't done. But if we are going to protect society -- and I was out there at one time as a law enforcement officer, and I won't get into that, but I will tell you this. I am

convinced of one thing. This Legislature, this Governor -- and I'm talking about Senate and Assembly and the Governor -- we can pass all the legislation we want this year. And there is a number of things that can be done and probably should be done before this year is out that can help the situation. There is a number of things, and I have listened to people in this chamber who I happen to agree with who say things to me about changing society and families and all that. We spend millions and millions and millions of dollars on education and on social welfare programs. No state in the union spends as much as we do on those kinds of programs.

But, ladies and gentlemen of the Senate, there is one action we can take that will send a message to those people out there who would kill, more than any other message we can send, and, in fact, more than that. I happen to believe -- in looking at these numbers, I happen to believe that it's the only way, unfortunately, at this point, that we can

send a dramatic message to our constituents that we're really ready to do something; and that message is to pass this bill; and when the governor vetoes it, as inevitably he will, to override it.

That message will say to our constituents that we are ready and have the courage to stand up and say to those who will kill, whether it's in the World Trade Center or whether it's on the Long Island Rail Road or whether it's at Buffalo and Rochester, wherever it is, we're tired of it. And we're saying to our constituents and, more so, to those people who would kill, you better be ready to give your own life if you take somebody's life.

ACTING PRESIDENT LIBOUS: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President. "Twenty years have passed since the Supreme Court declared that the death penalty must be imposed fairly and with reasonable consistency or not at all.

And despite the effort of the state -- the states and the courts to devise legal formulas and procedural rules to meet this challenge, the death penalty remains fraught with arbitrariness, caprice and mistake."

"Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death can never be achieved without comprising an equally essential component of fundamental fairness - individualized sentencing."

Mr. President. I'm going to read you some other things, but these are not my words. These are the words of Justice Blackmun in a dissenting opinion handed down, shocking many people in this country, and it was handed down on February 22nd of this year in the case of Callins v. Collins.

Justice Blackmun had, for years, supported the concept that there could be a death penalty in America if A, B, C, D, et cetera. And here is this distinguished jurist, appointed in 1970, who served 23 years on the

Supreme Court, having the guts to say what he said in this decision.

I say "guts" because there is too much politics in government, as I always say, but many of us feel that if we voted one way once or if we said something once, that is now in stone and everything we do must be somehow be wrapped around that mistake, if it was a mistake that we made, forever.

The man is a Supreme Court justice, sworn to uphold the Constitution, and stands up in front of America and says, Twenty years have passed, and what we said and what we thought could be done can't be done.

He goes on. The problem is the inevitability of factual, legal, and moral errors gives us a system that we must knowingly kill some defendants wrongfully -- wrongfully kill some, a system that fails to deliver the fair, consistent and reliable sentences of death required by the Constitution.

Here is a justice who said you can have in an intellectual vacuum a death

penalty administered constitutionally, who then says, When you get out of that intellectual vacuum and into our real world, you can't do it.

"Although most of the public seems to desire and the Constitution appears to permit the penalty of death, it is surely beyond dispute that if the death penalty cannot be administered consistently and rationally, it may not be administered at all."

"Experience has shown that the consistency and rationality promised in Furman are inversely related to the fairness owed the individual when considering a sentence of death. A step towards consistency is a step" against -- "away from fairness."

He closed, "My belief that this court would not enforce the death penalty (even if it could) in accordance with the Constitution is buttressed by the Court's 'obvious eagerness to do away with any restrictions on States' powers to execute whomever and however they please.'"

This is just overwhelming. There

isn't a doubt in my mind that the death penalty, as such, is not an issue in the New York State Senate as to whether it will pass, whether or not there are enough votes to override a veto because, unfortunately, we're in an election year. We are very close to a constituency group. We are not United States Supreme Court Justices who are a little bit aloof from that kind of jeopardy that I have just described. But it really is a shame.

It's a shame because while I have pointed out to this body that in states such as Florida and Texas, which execute more people than anyone else in America, they have horrifying homicide problems. Texas is a place where I think more police officers get executed than any place else. Florida has been all over the newspapers in the last year. And as a matter of fact, my wife and I went away in December for our 35th wedding anniversary, went to Nassau. It was flooded with tourists from Europe who normally come to America and are afraid to go to Florida now because of what

happened. Florida has the death penalty.

But no matter how much of that we talk about -- there's statistics that say that if you have the death penalty in a state murder goes up in many places -- none of that seems to break down the wall of resistance that people who favor the death penalty have in hanging on to that as the linchpin of their criminal justice package.

Maybe -- maybe -- Justice Blackmun can have an effect on some of you. This is an extraordinary statement by a respected judge. I mean can you imagine that? Twenty-three years on the bench, and the judge has the courage and the intestinal fortitude and personal integrity to come out with the decision that he did.

I want to make one other point, and then I will sit down. I have expressed at length -- and I won't this time -- on other occasions how I can respect anybody's opinion on this issue but that I resent it when we pointed to the Almighty and blamed God for our votes on

capital punishment. "An eye for an eye"; "Thou shalt not kill"; they point to everything.

In this last week when we had this disgusting, disgusting incident in which Aaron Halberstam lost his life, there was a call from some people in the Jewish community for the death penalty.

And while I enjoy reading Jewish literature and Talmud and Torah and the like and Jewish law, I do not pretend to have the scholarship of some of the Hasidic rabbis, but I will tell you it is my belief, my very firm belief, that under Talmudic Jewish law the killer of Aaron Halberstam could not be given a death penalty. Could not be given a death penalty. Because under Jewish law, before you could get the death penalty, there was a whole cadre of conditions. There had to be a certain amount of witnesses. There had to be statements made to the killer. Do you know that if you kill you can get the death penalty? And there was a saying that if a court sent one person to death in 70 years, it was considered a strict -

a very strict and a very harsh court.

Under Jewish law, you could get death penalty theoretically for not being - disrespectful to your parent. I mean there were all kinds of things, and you have to take this into a proper perspective.

And I admire greatly the people who spend their lives in the study of Jewish law and in any kind of religious law and in any kind of religious endeavor. But I urge upon you, if you have come to an intellectual conclusion that the death penalty is a deterrent, that the death penalty is this, that, or the other thing, then go with that conclusion.

But I urge upon you -- I have seen memos from the Catholic Diocese and others -- if we vote to kill people, we are not doing the Lord's work in my humble opinion. And I - and I -- I think we should just keep those issues straight.

I also think I would be remiss, and I'll say this in closing, if I didn't pay some respect to a public official who I think in

this state has an enormous amount of courage. The argument, the debate, over the death penalty is a legitimate debate, but I will tell you this. We have a governor who I think has extraordinary courage, not because he has a position and sticks with it but because it is this particular issue with this heat and with this political danger. And he says to the people of this state, You elected me to do what I think is right and in the best interests of our population, and I am doing it. And he realizes the political jeopardy, and he is certainly to be respected and honored for that degree of integrity.

But I suggest to you that he doesn't leave it at that. And one of the sore spots in the history of this house of the legislature for the last eight, ten years is our failure to pass life without parole; and it is my opinion that it hasn't passed because, by passing it, it would soften the political pressure for the death penalty; and there are people who don't want that softened. And I am

not in any way casting any dispersions upon my colleague Senator Volker, whom I respect in public and in private and who I know feels very, very sincerely about this issue.

But the fact remains, that during the past eight years or so, we did have the capacity to put people away and throw away the key -- throw away the key -- and we did not take that opportunity, and that is a shame because the fact is that this debate could have gone on on capital punishment, and there would have been people sentenced under a much harsher law.

So, Mr. President, you can't be good at everything, but I think I'm good at counting, and I know that this is a difficult issue, and that the bill probably will prevail, but I think it's a shame, and I would say to any of my colleagues who are so inclined to change their minds that if someone of the stature of Justice Blackmun can do it in public and stand up for what he believed is right even though it was a change of position, I think certainly we can do that, too.

ACTING PRESIDENT LIBOUS: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

My colleagues. Permit me, if I might, a rhetorical question. This seems to come up time and again in each of these debates, and I've said to those who oppose this debate - who oppose this bill, I certainly respect your opinion. I've never denigrated it. And somehow or other, I'm troubled and continued to be troubled by the fact that those who oppose the death penalty are people who should be honored, people who have integrity and people who have fortitude. I won't take that away from those who -- who oppose the death penalty. But, implicitly, it means that those of us who support the death penalty are somehow or other lesser people; somehow or other, we don't believe as passionately or as fervently, and somehow or other, there are no intellectual bases for the manner by which we arrive at our decision.

Now, with all due respects to Justice Blackmun, who has presided for some 23 years in the United States Supreme Court, I doubt that there's any of us who would agree with each and every decision that he has either written or each and every decision upon which he has ruled, and I really don't view him as being particularly relevant to this debate, other than for purposes of buttressing annecdotally the position of those who oppose.

Now, in Senator Gold's remarks, he made reference to the states of Florida and Texas and said, I think, something to the effect, I believe, that they have more police killings there or a disproportionately high rate of police killings. I don't recall the exact same thing. And I don't know if any of us has heard from either the state of Florida or the state of Texas or from any other police organization that they are so concerned that there is a connection between the death penalty and the murder of police that they oppose the death penalty.

The reality is that there is not a police organization that I'm aware of that doesn't support the death penalty, and they believe that it's a very vital tool for them.

Let me start off by saying, if there's anybody in this chamber who believes that somehow or other the death penalty is a panacea for the ills, the criminal ills of our society, you're backing the wrong horse. It is not a panacea for the criminal ills of our society. But, nonetheless, it is an important weapon in the arsenal against crime, because there are some people who by their very conduct do things that are so grossly beyond the pale of anything that we would consider to be acceptable that they, by their acts, have, in effect, taken themselves so far out of the mainstream that by their premedicated acts -- and we are talking premeditation here. This isn't a case where somebody gets drunk and hops up on the curb and kills somebody in a car. This isn't a case where someone comes rushing into a bedroom only to find his lover in the embrace of somebody

else and, in a moment of blind passion, either strangles that person or shoots that person. We don't have the premedication there.

This bill is a carefully crafted bill. I have read the bills of several other states, including the Texas statute, including the Florida statute. I believe I have read the Georgia statute, as well. And if you look to the evolution of what has occurred since the Furman case and the Gregg case, you will see that the Supreme Court, notwithstanding Justice Blackmun's most recent comments, have charted a course; and that course says that if you do certain things, we will view your proposal or your law as being constitutional.

Some 37 states have accomplished that. I see no reason why we shouldn't be the 378. That's an issue that remains to be seen.

And, by the way, speaking of the Governor and speaking of life without parole - a very interesting issue -- the Governor, time and again, talks about life without parole. The Governor says that he offers life without parole

as an alternative. Always it's an "alternative." "Alternative." "Alternative." "Alternative."

Let's not be disingenuous, and let's not play a semantic game. The Governor offers it as a substitute. He doesn't say, I will give you a bill that has life without parole and has the death penalty. He says, Take it or leave it. My substitute, not alternative, is life without parole. So let's cut to the quick on that one and not hide behind it.

Now, when you look at this bill, you see a bill that meets every constitutional test. You see a bill that provides for a bifurcated trial. That's what the Supreme Court said. You have 12 jurors who will determine whether there's guilt or innocence.

And, by the way, it would pay to read the bill because the bill will tell you a lot.

Twelve jurors who determine the question of guilt or innocence. If they are guilty, there's another 12 jurors who will then

make the decision as to whether or not the death penalty would apply. And if all 24 of those jurors don't agree, there is no death penalty.

If on the sentencing part of the equation, eleven of the jurors say yes and one says no, still no death penalty. And unlike all other cases, you can't even be retried. It's just on the sentencing part of the trial. So you don't get a second bite of the apple. No mistrial. That's it. It's over.

There is no nation on the face of this Earth that has bent over further to take the right of individuals. Nobody. There's not a society anywhere, even the society from which we supposedly inherited our common law, the English, they don't bend over as far backwards to accommodate the rights of individuals as we do.

Now, the Supreme Court in addition to saying got to have a bifurcated trial said you got to look at the mitigating and aggravating circumstances. We do that in this bill. We provide that those circumstances have

to substantial outweigh -- aggravating has to substantially outweigh mitigating.

For those who say that the death penalty is not a deterrent, and Senator Gold in his comments made some reference to -- and let me see if I can find his exact words. He said in some states -- not all necessarily, but in some states that have the death penalty, murder goes up in many places.

Now, we can massage the statistics all we want, but let me suggest to you -- and I have here a copy of the January 23, 1994 issue of the Albany Times Union referring to FBI statistics, and let me not say that they are conclusive, but let me just read for you in part.

"Since 1977, which is when we get into the Gregg case," the year Gary Gilmore was executed in Utah, the data shows New York's rate has the fifth highest increase over a fifteen-year period. The murder rate here in 1992 was 23 percent higher than it had been in 1977, while the national average was up 6

percent."

And then it goes on to cite, "In those fifteen years, 37 states have enacted new death penalty statutes. Murder rates have gone down in 22 of those states but have risen in another 14, and one state remained the same. Among the 13 states without a death penalty, murder rates have gone up in eight, down in four."

And then they list the big winners and the big losers. Murder rate increases: Hawaii up 50 percent; no death penalty. New Hampshire up 50 percent; has a death penalty. Montana up 46 percent; has a death penalty. Kentucky up 43 percent -- I'm sorry.

Those are down. I apologize. Hawaii down 50 percent; no death penalty. New Hampshire down 50 percent; death penalty. Montana down 46 percent; has a death penalty. Kentucky down 43 percent; has a death penalty. Idaho down 36 percent; has a death penalty.

Biggest murder rate increases:

North Dakota, no death penalty, up 111 percent. Wisconsin, no death penalty, up 57 percent. Maryland, up 51 percent, has a death penalty. Vermont has a death penalty, up 50 percent. And rated fifth, New York, no death penalty up 23 percent.

Now, the arguments dealing with deterrents still fail to address the one issue that this issue will never reach, nor will any other issue reach. How do you measure a negative? It's incapable of being measured.

How do you know about the individual who premeditated a murder, planned it, who went out and bought the poison, went out and bought the weapon? By whatever instrument he or she chose to kill and then for fear of the death penalty said, "I'm not going to do it. I'm going to pull the plug. I'm going to back off."

I hate my partner. He's been stealing me blind.

I hate my spouse. They've been cheating on me left and right.

But it's just not worth the risk.

How do you measure that?

Let's assume that person goes to their clergyman and confesses. Clergyman can't tell anybody. And even if they could, it would be inadmissible.

How do you measure the negative? No way in the world you can measure a negative. In no statistic anywhere can you determine who backed off a premeditated murder.

Now, there are questions involving the possibility of prejudice; that some how or another, this penalty is fraught with prejudice. Remember, we're in New York. We're not in some backwater state.

Is there anybody here who believes that our Court of Appeals, particularly in criminal justice issues, certainly by comparison to any other highest tribunal in the 49 other states is not if not the most liberal in its interpretation of criminal laws then, if not, it certainly is not surpassed by anybody?

You only have to look at some of the case decisions that have us dealing in the criminal world in a fashion that most, if not many, law enforcement officials would prefer dealing in another forum on.

But on this issue, let's look at the bill. You've got the right of an immediate appeal. You go to the Court of Appeals; and, guess what, the state foots the bill? You are required to have experienced counsel? Counsel has got to have at least five years of practice experience and three years of trial experience.

But on the question of the possibility of prejudice, when the Court of Appeals looks at the bill, in order to determine the validity of the sentence, it has to determine whether it was imposed under the influence of passion, prejudice or any other arbitrary factors. And then it has to determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, if any.

I can tell you with certainty the

statutes that I have looked at in the other states contain no similar provision. I'm not aware that their case law provides any similar provision, although I can't tell you I have looked at the case law.

What you are talking about, ladies and gentlemen, is a very carefully crafted bill. During the evolution of this bill during the multiple debates we've had on this bill, dealing with the subject of prejudice, dealing with the subject of as some would say the possibility of racism creeping into this, there is a U.S. Supreme Court decision, probably some three, four, five years ago now, the Batson case, Batson against Kentucky.

Batson against Kentucky basically set the world of jury selection upside down when the Supreme Court in that case said if you are going to exclude people based on race, the defendant doesn't have to show a pattern; it's enough that they feel you have done it in that case. And if you do it in that case, you run the risk of being bounced out. You run the risk

even if your trial is over of effectively being overruled.

And believe it or not, that's happened here in New York. In People v. Peart Appellate Division, 2nd Department, where there were two -- according to the account two black members of a jury panel who were denied that panel by preemptory challenges of a district attorney. The district attorney said -- the prosecutor said that one of the two potential black jurors were excluded because he did not appear to be a strong prosecution juror and, instead, was neutral.

The Appellate Division basically said we don't buy that. That's not good enough you can't hide behind that. The purpose of the Batson ruling is to eliminate discrimination not to minimize it, and the exclusion of any blacks solely because of their race is constitutionally forbidden. The prosecutor's bare assertion unsupported by any facts was an insufficient explanation.

This is New York, folks. There

is nobody anywhere who is going to show one case in the evolution of cases since 1977 in which there has been a mistake. Not one single case. That's even been admitted by the Civil Liberties Union. Although I haven't seen their materials in the past several years, they made that admission a few years ago. No mistakes.

You can't point to things that have happened under prior law. You can't point to things that happened back in 1977, because these people weren't tried under this statute. They weren't tried in a situation where they had ability to have 24 jurors. They weren't tried in a situation in which the prosecution had to establish beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating circumstances. They weren't tried in that environment.

I tend to doubt that there is anybody in this chamber, anybody in this chamber who if they were one of the twelve jurors who had to consider whether Adolf Eichman would be subjected to the death penalty would have hung

that jury. I certainly wouldn't have been the one to hold a jury, hang a jury. That man, if you want to call him a man, committed the most barbaric and inconceivable crimes upon humanity. Millions and millions of people were condemned to death by this evil, evil being. No justification whatsoever for sustaining the life of that person.

And then, for me, it becomes a relatively easy quantum leap to get to a mass murderer. It's a relatively easy thing for me to say if somebody comes barreling into a house of worship and because they don't like the way you worship, they don't like the color of your skin, they don't like your ethnic origin, they indiscriminately start shooting up the place and kill a number of people. I don't have a problem with that person being subjected to the death penalty.

I don't have a problem with the person who breaks into a house, robs, perhaps rapes, then kills the victim because they don't want to leave a witness. I don't have that

problem at all.

There are some carefully enumerated categories here in which the death penalty could be applied. I don't have a problem with a one of them. A police officer is killed in the line of duty, a police officer is killed -- correction officer killed in the line of duty. I don't have a problem. Or if a lifer serving a life sentence kills, I don't have a problem. And you remember the Lemuel Smith case? That man was a prisoner in Green Haven prison while sentenced there. You know, he killed four people, by the way, not once, not twice, not three, not four times, but we gave him the opportunity to kill a fifth time. He killed a female correction officer, Donna Payant, for those who remember. The guy shouldn't have had the opportunity.

We have the instance in which you kill because somebody witnessed a crime, an illegal witness. I don't have a problem. No problem for me to say a contract killer should be put to death upon conviction. No problem

with a felony murder. No problem with somebody who might want to torture his victim prior to killing them for a while, with intention to cause intense suffering, find the victim in a parking lot, which is a part of the natural consequences of a crime. Or how about somebody who plants a bomb in a crowded terminal, bus terminal, airport terminal? In the course of the crime, the defendant knowingly or recklessly created a substantial risk of death to many persons. I don't have a problem with that.

Ladies and gentlemen, what I have a problem with is somehow or other being told that, because I support the death penalty, my beliefs are less than your beliefs. I'm really troubled by that. I don't want to be subjected to some elitist rhetoric that says you can't believe in the death penalty because it's not the right thing to do.

Let me tell you I've lived through an experience and I've long been a proponent of the death penalty, long before I had to endure this experience. Somebody robbed

my son, tied him up, stole the things in his room and around the house and then tried to beat him to death so that they wouldn't leave a witness. The man is serving a life sentence. He had done it before. Perhaps I use the term "man" indiscriminately, but perhaps I should use the term "animal" as much as that might offend some people.

But let me tell you, I felt then and I feel now, if I could take that man's life I would, and I feel no shame about it. He tried to take away something that was very precious to me and he did it with the vilest of intents, just not to leave a witness.

So please let's disagree as we must, but let's not question the motives that get us to where we get, and let's not, simply because you feel it's your right, say that I'm wrong and those of us who support the death penalty are wrong. We will, one day, have a death penalty in New York. It's just a question of time. I would hope that this would be the time. It's the right time. It was the right

time last year, it was the right time the year before that. It's been the right time for the past 15 or 16 years, but perhaps this will be the time.

Thank you, Mr. President.

ACTING PRESIDENT LIBOUS: Senator Marchi.

SENATOR MARCHI: Yes, Mr. President.

I -- I'm not a newcomer to the position that I will take here this evening. I go back to college days when -- when the debate was very active in our country. There were about six states that did not have the death penalty, and any statistical analysis did not prove or disprove any or sustain any point of view. Indeed, there were confrontations made, for instance, between the state of Michigan and the Canadian -- the other side of the Michigan -- the city of Windsor where they had a death penalty, and they had a higher homicide -- rate of homicide than they did in the state of Michigan, which was also an industrial and

similar in every conceivable way in its make-up and social attitudes.

It goes back to the days of Thucydides, from Cesare Beccaria, the Italian penologist, who gave it its fresh face, that we're dealing with a problem of humanity. Certainly this is not to depreciate anybody that has -- holds the contrary point of view. We have no right to assume any ascendancy based on a conscientious and objective evaluation of what this means in public policy, and most of all I certainly have to say that there couldn't be a better example of humanity and compassion and good conscience and reason than my colleague, Senator Volker.

But we are invited, I believe we should be invited to consider this -- consider our positions, consider what we are doing in terms of public policy, in terms of eliciting the best that may be in our society and then making a determination whether this really squares with the public good.

The arguments have been made in

the past. Charles Dickens once put the argument of deterrence under a jeweler's eye. He inter viewed 267 people who were executed in London. At that time, it was a public spectacle. Thousands of people would assemble.

SENATOR GALIBER: Pardon me. Would you suffer an interruption, Senator? Mr. President, I -- I really can't hear, first of all. It's an important debate. I'd like to have some order.

ACTING PRESIDENT DALY: The Senator has a good point. Please, can we have order in the house.

Senator Marchi.

SENATOR MARCHI: Thank you, Mr. President. Thank you, Senator. This is not a light matter, and it should have our attention, serious attention. He interviewed these 267 people who were being executed publicly with thousands attending. 264 of them had witnessed prior executions. What did they find out from those 264 people? Did we bring out the best in them?

I submit, Mr. President, that if there is a morbid propensity, you're going to trigger it. You're going to trigger it, and it's going to react and any trappings that society puts on, they can bedeck themselves with maces and wigs, medals, anything you want, you're not impressing anybody. This is law, this is the public speaking, and I'm not speaking to the question of defense in a just war and some of the tangential circumstances that are not involved in this legislation.

We're dealing with a very basic subject. Has anyone here ever heard -- you know, we introduce an awful lot of resolutions. Is there any history in this state of a legislative body rewarding or giving a testimonial dinner to an executer? We know it's dirty business. The reason they stopped giving death penalties in this country for a while was very basic. People were not awarding death penalties. In my county, I guess you get 101 out of 100 saying we ought to have a death penalty, but the last one that they awarded was

in 1921. The same person who might answer a poll or might answer a question, say, yes, of course, but it doesn't -- it doesn't really go to the question whether that person would award the penalty.

Our record is squalid compared to the other nations of the world, not in terms of our solicitude, our professed solicitude, but in terms of impact. Life is cheap. Life is cheap and we only make it cheaper when we assign it a lower priority. These are not the better ways. Can we determine this? Can we make a determina tion based on an empirical statistical analysis? I submit no. If State A doubles its homicide rate because this last year they had one with the death penalty, this year they had two with without it, we're dealing with statistics and economics. You can make all those kinds of arguments but unless you put it under statistic al analysis -- and statistical analyses don't serve any useful purpose in this case.

We want to bring out the best in people. Why do we have a heightened crime rate

and so much disorder? We have drugs; we have so many searing social problems, changing moral attitudes, so things that have developed not because of the absence or presence of a death penalty, but because of mores that are under very severe social stress, and those are the items that we ought to be addressing, not furnishing bad examples, not -- and I'm not saying that this is done intentionally -- but not creating those circumstances that are conducive to a lesser respect for life.

Senator Gold mentioned the Talmudic law. It's true, it's almost virtually impossible under the circumstances in the context which would have to be recited and evaluated the way they took place. As a matter of fact, a unanimous verdict wasn't good enough. They said they wanted at least one dissent under the old Talmudic law because that one dissent was further evidence that perhaps everything had been considered. Then, they had other reasons. They had other reasons.

I -- I'm not -- I'm not assuming

a bully pulpit or anything here. I'm just inviting you -- inviting you to consider these facts, to consider that that squalid ugly mask of death presented by the public is not going to enhance our morality. It's not going to enhance our compassion. It only -- it could only depress it, and those states which have indulged in it very liberally have depressed it. It happens in civil wars; it happens in any circumstances where the taking of life becomes an amoral act almost, and then we're showered with those horrible examples of disrespect and of bestiality towards our neighbor, and that is supposed to move us.

We've got to let -- raise the level of our own conscience, of our own sensibility and our own feelings, and it's a slow process. It's not an easy process especially when we're undergoing a period of great, great social turmoil.

I would hope that you take it in the spirit in which I extend it to you. I extend it to you on the basis that you're

dealing with human beings. We're dealing with human beings, and if we're going to -- if we're going to go forward and display a greater respect for life, we can not do it by presenting a palpable example of really not appreciating the fact of life, lessening that respect that we ought to have for life, no matter how seriously it is challenged, and there are responses - there are responses that are available to a free people. That same England that was going through that great turmoil maybe ends with a hundred -- with a hundred homicides a year. Sights have been lifted.

For every -- for every homicide that takes place in this country, you take all of the surrounding countries. Do you know that, for one in those countries that -- where life is shed, we shed 88 in this country? Does that mean we're all bad people? No, we're a young country. Our institutions are developing. Our -- our society is under greater stress in its develop ment, but I would implore you to seriously reflect on any escalation and encouragement

which cannot -- it cannot address the basic problem, the basic problem of individuals interacting with other individuals, no matter how fool-proof our laws are.

Can you punish? Of course, you can punish. You can restrict, you can do those things that a society has every right to exercise. But I -- if anyone here feels that I'm -- I'm talking that someone's wrong and someone's right, I think we're all sincerely concerned, and I respect the intelligence and the conscience of every single member of this house, and I only ask you, invite you to think about this. Think about it seriously, because it is a serious issue, and I would hope that your determination is one other than taking of life.

ACTING PRESIDENT DALY: Thank you very much.

Senator Leichter.

SENATOR LEICHTER: Mr. President, thank you.

My colleague, Senator Gold,

certainly set forth in a very clear and rational way many of the reasons why the death penalty does not serve the people of the state of New York. John Marchi expressed really the moral issue involved here and he did it in a way that shows not only the strong moral compass that he has, but he brought to it an intelligence, a passion and a conviction that, frankly, I think anything that is said afterwards, lessens the debate, because he brought it to a level of eloquence that I found really one that one could only admire and could only hold in awe, and in some respects, I wish we could adjourn now and do what John Marchi asked us to do, to think about this issue, not to act instinctively politically. And I appreciate there are people, Senator Saland, who firmly believe in the death penalty, but it does deserve to be considered and thought about and not, Oh, well, I voted for it last year.

Justice -- Justice Blackmun came to the consideration of this issue and, after 20-some years where he had voted time and time

again with the majority of the court, realized that it was wrong.

I just, again, want to express my admiration for John Marchi and to say what he does and what he says is real courage. Senator Volker, you talked about courage, and that we wouldn't have the courage to enact a death penalty. I don't know if it's courage to run with the crowd. I think it's courage to come from Staten Island where probably 89 or 94 percent of the voters are in favor of the death penalty, and John Marchi says no, it is wrong. You sent me up to Albany to vote my conviction and my conviction is that I will not cheapen life by voting for the death penalty, and people of Staten Island are smart enough to appreciate what a jewel they have in John Marchi.

By the way, just talking about the politics of it, of course, we've seen time and time again that, while the public supports the death penalty, no question about it, but that time and time again they don't make that the key factor in deciding whether to vote for

and against somebody and, of course, we had this example in Democratic primaries, I believe two years ago, where I think two people who had voted against the death penalty changed their votes or positions in the primary and were defeated. But I don't want to get into the politics of it, although I think it does hang heavily over this bill, but I want to get into some of the other issues that have been raised and to try to see whether we can't understand that our job is to affirm life, to hold up the sanctity of life, and what I've never been able to understand how we uphold that sanctity if we take a life.

I think we all deride the old Biblical statement of an eye for an eye and a tooth for a tooth, and we interpret it as meaning that, if you sin against society you will be punished, but we realize that you can not take that admonition literally, and yet that's precisely what we're doing here with this bill and saying, You take a life, it's premeditated, we will take your life; and you've

heard the statistics, and so on, about whether or not this is a deterrence or not. In fact, I thought it was interesting that Senator Saland's readings showed very clearly that you could - there was no correlation at all between whether you have the death penalty and what your homicide rate is. In fact, in New York State in the last two years, the homicide rate has gone down. So, so much for that argument.

It's clear that the death penalty rests solely on the idea of revenge. It's not a deterrence. It rests solely on revenge. Clearly people who commit homicide must be punished and punished severely. If they commit the sort of homicide which would qualify for the death penalty under the -- under this bill, these are people that must be removed from society, and we believe permanently for the rest of their life. That certainly protects society, and society has a right to be protected.

I think the reason that we find this support among the voters, among the citizens, for the death penalty is because they

decry the failure on the part of government to deal with violence in our society, and I don't think that the answer that they really want is more violence because that's what the death penalty is, an eye for an eye, a tooth for a tooth, a literal reading of something that we as a civilized society have given up.

Yes, punishment, severe punishment; but to impose a death penalty, to impose a penalty which is irreversible and a penalty which says a life can be taken, does not decrease violence, and it does not decrease crime, but it does create severe and serious problems, the first which is inevitable that innocent people will be killed. No matter how careful you are, there are errors. We're human. We're fallible. Juries make mistakes. Judges make mistakes. Even the Court of Appeals makes mistakes.

We know that there are 23 documented cases of innocent people who have been killed. Eight of these were in New York State. Hardly a month goes by that we don't

read about some case, somebody who's languishing in jail sometimes on death row, who was convicted unjustly. Some of you may have seen the movie, "The Thin Blue Line", which was one of those cases. They're bound to happen, and you can't, after you've executed somebody, say, Well, we made a mistake. It's irreversible.

The other issue which really must be considered is the inherently discriminatory and, in this country, racial aspect of the way the death penalty is imposed, and it was interesting that Judge Blackmun in his -- in his really very startling dissent, stated -- first, let me just read something that he said about the killing of innocents. This is a person who has participated probably in hundreds of decisions in death penalty cases. He knows what he speaks of, and he says about the execution of innocent:

"The problem is the inevitability of factual, legal and moral error gives to the system that we know must wrongly kill some defendants, a system that fails to

deliver the fair, consistent and reliable sentences of death required by the Constitution." And, of course, his conclusion is that there is no way that that sentence of death can be applied in a constitutional manner.

What he says about -- want to read you the part where he speaks about the racial inequality. Here it is, and I quote again from his opinion: "The arbitrariness inherent in the sentencer's discretion to afford mercy is exacerbated by the problem of race. Even under the most sophisticated death penalty statute, race continues to play a major role in determining who shall live and who shall die. There's no doubt that in every society, unfortunately, also in our society there are those who are considered in some respects less worthy, who tend to become the object of some sort of derision or scorn."

And it certainly has been true that blacks, African-Americans, if you will, and Hispanics, have been sent to the death chamber in disproportionate numbers.

Senator Saland says, Well, we're not a backwater state. Well, Senator Saland, we're not a backwater state, but we do know that discrimination exists also in this state. Senator Saland says, But we got such a great Court of Appeals. But the death penalty is initially approved by a jury. Court of Appeals deals with legal error. It doesn't deal with the judgments that are made and, in fact, this memorandum in opposition by, I believe the New York State Bar Association, it states, Of the last 19 people executed in New York's electric chair, 14 were African-American, one Hispanic. Continues, data is now undeniable that there is a greater likelihood of being sentenced to death if your victim is white than if your victim is black. The likelihood of a death sentence also increases if the defendant is black. This has been the experience everywhere, including New York State, in the United States where the phenomenon has been reviewed.

I think our job is not to be tough on crime, but to be effective. We've

tried many approaches and most of them have been to increase penalties, put more people in jail, to pursue the death penalty. And where are we? We have three times as many people in jail as when Senator Volker and I first came to the Legislature. We have a higher crime rate. People feel less secure than they used to be. To come and say, Well, we're going to cure this, we're going to come up with a death penalty and I realize, Senator Saland says, Well, we're not saying it's a panacea, but it will make a statement.

It will not make a statement. We know from other states, we know from our own experience, we know from what has happened in the last 20 years that what is required to deal with crime is to deal, yes, tough on criminals but at the same time to deal with those social conditions out of which crime gross, to deal with the moral attitudes in this country and that eventually I think is the most important thing that we can do as law makers, is to lead a moral concern and above all, as I said, to

affirm life.

The death penalty cheapens life. The death penalty says, life may be taken. The death penalty says government may kill. That's wrong. I just came on a visit to a country where the death penalty was applied to people because they were the wrong religion, because they were Jewish and millions were killed, and I don't want to draw any parallel between death penalty and this darkest of periods in civilization. Obviously not, but the point that we must remember is that once you say that there are some lives that government can take, yes, even lives from people who have committed all the horrible crimes, that it becomes harder and harder to draw a line where government may not kill and the only line that you can draw is to say that government must never kill, that life is too precious, even the life of a -- of a person who has committed a horrible crime, and it is not only his life, but it is the life of all of us who will be -- the life of all of us that will be damaged, that will be cheapened if

we take that one life by government saying, we have the right to kill.

The death penalty is wrong. It doesn't do what it purports to do, but it will lead to great harm and injury to our society.

ACTING PRESIDENT SEWARD: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

Justice Blackmun has been quoted several times here, and I'll indulge in that myself, but just one line really, I think encapsulates it all. He advised or he proclaimed that "from this day forward that I shall no longer tinker with the machine of death." That's a line that has been incorporated today, but unfortunately now that it has we will pay attention.

He also has invited us to create something of a public spectacle about this thing that we consider here today the death penalty, kind of get used to it, hold it as a thought, you know. We get visited by children today.

They want tuition assistance. They're knocking on our -- on our doors and they were handing us these but the answer, and if we're courageous enough, if we're brave enough to pass this today, why not invite them here and why not kind of participate in that which we're going to sanction in a little bit and pass here, and that is we would all witness someone, as Justice Blackmun so poignantly describes in his dissent, a convicted murderer, intravenous tubes, toxic fluid about to be injected, and we'd all be watching this. We'd have sides. We would choose up sides, who screams and cheers the loudest. Would we be proud of ourselves?

I think, if we think of it in that context, we may think a little more like Senator Marchi advises us to do about the sanctity of human life. But Justice Scalia, he would think us soft. He said, you know, the problem with this is that it leads to, he would really prefer to cite different cases, brutal, brutal cases. You watch them on TV; some people personally experience them, and that's really

tragic and unfortunate.

This guy Scalia says, take the 11-year-old girl raped by four men whose under garment was -- she was made to swallow. If, God forbid, that would be someone's daughter or son in this house, we'd all feel like our colleague, want to strike back, want to kill. Such was the case with Kirk Bloodworth. Convicted in 1984 in Maryland of the rape and murder of a young girl, Mr. Bloodworth was sentenced to death. He was granted a new trial and given a life sentence. He was released in 1993, when DNA testing definitely confirmed his innocence.

The same was true of Walter McMillan. Mr. McMillan was freed after six years on Alabama's death row when prosecutors conceded that he had been convicted as a result of perjured testimony and withheld evidence.

These are real. These are real issues, and my colleague has spoken to that as well. We do make mistakes. Some will say, well, that's just the chance we have to take in order to have a better society; we may have to

kill some innocent people in the process. This is not a courageous stance. You know, we talk about the racial issue, and we try to make it part of our history when, in fact, it's present, it's a very part of America; it's unfortunate but true.

In 1987, an African-American in the McCloskey versus Kemp case in Georgia and I'll submit to you that this is not just indigenous to Georgia, in the Baltis study which was produced as evidence at this trial, it was demonstrated that blacks who kill whites are sentenced to death at nearly 22 times the rate of blacks who kill blacks and more than 7 times the rate of whites who kill blacks.

Race is a factor. Low socio-economic status is a factor. The death penalty is applied in a discriminatory manner. This has been demonstrated. This has been documented, and among western democracies we have the dubious distinction of being the only one that wants to trade in our tradition of fairness and equity to experience more of what I

have shared with you.

Now, you know, who would we be killing? It's noted some of the shortcomings but from 1986 to 1991 murders committed by teenagers, 14 to 17, grew by 124 percent. Yeah, we'd be killing our children even if they were murderers. You'd be killing our children. That's who we would be killing.

Last year, when I first overheard this debate, I had never been a part of a governmental process, an official debate, but something stuck to me and it was the sponsor of this bill and I, too, have experienced his humanity, his compassion in this year and a half, but it was he who said that there are two kind of key votes that we take in this season, this six-month season, the death penalty and the budget, and things have been said about how much we spend.

Well, let me just tell you how much you're going to spend if you enact this legislation. You will spend millions and millions to kill people. Put them away without

parole, you spend $500,000, destine them to death, and you will spend millions and millions.

So it becomes a fiscal issue. Then why not invest in some of the communities, in some of these killing fields that are creating these problems in the first instance? Some will say, well, we're already investing enough without no return. Are we investing enough when we -- when women and children on Aid to Families with Dependent Children don't have enough to pay their rent?

We have frozen welfare shelter allowance here. There's talk about it being renewed, but already we're years behind. Deny children and women the down-trodden, shelter, create a violent context in their communities. Allow for the proliferation of guns. Don't listen to Senator Dollinger's signs, day 51, day 52, year two, year three and we won't do it and you're going to get more of the same.

You're going to get children killing children, blacks killing blacks, Hispanics killing each other, horrific crimes

being reported on the news when, in my view, it would be just as simple to do, as our good Supreme Court justice advises us, and not tinker with the death machine. In fact, I think it is so simple to really just take a totally different and radical view of this and go back to the very beginning.

Preventive measures, the causal effects that create the kinds of people out there, the kinds of children that would not hesitate to look you or I in the eye and put a bullet through our head. That says a lot about us. When we can just look to not deal with that issue and that problem but only to, as I said earlier, come back into a chamber, watch a 17 or 20- or 25-year-old squirm to death, and we would have been a party to that.

Mr. President, I can't be a party to that. I think there would be a better way and I hope that we will find that, so that this rhetorical routine of ours, as passionate as it is, as righteous as some people think it is, will end, and we'll start investing in human

life instead of death.

Thank you so much.

ACTING PRESIDENT SEWARD: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

My colleagues have all addressed a number of these issues with great eloquence, my colleague from the Bronx just a minute ago talking about the death machine, my colleague Senator Marchi presenting, I think, as Senator Leichter described, the moral compass upon which we as a civilization should approach the issues that are broached by this debate.

I'd like to just touch on a couple quick little parts of the bill, talk about a couple quick little topics, things that people haven't talked about before and then give you what I think might be an appropriate conclusion.

One, I guess I have read the bill as I've been sitting here for the last hour, Senator Volker, and I should add as a footnote,

I don't question the motive of anyone who favors the death penalty. Senator Saland's eloquent comments about his motivation, I think, speak for themselves, and I assume speak for others who favor the death penalty with such passion.

My concern instead with the death penalty debate is simply a matter of logic and a matter of effectiveness that I think should promote a vote against this bill. But I've read the bill. One of the things that strikes me about the bill is that there's a very quick appeal from the Supreme Court or the superior court to the Court of Appeals.

I would suggest that just the opposite is what you need in death penalty cases. What you need is time to transpire. You need an opportunity to let that possibility for perjured testimony to come forward, that possibility for recanted testimony to come forward, that possibility for new evidence to come forward. It's coming forward all the time, all the death penalty cases for which habeas corpus was an appropriate remedy in the federal

system. The reason why that happened is because someone in prison three or four or five or six years later, said, "You're right, I told a lie under oath when I said I saw someone shoot someone else. He wasn't there; I made it up because I wanted to get a plea deal from the prosecutor."

I submit that by accelerating the rate of appeals from the superior courts to the Court of Appeals, we may create the possibility for a greater perversion of justice than we currently have now if we allow the appeal to work its way through the Appellate Division into the Court of Appeals.

I'm also concerned, quite frankly, by the reduction in the habeas corpus procedure at the federal level because the possibility that witnesses will recant later on and come to the fore without the adequate remedy of habeas corpus either through the state system or through the federal system, we're not going to be able to rectify a mistake and so have the greater possibility that someone is innocent

will die as a result of this bill.

The other issue I raise with respect to this bill is that of cost. I don't notice a cost estimate in the bill. I sort of have leafed through, and I understand that there are procedures in this bill that will allow the courts to waive the fees for lawyers who are going to defend those who are accused of capital offenses and those who could be subjected to the death penalty.

I submit that those are going to prove to be extremely expensive cases. The process will be extremely expensive. The representation will be extremely expensive. If there are 2,000 capital offenses, we apply the death penalty to even 2- or 300 of those cases, the effect on the criminal justice system will be an enormous expense.

Who is going to pay? My understanding, based on my experience in the County Legislature and, if I'm mistaken, I'll stand corrected, is that the counties pay the cost for indigent fees, that they provide it

through property taxes. This becomes another form of mandate when we pass to the counties the responsibility for prosecuting a death penalty that the state imposes on them or gives them the -- the prosecutors, the option to explore. My suggestion is that that total cost is 25- to 50 to $100 million that we don't have in our criminal justice system currently and that we're not going to be able to find.

A couple other quick observations. My colleague from the Bronx mentioned a man named Walter McMillan. I'll tell you what Walter McMillan's lawyer said when Walter McMillan was freed of six years on death row. His name was Brian Stevenson. He represented him after four appeals to the Alabama Supreme Court had been turned down, after he had been told on four occasions that the Supreme Court would not hear his appeal and would not review the death sentence.

Brian Stevenson went to work, found witnesses in the prison system who recanted their testimony until finally on the

fifth appeal he was freed, allowed to go free. His lawyer said, "I think every one needs to understand what happened because what happened today could happen tomorrow if we don't learn some important lessons from this. It was too easy for one person to come into court and frame a man for a murder he did not commit. It was too easy for the state to convict him for that crime and then have him sentenced to death and it was too hard in light of the evidence of his innocence to show this court that he should never have been here in the first place."

Walter McMillan is not a single example. Senator Leichter, Senator Espada have pointed out that there are seven or eight people who have been found innocent in this state after they were on death row and after they were executed. Who's going to issue the apology to them when they've been convicted, tried, sentenced to death and are killed by the state? Who is going to apologize to their families that they happen to be an innocent victim of our zeal to prosecute and discontinue violent crime?

Senator Volker said one or two things that struck me and, again, I believe this is from a man who is passionately convinced that we have to attack our problem of crime. One is he said we need to send a message to our constituents, and I submit, ladies and gentlemen, that that's exactly what we do by passing a death penalty. We will send a message to our constituent that says, You can feel a little bit safer in your home tonight because we, the members of the Legislature, have imposed a draconian penalty on those who would take a life.

The problem is, we don't send that same message to those who would be deterred from criminal conduct. The message is not one that we send to the criminal and say, If you take a life, you forfeit your own. That will deter you from your crime. The evidence is replete that it is not a deterrent. The states that have the high death penalty, that have the death penalty have high murder rates.

There's evidence that a

prosecutor, I believe in the State of Texas, interviewed 240 people on death row, said, Did you know there was a death penalty? If you knew that you would forego your life, would you stop doing what you've been doing? And they said almost unanimously, No, I wasn't aware of that and, if it happened, I don't think it would have deterred me.

It doesn't work. It doesn't achieve that goal. The message that we send here is, frankly, the wrong message. Senator Volker and those who support this bill are trying to send a message to those would-be murderers to not do it. Instead, they're sending a message to the people of this state, you may think they're not going to do it. You can go to bed tonight thinking you're a little bit safer in your home, but the truth is that that same thing will not happen. We will make everyone feel a little bit more safe.

People will come to me and say, I'm glad we finally got the death penalty. I'll ask them, are you really any safer in your home

tonight? I would guess that they would say, "Yes, I feel a little bit safer." I will tell them that the truth is, you are not, because the death penalty doesn't work. It doesn't deter those crimes.

Senator Volker also mentioned one other thing when he talked about we need to give a message that we will take your life if you commit a capital offense. We have a way to take their life. We have a way to put them in a position where they will never commit a crime again. It's called life imprisonment without parole. We have a tool. It's been available. It hasn't been debated in this house, but it's a tool. It's readily available. It can be enacted, in my opinion, and signed by the governor of this state and become law and achieve the same goal that Senator Volker wants tomorrow if this body were to change its view that they prefer the death penalty, the draconian measure that's involved in that, rather than opting for life imprisonment without parole.

We can achieve the goal you seek. We've got a tool to do it. Why don't we do it.

I close with one other comment, a little example from literature that perhaps my colleague, Senator Marchi, will appreciate. It comes from the book THE ONCE AND FUTURE KING by T.H. White, the foundation for the musical CAMELOT.

There's a wonderful scene in there where the king talks about the use of might and right, and he debates what might should be used for, might for right, might makes right, right makes might. He concludes that the thing that ought to happen is that might ought to be used for right. He founds a whole organization, builds a round table and it's the mythical story of CAMELOT, convinces everyone that the thing to do is to use the power of might, the power of the state only for righteousness.

And what happens? He sees his entire dream go down the drain because of the

fact he sees a crime committed for which he cannot impose a penalty, for which he is afraid of imposing a penalty against his own queen and, in fact, the entire kingdom falls apart. The troops go to war, all of his once Knights of the Round Table. All they want to do is go to war and he has a scene at the tail end of that book where he meets with a young boy who comes to him and says, I can't understand what happens and why can't you now go out and preach to the knights that they should fight for right and that we should re-establish righteousness, and he stands up and he says to the little boy, No, no, no. What they want now is revenge, just pure and simple revenge, and he describes it as the most worthless of causes.

I submit that this bill is pure and simple revenge. The logic that drives it is flawed. The logic that drives it is overwhelmed by the preponderance, if not evidence beyond a reasonable doubt, that it will not deter crime, it will not make people safer in their houses and, in fact, this bill becomes a placebo to

feed to our constituents and not accomplish the goal of providing a safer place.

Let's get on with the more diligent business of looking for ways to prevent crime, of looking for ways to help children and families in distress, of providing the stability that people need to make the right choices in life so that they can make their right choices, avoid the dangers to society that are imposed when people are out of control and lose control and commit capital offenses.

I submit to you that revenge is the most worthless of causes. We only ennoble it today by passing the death penalty. Please, let's move in the direction of a society that understands these problems, will be effective with its punishment through life imprisonment without parole, will avoid a possibility that we will ever have a Walter McMillan in the state of New York and that no man will be innocently punished for a crime that he did not commit.

Mr. President, I urge all my colleagues to vote no.

ACTING PRESIDENT DALY: Senator Galiber.

SENATOR GALIBER: Yes, thank you, Mr. President.

One of the disadvantages, of course, of being on the tail end of this discussion is that most of the pertinent matters have been covered. I would like to just take this opportunity to voice my simple views on this issue. I can recall there was a time when we wouldn't even discuss this matter because folks were kind of set in their ways about how they were going to vote.

18 years ago is a long time to carry something. 20 years is even longer for a justice of the Supreme Court who accidentally, one of my colleagues called "irrelevant", and we know that that word is a horrible thing, irrelevant. We'd rather be charged with anything else except irrelevance.

I say to my colleagues who bring this bill to us each and every year that it's a time now when we should just let loose, let it

go. It no longer has any place in this society. We heard a bit about courage, and I don't have to live in the land of Oz and this is not the land of Oz where I'm looking for a badge of courage or any of my colleagues because they do, in fact, have that courage, but oak leaf clusters in some instances.

The mere simple fact is, and Senator Volker knows this perhaps better than all of us or at least equally as we know it, the ends or the end of criminal law is a deterrent factor, and if we do not have that deterrent factor involved, then we should let it go as we should now with this death penalty.

There was a study if we -- if you will, some months ago, if we're really to attack what Senator Marchi was mentioning to us, more than just a moral issue, is that this great young country of ours has the capacity to zoom in on problem areas. Young man, old man now, spends some 23, '-4 years incarcerated for a homicide. He has submitted to us a study where in 17 neighborhoods, 7 assembly districts, 75

percent of our prison population comes out of that area. Add Buffalo, it's about 80 percent of our prison population.

If we are really interested in doing something about the violence that occurs in our neighborhoods and our communities, can't we, will we, certainly we have the ability to zoom in on that particular area.

We've heard statistics about whether the death penalty is a deterrent. We've heard some talk about the minorities being punished more in our society. The statistics were -- have been said, mentioned very candidly by some but, when you look at people of color constitute approximately half of the nation's current death row population, white 1,180; African-Americans 946; Hispanics, 156, Native Americans, 42; Asians 15.

It's an indication that certainly there is a factor here that racism does play a role, and I've been around so long now that I'm a firm believer that the term "racism" perhaps is thrown around too much, but it does, in fact,

exist and, as long as it does, we have a system which is flawed.

So I say to my colleagues, those of us who are opposed to it, we certainly respect the Senators and colleagues who have a position, but I have no less courage than those. I feel that it's extremely important to respect, and we do, the other person's opinion about this very serious issue.

I used to tell people I had a simple solution. We can solve Senator Dollinger's problem, some problems with violence in my community and yours very simply. Drugs is an important factor in my community and yours. If it isn't spread to yours yet, it's on its way. But imagine if we had the capacity to hit the real issue and that's what this is really all about, outside of the inability to transfer good solid feelings about this particular issue, if we were to take the profit out of drugs for example, if we could waive a magic wand and tomorrow take the profit out, what we would do is really to accomplish two things: One, the

assault weapons and all the weapons that are being used today would be off the streets tomorrow, at least half of them would be. All the violence that is -- occurs as a result of this problem that we have would go away, and this debate would certainly be academic, certainly be academic.

But, Senator Volker and to Senator Saland, I understand where you are coming from, respect that position, but I happen to be one person that vengence is not in my heart and, if vengence is not there, then I can't comply, I can't go along with or can't believe that this is certainly the answer to solve some of our problems in our society, and that's what this is all about. It certainly is not a deterrent factor, and it's been proved, statistics have been given to you tonight to indicate very -- certain very -- certain jurisdictions within the United States where there is a death penalty that those statistics would indicate that certainly this is not a deterrent as far as the bill is concerned.

The safeguards that they have in the piece of legislation are not bad. Just the concept is wrong. I think there's another way to approach this, and it's been mentioned as far as life imprisonment, if you have that vengence in your heart, if you believe so strongly that you want an eye for an eye and a tooth for a tooth, you believe that persons should be punished, and certainly as we go through this debate, we play on the emotions of the time.

We pick up a paper and here is someone shooting up in the Long Island Rail Road and I brace myself a bit and grit a little bit and say, momentarily, I'm almost ready to change my position on the death penalty or, if you hear about the World Trade incident or if you hear about the recent Brooklyn Bridge incident, there's a built-in proclivity, a tendency, if you will, to say, let me change my position and if I thought, in fact, that it was a deterrent, I would.

But there are people who are changing. Views are changing, people are

changing, and I understand when you get locked into something, as Senator Volker is -- great person; I'm not massaging him. He knows how I personally feel about him. I just say that, Senator, there's a time we've got to let it loose. We've got to let it go, and we can't keep over it and over it and over again bring ing this issue to the floor because, singularly, because we want an eye for an eye.

I've been here long enough to watch these debates and listen to them very carefully, and we've gone from the Scripture to a racial issue to a number of other matters as causal factors as to why, how we interpret the Bible, where God said or Jesus said, this is the right way to go, and we use the Bible or perhaps misuse the Bible depending on where we are coming from, and that's not correct.

Morality, the moral issue that Senator Marchi speaks about is almost, when he finished I looked at the clock and I was hoping that the two hours were up so I could make a motion that let's stop this at this very

excellent point in time, because he said it all. But I am -- had to get up, very frankly, to say that, as we've watched this debate from year to year and as it comes up this year, we must recognize that this is not the way to go. This is not a deterrent. We're not going to stop by sending people to the chair.

One more example. I have someone who I have been working with now for over 14 years charged with a homicide, almost got the death penalty. Spent 23, 24 years in jail. At a particular point in time now where that person is going to be free because they found out that he's not the person.

It's the old story. It's not many persons, a handful. In the anxiety one day one of the proponents of the death penalty suggested it was in the debate that if we kill one or two and there was a mistake, so what? And that's how strongly that person felt. Still respect his opinion or viewpoint, but the death penalty, colleagues, is not the answer.

If we want to do something about

assault weapons and take the badge off Senator Dollinger's lapel, and if we want to do something about the serious violence that's touching all of our hamlets and villages throughout the state of New York, then let's do something about that. Let's do something about that.

We know the areas of concern. Let's zoom in on those areas and maybe get to the point where this debate on capital punishment will, by pure statistics, mean absolutely nothing because the violence -- and I'll close on this remark, this observation, Mr. President. The violence that is occurring in our cities, and in our hamlets and our towns, the ride-by killings, the random shootings, is all about narcotics. It's all about drugs. It's all about people renting, if you will, renting corners in my neighborhood on a daily basis to sell drugs.

If we solve that problem, then Senator Volker might very well be in a position because that's where the crime -- that's where

the deaths are, that's where the statistics are, to be able to suggest, as I've suggested early on, it's time to let this death penalty go.

Thank you, Mr. President.

ACTING PRESIDENT DALY: Senator Waldon.

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

Mr. President, my colleagues, I have listened to the debates on the death penalty both in the Assembly when I served there and here in the Senate. First, let me say -

ACTING PRESIDENT DALY: Senator Waldon, will you excuse us just a minute, please. I see the Deputy Majority Leader.

SENATOR PRESENT: Mr. President, may I have the last section of this bill called and allow Senator Kuhl to vote?

THE SECRETARY: Section 16. This act shall take effect -- take effect on the first day of November next succeeding the date on which it shall have become a law.

ACTING PRESIDENT DALY: Call the

roll. Senator Kuhl.

SENATOR KUHL: I vote aye.

ACTING PRESIDENT DALY: Close the roll and go back.

SENATOR PRESENT: Thank you, Senator Waldon.

ACTING PRESIDENT DALY: The roll is closed. Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

As I was saying, I've debated this, listened to the debates both in the Assembly and here in the Senate and, first, let me express my thanks to my colleagues who so passionately have stated their positions in both houses. I don't for a moment think that anyone here is participating in an exercise in futility or being frivolous in terms of what they say and the positions they take.

However, this year, I looked forward to this debate with some trepidation because I have heard it all, at least I thought I had, and as I knew the spring would come

followed by the summer, I knew this debate would arrive in our house, and I really just wanted to get it over with, to avoid it, because we hear the arguments time and again, but this year I had a thought which I will share with you, and that thought was, what would it take for me to support this legislation?

I've never ever in my mind's eye created such a thought before, and I said to myself in response, well, perhaps if this bill were not so inherently barbaric, and what do I mean by barbaric? We no longer flog as a punishment in this state or in this country. We no longer mutilate those who are accused of crimes in this state as punishment for crimes. Yet for the crime of murder, this bill would allow us to take a life.

From the year 1900 to 1985, there were 350 cases of innocent persons who were wrongfully convicted of capital crimes. 23 of them, as said earlier, were executed. All western nations have eliminated execution as a form of punishment for capital crimes and, if we

were to institute that in this state, we would be similar to Iran and South Africa and, personally, I find that juxtaposition a little bit difficult to accept.

Al Waldon could perhaps support this bill if it were truly a deterrent. Most murders occur when people are totally out of control, when all logical thinking has been suspended unless they are a murderer for pay and this calculated person figures that he or she won't be caught and they are doing it for normally significant sums of money, but all other people or most of all of the other people who commit murder do so as a crime of passion.

Yet, when we look at states like Florida, where three years after the resumption of the death penalty, the highest murder rate in recent history as experienced by that state occurred. Then I looked at some other information in terms of deterrence. The states of Virginia, Washington and Vermont are non death penalty states, and they are juxtaposed contiguous to the states of West Virginia,

Oregon and Maine, which are death penalty states and yet in those death penalty states the murder rates were significantly higher in terms of percentages than the non-death penalty states.

But I think when I thought about what would it take for me to change my position on this issue, what I focused on most was, if it were only fair, and could it be fair in America? In the year 1615 at a place that is known as Jamestown, Virginia now, a boat landed with 20 indentured blacks upon the boat, and some people characterize America's folly with racism beginning at that time.

From that moment on, even in our documents which created this nation, at the moment of their creation and the creation of this nation, people of color were not considered full citizens, and so I wonder, with a history like that, could, in 1994, anything we do regarding the death penalty be fair.

When I look at what happened at the time of the Civil War in this nation, when many blacks made it possible as Union soldiers

to win the war, though no one really won, but to win the war on paper against the South, the draft riots in New York City saw African American blood run down the gutter like a mighty stream.

We go to the first World War where many of our soldiers fought overseas valiantly, and yet lynchings were going on at such a high rate in this country that the Niagara movement was created and the NAACP was founded, and it wasn't just then. In more recent times in the second World War where, again, in a segregated Army, American, African American blacks paid the highest tribute to freedom by giving their lives and fighting valiantly on foreign shores; and yet we couldn't vote.

If I had been old enough to be a soldier at that time in many places in this country, I could not have had a drink of water at the same fountain as you. I could not have gone to the bathroom the same as you, could not have ridden on the front of the bus the same as

you, could not have had a quality education the same as you. And so I question with all of that, can this bill allow equity even in the terms of those who should be killed for violent capital crimes? And I believe not.

I believe that the juries will yet remain somewhat biased, so even the jury may not be able to render a fair verdict because someone comes to the jury setting with bias. It has been proven in various data, and I won't bore you by reading them, that in those cases where blacks have killed whites, the prosecutors asked for the death penalty 70 percent of the time, but when it is reversed and where blacks have been the victims of murders by whites, prosecutors across this nation have asked for the death penalty in about 17 percent of the time.

So, for a whole host of reasons, I cannot support this legislation, but primarily because I believe that, in this country at this time under our system, this law would be another example of inherent unfairness towards those who

are the down-trodden, who are the poor and who, like me, had ancestors come here on a ship from a place called Africa and paid some heavy dues in this country, and yet are not free.

ACTING PRESIDENT DALY: Senator Pataki.

SENATOR PATAKI: Thank you, Mr. President.

I know the hour is late, the debate has gone on over two hours, but I do feel compelled to just add my comments in support of this legislation.

Senator Waldon, I heard your comments, your categorization of this legislation as barbaric at one point earlier in your comments, and let me say I couldn't disagree more.

I think what is truly barbaric is what is happening out on the streets in the cities and communities and towns of this state. You know, we do not have a legal death penalty in New York State, but we do have a death penalty. We have a death penalty imposed by a

criminal element across this state.

It is the shopkeeper in Brooklyn who faces the death penalty every day at the hands of a robber. It is the cop out on the beat trying to control crime and patrol our streets and make us safe that faces the death penalty every day at the hands of a killer. It is the mother taking her kid to school who has to realize that, given the depraved people out on the streets of this state, her child might face an extralegal death penalty every day.

There's one group that is immune to that, the group that has been caught and convicted in our criminal justice system of capital crimes. They are immune. They do not face the death penalty, because what I believe is a misguided sense of justice. I'm not one of those who stands here and says, Wouldn't it be wonderful if we had the death penalty as the law of this state? Isn't it tragic that we need the death penalty to protect the honest people of this state? But I truly believe that we do, and I've heard the arguments that, well, it's not a

deterrent. I heard the statistics that were just referred to.

Well, the statistics show, I believe, that it is a deterrent when you see that the national homicide average went up 6 percent, but New York State's went up 23 percent. When you see in the states that did not enact the death penalty after the Supreme Court decision, two-thirds of them saw an increase in homicide, but in the states that did 60 percent saw a decrease.

So I think you can make that argument, but what really gets to me is when I see Senator Dollinger sitting there saying with absolute certainty, with complete conviction, the death penalty is not a deterrent. Well, let me ask you, Senator Dollinger, last year we had 48 cabbies, just to take one category, 48 cabbies in New York City murdered.

Can you tell me in all 48 of those cases, that criminal who was holding a cabby up for money and was in all likelihood not resisting but was killing a witness to a crime,

in every one of those cases it never dawned on them that this state does not have the death penalty? And can you tell me, with that certainty, that there aren't cases where that criminal would understand that the consequences of taking a life could be so great that maybe they wouldn't do it?

I can't sit here and say absolutely, positively as no one can, that we are going to deter this criminal or that criminal by imposing the death penalty, but I reject categorically the concept that the murderer in this state, as again was said earlier in this debate, is comprised of two different groups; it's the irrational person killing out of an insane impulse or a sense of heat of passion, or it's the contract killer killing because they are a hard-bitten murderer doing it for pay.

I have to believe, and I believe the statistics show, and I believe the people of this state understand, that there has been an explosion of the rational murder, the explosion

of the criminal who understands that by killing the witness, by killing the officer trying to make arrests that they face less of a risk of getting caught and no more in the way of a criminal penalty than the absence of the death penalty.

I believe enactment of the death penalty will save lives; particularly it will save the lives of the poor, the innocent resi dents who can't move away from the high crime areas, and I believe it is necessary for us to have a fair and just system of criminal justice.

Senator Gold referred to the tragedy that we all abhor that happened on the bridge in New York City a few days back. The family of Aaron Halverstam has asked and is looking for the prosecutors to find a way to bring that criminal prosecution in the federal court under the anti-terrorism statute because the federal laws have the death penalty. They believe that that -- that their family could only get justice if the case is not brought in

the state courts of New York but in the federal court.

Isn't it time we had a system of criminal justice where the victims and the families and honest people felt that they could get justice in the criminal justice courts of New York State? I believe it is. I believe passage of this measure is long overdue, and I believe, as Senator Gold said early on, we should all take another look. We should all be willing to change our minds. We should all listen to the argument on both sides, and I think, if you do that, you will cast your vote in favor of what I believe will save lives, in favor of passing and adopting this law.

ACTING PRESIDENT DALY: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

We've heard a number of people speak about the sanctity of human life and a number of people talk about the -- excuse me, Mr. President.

ACTING PRESIDENT DALY: Senator Hoffmann.

SENATOR HOFFMANN: We've heard a number of people talk about the sanctity of human life and their desire to spare lives and regard as sacred human life in the issue of the death penalty, but inevitably that sanctity issue deals with the perpetrators of murders whose lives would be spared by the continued prohibition against the death penalty in this state. Almost never do we hear the accounts of the victims whose lives would have been spared had the death penalty been in place in this state.

I did a little bit of research today to pull out the record on one of the most heinous cases that has happened in our life time, was referenced earlier by Senator Saland, I believe; I think one or two others may have mentioned it. But I want to take a few minutes today to remind my colleagues because I haven't spoken in about four years on this issue, but it's always very fresh in my mind when we have

the death penalty debate, that Donna Payant, a rookie prison guard, was murdered in New York State in 1981 by a man who was serving two life sentences for murder and was indicted but never tried for two additional murders of women in New York State. In addition, he was serving a third sentence for a kidnapping and rape.

His MO was particularly hideous. He mutilated his victims by biting and then murdered them. In fact, there was a great deal of drama during the course of his trial because the defense attorney worked very hard to try to prevent the teeth imprint of Mr. Smith's being admitted into evidence. They felt that it would be an unfair invasion of his constitutional freedoms to be subjected to that type of scrutiny.

In fact, I read with interest the court records at the time, and back on July 24th of 1981, after the defendant had been arrested for first degree murder, the prosecution moved for an order authorizing the acquisition of photographs and dental impressions of the

defendant's lower teeth and bite.

The prosecution moved for an order authorizing the acquisitions for the lower teeth and bite, so that a noted forensic expert would be able to analyze them in comparison to some other previous murders in which Smith had been convicted and also to analyze them in relation to the body of Donna Payant which was found mutilated in a landfill outside Green Haven Correctional Facility where at that time Lemuel Smith had been incarcerated.

But Mr. Smith resisted the motion through his attorneys, resisted the motion claiming that neither the court nor any other court had legal authority to compel the seizure of his dental records for indictment and that it would be a violation of the defendant's constitutional right to privacy, freedom from self-incrimination, and would involve a seizure without probable cause.

But the court -- the court at the time in Dutchess County felt differently and ultimately the records were admitted and, at the

hearing -- I'm reading from the court records at the time: At the hearing on June 12th, 1981, the prosecution called New York State Police Investigator Jack Fox, through whom a photo of the body of the deceased, Donna Payant, was introduced. The photograph depicts her as mutilated by apparent bite marks. The proof at the hearing further established that the medical examiner, Dr. Michael Baden, upon observing Donna Payant's body, contacted Dr. Lowell Levine, a leading forensic odontologist, I believe -- I hope I'm correct in the spelling.

Dr. Levine then testified that he examined photographs of the deceased for purposes of possible bite mark identification. At the time of the examination, Dr. Levine was acquainted with the defendant's dental characteristics since he had, in September of 1977, acquired and examined a cast of the defendant's teeth in an investigation of a Schenectady County homicide and, on the basis of his examination, had concluded that the defendant, Lemuel Smith, had imposed the bite

marks found on the victim, Marilee Wilson, in that previous homicide.

Dr. Levine, on the basis of these comparisons, concluded to a reasonable scientific certainty that the same person administered the bite marks to both Donna Payant at Green Haven and Marilee Wilson in Schenectady County. Dr. Levine added that he required the cast of defendant's teeth at present to confirm this opinion, whether the defendant's teeth were in the same position now that they were in 1977, and the point was made, Dr. Levine testified, that the process of casting and photographing the defendant's lower teeth is painless and risk- free.

It seems the court went to inordinate lengths to make sure that Lemuel Smith's rights were well protected and that he was not subjected to any undue pain. But what Donna Payant went through was something entirely different because Dr. Levine concluded after his examination with the use of all of his instruments, that the body of Donna Payant

revealed torn nipples and mutilation of the abdomen.

There was one distinctly discernible bite mark which formed the basis of his findings and proved beyond any question of a doubt that Lemuel Smith had murdered Donna Payant, mutilated her body and ultimately allowed it to be disposed of in a landfill outside the prison walls where he served time.

Had the death penalty been in place in 1981 in this state, Donna Payant would no doubt be alive today. She was a young woman at the time with three children. They're all now young adults.

I think the issue for us to analyze is not whether we are protecting the rights of every defendant. I believe that the courts of this state have progressed dramat ically. Of course, there have been times and there can be clear statistical evidence cited to show that there has been, in fact, unequal justice in some cases.

Of course, we know that

historically in the United States of America, going back to the times before emancipation, people of African-American and other minority status were not given the same fair trials that white Americans were given. Those are different issues than the issue of justice when there is indisputable evidence of first degree murder of a premeditated nature.

Senator Volker has developed, over the years, a narrowly drawn bill which deals exclusively with a category of killers for whom the death penalty is the only appropriate form of justice. But that was not in place then for Lemuel Smith, and no retroactive treatment of the crime today will ever change things.

But I thought everybody might like to hear the update on Lemuel Smith that ran most recently in the paper. Back in 1990, two months after prison authorities accused him of possessing a hot joint of marijuana, multiple murderer Lemuel Smith was transferred from Great Meadow Correctional Facility in Washington County to Attica, a move that enraged his

fiancee. State Department of Correctional Services spokeswoman characterized Smith's transfer as just routine, saying that it had nothing to do with his "pot" predicament.

Smith became notorious, et cetera, but I thought this was kind of inter esting. Smith wrote a letter while at Attica to the Superintendent there, Superintendent Hall, and Smith said in his letter to Hall, that his marriage, quote, would be a stabilizing force for me during my incarceration, though he lamented, We would receive none of the benefits of other married couples because of my Special Housing Unit time.

Lemuel Smith also discussed in his letter to the superintendent his artistic pursuits and said that he inquired -- and he inquired as to whether he could work on his ink sketches, and said, "I am trying to get a portfolio together so I can apply to an art school and possibly get a correspondence grant while I am in special housing unit."

Life goes on for Mr. Smith at

Attica. The taxpayers of this state wonder why. They wonder why there is no justice for the Payant family. They wonder why we seem preoccupied with the rights of the killers and have overlooked the rights of the victims of this state.

With adequate safeguards, with the narrowly drawn bill that Senator Volker has, we could prevent the type of killing in the future that Donna Payant experienced.

I will vote aye, Mr. President.

ACTING PRESIDENT DALY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

It's many years now that we've had this debate, and I have attempted from time to time to revisit the issue in my own mind at times when we're not debating the bill, particularly at times after I read of some pretty horrible, callous, brutal murders that do occur all too frequently in our state and in our city of New York.

I have decided that I no longer will engage in the statistical debate about deterrence or non-deterrence because I think that the statistics can be viewed from different angles, can be manipulated, can be contrasted in such a way to perhaps indicate, as some members here have, that perhaps the death penalty is a deterrent or has been in some states, and by other members to just as fairly depict that the death penalty is not a deterrent.

I don't think the stories and the statistics, the story of the deterrence or non deterrence is in what we know about people from common sense and some members have alluded to that. There are really only a few broad categories of murder. There's the impassioned murder, the murder that's the product of emotion, that's the product of spur of the moment passionate feelings, or perhaps the consequence of a drunken fight or whatever.

I think we all -- all perhaps recognize that the death penalty is not a deterrent to that kind of murder. I think

that's why you don't find that kind of murder covered by the legislation proposed by Senator Volker. We all recognize, whatever the penalty for murder is, people who commit those kind of homicides are not pausing for any due reflection upon the consequences of their act. That may be regrettable, but that's part of the human condition, and it happens and we do recognize, if you will, some sort of lessened moral culpability on the part of those people at least sufficiently so that on the justice side we don't think they merit that and on the deterrence side, I think we recognize that no matter whether the penalty was death or not, it would not deter that conduct.

Then you have the broader cate gory of premeditated murder, a large portion of that felony murder, and we have a legal doctrine that says people in the course of a robbery who kill someone are presumed, in effect, to premed itate the possible consequences of their action when they go into that store or whatever with a gun.

Yet I think we all recognize that very few perhaps drug-addicted robbers who, hand shaking, with a gun in their hands intended to fire the gun when they walked into the store. Not excusing what they do and it certainly is of little -- their immediate intentions are of little consolation to the victim or the victim's family.

But as to deterrence, I don't think the penalty is a deterrent to that conduct unfortunately. As to the contract killer, the cold, calculated, premeditated murderer that Senator Dollinger pointed out, and I think we all know it's true, those kind of depraved people, depraved mentalities, they don't think they're ever going to be caught. They think they've hatched the perfect scheme or, in the case of the professional killer, they think that it's their job; they're so good at it they'll never get caught.

Deterrent? No. We all know they won't be deterred, no matter what the penalty is. They don't think they're going to get 25

years to life under present law. They don't think they'll get a death penalty if there were a death penalty. They don't think they're going to be caught. So in my reflection upon this issue, I've decided, and I think to some degree, deterrence is not the issue.

But we've heard a lot about justice here, and I make an admission to the proponents of the death penalty, in the case of the premeditated murderer, there is an esoteric justice that says they deserve to forfeit their lives by that conduct. I admit that. We have all read of those crimes, and when you look at the crime, you think, gee, the person who did that, if they did that consciously, premeditat edly, doesn't deserve to live. And I accept that. I can accept that concept of justice, but I have to look at what that means.

How do we apply this? Where do we go with it? None of us are divine, Mr. President. None of us have that ability to look into the human mind or to look down upon past events and, with a great degree of certainty,

know what occurred. We have a system of justice in this country and in this state which certainly strives for perfection. It's probably undoubtedly as good as or better, certainly in the overwhelming majority of instances, than any other justice system that human beings have brought forth.

But nonetheless, it's human and anything that's human is fallible, and it's subject to making mistakes. It's subject to convicting the innocent on evidence. I'm not talking about, gee, there was no evidence, but he got convicted, because then it's very easy for Senator Volker or anyone else to say that's why we have a Court of Appeals. Of course, they're not going to let a conviction stand or an execution go forward if there's no evidence.

But what is evidence? In our legal system, the best form of evidence is considered eye witness testimony. That's the best form of evidence. It's direct evidence; it's not circumstantial. Yet I have seen repeatedly over and over again, psychological

studies and tests run that show -- and do any of you doubt it -- that in a stressful situation, that amount of time, that eye witness identi fication is extremely faulty, that at least as many people I.D. the wrong person as the correct person, and this is when they're being tested in a theatre and they know they're about to be tested, and they know the scene that's going to flash before them in three or four or five seconds is not a real shooting or a real murder and their life is really in danger.

Regrettably the real eye witness does feel their life is in danger and they're right. Yet we turn around and in the court sys tem say their identification, their testimony, is the best form of evidence and upon that we will convict.

Shall we abandon that rule of law? No. But should we view it as infallible? Should we view it as not subject to error in a large number of instances? That would be foolish.

Now, what's the point of this?

The point is, therefore, that under the best system of justice with the best safeguards, there remains the distinct possibility that an innocent person can be convicted and executed, and it's happened before. Why? You know, I'm not so worried about the prejudices of our Court of Appeals. Someone said before, Oh, all this stuff, Justice Blackmun's comments, and so on, that indicate that racial prejudice or other prejudices affect the outcome of these cases, result in convictions or perhaps in guilty people going free on occasion. Gee, we have a Court of Appeals. I'm not worried about the Court of Appeals.

The fact is we have a system of jurors who are from the public. They bring their everyday impressions. They bring their life experience. They bring their, if not -- if they suffer from no conscious or unconscious racial or ethnic bias, they do bring certainly understandably their own cultural bias, and we now have a state that's increasingly multi cultural. We certainly have that in the City,

immigrants from many different cultures.

In some cultures, if a defendant stands there or sits on a witness stand and stares at their feet, that is viewed as deceptive. An a juror could say, "He didn't even look me in the eye when he denied he did it. I don't believe him." Other people from other cultures could regard that as extremely respectful behavior as it is in some cultures that it's considered disrespectful and defiant to look jurors or judges straight in the eye.

We can't eliminate these cultural biases. We're dimly aware of them. Yet we vest in a jury made up of people from different cultures and from different cultures from each other and different cultures perhaps from defendants or witnesses, we vest in them the determination of things like credibility -- Gee, does the witness seem truthful based on their demeanor. It's for the jury to evaluate demeanor. Obviously, it's inherently faulty because of these different cultural biases.

Therefore, the risk that an

innocent person could be convicted, perhaps executed, remains. What has our Supreme Court of the United States done about it? Recognizing the public's understandable intolerance and the somehow freakish fact that we were in some states executing people 12 and 14 years after their crime, long after accomplices were out on parole, now, and the wheel man -- the shooter is out on parole, he's out on parole, but the guy who drives the get-away car is being executed 14 years later. We've had cases like that.

Does the public think that's right? No. The courts don't either. No one thinks that the swiftness of justice is that important. So how has the Supreme Court been dealing with it? Well, gee, we got to speed this up, or, well, gee, if the guy's lawyer didn't file the papers on time, too bad. Kill him! Gee, if the state said you have 30 days to find new evidence, if you don't find it, kill him! So what if you find out a year later he's innocent?

We had a case where they said, so

the innocence of the person isn't what's important. It's not legally relevant as to the inquiry in the federal courts. How freakish! In trying to address the clear injustice to all concerned, victims, society, as well as the criminal, the convict in a 12-year delay, they tried to speed it up and, in my mind and I think in any fair person's mind, thus increasing the risk that the innocent person could be executed.

Is this bleeding heart? No. My premise, if you recall, my colleagues, was, forget about deterrence. Who knows? Logically there's probably not any deterrence. We wouldn't have so many criminals. We wouldn't have so many people doing things they could get 20 years for if they thought about the penalty and could be deterred.

Justice though. Does the calculated -- calculating murderer who commits a premeditated, cold-blooded murder with no mitigating factors whatsoever deserve to die as a matter of justice? I submit yes, perhaps.

I'm willing to accept that, but the risk, the risk of error, the very high risk of the innocent being convicted and executed, which exists, belies that issue of justice. It suggests an even greater injustice, and it undercuts what, in my mind, is the only really true philosophical justification for the death penalty as a matter of justice. Not revenge, justice.

Unfortunately, we simply don't have nor perhaps can any humans implement a system of criminal justice that's fool-proof, that's not dependent on prejudices of the players, of biases, conscious or unconscious, of jurors and judges and courts, and of the unreliability of forms of legal evidence. Therefore, it can't stand on that foundation of justice.

I can't support a penalty like that. I can't see the rationale for it. It's the ultimate penalty. It's a penalty that cannot be corrected. It's a penalty that really can only be, in pure justice, imposed if those

imposing it are of divine origin, and I dare say none of us are.

Therefore, Mr. President, I'm still voting no on this bill:

ACTING PRESIDENT DALY: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Some six years ago, I stood in this very same position for the first time and called this our annual day of death. It was a day such as this, gloomy and overcast.

Mr. President, my position remains the same. I, once again, rise in an attempt to impart the mendacious context of this proposed legislation. As a long-standing advocate for the disabled and mentally retarded, I am greatly concerned that under the provisions of this bill, a jury could find that a defendant is retarded and still impose a sentence.

Historically, juries have sentenced the retarded to death. Do any of you really want the retarded deprived of life, even

though they themselves cannot quite grasp the realities of their situation? Many of you have heard of Evan Stanley, James Duprey Henry, Morris Mason, James Terry Roach, and Jerome Bowden. But if you haven't, for the record, these are just five men who were mentally retarded, yet executed.

Evidence has shown that a substantial number of those sentenced to death have a long history of severe mental illness. Yet, their mental impairment was not detected during their judicial proceedings. According to the New York State Defendants' Association, as of May 1989, there was a total of 8,376 mentally retarded persons convicted under New York State's sentencing statutes.

This statistic represents 18 percent of the Department of Corrections population and as of March of '89, 58 percent of males and 28 percent of females in the department of youth facilities were classified as developmentally disabled.

An 1989 Amnesty International

poll which was conducted by a renowned pollster, Patrick Caddell, indicated that 82 percent of New Yorkers overwhelmingly opposed the execution of the mentally retarded.

Well, here we are today, and we're still debating a death penalty bill which includes the mentally retarded. As long as those provisions are included in this bill, Mr. President, there is no way that I can possibly vote in the affirmative.

ACTING PRESIDENT DALY: Senator Volker to close.

SENATOR VOLKER: Mr. President, and I will certainly try to be brief, although I must say that this as usual, well, maybe not as usual in the immediate past years, I think that the length of the debate and the depth of the debate, let me just say, I think indicates something which all of us realize deep inside, that this is not a normal year. The anti-death penalty people realize very, very strongly that the possibility of an override this year is greater than it's been certainly in many, many

years. We all sense it. We know it. The public is incensed. The media has tried to turn off on this issue as they so often do, but they can't do it. It can't be done.

This is -- this is an issue that I think has come to the fore front. It is a dramatic issue. It is an issue that should be a dramatic issue. Unfortunately, a lot of myth - mythology has developed around it, and I guess it's the nature of our business that mythology develops, the mythology, for instance, in the logic of the retarded, the mentally retarded.

Let me tell you why you cannot eliminate the mentally retarded or the mentally ill. Ted Bundy, a mass murderer, one of the issues in one of his trials, and I say one of his trials because he was dragged all over the country and the reason he was dragged all over the country, they were trying to find bodies. They were literally and figuratively trying to find bodies, he killed so many people. They were trying him in different places and then not sentencing him to what he was -- to death or

whatever, on the basis of the fact that he would pledge to find some more bodies, and one of the trials they pointed out that he had a quirk, whatever, that would technically classify him as mentally retarded. This guy was brilliant in most things. He was a bright guy. Obviously sick. No one is sure to this day to say how many people he killed. Some people estimate 75, a hundred people. He was suspected in a killing in my own town, of two people, and I won't get into the details. It turned out that his buddy, who was another mass murderer who spent time in jail with him, apparently did the killing. My own law partner, who was the chief of police, investigated that case and found out, the reason he found out that Bundy didn't do it is they found out Bundy was in jail when the two people were killed, and then they finally figured out it was this other guy that did it.

I don't really think that anybody would truly recommend that we exclude a whole class of people that might include somebody like Ted Bundy.

You know, Senator Marchi, I must say to you that -- and you and I have discussed this ad infinitum because you are, since my - some of the other good friends who were here are gone, and you were a friend of my father's and we've talked about this many times, and I certainly, I appreciate, I want you to know, the reference to the moral fiber of this state, and I have -- and I happen to agree it's an issue.

I would point out to you several things when we deal with this issue, however:

Number one, and we have looked at this before, and it's something that the anti death penalty people, especially from outside, have told me that they are petrified of New York about, one reason why we get umpteen people here, and in the past we've had literally thousands of people here attacking this state because no state in the Union had a situation of what happened here in New York when the death penalty was abolished. No state in the Union that I know of.

In 1965, 837 people were

murdered. The next year it only went to 876; the next year 1,009; the next year 1231; the next year 1406; two years later 1832; two years later or one year later, 2,057. The murder rate in this state burgeoned dramatically when the death penalty was abolished, and some people said to me, Well, it was going up before that. Yeah, it would go up like 10 here and maybe 15 there. It never, never approached the numbers that occurred in this state when the death penalty was abolished.

The average murder rate, the murder rate in 1965 was 4.7 per 100,000. In 1992 it was 13.1 per 100,000. 1992, by the way, 2382 innocent people -- 2382 innocent people were killed. When somebody said here we might execute innocent people, we do it almost every day in this state.

And somebody referred to those two California professors who came in here and did a study which I can only describe as a shallow study that would have got them flunked out of law school had they been tested on it.

Their 23 people were researched by the U. S. Justice Department in a Stanford Law article. We did the research here; we gave up after about four or five of them, because it was so outrageous and so ridiculous, because it was clear what they had done. If somebody said they were innocent, they were innocent. Anyway, the Stanford Law article just totally debunked every one of those supposedly 23 innocent people.

I'm saying here today, and saying what I said before, those two California law professors came in here and did such a sloppy job of investigating cases, there has never been -- I believe it's something like 614 people were executed in the state. To our knowledge, there has never been even ample and solid proof that anyone who was innocent was ever executed in this state. No one has been able to produce that kind of evidence. It's a fact. Nobody's been able to do it.

If you want to look at some of those cases, those eight cases they came up with, two of them were in my home area. The

families involved in it were absolutely incensed. In one case they found -- they said this guy is innocent because, as one of his accomplices was being executed, he said, you know, Joe was really -- he didn't really do it, which is one of the tricks that some of these people, by the way, do.

The only problem was there were two independent eye witnesses and the other guy who was involved in the killing said, Well, of course, he did it. There was ample evidence, way above that.

I only point that out because somebody said that they interviewed some people in prison. Let me give you my story. I was at Attica one day here many years ago. There was a life termer standing next to me, and a reporter came up and the reporter turned to this guy and said, "Joe, what" -- I forget what his name was; I used to know who the guy was, he killed somebody in downstate New York -- anyways, said to him, "Joe, you're in for a life term. Would you -- would you really have been upset if there

was a death penalty in the state?" "Nah," he said, "that's baloney," he said, "I really, I'm much more soft now with this life term. I -- I really don't want to stay in prison; I would have been much happier with the death penalty." The guy turned; he walked away.

I said to him, Joe... he says, "Was I good; was I impressive?" I said, "Yeah, you were pretty good." He said, "You don't really believe that. I don't want to get killed." He said, "That guy believed it and he'll print it tomorrow probably in the New York Times."

Now, I don't know much about the Talmudic law. I don't know anything, in fact, and I can't -- I don't get into that stuff. I do know, however, that in the religions of the world, executions were far more commonplace than people would have us believe, and I don't want to get into that.

But I will say another thing about life without parole because, you know, Senator Hoffmann read something about one of her

other unfortunately famous killers. Now, let me read you a little bit about another one who is presently serving what amounts to a life term without parole: Willie Bosket, serving an original 25 years to life when he received an additional 25 years to life from Judge Francis Voight for the murder of a correction officer. Voight, in sentencing, commented, "I know you're going to kill somebody, so in sentencing you, I'm sentencing an innocent man to death." Baskin has vowed to flaunt the system and repeatedly threatens to kill a correction officer if the opportunity presents itself. At sentencing, he stated, "I laugh at you, I laugh at this court. I laugh at Mr. Prosecutor, I laugh at this entire system. The sentence the court can impose on me means nothing."

The real problem, my fellow Senators, is that sometimes -- and we are all guilty of it -- we all to a certain extent live in our own little worlds and some of us live in obviously different kinds of worlds. At one time I lived in a more violent world. I told a

story about the fellow who, well, without telling the whole story, however, I rounded up a fellow who had already killed somebody in Texas, had a warrant for his arrest. I knew he had said already that the next police officer that tried to stop him, he was going to kill him, and we knew he had a gun. To make a long story short I ended up having to arrest him myself and, as he spotted me as I came up to him, he, of course, immediately leaped for what I thought was the gun. It turned out it was the gun, and I stuck my gun in his ear. There's always a little bit of a deterrent to making sure that somebody understands that you're telling them the right thing. Under the seat was a .45, a loaded .45 automatic and he kept saying to me, "Dale, Dale, I wouldn't hurt you; I was going to give you my gun." I said, "Yeah, sure you were," probably bullet by bullet.

The rest of the story is, so that you know, we arrested him on the warrant and I charged him with -- oh, I don't remember exactly what I charged him with. He was in for a while

and he got bailed. Next thing I knew, about three months later we found two bodies in our own village behind a concrete place, and the story I heard immediately was, he was the one. He now spends 50 years to life in Attica Prison or in the prison system, writes me every once in a while letters asking me about changing the law so he can get good time.

The thing I'm pointing out to you is, here is a fellow who nearly killed me, killed, I believe, his girl friend in Texas, killed two people here in New York. He's still alive, he's still writing letters to the Legislature talking to us about good time, and we are saying to ourselves here, Gee, you know, you really shouldn't do anything about the death penalty because maybe, maybe we'll make a mistake.

My colleagues, let me just tell you this: We may have an imperfect system here, but there are people who can argue about us that we are imperfect here in our view of humanity and society. If we are truly, truly going to do

anything about the crime in our streets and particularly the crime of murder, we must -- we must enact the most drastic of measures. Not something we want to do, it's not; there ought to be a better way. My father said it years ago, all kinds of people have said it. The problem is, nobody's found a better way.

So unfortunately, what we have to do tonight and in the future when the Governor vetoes this bill, is to send a message to those that would kill and you could say all you want that it's never going to be a deterrent, but you have heard tonight in this chamber examples of people who had there been a death penalty would not have killed because they never would have gotten the opportunity.

ACTING PRESIDENT DALY: Last section.

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT DALY: Slow roll call.

THE SECRETARY: Section 16. This act shall take effect on the first day of

November next succeeding date on which it shall have become law.

ACTING PRESIDENT DALY: Do we have five Senators standing for a slow roll call? Slow roll call.

THE SECRETARY: Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Daly.

SENATOR DALY: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, I rise to explain my vote.

ACTING PRESIDENT DALY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I commend Senator Volker for triggering what I think is the most interesting debate, I think, year after year; this is the most interesting debate we have. I would only encourage my foes from the other side of the aisle, as I know we will lose this vote, but there are a whole bunch of issues we could have fascinating debates about, be they a gay rights bill, bias crime bill, campaign finance reform bill, Election Law reform bills, life imprisonment without parole, assault weapons, mail issues, there are all kinds of fascinating debates we could have.

I commend Senator Volker, although I disagree with him, I understand the passion which brings this issue to the table. Wish that the passion from the other side of the aisle would bring those issues to the table as well so we could have the same kind of fruitful

intelligent debate about the future of this state. If we did, we would make this Senate the best Senate in this nation, bar none.

Mr. President, I vote no.

ACTING PRESIDENT DALY: Senator Dollinger votes no.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: No.

THE SECRETARY: Senator Gold.

SENATOR GOLD: Mr. President, I'll try and be brief to explain my vote.

ACTING PRESIDENT DALY: Senator Gold.

SENATOR GOLD: Senator Volker says that there may be a better way but no one's found it. Senator, that's a credibility issue. You want to believe that life imprisonment without parole puts people away and makes us safe, it is a better way.

I've heard reference to the Halverstam family; I've heard many people talk about the fact that we've had a presidential candidate from Massachusetts who lost. Maybe one of the issues was this, because he couldn't answer it correctly.

I've heard Senator Hoffmann refer to whether or not you could use teeth prints; I don't oppose that.

But the bottom line here is, I want to thank some people for past conduct because you deserve my thanks. Senator Bruno and Cook and Daly and Goodman and Johnson and Lack and Levy and Marchi, Marino, Padavan, Stafford, Trunzo and Volker, together with a number of Democrats, I want to thank you, because in 1981 you voted yes and helped me pass a bill that allowed Isadore Zimmerman to sue the state for his 26 years of wrongful incarceration for a conviction of murder. Thank God he received a clemency the last minute before he went to the chair, and then it was determined that he was innocent, and you gentlemen along

with others in this house voted to allow him to sue the state for his damages.

I'm sure it distresses you as much as it distresses me that he only lived about six more months and, even though he received some benefit from the state of New York financially, you still took away -- we still took away 26 years of his life improperly and kept him in prison.

Ample and solid proof of innocence for those executed you said, Senator Volker. That is subjective. If somebody proves something to you and you don't want to believe it, all you have to say is, "I don't believe it." This happens in religious arguments every day of the week. You argue religion and then finally somebody says, well, I believe it and then that's the end of the argument and, if somebody shows you proof of innocence of someone who is executed and you don't want to believe it, you say, "I don't want to believe it," that's the end of the argument.

And the last thing you said,

Senator Volker, is that we should vote for the death penalty because there's someone sentenced to 50 years who writes and asks for changes in the law. Senator, he should write for changes for as many years as he wants. What are we talkin' about? We're not changing that law for a man who was killed and who is in prison for 50 years. Who cares?

There's a maniac in California who killed an actress and killed other people and he became, as I'm ashamed to say it, even a cult figure to some people, but he's in jail and he comes up for parole, everybody says, "You see that? He's up for parole. If we kill him he wouldn't be up for parole." But he doesn't get parole. It's a strawman argument.

The 2300 innocent people, Senator Volker, should be alive. They should not be killed, but whether their killers are executed or put behind bars and never see the light of day, we are still protecting society, except we have proven that we know what humanity is all about, and we know that we are more civilized

than the barbarians that have murdered.

I vote no.

ACTING PRESIDENT DALY: Senator Gold in the negative.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

SENATOR JONES: To explain my vote.

ACTING PRESIDENT DALY: Senator Jones to explain her vote.

SENATOR JONES: I suspect none of us who came here today really looked forward to this day. I've only had one other year where I was able to participate in this, and I will say the only thing I did look forward to was seeing a magnificent display of courage and probably a passion and caring for society as a whole that I have really had the opportunity to see, and I thank you for that, Senator Marchi.

If I were standing here today as a mother of a child who had been killed, I certainly -- there's nothing else that would assuage the grief in my heart except for that person to be killed.

If I were standing here today as a wife of a man who had been killed in a store by a robber, I certainly would feel the same way, and I don't blame anyone for feeling that way.

I guess if I were even politically a great strategist, I would raise both hands and say "yes" and sit down again. But I'm not any of those things. I see myself

as a legislator who has to look at society as a whole and say to myself, What can I do or what is it right for me to do to change the society and make it the way Senator Marchi describes it, or I should say envision it to be? And, for that reason, I have had an opportunity to read and study and analyze all the material and I can assure you I've spent many hours doing that, that has been shared with me on both sides of this issue, and it still says to me my vote is going to represent my best judgment.

I was willing last year to let the voters have that provided and I believe that that would happen if it were on the ballot that they also had all this information that is at my hands is make this decision today.

I don't want to be a part of a violent society, and I certainly don't want to be part of a society where the government also takes part in the violence. I want to be part of a seat free of that, and I don't think this is the road to get there.

I have to vote no.

ACTING PRESIDENT DALY: Senator Jones in the negative. Continue the roll.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

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

Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: No.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Marino, aye.

Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No. No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nolan.

(There was no response.)

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Ohrenstein.

SENATOR OHRENSTEIN: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Didn't hear you.
SENATOR OPPENHEIMER: No.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Pataki.
SENATOR PATAKI: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: Mr. President.
ACTING PRESIDENT DALY: Senator Paterson.
SENATOR PATERSON: This is my ninth year of speaking on the death penalty and each year I have argued in opposition to it and yet, when I heard about the massacre on the Long Island Rail Road, my instinctive reaction was that I hope that those individuals who were finally able to accost the individual who was the perpetrator would have killed him.
When I heard about the apprehension of the three suspects in the savage attack on the Brooklyn Bridge last week, I

really hoped that they would put them under the jail.

In spite of my moral opposition to the death penalty, that's how I felt. I don't really know how to reconcile that other than to say that those may have been my personal reactions, but as a legislator, I am sworn and have given an oath to try to make law and to fashion that law which will best adjust to our society; and so, for the reasons I think mostly stated by Senator Espada and Senator Waldon today, I want to vote no on this particular issue.

But I do want to add just there one point which is that a Marist poll that was released in the past few days stated that only 2.6 percent of the residents of New York State who were queried think that this is the most serious issue, and yet it is the issue that we seem to give the longest debate and it is the issue that we seem to spend a great deal of time and also challenge each other in the media.

I don't think that we can come to

a decision as to which among us are right and which are wrong. This is an issue of moral conviction where we are bound to respect the opinions and points of view of our debating adversaries, but I would hope that at some point in the rest of this session, we would turn our attention and perhaps wonder what the other 97 percent of New York State residents think of the critical issues in this time, particularly related to trying to stop violence in this state.

ACTING PRESIDENT DALY: How do you vote, Senator?

SENATOR PATERSON: Oh, I said that I was voting no.

ACTING PRESIDENT DALY: Senator Paterson voting in the negative.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

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

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Aye.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.
THE SECRETARY: Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
SENATOR WALDON: No.
THE SECRETARY: No.
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT DALY: Absentees.
THE SECRETARY: Senator Nolan.
(There was no response.)
ACTING PRESIDENT DALY: Results. Ayes 40 -- the bill is passed.
THE SECRETARY: Ayes 40, nays 20.
ACTING PRESIDENT DALY: The bill

is passed.

Senator Present.

ACTING PRESIDENT DALY: Senator Maltese.

SENATOR MALTESE: Mr. President, on Calendar Number 262, I ask unanimous consent that I be recorded in the negative.

ACTING PRESIDENT DALY: Senator Sears. Senator Sears.

SENATOR SEARS: Mr. President, I'd like to ask unanimous consent to be recorded in the negative on Calendar Number 257.

ACTING PRESIDENT DALY: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

ACTING PRESIDENT DALY: Senator Farley.

SENATOR FARLEY: Yeah, hold on. I have a motion on behalf of Senator Bruno. He wishes to call up his bill, Senate Print 6300-A, which has been recalled from the Assembly which is now at the desk.

ACTING PRESIDENT DALY: Secretary will read.

THE SECRETARY: By Senator Bruno, Senate Bill Number 6700-A, an act to amend the Highway Law.

SENATOR FARLEY: Mr. President, I now move to reconsider the vote by which this bill passed.

ACTING PRESIDENT DALY: Call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 61.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT DALY: Amendments are received and accepted. Senator Santiago.

SENATOR SANTIAGO: Ask unanimous consent to be recorded in the negative on Calendar Number 157.

ACTING PRESIDENT DALY: 157.

SENATOR SANTIAGO: And 289.

ACTING PRESIDENT DALY: Senator DiCarlo.

SENATOR DiCARLO: Unanimous consent to be recorded in the negative on Calendar Number 262.

ACTING PRESIDENT DALY: Is that Bill Number 262?

THE SECRETARY: 262.

ACTING PRESIDENT DALY: Senator Present.

SENATOR PRESENT: Hold it a minute.

ACTING PRESIDENT DALY: Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until tomorrow at 11 a.m.

ACTING PRESIDENT DALY: Senate is adjourned until tomorrow at 11:00 a.m.

(Whereupon at 7:27 p.m., the Senate adjourned.)