ALBANY, NEW YORK

May 2, 1994

10:00 a.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT SPANO: Senate will come to order. All please rise for the Pledge of Allegiance to the Flag.

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

In the absence of clergy, please bow our heads for a moment of silence.

(Whereupon, there was a moment of silence.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 1. The Senate met pursuant to adjournment. Senator Bruno in the chair upon designation of the Temporary President. The Journal of Saturday, April 30, was read and approved. On motion, Senate adjourned.

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

The order of business:

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Motions and resolutions.

Senator Wright.

SENATOR WRIGHT: Mr. President. On behalf of Senator Sears, I wish to call up Bill Number 6756, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT SPANO: Secretary will read it.

THE SECRETARY: By Senator Sears, Senate Bill Number 6756, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT SPANO: The bill is before the house.

SENATOR WRIGHT: Mr. President. I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT SPANO: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT SPANO: The bill

is before the house.

SENATOR WRIGHT: Mr. President. I now offer the following amendments.

ACTING PRESIDENT SPANO: So ordered.

SENATOR WRIGHT: Mr. President.

ACTING PRESIDENT SPANO: Senator Wright.

SENATOR WRIGHT: On behalf of Senator Lack, I wish to call up Calendar Number 561, Assembly Print 10481.

ACTING PRESIDENT SPANO: Secretary will read it.

THE SECRETARY: By Senator Lack, Senate Bill Number 7213, an act to amend the Uniform Commercial Code.

SENATOR WRIGHT: I now move to reconsider the vote by which this Assembly Bill was substituted for my bill Senate Print Number 2713 on April 25.

ACTING PRESIDENT SPANO: Without objection.

SENATOR WRIGHT: I now move that

Assembly Bill Number 10481 be recommitted to the Committee on Judiciary and my Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT SPANO: So ordered.

SENATOR WRIGHT: Mr. President. I now offer the following amendments.

ACTING PRESIDENT SPANO: Amendments are received.

SENATOR WRIGHT: Mr. President. On behalf of Senator Cook, on page 32, I offer the following amendments to Calendar Number 613, Senate Print Number 3202, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SPANO: So ordered.

SENATOR WRIGHT: Mr. President. On behalf of Senator Bruno, request we place a star on Calendar Number 418.

ACTING PRESIDENT SPANO: So ordered. Senator Johnson.

SENATOR JOHNSON: Mr. President. On page 29, I offer the following amendments to

Calendar Number 285, Senate Print Number 4369A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SPANO: So ordered.

Secretary will read the substitutions.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT SPANO: Senator Stafford.

SENATOR STAFFORD: Excuse me, please. I respectfully call an immediate meeting of the Committee on Finance in Room 332.

ACTING PRESIDENT SPANO: Immediate meeting of the Finance Committee in Room 332.

Secretary will now read the substitutions.

THE SECRETARY: On page 4 of today's calendar, Senator Farley moves to discharge the Committee on Banks from Assembly Bill Number 10684 and substitute it for the

identical Calendar Number 730.

Also on page 4, Senator Farley moves to discharge the Committee on Banks from Assembly Bill Number 11340 and substitute it for the identical Calendar Number 732.

ACTING PRESIDENT SPANO: Substitutions ordered.

Senator Present.

SENATOR PRESENT: Mr. President. Would you recognize Senator Skelos, please.

ACTING PRESIDENT SPANO: Senator Skelos.

SENATOR SKELOS: Mr. President. I believe there is a resolution concerning Senior Citizens Day at the desk. If we could have the title read, please.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative Resolution, by Senator Skelos and LaValle, congratulating Henry C. Pheiffer Jr. upon the occasion of his having been selected as recipient of the 1994 New York State Legislative

Award for Senior Citizen of the Year on May 3, 1994.

ACTING PRESIDENT SPANO: Question on the resolution. All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Present.

SENATOR PRESENT: Senator Stafford, I understand you have a privileged resolution.

SENATOR STAFFORD: Thank you, Mr. President. I understand we have a resolution at the desk. Could I have the title read, please.

ACTING PRESIDENT SPANO: Secretary will read the title of the resolution.

THE SECRETARY: Legislative Resolution, by Senator Stafford, proclaiming the week of May 15 through the 21st, 1994, as Medical Transcriptionists Week in the State of New York.

ACTING PRESIDENT SPANO: All those in favor of the resolutions, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Present.

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

ACTING PRESIDENT SPANO: Secretary will read the noncontroversial calendar.

THE SECRETARY: On page 17 of today's calendar, Calendar Number 432, by Senator Levy -

SENATOR PRESENT: Lay it aside for the day please.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 558, by Senator Hannon, Senate Bill Number

5206A, an act to amend the Real Property Actions and Proceedings Law, in relation to payment of rent in certain summary proceedings.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Levy.

SENATOR PRESENT: Lay Calendar 607 on the side for the day please.

ACTING PRESIDENT SPANO: Lay it aside for the day.

THE SECRETARY: Calendar Number 619, by Senator Skelos, Senate Bill Number 1296A, an act to amend the Vehicle and Traffic Law, in relation to distinctive license plate

for Gold Star Mothers.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 627, by Senator Saland, Senate Bill Number 3759A, an act to amend the Domestic Relations Law, in relation to orders for child custody and support.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 630, by Senator Rath, Senate Bill Number 7225A, an act to amend the Family Court Act, in relation to the return of children who have run away.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT SPANO: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator Padavan.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 654, by Senator Hannon.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

THE SECRETARY: Calendar Number 659, by Senator Seward.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT SPANO: Lay it aside.

That completes the noncontroversial calendar.

SENATOR PRESENT: Mr. President. May the Senate stand at ease for a few moments.

ACTING PRESIDENT SPANO: Senate will stand at ease.

(Whereupon, at 3:00 p.m., Senate was at ease.)

(Whereupon, at 3:44 p.m., Senate reconvened with Senator Kuhl in the chair.)

ACTING PRESIDENT KUHL: Senate will come to order.

Senator Present.

SENATOR PRESENT: Mr. President. Can we return to reports of standing committees?

ACTING PRESIDENT KUHL: Clerk will read.

THE SECRETARY: Senator Stafford from the Committee on Finance reports the following three bills directly for third reading:

Senate Bill Number 7962, by the Senate Committee on Rules, provide payments to municipalities.

Senate Bill Number 7963, by the Committee on Rules, making an appropriation for the support of government.

Senate Bill Number 7964, by the Committee on Rules, making appropriation for the support of government.

All bills reported directly for third reading.

ACTING PRESIDENT KUHL: Without objection, directly for third reading.

Senator Present.

SENATOR PRESENT: Mr. President. Can we have the third reading on those bills right now?

ACTING PRESIDENT KUHL: Clerk will read.

THE SECRETARY: Calendar Number 742, by the Senate Committee on Rules, Senate Bill Number 7962, an act on provide for payments to municipalities.

SENATOR PRESENT: Mr. President. Is there a message of necessity and message of appropriation at the desk?

ACTING PRESIDENT KUHL: Yes, there is, Senator Present.

SENATOR PRESENT: I move we accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: To explain my vote.

ACTING PRESIDENT KUHL: To explain his vote.

SENATOR GOLD: I have considered these bills and the impact on the people of the state, and I have spoken to the highest authority available, and the Comptroller of the City of New York said I should vote yes.

ACTING PRESIDENT KUHL: Senator Gold will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes 48. Nays 2. Senators Holland and Maltese recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 743, by the Senate Committee on Rules, Senate Bill Number 7963, an act making an appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity and message of appropriation at the desk?

ACTING PRESIDENT KUHL: Yes, there is, Senator Present.

SENATOR PRESENT: I move we accept the messages.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The message is accepted.

SENATOR PRESENT: Last section.

ACTING PRESIDENT KUHL: Last

section.

THE SECRETARY: Section -

SENATOR DOLLINGER: Mr. President. Mr. President, just one question on the bill please.

ACTING PRESIDENT KUHL: Senator Dollinger.

Senator Stafford, do you yield for a question?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR DOLLINGER: Thank you, Senator Stafford, for yielding. It is my understanding that this only applies to employees of the judicial and not any other state agencies. Is that correct?

SENATOR STAFFORD: That's correct.

SENATOR DOLLINGER: That's all I need to know.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Read the

last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 744, by the Senate Committee on Rules, Senate Bill Number 7964, an act making appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: Mr. President. Is there a message of necessity and a message of appropriation at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT KUHL: All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The messages are accepted.

SENATOR DOLLINGER: Mr. President. I vote against the acceptance of the message of necessity on this bill.

ACTING PRESIDENT KUHL: Senator Dollinger recorded in the negative.

Senator Jones.

SENATOR JONES: Yes, I would also like to vote in the negative, please.

ACTING PRESIDENT KUHL: Senator Jones recorded in the negative.

Message is accepted.

Clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49. Nays 2. Senators Dollinger and Jones recorded in the

negative.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: I ask that we reconsider the vote on Calendar 742.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration on Calendar Number 742.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is before the house.

SENATOR PRESENT: I understand that a substitution would be in order.

ACTING PRESIDENT KUHL: You are correct, Senator Present.

Secretary will read substitution.

THE SECRETARY: Senator Stafford from the Committee on Finance moves to

substitute Assembly Bill Number 11469 for Senate Bill Number 7962.

ACTING PRESIDENT KUHL: Substitution is ordered.

Read the last section.

THE SECRETARY: Section 2.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Stafford yield to just one question, so I make sure I know what is going on?

ACTING PRESIDENT KUHL: Senator Stafford, you are asked to yield.

Senator yields.

Senator Dollinger.

SENATOR DOLLINGER: Again, thank you, Senator Stafford for yielding. This is the Assembly version of the bill for the Medicaid payment; is that correct?

SENATOR STAFFORD: That's correct.

SENATOR DOLLINGER: Simply does what we did in the prior bill, except -

SENATOR STAFFORD: That's correct.

SENATOR DOLLINGER: Okay. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49. Nays 2. Senators Holland and Maltese recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Goodman.

SENATOR GOODMAN: Would you be good enough, please, to record me in the negative on Calendar Number 558, without objection.

ACTING PRESIDENT KUHL: Without objection, Senator Goodman recorded in the negative on Calendar Number 558.

Senator Present.

SENATOR PRESENT: Can we return to the controversial calendar?

ACTING PRESIDENT KUHL: Clerk will call the controversial calendar.

THE SECRETARY: On page 24, Calendar Number 636, by Senator Padavan, Senate Bill Number 3154A, an act to amend the Criminal Procedure Law, in relation to the defense of "guilty but mentally ill".

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Padavan, an explanation has been asked for.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

The issue of the insanity defense has been one that over a period of decades, if not over a century, has preoccupied -

SENATOR PRESENT: May I interrupt

you?

SENATOR PADAVAN: Certainly.

SENATOR PRESENT: Mr. President.

ACTING PRESIDENT KUHL: Senator Present.

SENATOR PRESENT: May I have the last section of this bill called and allow Senator Spano to vote.

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

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Spano.

SENATOR SPANO: Aye.

ACTING PRESIDENT KUHL: Senator Spano is recorded in the affirmative.

Roll call is withdrawn.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

I indicated, Mr. President, this issue of the insanity defense has preoccupied legal scholars and jurists for decades if not

for over a century.

ACTING PRESIDENT KUHL: Senator Padavan, excuse me just a minute.

I don't know whether you were having a difficult time hearing, but I certainly am. I think there is a lot of unnecessary noise and conversation in the chamber. Can we please settle down? Members take their seats. Staff take their seats. Show the Senator some respect.

Senator Padavan.

SENATOR PADAVAN: The first time that the issue of insanity as a defense in a criminal trial surfaced was in 1834 in England in the famous M'Naughten case, which then became referred to as the M'Naughten rule. Simply stated, insanity was indicated as a reason for that person being acquitted of the crime, in that case a violent crime, and, therefore, not incarcerated and in a brief period of time let free.

The laws of this state, indeed of every state in the nation, have provided an

insanity defense as a matter of law as well as a defense referred to as "incompetent to stand trial." The bill before us does not -- and I say this very early in our discussion -- does not repeal either of those statutes. An insanity defense would continue as would a pleading of "incompetent to stand trial."

In a successful outcome of such an appeal, a person would be remanded to a state mental facility for care and treatment for some indeterminate period of time.

What has happened, however, as the psychiatric community over a period of many years has matured, as the science of psychiatry -- though some would say it's more of an art than a science -- has matured, there have in the mind of many developed a sense of dissatisfaction with the manner and methods by which insanity defenses had been raised.

I first brought this concept, this bill, before this house a number of years ago, and it has been before you on four other occasions and on every occasion you voted for it

in terms of it being passed. The last time, in 1985, I advised you that seven states in this country had adopted an alternative verdict, "guilty but mentally ill." Since then, ten other states have done likewise. At this point in time, there are seventeen states that have that as an alternative verdict.

In addition, I might add parenthetically, three states have voided the insanity defense entirely. But that's not the issue before us.

In hearings and in discussions we have had over a period of years with judges, psychiatrists, they tell us quite candidly that there are juries that are torn between deciding whether or not a person is innocent by reason of insanity or guilty as charged. Those are the alternatives in such a pleading. They are undecided as to what way to go. They acknowledge to themselves that the person did a terrible thing, guilty of a violent crime or violent act; at the same time, they acknowledge there is a degree of mental instability. But

they have to decide whether to go one way or the other.

We now provide in this proposal -- this bill, a middle ground, where a jury or a judge may determine that the person is mentally ill but at the same time was not so incapacitated that he or she did not know the consequences of the act involved; and by so doing, that person would go to a prison and serve a sentence commensurate with the act involved, as similar to any other defendant in a similar case.

However, there are differences. First, that person would be placed in an institution, in a Department of Correction facility, and we have seven of them in New York State, that provide mental health care, that are associated with mental health clinics.

Secondly, when that person, assuming that he or she would be eligible for probation -- parole, rather -- the condition of parole would be that during that period of parole the individual would be required as an

outpatient to undergo ongoing psychiatric care.

Now, in a crime or in an incidence where probation -- five years, which is quite common -- would be given is the sentence, during that period of probation, this bill mandates that psychiatric care be part of that person's regimen during that five-year period.

And so the difference are quite clear. We think that this would add a far greater degree of common sense to what has become in too many instances a matter of confusion, a matter where the public has demonstrated -- and sometimes with, in my view, good reason -- dissatisfaction with how the law is being applied.

It would facilitate many pleadings, avoid many trials. It would give juries and judges an opportunity of doing what they would rather do. That, in essence, is the bill.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Would Senator Padavan yield, please?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator Padavan yield? Senator does.

SENATOR LEICHTER: Yes, Senator. Thank you for a very complete explanation.

I'm not clear what happens to those cases where presently the judge finds that the defendant charged with a crime is incapable of actually standing trial. Does your bill address that situation?

SENATOR PADAVAN: No. As I said at the very outset, Senator, neither the incompetency determination, which is usually a recommendation to a judge prior to anything having taken place, nor is the insanity defense violated by this bill. We do not eliminate either. So those two potential results still remain on our books.

SENATOR LEICHTER: In other words, if I understand what you are saying is that you are adding a new defense?

SENATOR PADAVAN: That's correct.

SENATOR LEICHTER: Somebody who may to some degree or extent understand the nature of his or her acts but nevertheless, was acting under, let's say, a compulsion or some other recognized ground of mental defect, that you are -- for that person, you are setting up this defense?

SENATOR PADAVAN: Right.

SENATOR LEICHTER: But you would still have the insanity defense for somebody who is totally bereft of all their senses and incapable of understanding the charges and so on?

SENATOR PADAVAN: Yes. That is, in my view, the more appropriate way to go on this issue. I think you would accept the fact that there are people whose degree of mental incompetence makes them totally incapable of knowing what their act is all about.

There have been, obviously, stories written on this, the most famous being Steinbech's "Of Mice and Men," where you recall

Lenny held that rabbit in his hand, squeezing it, not knowing that he was killing it. Later on, he did that to a young girl.

Those kind of situations still will exist, still should be provided for in law. And our proposal here in this bill does not in any way, shape or form eliminate that potential.

SENATOR LEICHTER: Senator, if you would yield to another question, please?

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: In the event where somebody pleads insanity in the traditional sense as it can be done now, could the judge then charge that the jury could consider that they could find him "not guilty by reason of insanity" or could find him "guilty but mentally ill"?

SENATOR PADAVAN: That's correct.

SENATOR LEICHTER: Thank you.

SENATOR PADAVAN: And while I'm

up, Mr. President, let me also indicate to those here that this legislation was supported by the former Attorney General Robert Abrams, who cited the need to make changes in the insanity defense and, as he stated, "to restore the balance between the State's obligation to protect its citizens, the rights of an individual defendant and society's moral obligation to ensure that those who are truly inflicted by mental disorders are not unjustly blamed and punished for their criminal conduct." I think that responds in part to your questions.

It is also supported by the New York State Law Enforcement Council, which, as you know, is comprised of the district attorneys here in New York State, and the District Attorneys Association, the New York State Association of Chiefs of police, the New York State Sheriffs Association, the Criminal Justice Coordinator of New York City, and the Citizens' Crime Commission, all of whom support this legislation.

ACTING PRESIDENT KUHL: Is there

any other Senator wishing to speak on this bill?

Senator Dollinger.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator Padavan van, do you yield? Senator does.

SENATOR DOLLINGER: Thank you, Senator.

This bill, because it tinkers with, to some extent, for want of a better term the means rea component of our criminal law system, raises some issues for me.

Could you tell me, if you know, how often is the insanity defense invoked in New York State, and how often do you anticipate that this defense would actually be used or this option would be selected by a jury in this state? Is there any way to predict that, Senator?

SENATOR PADAVAN: Senator, I

cannot give you off the top of my head, although I'm sure this is available, statistics on how often the insanity defense is raised.

But we have two cases right now that I read about, one a man out on Long Island -- I think his name is Rifken -- who supposedly killed 18 women. We have another individual on Long Island, as you know, was involved in the Long Island Rail Road shooting. In both instances, if I read the papers correctly, their defense will be insanity.

So, obviously, it's not something that happens with great rapidity, but it does happen; and when it does happen, it gets a great deal of attention; and in so doing, if not handled properly, can undermine, I think, the public's confidence in our criminal justice system. I think this measure would do an awful lot to help that, to prevent that from happening.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr.

President. Just one other question, if the sponsor will yield.

I note, Senator, that I guess the Department of Mental Health -- the Office of Mental Health and the Alliance for the Mentally Ill of New York State have opposed this bill, and at least there is a suggestion in the Office of Mental Health memo that this would create an entitlement to psychiatric assistance as part of the Department of Corrections or through OMH.

I just would be interested in the sponsor's response to that.

SENATOR PADAVAN: Senator, over a period of years, particularly when I chaired the Senate Committee on Mental health, there were commissioners who I spoke to who were in support of this legislation, and there were commissioners who were opposed to it. So, I don't have that particular memo in front of me, but I accept what you say as a matter of fact.

I've talked to psychiatrists some of whose entire practice centers about this issue and, in the main, most of them if not all

of them support this measure.

I really can't respond to your question. Obviously, this is something that's always been at issue. As I indicated earlier, I brought this bill up many years ago, four times, and the last time was 1985. But seventeen other states now have this -- the benefit of this statute. The Supreme Court in the Montana case, reviewed to the extent of allowing the state to eliminate the insanity defense entirely, which I again repeat, we were not doing nor would I want to do it.

So, obviously, an awful lot has happened in the last decade or so on this issue that brings us to the point we're at today and, hopefully, we will pass it, and it will become law in New York State. I think it's long overdue.

ACTING PRESIDENT KUHL: Senator DeFrancisco.

SENATOR DeFRANCISCO: This is probably the first time I've risen in the chambers where I really don't know how I'm going

to vote, but I do want to mention a couple of things that I think are relevant in people's determination in how to vote on this particular bill, and maybe I can clear up my own mind as I go through this process.

That additional option that a jury would have is not another defense; it's another option. It's not a defense raised by someone. Insofar as if you are found "guilty but mentally ill," you are still guilty and subject to the same prison term, but the first part of the prison term is served with mental health treatment being provided.

Now, I've tried a lot of cases on both sides in the criminal justice system as well as the civil courts, and it seems to me, although practically it makes a lot of sense when you hear the logic behind it -- seems to me this is another way to eliminate in practical terms the insanity defense. And the reason I say that is if someone plead "not guilty by reason of insanity," it's going to be a very difficult task for a jury to say "not guilty by

reason of insanity" when there is another option which will satisfy their mental process that, "Well, we really are giving mental health treatment to this individual but while he or she serves the entire sentence."

And that's to me a real problem, because once the jury has that option it's a good compromise that really puts the person away for the same time as if the person was guilty completely without this situation, where there's this not guilty by reason of insanity.

So, I've got a feeling - although logically this makes sense, I just have a feeling and this should be considered by those on this vote that as a practical matter it's going to eliminate or virtually eliminate the practical finding of "not guilty by reason of insanity," in those marginal cases, rather than giving the benefit of the reasonable doubt to the defendant is going to give benefit of reasonable doubt to the compromise; and, thereby putting the person in jail for the full length of time, maybe the first part of which is

getting medical treatment.

And what bothers me about that in light of the Lenny example, Lenny under those circumstances, from "Mice and of Men" would be in jail his entire life; and maybe the first few years might be some mental treatment, but that's the likely result of any case where you have this option.

And I would like to see, quite frankly, before voting on this what the empirical data shows in those seventeen states, whether what I suspect is true actually became true as that statute was being implemented.

So I just wanted to discuss that, and I'll figure out how to vote after I hear the rest of the debate.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would the sponsor yield for a question or two?

ACTING PRESIDENT KUHL: Senator Padavan, do you yield?

Senator does.

SENATOR PADAVAN: Pardon me?

SENATOR WALDON: Would you yield for a question?

SENATOR PADAVAN: Yes.

SENATOR WALDON: Senator, you said earlier that seventeen states have adopted similar legislation.

SENATOR PADAVAN: Yes.

SENATOR WALDON: Can you tell us the last year that this legislation or legislation of a similar nature was passed in another state?

SENATOR PADAVAN: 1985.

SENATOR WALDON: '85? My records show '84, but I'll accept that.

SENATOR PADAVAN: The last year it was passed in this house?

SENATOR WALDON: No. The last year it passed and became law in another state.

SENATOR PADAVAN: I have a list here in front of me, Senator. If you give me a moment, I will read down the dates. Alaska

1982. California 1984. Delaware 1982. Indiana 1983. I guess the last state that adopted this was 1985 of the seventeen that I've got listed.

SENATOR WALDON: Thanks, Senator.

May I ask another question, Mr. President?

ACTING PRESIDENT KUHL: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR WALDON: Senator, are we not asking the jury to make the decision with this legislation as to when someone is in need of psychiatric assistance? Doesn't this happen with this legislation that that decision is made by the jury as opposed to being made by medical professionals?

SENATOR PADAVAN: In every case involving a defendant's use of the insanity plea, psychiatric testimony, pretrial and during the trial, as you know as an attorney -- I

believe you are an attorney, are you not? I'm not. That's why I'm asking you -- is part of the procedure.

So the issue of psychiatric impairment is brought to the attention of the jury by experts during the course of the trial. Their determination will be as laymen, as most of them are. "Acquittal by reason of insanity," "guilty" or, under this proposal a third alternative, "guilty but mentally ill."

Should they decide on that third alternative, then mandated would be mental health care. But the issue of mental impairment would become part of the trial. Frequently, there will be psychiatrists representing the defense, a psychiatrist representing the prosecutor.

Quite frequently, in those cases that I've read about, the juries usually become confused as to the level of impairment, the degree of impairment, the efficacy of the insanity plea. Obviously, they do reach out. Senator DeFrancisco is correct; they do reach

out for an appropriate middle ground -- and I emphasize the word "appropriate"-- and this would provide it.

SENATOR WALDON: Thank you.

Mr. President. If I may, I have two more questions, if the Senator would continue to yield.

ACTING PRESIDENT KUHL: Senator Padavan, continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR WALDON: Senator, can you tell us in New York State over the last two or three years what percentage of people who have been tried under the circumstances covered by your proposed legislation were actually affected, meaning in 1990, how many people qualified under this?

SENATOR PADAVAN: There is no way I can answer that question, Senator. What I believe you are asking is how many people claimed the insanity defense, which would be the

first part of the question. Then you are asking how many would be covered by this statute, and there's no way to answer that. This would be a determination made by a jury. Items totally prospective.

SENATOR WALDON: I apologize for my error in not appropriately phrasing the question. Let me try again. If I may, Mr. President?

ACTING PRESIDENT KUHL: Please do, Senator.

SENATOR WALDON: In the State of New York in 1990, how many people were found not responsible who might also qualify for the legislation that you're proposing?

SENATOR PADAVAN: You say "not responsible," incompetent to stand trial?

SENATOR WALDON: Yes.

SENATOR PADAVAN: I do not know.

SENATOR WALDON: Last question, if I may, Mr. President.

ACTING PRESIDENT KUHL: Certainly, Senator.

SENATOR WALDON: Senator Padavan, can you tell us, please, in your own words what might be the fiscal impact on OMH, Office of Mental Health, if this legislation became law and it took the control of the treatment of these persons in hospital facilities out of the hospital facilities and into the prison system?

SENATOR PADAVAN: What would be the impact if they were taken out of the hospitals and put in the prison system?

SENATOR WALDON: Yes. That's what is going to happen here.

SENATOR PADAVAN: Yes, except if you recall what I said earlier, we have seven correction facilities in this state that have a direct relationship with OMH clinics. OMH still would provide and does today the mental health care for prisoners in general. We have many people who are incarcerated who have need of mental health care irrespective of anything we're talking about here today; either they had it when they were going in or they developed it while they are there. So I would say there's

really no impact on OMH should this become law.

SENATOR WALDON: Thank you very much, Senator Padavan.

Mr. President. When I have an opportunity, I would like to speak on the bill.

ACTING PRESIDENT KUHL: Senator Waldon on the bill.

SENATOR WALDON: Thank you very much. For the edification of my colleagues, in 1990, 25 persons qualified, as I understand this information, under the proposed legislation, in '91, 23; '92, 24; and in '93, 33.

I disagree with Senator Padavan, my colleagues. If you pass this legislation, there will be a dramatic impact on OMH and its ability to devise its budget, which is not a statement from Al Waldon but a statement from the leadership of the Office of Mental Health.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Seward on the bill.

SENATOR SEWARD: Thank you, Mr.

President.

My colleagues. First of all, I want to recognize Senator Padavan for his very persistent efforts to bring some logic and common sense to this whole area of the law over a period of a number of years, and I have long supported this type of legislation, and I'm very pleased this year to be joining Senator Padavan in co-sponsoring this measure before us. I also want to commend my colleagues in this house who, over a period of time, have actually passed this type of legislation.

Mr. President. I want to tell you and my colleagues why we must pass this measure again this year, and that I am very hopeful that it will be signed into law this year.

There have been some statistics thrown around here today and some very keen thoughts provided, but I would just like to take a moment to personalize this type of legislation.

In an incident right in my

district on October 20, 1992, in the small community of New Berlin in rural Chenango County, a teenager, April Dell'Olio lured her boyfriend, David Eccleston, to a secluded area before school and stabbed him to death. In fact, she stabbed David 22 times. The murder was planned in advance -- this all came out in the trial -- she contrived the opportunity and she also tried to cover her tracks.

Leaving David dead, she went on to school that day. The family grieved the death of a young man killed for apparently what turned out to be a jealousy over a wilting teenage romance.

What happened after she was arrested, though, caused even more pain and anguish to David's mother, who is in the gallery today, his younger brother, his family and friends, in that community in which he was raised. The verdict in this case, and in the end, was "not responsible by reason of mental disease or defect."

I think it's unthinkable. But

under the circumstances, the judge imposed the only sentence that he could for this outrageous crime and that was five years of outpatient therapy. Five years of outpatient therapy for the murder of a young man in the most brutal and callous way.

I don't think the verdict can be blamed on the jury or the judge or even the defense's use of some very confusing psychology and that type of testimony. I think the verdict was the result of an insanity defense law that we have in this state that places the jury in an all or nothing situation.

If there is some evidence of mental disorder and you couple that with a very confusing and complex and lengthy oral instruction from the trial court to the jury, it invariably -- and very often, I should say, leads to the insanity verdict; in that the condition is deemed to be temporary in nature, the defendant walks free, proving that in New York State, in this particular case, you can get away with murder.

Now, the sentencing judge, a Judge Kevin Dowd of Chenango County, said at the time of sentencing, and I will quote Judge Dowd, "I have never in my entire legal career had a case with more disturbing overtones than this one. A young man is dead, and I'm hamstrung by the law that treated with a psychiatric equivalent that April had a bad hair day on October 20, 1992."

Now, my colleagues, I'm not here to retry this case or to suggest that we should change the law because of one single case, but I do stand here to say that this case demonstrates, very clearly in my mind, that there is a very obvious omission in New York State law that we need to correct and to fill.

Now, the bill before us allows the jury to say very simply, yes, the killer or the offender, whatever the case may be, the killer was suffering from a mental disorder at the time of the crime, but it was not to such an extent that the defendant is excused from accountability and responsibility for a very

serious crime against an individual or society as a whole.

The bill simply provides a meaningful alternative, the middle ground, as it has been described here today, for the juries to choose instead of being forced to choose between "guilty beyond a resonable doubt" and "not guilty by reason of mental disease or defect."

It seems to me that the heart of the matter is that laws that diminish respect for our courts and our criminal justice system or those that contribute to negative public perceptions of the legitimacy of the law demand our very serious attention.

Mr. President. This bill before us does not radically overhaul the criminal justice system or the insanity defense as some might suggest. It leaves the insanity defense in place, yet it does introduce an element of common sense and logic to the combination of the law and psychiatry. So, most important, it will assure accountability for those who are, in fact, responsible for their actions.

Because of the local case that I have outlined for you today, in my area of the state, this legislation before us is being called the David Eccleston Act, not only because of that celebrated case but also because of the tireless efforts toward reform of David Eccleston's mother and family and other close friends in that community, their tireless efforts to push for these types of reforms in our New York State law.

So, Mr. President, for the sake of a public that sees our -- very often sees our criminal justice system as all criminal and no justice, for the sake of grieving families like the Eccleston family who will suffer a lifetime of emptiness and sorrow, and for the sake of justice of all concerned and for the sake of order in our society and a civilized culture where we should be rewarding virtue and penalizing wrongdoing, I would urge my colleagues to vote in favor of this legislation here today.

ACTING PRESIDENT KUHL: Senator

Gold.

SENATOR GOLD: Mr. President. I don't think it's any secret that I have a tremendous amount of respect for Senator Seward; and I think as everyone else in the chamber, we listened very carefully to what he had to say, and I understanding exactly where is coming from.

There is -- there is a movie we talk about every once in awhile, "Absence of Malice," and at the end there is that wonderful scene where the investigator from Washington is up and he is talking to everybody, and when they figure out how smart everyone is, there's that line where Paul Newman says, "Yes, everybody in the room is smart, but" and then he mentions the name of this girl and says, "but she's dead. Who do I go to see about that?" And the answer is, "Well, no one. I wish there was."

Senator Seward, I don't know what to say to the Eccleston family, and we wonder in this Legislature sometimes when these situations happen, what can we do, and unfortunately the

answer is: As much as we have power, we don't have the power to recreate life, as everyone knows, and there is nothing we can do.

But we all know, as professionals in this business, that very often bad cases make bad law. And I didn't sit in that courtroom, and I don't know what went into the jurors' minds or whatever, but from your perspective, Senator Seward, as you have explained it very articulately, it may be a case where a jury was wrong, I don't know. Juries are wrong from time to time.

Senator Volker has asked us on a number of occasions to pass a bill that would alter the way certain things happen in the grand jury because one assistant district attorney in Buffalo made a mistake on one day. And interestingly enough, every time that we debate the bill, we still go back to that one case. D.A.s, ADA's, aren't making that mistake any more; and as we, who have opposed that bill, have said, we shouldn't just shake up the system because there was one mistake.

Unquestionably, there have been people who have been subjected to a jury trial, and the juries under our existing law have found them "not guilty because of mental defect," and we can in fact, apparently, come up with those numbers, and Senator Waldon was very, very accurate in pointing out the really small number that are involved. When he said, for example, 25 in the year 1990, there were 202,000 criminal dispositions in this state, and 25 people were found by juries to not be responsible. That's something like, what is it, one tenth of a percent? Infinitesimal amount if you want to look at the numbers, and so it is in each year that the number where this happens is really extraordinarily low.

Now, the one figure we don't have which would be fascinating, and much larger I'm sure, are the number of cases where people have gone into court claiming this defense and juries have said no. Now, I make that point because it's something that we sometimes don't think about. We do know and we do hear about a case

where an individual is released because a jury makes the finding, but we don't hear about the others very often because it's just another convicted person.

I don't think there's anybody here that doesn't understand the very, very strong emotions that this whole situation brings about. I have great respect for my colleague from conventions, Senator Padavan, and of course I admire his tenacity. But the reason that this bill becomes so very important of our whole system of justice, and that has always been that people with criminal intent and criminal responsibility are found guilty; and where there is no criminal intent, things may happen, people may be responsible, but we have determined that they were not guilty of crime. And in the insanity situation, the issue has always been did the person have the mental capacity to be able to have that intent to understand right or wrong or whatever the other parts of that test are.

And so if we, in fact, were to go

along with this -- and I think Senator Waldon very well pointed out that it's been almost ten years since any state has jumped into this area. The question would then be, are we going to take people who do not have the capacity, according to a jury now, to determine criminal intent, do not have the capacity to make those criminal decisions and find them, nonetheless, quilty of a crime? Because that's what you are doing "guilty but mentally ill."

It is a very, very tough road in a situation where less than 1/100 of a percent of cases in New York are affected. And I might say that out of the less than 1/100 of one percent, we're not even claiming the juries are wrong in those cases.

Now, in the case that Senator Seward spoke about, number 1, the jury may have been wrong. It may have been the wrong thing to do. I don't know whether the other 23 or 24 cases that year were wrong or not.

But I would respectfully suggest -- and I understand that the family is here,

and I certainly wouldn't want them to think that those of us who may not agree with the change in the law do not have compassion for what happened that day, because that's not what we're debating here. But we are basically in a classic situation being asked to change the law because of one or two situations out of what is literally hundreds of thousands of cases that are brought before our courts.

The Office of Mental Health has filed in opposition to this. The Alliance for the Mentally Ill has filed in opposition to this, and I would respectfully suggest to my colleagues that we are here to do the best we can in terms of framing laws, and it is unrealistic to suggest that we are not human beings, that we do not bleed, that we do not have compassion and emotions for individuals in individual case. But I think that we are called upon every day to look further than that in terms of developing a philosophy of our legal system, and this is one of the situations where that delicate balance comes into play.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Mr. President. Senator Gold and as did Senator Waldon pointed out, and properly so, that the number of instances where the insanity defense is raised, successful or otherwise but even raised, are very limited. However, I would like to quote for your information a statement in the Attorney General's report, a rather lengthy report that he put out a number of years ago -- when I talk about the Attorney General, I am referring to Robert Abrams -- where he addresses that issue.

He says, "Some have argued in support of the insanity defense that the relatively small percentage of criminal cases resulting in insanity acquittals should not give rise to undo concern. This argument totally ignores the vital relationship between legitimacy in the law and public confidence in the legal process."

I think this is what was being said earlier by Senator Seward. It's not the

number of cases that are at issue here, successful or not, but it is the significance that those cases have in the mind of the public when they view the legal process and all the publicity that it gets, and I think that should be understood here.

Senator Gold also mention is that there are far greater number of cases where the insanity defense was rejected and that person went to jail, period.

I ask you to recall the question, even if the jury was uncertain of the degree of mental incapacitation, wouldn't it be far better that that defendant, when he or she went to prison, was mandated to receive some level of mental health care through the satellite clinics which we already have in place in New York State; and should that person go on parole as many do, that that mental health care would follow the individual so that he or she would not perhaps be prone to revert back to a former state and commit yet another crime?

Wouldn't it be far better to have

such a mechanism in place for, as Senator Gold properly states, the greater number of individuals where in the course of a trial the insanity defense was raised? And keep in mind the guilty but mentally ill opportunity provided for in this bill could only be utilized when the insanity defense is raised, not just in any case but in those number.

Final, let me comment about the memorandum from the Office of Mental Health that was referred to. They say that the insanity defense -- it's on page 2 of their memo -- is rarely used, and they are right. If it's rarely used, I fail to understand the logic of their contention that it would cost such a great deal of money for them to provide the care and treatment that a prisoner who was found "guilty but mentally ill" would require, because those individuals would have had to be a person who was tried having claimed reason of insanity as a defense. There is a contradiction there that I'm sure you will accept as a matter of fact simply reading the memo.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Was Senator Padavan concluding on the bill? If so, I will hold my comments to explain my vote. I don't mean to usurp his -

ACTING PRESIDENT KUHL: Senator Padavan was the last speaker, Senator Dollinger.

SENATOR DOLLINGER: I'll comment at the -

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Clerk will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day after it shall have become law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.

ACTING PRESIDENT KUHL: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: After listening to the debate, I think these issues

become much clearer in my mind. It's not an easy issue to deal with. It's an emotional one and an important one.

In fact for many, many years the M'Naughten rule, since the late 1800's, has been the rule and we have not been able to come up with one better in over a hundred years, and it results in very, very difficult problems on many occasions.

Right now, when a defendant raises the defense of not guilty by reason of insanity, there are two options that the jury can take, guilty or not guilty. By saying "guilty," implicitly the jury is saying there may be something wrong with this person, whether you call it mentally ill or whatever you want to call it, but not sufficient enough to meet the M'Naughten rule, not sufficient enough to relieve the person from responsibility.

If this bill became law and you raised the defense of "not guilty by reason of than sanity," there are three options, guilty, guilty, or not guilty. And the two first guilty

verdicts are guilty, straight guilty, guilty by reason of mental illness, and they both carry with it the same sentence. Both the same sentence. Maybe the first part of that sentence in the second option is in a mental institution or at a facility that treats the person for mental illness.

And I think that is very radical change in the jurisprudence of this state, and I think what would happen, in my humble opinion, is that what is held out to compromise is really just a second option to find the defendant guilty. And for that reason, unless I can see statistics that these bills come back to us that this has not happened in other states, that it's really in effect abolished the "not guilty by reason of insanity," I vote no.

ACTING PRESIDENT KUHL: Senator DeFrancisco in the negative.

Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President. This bill poses for me a whole

series of very, very difficult questions, and I applaud Senator Padavan for bringing the issue forward. I think the comments of Senator DeFrancisco, measured and tempered as they are, I think are right on the nose. I have sort of weighed whether I should vote yes or no on this bill and pitched it back and forth.

I would like to make one comment on something Senator Seward said; and that is, too often, at least in my experience in the criminal justice system the tendency on the part of the public is to view anytime that someone is tried for a crime and they are either acquitted or if their case happens to be dismissed in the pretrial suppression process because of the court concluding that materials were improperly seized oral statements improperly obtained, everyone is convinced that someone got away with something, "That someone got off," as I think it's often put.

I think when we look at who got off, we have to look at the important, if not vital principles that are vindicated in that

process, whether it's someone's constitutional rights, the constitutional rights that were the foundation of this country, the constitutional rights that are enshrined in this constitution of this state, important and significant as they are.

But I think the other thing that we have done in this state is we have taken our entire criminal justice system and based it on a theory of intent. Look at the statutes that we've passed, that this body has passed that are part of our law, and you will see that we measured the degree of a crime oftentimes by the intent that goes with that crime, intent to murder, intent to kill is a homicide, it's punished as a homicide. If you can't prove intent, we have criminally negligent homicide, we have reckless conduct.

All of those are based on the theory that you are responsible for what you do because your mind forms the idea and the intent to do it, the mens rea concept that we learn about in our first year of law school. It seems

to me that this bill seeks to create that fine line in the difference between the insanity defense and the idea of culpability.

While I applaud Senator Padavan for bringing the issue to the fore, it seems to me that we have not fine tuned our analysis from psychiatrists and psychologists to a point where they will be able, in my judgment, to make that very, very difficult differentiation between "guilty," "not guilty by reason of insanity" and this middle ground that I don't believe at this point the courts of this state can really deal with and the evidence will be able to be properly dealt with by juries.

I agree with Senator DeFrancisco. The notion may be confusing to the jury. We may be weighing it more heavily in favor of guilty. I think that those who are mentally ill and mentally not responsible are given the benefit of a reasonable doubt in this case.

I will vote no.

ACTING PRESIDENT KUHL: Senator

Dollinger in the negative.

Senator Seward to explain his vote.

SENATOR SEWARD: Yes. Thank you, Mr. President.

During the debate this afternoon, there have been many references to the other states that have, in fact, moved forward and passed "guilty but mentally ill" legislation, some seventeen across the country. It's been pointed out that no new states have been added to this list in a few years. But I also want to point out that neither have there been any states stepping away from the "guilty but mentally ill" concept. In fact, some states have even gone much further; and we've seen, as a result, some Supreme Court action in a couple of those states very recently.

And I would point out in those seventeen other states, these bills have been challenged in the courts in those states on a variety of grounds, whether it's that the "guilty but mentally ill" is cruel and unusual,

for due process, equal protection, many other grounds where the "guilty but mentally ill" legislation in those states has been challenged. And, in fact, in each case, the "guilty but mentally ill" legislation in those other states has been upheld, and I think that says a great deal in terms of the appropriateness of this legislation.

Believe me, as a co-sponsor of this measure and as close as I have been to a local situation as I have outlined earlier, believe me, I would be the last person that would want to inappropriately put someone behind bars and throw away the key or any of those situations. And this legislation does not do that. It simply says that in the cases where someone is deemed to be guilty but mentally ill we should in fact take care of, treat the mental problem that led that person to commit the crime. Let's treat the problem and then in fact if they recover, they would serve out whatever remaining time on their sentence in a correctional facility.

We're not trying to put someone inappropriately behind bars. We're trying to give someone who has committed a serious crime the treatment they need, obviously need, protect society from further ill, help that person protect society, and I believe those are all pluses, and that's why I'm supporting this legislation.

ACTING PRESIDENT KUHL: Senator Seward in the affirmative. Senator Marchi to explain his vote.

SENATOR MARCHI: Yes. Mr. President. That is a disturbing case, because it is difficult to fault someone to come up with the solution that's presented. But as I read it, we have in section 330.21(a) "that the defendant is guilty of a crime."

The word guilty is not coextensive with the word responsibility. Guilt implies a moral failure, a moral responsibility which was offended. It is more could extensive, the word "guilty", with a criminal intent, which is essentially the basis of the M'Naughten rule.

And then going on to (b) "That defendant was suffering from mental disease or defect but not to such an extent that he lacks substantial capacity to know or appreciate either:"

Now, what is substantial capacity? "... to know or appreciate either: The nature or consequence of his conduct... Does the nature and consequence of his conduct also carry with it the criminal intention to do something wrong, mala in se -- not mala prohibita, but mala in se.

Nature and consequence. If I have a gun and I'm suffering under this disability, I know the nature and consequence - and I know the consequence of my act if I know that if I pull the trigger that person is going to drop dead, but it still does not establish whether I had the criminal intent or not because of a failure or a capacity to make a moral judgment of the act that I am committing.

"...; or that his conduct was wrong at the time of the commission of the

crime." Now, we're getting down to the essentials; that is, mala in se. Not mala prohibita, but -- it may or may not offend mala in se. Mala in se means that the act was wrong.

When we go to the end on page 3 of the act, "As used in this section the term "mentally ill" means a substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgment, behavior or capacity to recognize reality or the ability to meet the ordinary demands of life." So it would seem to say that the person was not available or incapable of earning the title guilty.

I believe what is sincerely sought to achieve was to supply a pragmatic answer, but in a -- but I believe that it does fail in meeting the essentials, and perhaps it might be, in a pragmatic sort of way, if we really knew what happens. But even if we knew, it still doesn't answer my problem with respect to -- to establish the moral circumstances surrounding the taking of a life or the

commission of what would otherwise be a crime. And by crime, I can only make that coequivalent to the capacity to understand that the actor here is perpetrating an action that comes under the classification of mala in se, evil in and of itself, and it can't accommodate some of these other circumstances that would result in a different disposition.

So for those reasons, I would have to say no to this bill, but most perplexed in so doing.

ACTING PRESIDENT KUHL: Record Senator Marchi in the negative.

Announce the results.

Senator Leichter? In the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 636 are Senators Connor, DeFrancisco, Dollinger, Gold, Leichter, Marchi, Mendez, Ohrenstein and Waldon. Ayes 46. Nays 9.

ACTING PRESIDENT KUHL: The bill

is passed.

Clerk will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 654.

SENATOR NANULA: Mr. President.

ACTING PRESIDENT KUHL: Senator Nanula.

SENATOR NANULA: I would like to request unanimous consent to be recorded in the negative on Calendar Number 744.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Holland.

SENATOR HOLLAND: I would also like to be recorded -- with unanimous consent, I also would like to be recorded on the negative on Calendar 558.

ACTING PRESIDENT KUHL: Without objection, Senator Holland will be recorded in the negative on Calendar Number 558.

THE SECRETARY: Calendar Number 654, by Senator Hannon, Senate Bill Number 277,

an act to amend the Administrative Code of the City of New York.

SENATOR CONNOR: May we get one day on this?

SENATOR PRESENT: Lay it aside.

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

THE SECRETARY: Calendar Number 659, by Senator Seward.

SENATOR GOLD: May we lay it aside for today, please?

SENATOR PRESENT: Lay it aside for the day.

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

Senator Padavan.

SENATOR PADAVAN: May I be recorded with unanimous consent in the negative on Calendar 558.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Present, that completes the controversial calendar.

SENATOR PRESENT: Mr. President, any housekeeping? Mr. Cornell got everything up-to-date?

ACTING PRESIDENT KUHL: Nothing at the desk, Senator Present.

SENATOR PRESENT: Mr. President, there being no further business -

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT KUHL: Senator Galiber.

SENATOR GALIBER: Could I have unanimous consent to be voted in the negative on 636.

ACTING PRESIDENT KUHL: Without objection, Senator Galiber is going to be recorded in the negative on Calendar Number 636.

I believe that concludes it, Senator Present.

Senator Present.

SENATOR PRESENT: Mr. President. There being no further business, I move that we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT KUHL: Senate

stands adjourned until tomorrow at 3:00 p.m.

(Whereupon, at 4:56 p.m., Senate adjourned.)