ALBANY, NEW YORK

January 24, 1995

3:01 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and repeat with me the Pledge of Allegiance to the Flag.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, January 23rd. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Friday, January 20th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communication and reports from state officers.

Motions and resolutions.

Senator Bruno, are you ready for the Resolution Calendar?

SENATOR BRUNO: Yes, Madam President. I would appreciate a reading of the Resolution Calendar.

THE PRESIDENT: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, are you ready for the calendar?

SENATOR BRUNO: Yes, Madam

President. We would like now to take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read, please.

THE SECRETARY: Calendar Number 3, by Senator Kuhl, Senate Bill Number 515, an act to amend the Agriculture and Markets Law and the Economic Development Law.

SENATOR CONNOR: Lay it aside for Senator Leichter.

THE PRESIDENT: Lay aside the bill, please.

THE SECRETARY: Calendar Number 7, by Senator Levy, Senate Bill Number 331, an act to amend the Vehicle and Traffic Law, in relation to distinctive plates for police officers.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 9, by Senator Holland, Senate Bill Number 143, an act to amend the Penal Law, in relation to criminal possession of public assistance identification cards.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Bill Number 197, an act to amend the Penal Law, in relation to

resisting arrest.

THE PRESIDENT: Read the last section.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: Lay the bill aside, please.

THE SECRETARY: Calendar Number 14, by Senator Holland, Senate Bill Number 213, an act to amend the Penal Law, in relation -

SENATOR CONNOR: Lay aside.

THE PRESIDENT: Lay the bill aside, please.

Senator Bruno, that completes the non-controversial reading of the calendar.

SENATOR SKELOS: Madam President, we'll proceed to the controversial calendar. At this time, with the consent of the Minority Leader, I'd ask that Calendar Number 14 be read for the purposes of Senator DeFrancisco voting.

THE PRESIDENT: The Secretary will read, please.

THE SECRETARY: Calendar Number 14, by Senator Holland, Senate Bill Number 213,

an act to amend the Penal Law, in relation to the validity of a license to carry or possess a pistol within the state.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Withdraw the roll call.

SENATOR SKELOS: Madam President, if we could now lay that bill aside, and we'll proceed to the controversial calendar regular order.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 3, by Senator Kuhl, Senate Bill Number 515, an act to amend the Agriculture and Markets Law and

the Economic Development Law.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take -

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would we be willing -- may we have an explanation on this bill?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Mr. -- Madam President.

This is a bill that is not unnew to this house. It was presented to this chamber last year and passed overwhelmingly. It's a bill that essentially creates an economic vehicle within the Department of Agriculture and Markets.

For all the members' information, there is no appropriation attached to this particular bill because there is no acknowledged absolute dollar exact monetary need that's been

identified at this point. So the bill creates a mechanism, a foundation, by which we in this state can attempt to promote agriculture and particularly the agribusinesses in this state.

SENATOR LEICHTER: Yes, Mr. President -- I mean Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I yield to Senator Leichter, Madam President.

SENATOR LEICHTER: Yes, if Senator Kuhl would be so good as to yield?

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: I voted against that bill last year and one of my concerns, Senator Kuhl, you've touched on, which is that you impose an additional function on a governmental agency but you fail to provide the money.

Last year, I don't know that we debated it, but since I know you to be a candid person, as you just proved now, you said, Well,

we haven't figured out how much it's going to cost, but it would seem to me, Senator, this admission that there will be some expense and some cost imposes an obligation on all of us, if we think it's worthwhile, to come up with the money to fund it.

So my question to you is, what's the value of doing this if we don't provide the money which is going to enable it to be done?

SENATOR KUHL: Well, Senator, I think perhaps you're confusing what your concern is with what the intent of the bill is.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: The bill, if you can think of it in these terms, would essentially define the job responsibilities of individuals within the Department. It specifies as to the kinds of things that they should be looking for -- the vehicles -- and provides vehicles by which they can provide funding. However, there is no funding appropriation, but there's no funding appropriation, which is the second step, because what we don't know is what

the identified need is.

In more practical terms, we have noticed in the western part of the state and actually throughout the entire state, that we have lost significant agribusinesses. Food processors have left this state for a number of reasons, and what that does is, it essentially removes a market for many of our farmers. If our farmers can't get their food to market, so to speak, they can't sell it. So, if they can't sell food, then they operate at a deficit and not a profit, and they go out of business.

The agricultural business is such a core, such -- so much the fabric of the land scape of rural New York State that it needs to be protected. It needs to be developed, and what this bill does is essentially create the mechanism that would allow for the long-term development. It does not put the dollars into place to provide funding or the kinds of support for identified needs, but it does allow and does direct the Department of Agriculture and Markets to, in fact, investigate the need, identify it

and then come back to us and tell us, This is what we need monetarily to support this industry.

SENATOR LEICHTER: Yes, Madam President.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If Senator Kuhl would continue to yield, please.

SENATOR KUHL: I'd be happy to.

SENATOR LEICHTER: Senator, I understand. You're really doing, it seems to me, two things here. One is you're telling the Department, take a look and see what needs to be done to develop agri... -- agro... is it agribusiness? However you say it.

SENATOR KUHL: Agribusiness.

SENATOR LEICHTER: O.K. -- and develop that program.

Secondly, it seems to me that you also establish in this bill the elements of that program that's in your Article 14A, so that you do more than just say to the Department to study

what should be done. You also point what you would like supported in that study, which is the establishment of a program within the Department.

Is that a fair characterization of the bill?

SENATOR KUHL: We set up the guidelines, Senator, by which we want to see the Department establish this program, and that's what Article 14 is all about, O.K.? But admittedly, we don't provide the funds for them to be able to carry that out.

Essentially, again, we're going back to creating job descriptions for people within the Department. We know that there's opportunity at this point for restructuring. This new administration is looking at restruc turing, shrinking down, making things more efficient, and we know that this process has been gone through by the most -- well, it's now outdated -- the Department of Commerce, when we changed and consolidated departments there and created mechanisms for the enhancement of the

manufacturing industry. The agricultural industry was neglected. It was never looked upon and never dealt with the same way that those industries were.

And so what this is, is a kind of similar type of consolidation within the Depart ment, although it doesn't talk about personnel, it doesn't talk about dollars for financing. It essentially creates a job description within the Department for a program that we want developed down the line.

SENATOR LEICHTER: Senator Kuhl, if you would continue to yield.

SENATOR KUHL: Certainly.

SENATOR LEICHTER: You state, you know, that we're trying to reorganize government. We're finding such wonderful names like reinvent government, and so on, and there's a lot of usage of the word "lead", which you just used in your description.

The fact of the matter is you're adding to the Department of Agriculture. You're giving them, if you will, a new function.

There'll be a new office. Once, when this is funded, there'll probably be a new title, Assistant Commissioner for Agribusiness, and there'll be -- you'll have to have a few assistants and other people.

By the way, I think you're right. I think we should be doing this, but don't tell us that you're making government leaner or more efficient, less costly. In this instance, you're probably making it more costly and it's worthwhile, but let's admit it. Let's say what it is. I think it's important. It should be done.

Isn't this going to impose an additional function and duty and, therefore, cost to the Department?

SENATOR KUHL: This will establish a mechanism, again, Senator, that will allow for economic' growth in the agricultural industry. It's the one thing that we've noticed in the development long term of programs that I've had in the Agriculture Committee for eight years now, and that has been that there has been

virtually no growth in the agricultural industry. Part of that has been for the failure of the state to actually support that industry and to work with that industry to try to create new jobs.

What we want to do in this state, Senator, is to create jobs. We want to put people to work. We want them to pay their fair share of taxes, and this bill does not do this. This just develops a responsibility within the Department that they have to carry out. I would expect, with the great minds that are there op erating at the department, that they can handle this responsibility. It's not so overwhelming because the needs haven't been identified. We don't know whether it's just one processor that needs help out there or whether it's a million, and I doubt it's a million because there aren't that many in the state any more.

So the defined -- the need is there. We know it's there. It needs to be worked on, to be developed. We think this program will do it.

SENATOR LEICHTER: On the - Madam President, on the bill.

I agree almost with everything that Senator Kuhl is saying he wants to do. I just wish he really did it, that he just didn't talk about it, and I think we can be honest, Senator, in going to the public and saying, we're going to do this because it's going to provide an important service and it's going to create more jobs, and it's going to lead to a healthier economy and, you know what, it's going to cost money. It's going to cost money in the initial steps to get this done, and I wish that you would say that, and I wish you'd had an appropriation here.

The only reason I voted against it last year, and I'll probably vote against it this year, is because I don't think we're being fully honest with the public. I think we're going to tell them these things need to be done, then I think we've also got to say they are going to cost money, and I know that we have a governor now who says that he's going to cut and

slash, and so on, and we're all going to be leaner and we're going to be able to do more. But sometimes you can't do more with less, and there are things that need to be done.

You pointed out a perfectly correct area where we need to provide -- we, the state of New York, need to provide more help. Agribusiness is one of the important growing elements of world commerce. We ought to be doing more about it, but we're not going to do it unless we're willing to spend some money for it -- and it's not evil. It's not wrong. It's the honest thing to do. It's the good thing to do, so I would like to be supporting this bill with an appropriation and, Senator, you could go down to your former colleague, now the distinguished governor of this state, and you would say, This is money worth spending. Let's not be ashamed to spend money to help the people of the state of New York; and I'm sure there'll be other occasions that will come before us where I would hope that he would follow that precept.

So, Senator, I'd support that bill if that appropriation were in there for really accomplishing what -- the very worthwhile goal that you have. I think without money, without an appropriation, unfortunately, I think this is going to be a dead letter.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I would ask that Senator Kuhl yield for a question.

SENATOR KUHL: Be happy to.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

Let's assume that Senator Leichter is not correct, even though he makes a very valid point. Let's pretend that Senator Leichter is not correct. In spite of the fact that I agree with him that this kind of a creation of a center of agribusiness development would actually create a cost just through its

institutionalization, but if it doesn't create a cost, my question to you is, that since there's already staff and there's also regulation that seems to indicate that this function is already caused -- is already performed in the Department of Agriculture and Markets and that the Department of Economic Development also has staff that performs what seem to me to be the definition of what you're seeking in this bill, if that's the case, then and there's no need for an appropriation, I'm just asking what was within your contemplation when you wrote the bill? What is it that you're actually trying to accomplish by putting this bill in?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Senator Paterson, just to repeat, I view this process of the creation of agribusiness development programs as being more than a one-step process. I view this as being a multi-step process.

First of all, you have to create some vehicles because I -- I don't assume nor will I pretend, because it doesn't exist, that

there is direction within the Department of Agriculture and Markets nor within the Department of Economic Development, that essentially establishes programs that are beneficial to agribusinesses in this state. That has not happened.

Agriculture has been specifically excluded from those types of developmental programs. This is a bill that would allow for the incorporation of agriculture into the economic development business in this state, and it specifically defines a program that would establish the vehicle, start the process moving to establish whether there is a need, number one, and number two, what the need is in financial terms, whether there is a need for a small agribusiness, say, in Solvay, New York, or wherever if happens to be, to purchase a great harvester or whatever the piece of equipment or real estate or whatever it happens to be. That has to be established.

Now, once that's established, then we're in the position, I think, to come

back to the Legislature and to the Governor and say, Look, we can create a hundred, a thousand, five thousand, a hundred thousand jobs with this type of expenditure. This is our payback. To do that, at this point, I think is merely guess ing, and that would be asking this Legislature to take, I think, a great step of blind faith that there were going to be jobs created with an expenditure that's unknown, and I'm not willing to do that.

Now, Senator Leichter would have us do that now. I think it is a step early to do that. This is a two-step, again, process. First, we create the vehicle, establish the need, determine what we can do, what the job creation is, and then we come back and determine whether or not that is a viable expenditure, and I think that all of us who are reasonable in expenditures in trying to look to ways to accommodate but at the same time create jobs, that's the kind of process that we'd go through, and I think this bill does that.

THE PRESIDENT: The Secretary

will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day after it shall have become a law.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays one, Senator Leichter recorded in the negative.

THE PRESIDENT: The bill is passed. (End)

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Bill Number 197, an act to amend the Penal Law, in relation to resisting arrest.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, this is a bill that has passed this house on several occasions before, and just to give a little bit of background, a number of law enforcement agencies have asked for this bill. There has been a discussion for some time by the D.A.s' Association and by law enforcement groups

that, to start with, the assault provisions that we have on the books are under-valued, that is that the courts -- in fact, what the courts have done is to limit the use of the assault provisions to the point where there is a problem here.

As a for instance, what this bill does, to start with, is to change the statute for resisting arrest from a Class A misdemeanor in any case, in other words whether a person goes limp and falls on the floor and refuses to be arrested or pushes a police officer or anything that is done in the area of resisting arrest, it is a Class A misdemeanor.

What this bill would say is that this would set up a second resisting arrest in the first degree, where a person would be guilty of resisting arrest in the first degree when he commits the crime of resisting arrest in the second degree, in other words the normal resisting arrest, and uses physical force.

What has happened is that the allegation has been made by some groups that,

well, what about assault second which is assault on a police officer? Assault on a police officer under the court cases, the definitions that have been delineated in virtually every court in this state say that you must have what amounts to some serious physical assault, serious physical force, before you can charge someone even with assault second. Virtually all law enforcement attacks, if you want to call them, where there is no damage to speak of, has been thought - has been determined to be assault in the first degree, which is a misdemeanor.

What this bill is designed to do is to cut through that gap, and that is where a person uses physical force in resisting a police officer, that you can use the -- the crime of resisting arrest in the first degree, which is a Class E misdemeanor because it is a more serious -- a more serious event.

The argument that has come up is -- and I might as well put it right out here - the issue of physical force. What is the definition of "physical force"? Well, there is

no definition of "physical force" any place in the Penal Law. I had my people research.

We also found, by the way, that the "physical force" is used in a series of other -- in connection with a series of other crimes such as rape and sodomy and the various other sex crimes. No courts have ever had any problem in determining the physical force provision and have used it in the normally understood way in which physical force is used.

There is a definition of "deadly physical force" which is Section 10 of the Penal Law, which says, Physical force which is, under the circumstances in which it is used, readily capable of causing death or other serious injury, but there is no definable definition of "physical force", but I think it is something which is well understood, and I think that the courts as well as the district attorneys and law enforcement officers obviously can determine, because physical force is something that we understand readily.

So I think what this bill does,

it fills a void right now that has occurred because of the limitation of the statutes that are presently on the books and in court decisions.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Senator Volker yield for a question?

ACTING PRESIDENT HOBLOCK: Senator Volker, will you yield?

SENATOR PATERSON: Senator, I'm just curious as to the construction of the bill itself. Pointing no finger at the bill itself. I'm just wondering why did you choose not to add to the aggravated assault statute, Penal Law Section 120.1, which is a D felony and then create a second degree of it which would be the E felony that you're seeking rather than moving over to resisting arrest?

SENATOR VOLKER: Because the issue is not the issue itself of the assault, David. The issue is really the -- the person refusing to be arrested, and taking whatever

steps that need to be taken to be arrested.

The second degree assault provisions, as you know, are already there, but as I say, they have been limited in their definition. Now, we had proposed, by the way, upgrading the penalties for assault since I've been on this floor of the Legislature, on several occasions; but we think that this is a specific -- and law enforcement officers feel that this case is a specific situation that needs to be filled and that the issue of whether we can upgrade the assault provisions is another issue that probably should be dealt with, but that this is a better way of dealing with the issue of arrest and the attempt by people to - to avoid arrest.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker would continue to yield.

I'm just curious as to the law enforcement agencies that have commented on this bill. I didn't see a memo from the police

council or from the law enforcement council. I just wanted to know who they were and why they specifically wanted to have this upgrade.

SENATOR VOLKER: I think, my recollection is that this bill initially came from a Suffolk County police department, and I think we also had discussions with the New York State PBA, and I -- I think it results again from problems that they have had where cases were -- of cases where people who have, in effect, assaulted police officers while they were being arrested for whatever -- for whatever reason, and the assault second provisions, they were charged with assault second, but what happened is because the courts felt that the - under the present situation, if the assault wasn't serious enough to be considered assault second for a felony, that the charge was then reduced to a Class A misdemeanor and, of course, the resisting arrest is also a Class A misdemeanor. So, as a result, the only charge that you could lay against somebody who had actually, in effect, assaulted a police officer

while resisting arrest, related to two Class A misdemeanors, and what this does is give some option to use a more serious -- admittedly the least serious -- felony, which is a Class E felony, but where there has been actually force in resisting arrest, that a felony charge could be lodged against that person.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Volker.

Actually I don't have any more questions for you, Senator Volker. I just have a story I want to tell you.

There was a person who contacted my office in 1991 during the time that they were blowing up balloons for the Thanksgiving Day parade, Senator Volker. This person said that they were assaulted by the police and that another civilian had filmed it on a video camera, and, of course, in 1991 was the same year as the Rodney King assault, and so the fact that this assault had been captured on video was

rather interesting. And so we contacted the 20th Precinct on the West Side of Manhattan. They were very cooperative, and although the individual had been charged with resisting arrest, the 20th Precinct was willing to look into the possibility that maybe resisting arrest was an interpretation the police officers had made after they had assaulted this particular victim.

So at the point that the video was finally delivered to our office, we were fully prepared to publicize this video until we watched it and saw that the video demonstrated that the defendant had clearly assaulted the police, just as the police said that he had, and that was the end of our coast-to-coast presentation that we were going to demonstrate on a Rodney King incident in New York.

So we definitely understand that the police have a number of problems with individuals who resist arrest, but the point that I'm trying to make is that resisting arrest is really an extremely subjective determination

since we don't really know what resisting arrest is, and some of the defensive maneuvers that an individual might engage in might not necessarily be resisting arrest but just resisting the fear of being injured during the arrest; and so we just don't feel that this particular change in the Penal Law is clear enough to determine that the first degree of resisting arrest should be the felony and that any degree that comes thereafter would be a misdemeanor.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

SENATOR LEICHTER: Just a second.

SENATOR SKELOS: Would you recognize Senator Dollinger? I believe he was next.

ACTING PRESIDENT HOBLOCK: I'm sorry, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Senator Skelos.

Mr. President, I rise -- I'm going to vote in favor of this bill.

I rise only -- and I appreciate Senator Volker's comments. I think we're all concerned about assaults on police officers. I guess -- I've been in this chamber for two years and we've never been able to pass a bill that would decrease the number of assaults by weapons by banning assault weapons, and my hope would be that this year we'd be perhaps a little more consistent in our treatment of the concept of assault in that, as we increase the penalties for those who are assaulting police officers, we might look at the concept of taking away the weapons from those who are assaulting the general public, and my hope is that we'll be able to do that this year.

But I will be voting in favor, Mr. President. I think this is a good step. I'd like to see us continue to walk in that direction.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President. If Senator Volker would just yield

for a quick question, please.

SENATOR VOLKER: Sure.

SENATOR LEICHTER: Senator, I'm concerned about this bill, particularly since, as you said, there is no definition of what is using physical force in the Penal Law, and that's understandable and, therefore, I'm really concerned about that almost any act that an individual takes, which may well be where he may just move his arms, and so on, that the arresting officer may say, Well, you used physical force against me and I'm going to charge you with a Class E felony.

But I think it's terribly important to protect the police officers, I fully agree with you. They're carrying out their duties as they see it, and certainly it's important to protect them. But aren't they protected now because, if anybody uses the sort of physical force that I have in mind and I think that's probably what you have in mind, you push the officer or you punch him and so on, wouldn't that be an assault and wouldn't that be

chargeable as a felony?

SENATOR VOLKER: Senator, that's the problem that I mentioned. What's been happening is -- and I think it's pretty clear that this is generally the case in New York - in order to obtain an assault second -- assault second is an assault against a police officer, and it's been evolving over a number of years, you have to show more than just the normal assault provisions. You have to show some sort of physical injury has resulted, not just the fact that the detective -- the police officer has been pushed or shoved or punched or whatever.

It's been determined in every case of the assault third, as the law has evolved, that basically, as I said, that an assault second on a police officer has really been determined to be a more serious assault than just the ordinary assault and, of course, some courts have said that this is something that should be dealt with in the resisting arrest statute, and one of the reasons that law

enforcement people came to us with this bill is because they said, Right. Then if we can't get an assault second conviction for this kind of behavior, then why don't we have a -- the lowest grade felony? That isn't what they said it, like that, but why don't we have a more serious charge in the resisting arrest area which would cover it, so that you could charge someone under this -- under this provision that was engaging in that kind of conduct because so often the case, as you know, a police officer is pushed and jostled, and so forth. He never -- in fact, most police officers today don't even bother to -- with the assault second because they know that they don't have any chance and, in fact, that minor pushing and jostling, they're probably going to do the same thing. They're probably going to leave it the A misdemeanor anyway.

We're talking about something a little more serious here, and the feeling is, I think, by many people in law enforcement and by many district attorneys, that there ought to be

a piece of a statute that allows for some latitude in these kinds of cases since you can't really use assault second in the way in which maybe you would envision it.

SENATOR LEICHTER: But -

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: If I may, Mr. President, very briefly on the bill.

I understand in trying to cover maybe a very small range of activities that are now not covered in the law, you're opening up a whole area of what is really not threatening behavior to a police officer which now it becomes subject to a class E felony.

I was off the floor for a few moments so I don't know whether this was mentioned, but just talking to my good friend Senator Gold here, seems if there was a protester was sitting down, and the officer says, "You're under arrest;" the protester doesn't move -- and we know that that happens a lot and officers have to pick them up and carry

them to the paddy wagon -- that's resisting arrest. That's a Class E felony.

It just seems to me wrong to cover that whole range of activity, and the risk of overcharging here becomes, I think, very serious.

SENATOR VOLKER: Senator, let me just disagree with that, that what you just described is a Class A misdemeanor resisting arrest because there was no physical force. You have to have some sort of physical force against the police officer of a nature that can be considered this.

Let's be -- let's be frank: If under the assault second, we -- we come to the point where punching and jostling and shoving and -- in some cases, and in some cases knocking police officers down, has not been adjudged to be enough to be an assault second, because there is no injury, then clearly there's going to be limitations on the resisting arrest.

So that's why, as I say, you're going to have to prove a genuine physical force

in order to get an E felony conviction on this kind of case.

SENATOR LEICHTER: Well, Senator, I just wanted to finally say, I think in most instances while I'm in full agreement with you, somebody punches a police officer, knocks him down, I think that now would be an assault one. In that case, it ought to be covered by the Penal Law and is covered. I'm not so sure the example I gave where you have to lift the protesters up and carry them to the paddy wagon wouldn't be deemed to be resisting arrest by physical force against the police officer.

You know, you shake your head, but it's our obligation to write penal statutes very clearly, make sure that they're not ambiguous. I think that's certainly ambiguous, so I say again, it seems to me that what you're opening up is a whole area of acts that now become Class E felonies and that, I think, police officers are going to be very quick to charge which I think are really not appropriate charges as a felony and, for that reason, I just

can't support this bill.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

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

Senator Volker, if I may, Mr. President, ask a question or two.

ACTING PRESIDENT HOBLOCK: Yes.

SENATOR WALDON: First, let me make a comment. I remember the 22 years that I was a police officer, and I can remember being in what you describe an attack drive sometimes, very appropriately as heat of battle, and when someone punched an officer and knocked him or her down -- at that time there were very few women working the streets -- but it was a serious situation, and I can recall those people who were foolish enough to do that, that the reaction and response to the officer was sometimes very severe, and the charges would mount according to the severity of the attack by the perpetrator as he was characterized, and a whole host of charges would be put on that

person.

And so my question to you is, police work hasn't changed that much. When someone assaults an officer, the officer normally would place the person under arrest, do what is necessary. We only exercise physical force as it was placed upon us or directed toward us, but we resisted in kind and acted in kind to the other kinds of force.

So isn't there a redundancy here? The cops on the street know what to do. They know how to handle these situations, and they know how to properly and appropriately charge according to the actions of the person being arrested. So I don't -- I'm going to support it, but I just feel we want a little clarification as to why do we have to do this when there are already mechanisms in place in the law and in practice out there to deal with it?

SENATOR VOLKER: Senator, when you and I were law enforcement officers and the law, I guess, probably it depends on the part of

the state, we even in those days had trouble. I was assaulted nine times in one year. I won't get into it, but -- and I was not -- I think I was only able to maintain one, maybe two charges of assault second. It was always difficult because police officers, whether we like it or not -- and in modern society, I think even more so -- are, as some of you said, almost expected to get assaulted, and what has happened is, if you really talk to law enforcement officers across the state, I think you're going to find out that they will tell you that there are very, very few assault second convictions in this state, very -- an assault second, as you know, is an assault against a police officer. Assault first is a serious -- serious physical assault against anybody, deadly assault, so forth, but what has happened is that judges have clearly made very clear that a police officer is, in effect, expected to be assaulted or to have to be subjected to certain physical -- physical restraints or whatever, and unless there is a showing, for instance, something broken or

facial scars, the police officer -- police officers are saying all over the state that the decisions have come down that assaults have been interpreted to be assault third which is a misdemeanor and, of course, resisting arrest, which is along with it, the maximum you can get in a resisting arrest is a misdemeanor.

So that's why in certain cases, in fact, I think there was -- it seems to me that the real impetus, that the request for this came in a case that was tested, and what happened is that the person, I believe, was convicted of assault second and the resisting arrest was dismissed and then, when the case went on appeal, a judge threw out the assault second and said that the best that this should be is an assault third and, in effect, the person, because the case was dismissed unless they wanted to recharge the whole thing, was thrown out and the law enforcement people said there ought to be something in between that we could do to deal with these kinds of issues since in the -- in the cases as they are -- as

they are being maintained, we are being subjected to this -- to this kind of treatment.

Now, you are right, I happen to believe probably that we should upgrade assault penalties and, as you are probably aware, I have some bills that would do that, and we have passed them in this house. We've had no success in the other house, but the law as it is right now, as far as assault second is concerned, you have to have a pretty substantial injury before a law enforcement officer can maintain an assault second conviction.

SENATOR WALDON: Thank you very much, Senator Volker.

Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Abate.

SENATOR ABATE: Yes, Senator Volker. Would you yield to another question or comment, combination?

I am -- I understand what the goals you have in mind are, and that there's a need to protect law enforcement officers who are

abiding or carrying out their official duties, but it seems to me the better strategy for the one you just articulated is not to increase the scope of punishment beyond a year for resisting arrest, because I believe under the interpreta tion or the lack of definition of "physical force", anyone could engage in a tussle and would be charged with the E felony.

I think what we should look at right now is a simple assault on an officer, please correct me, as an A misdemeanor, and it's very difficult to prove serious physical injury against an officer.

I think the better approach is to elevate the crime of simple assault against a police officer, elevate that to a felony and then you are exactly doing what you want to accomplish.

I believe by elevating resisting arrest or some parts of resisting arrest to an E felony would not accomplish what you want.

SENATOR VOLKER: I appreciate that. I -- I think that we will certainly, and

we have been attempting to change the assaults statutes, but I think it's probably unlikely that that's -- that is going to happen in the immediate future. I really do believe that we have a better opportunity here to plug this hole with this resisting arrest statute, and that's why -- that's why we've -- we've moved forward, and that's what the law enforcement people have asked us to do, and that's why this bill is here.

ACTING PRESIDENT HOBLOCK: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President.

I want to speak to this legislation because I -- though I voted no, I don't want to just pass without my going on record with a couple of reasons why I continue to oppose this legislation.

I have a friend who -- whose son is now an assistant district attorney in Brooklyn, who was in law school at a time when he, along with a couple of his friends, entered

a store in Manhattan late at night to buy a can of chili after they'd been out. And this is a youngster, an African-American youngster, who is not on drugs, does not wear baggy pants, has never been arrested, has gone to the best colleges and universities, and still presented a menacing figure to the store owner who called the police, and those youngsters were subsequently arrested and booked for assaulting a police officer, which did not happen.

I had another incident in my district which -- wherein a number of high school students were involved in a demonstration outside of their high school against some of the policies that they felt were problematic, were unjust from their point of view, right, wrong or indifferent -- I believe they had that right and I certainly support that; I think we all do - and a number of those young people were arrested, and the charge essentially was resisting arrest.

Now, here we are confronted in both instances with young people, in one

instance a group of young people, in another instance several young men, African-American - in all cases these are African American, particularly African-American male youngsters whose only charge when they are confronted with a police arrest, is that they are resisting arrest, no matter what.

That means that without - without the fact that my friend's son having herself and a whole battery of -- of legal support that she had to muster, her son may not have been able to finish law school and successfully become involved in a career in law enforcement. That happens every single minute of every day in my district. I'm confronted with this to the point where I have a special hot line between my office and the D.A.'s office to defend such cases as those youngsters who were caught up in a simple process in front of their high school.

So to my colleagues, I warn you that while we want to protect police officers, and there's no one in this room who cares more

about the lives of the police officers who protect the people in my district, I want to make that very clear, but I also have to consider what is going to happen when this law goes into effect to thousands of youngsters, particularly young African-American and Latino males in this state, especially in this city, when this law goes into effect and their careers get shorted out because they run into a situation and the police officer is able to arrest them, and the charge can be a felony because they so-called "resisted arrest".

I urge you to rethink this whole issue, that we should not be passing such legislation as this. This is the wrong thing to do. It does not help resolve the problem of crime on the streets, and I say to you that this has very, very far-reaching ramifications for young people in the state of New York.

I vote no, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Volker.

SENATOR VOLKER: Mr. President.

Senator, somebody obviously gave you some erroneous misinformation. You can not be charged with resisting arrest alone. You have to be arrested for something else in order to be charged with resisting arrest. So you know, I think one of the problems when we hear these stories -- and I understand your vehemence and all that, and I can assure you that there are situations that, in my district, in our area that are questionable. In fact, there's an old saying that my friend Tom Coughlin said to me, "I've got 62,000 people in my prison system and none of them are guilty of anything."

But let me just say to you that you just don't get charged with resisting arrest. You've got to get charged with something else, otherwise the resisting arrest falls, because you -- in other words, it's got to be trespassing, or it's got to be something besides the resisting arrest.

Now, the fact that sometimes arrests that may be erroneous or whatever, that can happen any place in the state. But that

still does not avoid the problem of the fact that we have had a -- a plethora, if I might use the word, a great increase in the amount of resisting arrests in this state, genuine resisting arrests, and genuine assault on police officers, and the mere fact that, it seems to me, that there may be cases that are not totally legitimate, does not mean that we should shrink from moving to protect people who protect our society, whoever they be -- whoever it may be, and wherever they may be, and I understand your concern, and I -- I really do.

I just do not believe that this is going to create that sort of problem. I think this is something that needs to be done and I think in the long haul and in balancing in our society, it's something I think you will find will better serve the streets of the city of New York as well as the streets of the rest of the state.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

THE SECRETARY: Section 3. This

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 12 are Senators Abate, Connor, Espada, Leichter, Markowitz, Mendez, Montgomery, Paterson and Smith. Ayes 44, nays 9.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 14, by Senator Holland, Senate Bill Number 213, an act to amend the Penal Law, in relation to the validity of a license to carry or possess a pistol within the state.

ACTING PRESIDENT HOBLOCK: Explanation has been requested. Senator Holland.

SENATOR HOLLAND: Yes, Mr. President.

Today, if you are issued a pistol

license in the city of New York, you can carry your weapon anywhere within 62 counties of the state of New York. However, if you are issued a pistol license in any of the 57 counties other than the city of New York, you can carry any place except the city of New York.

This bill attempts to make - bring us back into one state under one set of laws and regulations as far as the carrying of a weapon goes and would allow any pistol license issued by judges in the other 57 counties to carry any place in the 62 counties in the state of New York.

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: Will the Senator yield to a question or two?

SENATOR HOLLAND: Yes, sir.

SENATOR STAVISKY: Senator, would you acknowledge that there are substantive differences in the environment and the quality of life in a sparse, rural area versus a densely populated urban area?

SENATOR HOLLAND: Absolutely.

SENATOR STAVISKY: O.K. Would you agree that it may be more dangerous because of dense population and because of unrest for a variety of reasons, to have pistols readily available in an urban setting?

SENATOR HOLLAND: I would, sir, except it is not the pistol licensee who would cause any unrest or problem. It is the people who illegally purchase weapons. This only deals with legally issued licenses.

SENATOR STAVISKY: We can't have a line-up, Senator. "You're not likely to threaten." "You're not likely to threaten." "You, we don't know about." We can not have a category, a classification, that exempts certain people automatically from the possibility that they might inappropriately use a weapon.

There are differences, Senator. There are differences where -- in an area where a pistol might be very appropriate and part of the quality of life, and another area where it would be highly inappropriate, and this

legislation is not the first time we have debated this, but this legislation continues to come up.

Another question, Senator: You generally favor home rule?

SENATOR HOLLAND: O.K. I do.

SENATOR STAVISKY: O.K. Do you favor home rule for all municipalities other than the city of New York?

SENATOR HOLLAND: I favor for all municipalities, including the city of New York.

SENATOR STAVISKY: Other than the city of New York?

SENATOR HOLLAND: Let me tell you, the city of New York is the only one that's complaining here. Buffalo's not complaining. Syracuse is not complaining. Rochester is not complaining, and they have similar problems that the city of New York has.

SENATOR STAVISKY: Do you favor or refuse to favor home rule for the city of New York?

SENATOR HOLLAND: I generally

favor home rule if that's what you're trying to get at, Senator, but I think this bill should be statewide.

SENATOR STAVISKY: Then why don't you talk to the mayor and the police commissioner of the city of New York and ask them to reconsider their objection? There may be good and sufficient reason, Senator Holland, why the mayor and the police commissioner of the city of New York -

SENATOR HOLLAND: Well, you know, Senator -

SENATOR STAVISKY: -- may feel that this legislation is not appropriate for that one city.

ACTING PRESIDENT HOBLOCK: Senator Holland.

SENATOR HOLLAND: Again, Senator, you've seen the memo from the mayor. I think that's historic more than anything else and, again, I just have to continually point out - and this is probably only the beginning -- we're only talking about licensed pistolholders, you

know, and I've told you this in the past, what you have to go through in this state to be issued a license to carry a pistol.

You have to go to your county clerk or your commissioner down in the City. It takes at least six months. You have to be checked out, your fingerprints by the FBI, the BCI, mental health. In Rockland County, you have to have a letter from your spouse or significant other saying whether you can carry, have that license. It has to be signed by the sheriff, signed by a judge, takes about six months for the initial license and, if you get a second license for a second weapon, that takes at least seven days, and also you have to have it signed by a judge.

SENATOR STAVISKY: Senator Holland -

SENATOR HOLLAND: Nothing easy about getting a license to carry a weapon.

SENATOR STAVISKY: Senator, do you acknowledge -

SENATOR HOLLAND: Yes.

SENATOR STAVISKY: Another question.

SENATOR HOLLAND: Yes.

SENATOR STAVISKY: Do you acknowledge that sometimes a spouse or an innocent child may be the victim of a shooting with a licensed pistol?

SENATOR HOLLAND: It's possible. It happens, yes.

SENATOR STAVISKY: As a matter of fact, in many instances, traditionally, a member of the family has been more likely to be killed with a firearm, licensed or otherwise, than anyone else because the presence of that fire arm makes it easier to take the life.

SENATOR HOLLAND: Usually happens at home.

ACTING PRESIDENT HOBLOCK: Senator Holland, Senator Stavisky, would you please address your remarks to the Chair.

SENATOR HOLLAND: This one -

SENATOR STAVISKY: I yield to the Senator on the response.

SENATOR HOLLAND: This one - this one usually happens in the home, and we're only talking about somebody carrying it with them while they're in the City. They're not in their home then, and why would it be any different if a license is issued by an upstate judge or the commissioner of police in the city of New York? The same thing could happen; so that's just -- that argument doesn't carry weight.

SENATOR STAVISKY: On the bill.

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: What happens in the home, Senator Stavisky, can happen in a hotel room in the city of New York. It could happen in a train terminal in the city of New York or in a taxicab in the city of New York. The failure of people to show restraint in the use of this ultimate weapon of death is not limited to the circumstances of whether they are in a rural area, peaceful rural area -- and I will concede that -- or whether they are

elsewhere or whether, in the city of New York suddenly in a fight over a parking space that individual carrying that licensed firearm fighting over a parking space or over an insult that is hurled from the occupant in one car to the occupant of another car -- and they're not asking each other, Do you have Grey Poupon mustard with you? Sometimes over a parking space, people get hot under the collar and sometimes they over-react. Grey Poupon mustard will not kill. A pistol will.

I think that you show a disser vice to the principle of home rule, which you espouse, when you fail to consider the home rule request of the mayor of the city of New York and the police commissioner of the city of New York. We are asking in many parts of the state, Senator Holland, for people to be given rewards for turning in their weapons and these programs of giving rewards, gifts, cash in some cases for turning in weapons, are intended to reduce the number of firearms that are in settings such as densely populated urban areas like the city of

New York.

It's a bill which may be good for a rural area. It's not a bill that is good for the city of New York, and I would urge anyone who has a regard for cutting down the carnage, reducing the carnage, the deaths that occur from weapons, licensed or otherwise, to consider voting against this.

Judges do not necessarily do the background check, and you can't ask a spouse. There are many spouses who are dead when they had great trust in the other member of the family and could not anticipate a situation where violence and perhaps the resort to a fire arm would occur.

I once had a conversation with an FBI official who said, Come after me with anything, a knife or a baseball bat, and I have a chance of surviving, but come after me with a gun at close range, and the odds in my favor drop dramatically.

Give us the opportunity to have home rule in our City, and I will not oppose the

reverse situation on your constituents, but do not endanger the people I represent or anyone else in the city of New York.

I hope you will withdraw this bill and learn from the fact that it has never passed the Assembly. I hope you will allow it to die quietly before someone else dies not so quietly.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Will Senator Holland yield for a question, Mr. President?

ACTING PRESIDENT HOBLOCK: Senator Holland yield?

SENATOR HOLLAND: Yes.

SENATOR PATERSON: All right. Senator Holland, we don't mean to suggest that those who carry firearms increase the crime rate by any significant amount. We don't mean to suggest that people who carry weapons are irresponsible with those weapons, and we don't mean to suggest that those who would like to carry their guns in New York City are

necessarily in any way an obstacle to the quality of life in New York City.

But I don't see this bill as a question of firearms or licensing. I see it as a question of home rule. You said in your previous remarks that the city of New York has issued a memorandum opposing this bill as a matter of history. I want to tell you what some of that history is.

In the year 1990, there were 3,245 murders in the city of New York and in calendar year 1991, there were 2,254; 1992, 1,995, the last year 1993, in the Dinkins administration there were 1,946 murders. In the first year of the Giuliani administration, those murders have decreased by over a hundred. So crime generally, in 13 FBI categories, has decreased in New York City, and we feel that we are trying to fight a crime problem.

One of the reasons that we feel that we are fighting a crime problem is just the changing the perception of violence in the City and this is why we would prefer in New York City

not to have firearms as much as possible unless the individual is licensed and there is a rigorous test to determine that an individual can receive a license.

We appreciate that you short-circuited that test in Rockland County and hope that we can create procedures that will make it such that those who have to carry weapons can get them as soon as possible.

But my question to you is, why would you assume that a memorandum coming from the city of New York is a matter of history when the historical evidence shows that crime has decreased in the city of New York, and although it's not to a level that I would consider to be the threshold of safety and that there should be no fear, at the same point, it is something that we in the city of New York are trying to reserve the right to control, and I wonder what your thoughts were on that.

SENATOR HOLLAND: Senator, I'm in agreement with you that there are too many weapons on the streets of the city of New York

and I -- and Senator Stavisky and I think that they should be removed. But you should never - and you should never ask a question you don't know the answer of, but in the statistics you cited, do you know how many of those 2200 deaths and 1900 deaths were caused by weapons and how many were caused by licensed weapons in the hands of the licenseholder?

SENATOR PATERSON: In answer to the question, Senator Holland, I never suggested that any of them -- I'm sure that some of them were, but I never suggested that any of them were caused by those who were holding a licensed firearm. What I'm saying is that we feel the possession of a licensed firearm is actually something that just means that there's one more weapon on the street, and we would not like to have very many of them unless it's absolutely necessary.

SENATOR HOLLAND: I think it's an infringement on the people in my district and the rest of the 57 counties in the state of New York that we can't follow the Second Amendment

and carry weapons.

You know, Senator, that anybody who's issued a weapon has to go through a safety course. They know how to handle the weapon. They don't take their weapon out and shoot people in the parking lot, as the Senator suggests. They are respectful of their weapons. The problem is the illegal weapons in the city of New York, and I totally agree with you that we should do everything we can to get them off city streets and all the streets.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Well, thank you for the answer, Senator.

On the legislation. It is the position of the city of New York, and it is historical, whether it be a Democratic mayor or a Republican, that we would just advise that the city of New York is really a New York State thoroughfare. There are many people come in and out of the city to such a rapid degree that we would assume that if they're going to be in the

City for any period of time, that they go through the City's licensing procedure, and this is what the City would like to maintain.

There are a number of pieces of legislation that come across our desks every day in which legislators around the state are asking for certain kinds of home rule, and the reason this is an issue in the first place is because people regularly frequent New York City, so we've had this situation replicate itself on a number of issues such as the desire that New York City has to have its police officers live and work in New York City. There are those who oppose that. The officers often live in other parts of the state and, if you go into those towns, you can't do anything unless you're a resident of that town.

So the general point of view is, at least the points of view that I've heard, is that there should be some substantial home rule. So now we bring ourselves to the question of what meets the home rule test. Well, the role of state government is basically to

regulate the conduct of towns and cities to force the protection of the people who live in those towns and cities; and so, when you have a situation such as perhaps something we discussed yesterday, the spraying of DDT and what would be aerial sprays, what you're talking about is a significant health hazard that would affect everyone, so the state might want to try to regulate in that area.

But when we're looking at what is really a policy determining how a certain class of citizens act, and that would be those citizens who maintain firearms, we are just saying in New York City that we would like to curb the number of firearms around, and we feel that that will curb inevitably deaths, whether they be intentional or accidental, that are caused by those firearms and, for that reason, I'm going to vote no on this particular legislation.

I agree with the mayor of the city of New York, and I agree with the previous administrations who would like for people who

are regularly going to be frequenting New York City to comply with New York City's standards for licensing firearms.

ACTING PRESIDENT HOBLOCK: Senator Dollinger.

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

ACTING PRESIDENT HOBLOCK: Senator Holland?

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: Senator, I went back through the history of this statute, the exclusion for New York City, for want of a better term. The best I can tell, it was put into the statutes about 1965. Are you familiar with what the rationale was for excluding New York City from the reach of the state's pistol permit process at that time?

SENATOR HOLLAND: I was not here. I do not know, no, sir.

SENATOR DOLLINGER: O.K. Well, I assume, and again assumptions are always

dangerous, but I assume that the city of New York said they wanted to control the weapons withinside the City limits by issuing their own pistol permits to people who could meet the standards imposed by the city of New York.

Do you think that's a fair characterization of what the explanation was for this?

SENATOR HOLLAND: I don't know, Senator, but do you think it would be a good idea if we allowed other counties to do a patch work situation like this so you'd have to have a locked box and couldn't stop your car if you had a weapon? It's unfair. It's blatantly unfair.

SENATOR DOLLINGER: Mr. President, I'll ask Senator Holland that question with respect to Rockland County in a second.

ACTING PRESIDENT HOBLOCK: O.K. You got another question?

SENATOR DOLLINGER: In just a second. But let's just address the question of what was the rationale for putting this in the

statute in the first place.

SENATOR HOLLAND: I don't know. You assumed something. I don't know whether that's true.

SENATOR DOLLINGER: Well, my guess is that that's what the explanation was but what I'd like to ask you is, again through you, Mr. President, can you tell me what's changed between 1965 and 1995 that suggests that we should do something differently now? What's changed? Are there any fewer weapons in the city of New York, any fewer homicides? Is there anything that suggests the city of New York's interest in decreasing the weapons in its borders is any less today than it was in 1965?

ACTING PRESIDENT HOBLOCK: Senator Holland.

SENATOR HOLLAND: New York has the toughest gun laws in the nation right now, and in answer to your question, it is a much more dangerous city than it used to be.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT HOBLOCK: Another question?

SENATOR DOLLINGER: New York City has the toughest gun laws in the state, in the nation, isn't that correct?

SENATOR HOLLAND: New York City and Washington, D.C., I think.

SENATOR DOLLINGER: So it's safe to say that New York City wants to protect - has the toughest gun laws in the country.

SENATOR HOLLAND: They're totally ineffective.

SENATOR DOLLINGER: Well, are we arguing effectiveness, or are we arguing the right of the city of New York to make that decision?

SENATOR HOLLAND: Simply asked me a question, Mr. President.

SENATOR DOLLINGER: I wanted to find out through you, Mr. President, whether my colleague acknowledges that anything has changed since 1965. This was obviously a judgment of this Legislature to give to New York City that

power to impose stricter restriction on access to weapons than we impose everywhere else in the state, and the best I can tell, you can't tell me that anything has changed. That's a more dangerous city.

ACTING PRESIDENT HOBLOCK: Excuse me, Senator Holland. You asking that question?

SENATOR HOLLAND: No, no, I'm just answering that particular issue again, but -- I'm sorry.

SENATOR DOLLINGER: But again through you, Mr. President, as I understand the answer to the question is nothing has changed. If anything, it's gotten worse. The city of New York's interest in patroling its own borders is even bigger than it ever was; isn't that correct, Senator?

ACTING PRESIDENT HOBLOCK: Senator Holland.

SENATOR HOLLAND: Something has changed because it's a much more dangerous city.

SENATOR DOLLINGER: Well, under

those circumstances, again through you, Mr. President, don't you think the city of New York should be able to do everything to tighten its own restrictions on weapons inside its borders?

SENATOR HOLLAND: If it was effective, I'd believe so, sir, but it has not been effective in any way, shape or form, in my judgment, and I don't think licensed gun holders, weaponholders cause any problem. We have all the information regarding your background. If they cause a problem, the weapon is taken away from them immediately and they can get it no more. It's not -- the problem is not caused -- not caused by licensed gunholders, sir. It is caused by the illegal weapons and the criminals, not by licensed gunholders.

SENATOR DOLLINGER: Again through you, Mr. President, so it's my understanding of your answer that because you don't believe it's effective in New York City, in evaluating this legislation we should substitute your judgment for the judgment of the mayor of the city of New York who says that his police department

violently opposes this bill, that he violently opposes this bill, and that the City Council, elected to represent everyone in the city of New York, violently opposes this bill. We should substitute your judgment for theirs?

ACTING PRESIDENT HOBLOCK: Is that a question of Senator Holland?

SENATOR HOLLAND: I'll substitute the Second Amendment to the United States Constitution.

SENATOR DOLLINGER: Well, it's interesting, again through you, Mr. President, you've mentioned Second Amendment. Of course, if there was a Second Amendment that allowed people to bear arms without any restriction, we wouldn't be able to have a pistol permit statute in this state because we couldn't restrict that right at all, could we, Senator?

SENATOR HOLLAND: No. No, we all have restrictions throughout the state of New York. However, we can carry licenses that are issued in any of the 57 counties in those 57 counties, but we cannot -- against the Second

Amendment -- carry them in the city of New York. We can carry them in Buffalo, Syracuse, Rochester.

SENATOR DOLLINGER: Just as a point of clarification, Senator, I believe the thing that prevents us from carrying them in the city of New York is, in fact, that this law specifically says that they can't, this creation of ours, in conjunction with the Assembly and the Governor, not the Second Amendment, that applies, just for clarification.

But let me, if I could, Mr. President, ask one other question.

ACTING PRESIDENT HOBLOCK: Senator Dollinger.

SENATOR DOLLINGER: That addresses an issue Senator Holland brought up earlier. Now, suppose, Senator that Rockland County ran into a rash of firearm problems and suppose that Rockland County sent a home rule message to this body that said, We would like the authority to issue our own pistol permits and we would like to have the same exception

that applies to the city of New York to apply in Rockland County. What would your reaction, as the representative of Rockland County, be to that request?

SENATOR HOLLAND: I would make every attempt to dissuade them from that, but we don't have that problem, thank God.

SENATOR DOLLINGER: But suppose -- suppose it was. Suppose you had the same kinds of violence Senator Stavisky talked about in New York City, or Senator Paterson, rattling off the thousands of people that were killed with firearms. If that existed in Rockland County and they sent you a home rule message that said, We want the same protection as the city of New York, would you sponsor the bill and give it to them?

SENATOR HOLLAND: I would try to dissuade them, but certainly I would consider a request from my county, and then I would do it for the rest of the state as well if that were the case and wouldn't suggest a bill that you couldn't carry in any other than your own permit

town.

SENATOR DOLLINGER: O.K.

SENATOR HOLLAND: That would be fair on the other side of the issue.

SENATOR DOLLINGER: O.K. I concur with that. I guess if the city of Rochester, most of which I represent, made the same request of me, I would be in here attempting to get the same type of bill passed. I think that's part of our jobs as representatives to stand up here and protect the interests of the people in our community as expressed through their home rule message, whether it's in favor of a bill or against a bill. That certainly has to be a factor in what we do.

On the bill, Mr. President.

ACTING PRESIDENT HOBLOCK: On the bill.

SENATOR DOLLINGER: I look at this as a situation where in 1965 this Legislature addressed the problem of who's going to issue pistol permits in the city of New York. This body, in conjunction with the state

Assembly and the Governor, gave the power to the city of New York to do that for themselves.

It seems to me that nothing has changed. New York City can determine to have the strictest laws in the universe on guns, use and gun access. They want the power to do it. They feel it's in their best interest. It seems to me that nothing has changed since 1965, and the same rationale applies.

I'd point out just one other thing for consideration by this body. We amended this provision in 1990, and we said that we could allow police regulations, weapons - allow retired police officers who are licensed to wear -- to possess weapons outside the city of New York to come into the city of New York and bring those weapons with them. Retired police officers. In the legislative memorandum in support of that bill, this body expressly recognized the power of the city of New York to control weapons within its borders when we said, "While the sponsors of this legislation recog nize the city of New York has a legitimate

interest in restricting the number of individ uals who carry firearms within city limits....."

We recognized that when we did it in 1990. We said that the city of New York has a legitimate interest. Why we would now say that we're prepared to submit our interests, submit our judgment from Rockland County or Monroe County, a long ways away from the city of New York, that we submit our judgment for that of the mayor or the City Council and the representatives of the city of New York I just can't understand.

Nothing has changed. We ought to do what we did in 1990 and recognize this is something that the city of New York has the power to do and recognize the validity of keeping the power in the city of New York. I'll be voting no.

ACTING PRESIDENT HOBLOCK: Senator Johnson.

SENATOR JOHNSON: Mr. President, I've really enjoyed listening to the debate

carried on the other side of the aisle. They've made the case for this bill if I've ever heard it, but they don't recognize that fact.

I think it's rather interesting to hear Senator Stavisky say that we recognize the difference in the environment and the quality of life in New York City vis-a-vis outside the City, and don't we agree it's more dangerous there?

Well, that's certainly a good reason for this bill to pass. I don't think the people who live outside the City should be in danger by going in there and, if they have a concealed weapons permit, a carry permit, they should certainly be able to carry it where the crime is most rampant in this state. Makes sense to me.

Senator Paterson said they want to curb firearms in New York City. What have they done to curb firearms? Simple fact is New York City is fair hunting grounds for any criminal because they pretty well can depend on not finding anyone capable of defending

themselves with a firearm or, for that matter, with a can of mace.

That's absolutely ridiculous to say that you're not allowed to protect yourself in the city of New York.

Senator Dollinger said nothing's changed in 30 years and New York City's got the strictest laws. And guess what? Nothing's changed. Crime's gone up and up progressively over the years, and there's nobody there that can fight back. Certainly that is an anachronistic policy that's failed and it's time to look in another direction as 21 other states have done.

21 other states have advanced concealed carry permits to anyone of good character, not a criminal, a mental case; they let them carry concealed weapons. Crime has dropped 33 percent; homicides have dropped 33 percent in those states where they've put those into effect. So you're safer with more people carrying weapons -- more honest people, licensed people, carrying weapons.

Robbery rates down 37 percent, aggravated assault rates down 13 percent, 21 percent lower total violent crime rates in the states where they've permitted honest citizens to carry weapons. That seems to me it's time for New York City and their representatives to re-examine their failed policy.

And you're asking questions of Senator Holland about do we have the strictest laws in New York City, and he said yes, New York City and Washington, D.C., and, of course, those are the crime and murder capitols of the nation. So obviously those laws are very conducive to criminal activity and make it very dangerous for honest people to walk the streets in those communities. In fact, if you call up your Congressman, he doesn't walk two blocks in Washington, D.C., and he knows what he's living under, the strictest crime control law because we're controlling the guns and keeping them out of the hands of the honest people while the criminals have free rein to run the streets at their -- at their leisure, and to assault anyone

they want. So I think it's time to change the New York City policy, and this just dramatizes that.

The argument for home rule is a specious argument. Senator Dollinger said there's home rule for New York City; therefore, they should tell you that your people can't protect themselves if they come to this most dangerous city in our state. I think that's an immoral home rule and certainly shouldn't stand in this instance. It should really be perhaps the other way around.

You know, when Joe Holland was asked to agree that there are too many guns on the streets of the city of New York, he should have said something further beyond that. He should have said in the wrong people's hands.

Now, in other cities in this nation, they have taken -- the police have taken the offensive to get the guns out of the wrong hands by strict enforcement, by searching when people are stopped for drugs or for even driving erratically on the street, or stopped going

through a red light. If they have an opportunity they suspect these people might be engaged in criminal activity, they searched their vehicles and they found many weapons. They got a lot of weapons off the streets, and this experiment, which recently took place in Kansas City, Missouri and Indianapolis, Indiana, they find out -- they find there was some type of 50 percent reduction in gun-related homicides because they didn't try to prevent honest people from possessing weapons. They tried to get the guns away from the people that use them illegally, and I think you've all heard this before. There are 200 million weapons in this state in the hands of the citizens -- in this nation, rather, in the hands of our citizens and only 100,000 are used in crime. All the rest are possessed for peaceful activities, for self protection, hunting, target shooting, whatever.

So that guns are no threat. The guns in the wrong hands of the criminals are a threat. Those are the guns you have to go after, not restrict honest citizens who have a

license from going in any other part of their own state with a weapon.

So I think you're really on the wrong track, New York City. You have got to wake up and smell the coffee, find out your problems obviously -- your policies for the last 30 years are obviously a gross failure. You have to reassess your policy, get in tune with the times but, as far as this particular bill, there's no reason in the world to say a person who is licensed anywhere in New York State cannot go into New York City to defend themselves, to help protect someone else.

In fact, the case was made when everybody was screaming about assault weapons, including everybody on your side of the aisle, several of the people on that train said, Oh, if someone only had a licensed weapon, one of the citizens in our community, they could have stopped this guy before he killed half a dozen people and shot another 15 or whatever.

So it makes a lot of sense to have honest armed citizens within our midst to

protect us, take the place of police who can't be everywhere all the time. So I mean this is a good bill. Joe, I commend you for putting it forth. Everyone should vote for this bill. It's not going to increase crime; it's going to increase the safety for the citizens in this state and restore our constitutional right as Joe Holland sees it, to carry your own weapon if you indeed have a license in our state.

Thank you.

ACTING PRESIDENT HOBLOCK: Senator DiCarlo.

SENATOR DiCARLO: Yes. Mr. President, I wasn't going to speak on this bill but since there isn't any other Majority Senator from the city of New York who has spoken on this bill, I think it's important that I do rise in support of the legislation.

First point I'd like to make is I -- I don't agree that it's more dangerous on the streets in my district than it is in any other district in many upstate communities. I'd be willing to bet that there were probably more

murders in some of my colleagues' districts in upstate New York than there have been in my district in Bay Ridge and Staten Island, number one, so I do take offense to both sides of the aisle when they talk about New York City and they lump us all together as sort of being crazy dangerous area. My community is not one of those, and I would stand up for that point.

Number two, I don't know why 1965 this was done at all. I don't agree with New York City being able to separate itself from the rest of the state and decide what law-abiding citizens are going to protect themselves and which law-abiding citizens in the state are not and shall we, the people in the city of New York, have a right to protect ourselves just like any other citizen in the state of New York.

So I would like to see this rule changed or this law changed prohibiting the honest people in my district from protecting themselves. The argument is made that the City Council and home rule and the mayor, the mayor

is a good friend of mine. The mayor is wrong on this. We in the city of New York have a right to protect ourselves, and if people would argue that the city of New York, God knows most of the members of the City Council in New York City, their philosophies do not represent the philoso phies of the people in my district, and I thank God that we have a state Legislature that at times will stand up and tell the city of New York and most of the legislators in the city of New York that we're also going to stand up for Senator DiCarlo's constituents because most of you do not represent the feelings of the constituents in my community.

So I thank Senator Holland for bringing up this legislation. I would like to see it expanded so that the law-abiding citizens of my community can also protect themselves. The problem is, as has been said, not with legal gun permits and people carrying legally. Any thinking person who looks at the problem knows that it is the criminal who is -- who is killing people on the streets of New York City and all

over this state.

The answer is not to prohibit somebody from Rockland County who is down on business in New York City who's carrying a legal gun to keep them out of New York City. The answer is to put people who are not licensed, people who are committing crimes and using weapons into prison. That's the answer.

I would -- I would hope that maybe we come up with some legislation to allow the people of the city of New York the same rights as the people of Rockland County to protect themselves in these difficult times and for anybody who would like to come to my district, it is a beautiful place and it is a safe community, and we'd like to keep it that way.

Thank you.

ACTING PRESIDENT HOBLOCK: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I wasn't going to

speak. I thought, after hearing Senator Leichter and others, that the points had been made, and then lo and behold, Senator Johnson, my old friend who deserted us from the third floor, gets up, and you just don't get it. I mean it's a simple issue. This isn't complicated. I mean we'll get to a lot of complicated issues, but this one isn't complicated. We don't want your guns in the city of New York. We don't want your guns.

Now, there are things that happen in this state that discourage people from going around the state. I remember years ago probably more than today, but maybe still today there was speed traps, and the AAA would come out with a list and say, Don't drive here, there and the other place. Well, some little towns thought they could raise revenues. They had speed traps. And what happened? They lost people going through the town.

Well, maybe the city of New York with the law the way it is today is losing some of your people, Senator Johnson, who are too

petrified to come to the city of New York and spend your money there; and you're not going to our shows and you're not going to our restaurants, and we say, Too bad! If you've got to come with your gun, don't come. It's that easy. It's that easy.

Now, it's been pointed out that under the Dinkins administration crime in the city of New York started to go down. The Giuliani administration has continued that and crime is going down.

When it comes to the victims of those crimes, I don't know where they come from. I don't know whether the people in your district ought to be frightened to death because everyone is hearing about the neighbors coming to the city of New York and getting killed. I know, when I read the papers in the city of New York, most of the victims unfortunately or whatever -- I'm sorry they're victims to begin with, but they're people who live in the city of New York. Gary Ackerman had his dinner ruined with a murder 20 feet away from him, where some

guy shot his landlord. The landlord was from the city of New York, and so was he.

So I don't know whether or not your people are really coming to the city of New York, and just because they're not armed like Wild Bill Hickok, they're gettin' killed and the word is gettin' out, but the people in the city of New York don't want your guns. That's all.

Now, Senator DiCarlo said that he supports the mayor, but the mayor is wrong. Well, I got news for you. The mayor has a constitutional right to be wrong. That's right. Got a right to be wrong. Now, I know some of you believe that David Dinkins was a raving maniac liberal and didn't want to pay attention to his memos. But Rudy Giuliani? You're not going to say that. Law and order candidate, taking care of the city. Crime is too much, and he's going to take care of it, and he says to you, his Republican colleagues, Fellows and one lady, give me a chance. I'm working it out. I don't want the guns in the city of New York. We want economic development

in the city of New York, but if you have to come down with your guns, don't come to the city of New York. And that's the bottom line.

Somebody on your side made the comment that -- that home rule is important but it ought to be right, and I say hogwash. There's not one of you on that side of the aisle as you vote, as Senator Abate learned the last few days, as rigid soldiers without using your minds. If there's a Republican bill, by God, it's got to pass, you can't think about it. But I mean there's not one of you who has ever, ever stood up on a Republican bill and said, "I know it's home rule, Charlie, but this one you're wrong." I've never heard that, never.

All of a sudden when the distinguished Republican mayor of the city of New York submits a memo asking for respect on home rule now, there's a new rule in the New York State Senate that home rule only applies if you're right. Come on! Give me a break! Maybe far right, but not -- not in any logical sense.

And I would say that, you know,

we've had this debate year after year. I think we all owe Senator Holland a great debt because he gets everybody's adrenalin up every year, but thankfully the bill is going no place, and it shouldn't go any place. It is wrong. It's wrong because the mayor of the city of New York from one administration to the other has said, We don't want it. We'll take the risk, and that's the bottom line.

That's why I'm going to vote no and some of the other people will vote no.

ACTING PRESIDENT HOBLOCK: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I'm looking at the memorandum and it says here that there's such a danger to the constituents, I suppose of the sponsors of this legislation, because they say that any stop such as for a quick meal could, in theory, subject someone to criminal action and criminal sanction if they are carrying their guns even if they're in a locked box, I suppose. Hopefully they're in a locked box. So I suppose if you stop at

the McDonald's or you drive through Burger King, and you have your pistols and the police happen to stop you, you could go to jail.

Mr. President, I would just like to ask Senator Holland a question or two.

ACTING PRESIDENT HOBLOCK: Senator Holland, will you yield?

SENATOR HOLLAND: Yes, yes.

SENATOR MONTGOMERY: Thank you, Senator Holland.

Senator Holland, I suppose you, you know, the concern for your constituency in this situation is such that you need to do this legislation. How many people from your district have been shot in the City because they weren't carrying their pistols and couldn't defend themselves?

SENATOR HOLLAND: A number. I don't have the number, but I know a number.

SENATOR MONTGOMERY: You don't have the number, but you do have the number?

SENATOR HOLLAND: No, I don't have the exact number, but a number of them

have.

SENATOR MONTGOMERY: How many have been killed in that way?

SENATOR HOLLAND: I don't have the exact number, but a number of them have, maybe three, recently. I can -- I can give you a specific: A landlord from Monsey was shot in the hallway in the city of New York, if that's answering your question, but I don't have a specific number.

SENATOR MONTGOMERY: All right. Thank you, Senator Holland. The -

Mr. President, may I ask a question of Senator Johnson?

ACTING PRESIDENT HOBLOCK: Will Senator Johnson yield?

SENATOR JOHNSON: Yes.

SENATOR MONTGOMERY: Senator Johnson, how many of your constituents have been shot in New York and have been killed because they didn't have a pistol to protect themselves?

SENATOR JOHNSON: Well, I'd like to know what difference that makes.

SENATOR MONTGOMERY: Well, I'm just trying to -- you are a sponsor -- you are a co-sponsor of this legislation, Senator Johnson, along with a number of my colleagues on that side, and I've heard you talk about a compelling need for this legislation, and I'm trying to figure out what is the need. How -- how serious is this problem?

SENATOR JOHNSON: Senator, I don't know if you're aware of it or not, but licensed pistolholders are not committing crimes. In fact, an interesting statistic is that roughly ten percent of the licensed pistols are licensed in the city of New York while 90 percent of the murders are in the city of New York and vice versa. A hundred percent of the licensed pistols that are in the rest of the state and only ten percent of the murders, so obviously it has nothing to do with the number of pistols and the number of crimes. In fact, there is an inverse ratio between the number of pistols and the number of murders.

So we're talking about a lot of

other things, hundreds of thousands of assaults in the city of New York, and rapes and all kinds of things, and in other states where they've permitted people to carry weapons, the assaults and the robberies and the murders have gone down.

So I'm saying the city of New York is out of sync'. It's anachronistic. It's got a program that doesn't work, and it's time to open up the program, re-examine what you're doing in the city of New York about guns because you're not getting them out of the right hands.

So all we're saying here is that a license issued in this state in any jurisdiction should be valid statewide. I mean if a New York City licenseholder can go up in Delaware County and carry his weapon or any other place in the state, why can't a person, Delaware County or Jefferson County go to New York City and carry a weapon? Why not? Why not? Why should not one law be a statewide law to carry it everywhere in this state? That's my question. She's trying to answer it by saying

obviously it's a flawed policy. It should be corrected.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Montgomery.

SENATOR MONTGOMERY: I'm not an attorney and I know I'm getting a non-answer with Senator Johnson. I simply asked how many of his constituents have been killed in New York City because they didn't have a gun to protect themselves, and someone shot them to death.

ACTING PRESIDENT HOBLOCK: Senator Johnson.

SENATOR JOHNSON: All right. I'd like to know how many have to be killed before we have a right to carry a weapon in New York City? What number would you think would be appropriate, Senator, should be killed before you're allowed to protect yourself?

SENATOR MONTGOMERY: I'm just trying to find out, get a ball park figure, Senator, of how -

SENATOR JOHNSON: Senator, I'm telling -

SENATOR MONTGOMERY: -- how - why the urgency of this legislation.

SENATOR JOHNSON: Senator -

SENATOR GOLD: Are we saying -

SENATOR MONTGOMERY: I mean are we debating gun control in this house, is it because there is such a huge problem with people dying because of the -- the excess number of guns in the hands of people across the board, legal or illegal, and so we have this legislation and we debate these bills? My assumption is -

ACTING PRESIDENT HOBLOCK: Senator Skelos.

SENATOR SKELOS: If I could suggest, because I know the stenographer is having a problem, if we can direct the questions and the answers through the Chair, please.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT HOBLOCK:

Senator -- Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I'm only trying to assess the significance of the need for this legislation vis-a-vis the number of people who are represented or whose interests are represented based on the fact that we have X number of people in the last three years, four years.

Senator Holland gave me an answer that was fairly specific. I'm just trying now to find out from the sponsors, what are we talking about? What is the problem, Mr. President? So I'm just asking Senator Johnson if he would answer how many people from his district that he is representing have been killed in my district or anywhere in the city of New York by guns because they didn't have a weapon to defend themselves.

ACTING PRESIDENT HOBLOCK: Senator Johnson.

SENATOR JOHNSON: Senator, my answer is that the City people, the New York City people are so used to reading about the

murders every night, every morning in the paper that they're totally immune to any concern about people being killed. They know people cannot defend themselves except those who get a New York City license and, therefore, they're the only lives worth protecting, those 10,000 or so New York City people that have a license. The rest of the people are not allowed to defend themselves; they're not worth the concern the concern, I'm afraid, of the legislators in New York City and, therefore, they will not be able to protect themselves, and that's your answer and I accept it.

ACTING PRESIDENT HOBLOCK: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, briefly on the bill.

For Senator Johnson, even though I didn't get a satisfactory answer, I think he spoke to the issue to some extent and it sounds to me as if there really is not a compelling reason for this legislation. I did not hear it from Senator Johnson. I did not hear it from

Senator Holland, and I would imagine if I asked Senator Trunzo, Senator Larkin, a number of people who are on this bill, Senator Libous, I'm sure that I would get a similar answer to Senator Johnson.

So it is -- and what we're saying, those of us particularly on this side of the aisle who represent the city of New York, any one of its boroughs, we're saying that we - we're experiencing a down-sizing in terms of the number of crimes committed, especially violent crimes.

The police commissioner of the city of New York is working very hard on that. He's been to every borough, every community, every neighborhood, and talked to people about it and African-American people are just as concerned about it as any other community in the City. The mayor is concerned about it. He's working on it. That's his number one issue.

We all care about saving the lives of people, every life that's taken, and if it means that we want to have a little bit

higher standard for the city of New York because of its density, because of the uniqueness of the population and the problems and the situation there, then that should not be a cause for the rest of the state to be up in arms, not to use a pun.

We do not need your weapons in the City. We do not want your weapons in the City, and we ask you to honor that, honor our standard and honor our need to protect the citizens in the City to a little bit greater extent than perhaps is needed for those of you who represent upstate districts and Long Island.

Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

Once again, we're seeing a departure from the traditional debate in this chamber. I was pleased to hear Senator DiCarlo speak about the importance of having a healthy

difference of opinion with a member of an elected body, the mayor of the city of New York who holds his party's position, and I too find myself having a difference of opinion not for the first time as you did, Senator DiCarlo, but for the eleventh time that this bill has come up, differing from my colleagues on this side of the aisle on this subject, and I think that we have to continue airing this issue because there are several aspects of it that continue to be clouded by the emotions, and the element of fairness is sometimes buried behind the rhetoric and the very strong sense of protectionism that many colleagues in this chamber, and I'm sure all of us feel at one time or another for our own constituents.

But the aspect of fairness is one that I would just like to direct a few brief remarks to, because I've heard so many times from my constituents and people in other parts of the upstate region that they do not understand why they feel unwelcome in New York City with their firearms, and I -- I'm very

concerned that Senator Gold has once again chosen to send an inhospitable message to people in the 48th Senate District and other parts of New York State by saying as strongly as he did on the floor today that "we don't want you" or "we don't want them with their guns", and I think probably the -- the most frustrating thing of all for me to deal with here is the fact that you have chosen, Senator Gold and some other members on this side of the aisle, to make a statement that implies some irresponsibility on the part of my constituents who are law-abiding and licensed pistol owners, and imply that somehow they are not capable of carrying them well, and that they put themselves in other peril when they come into New York City.

The point is really not whether or not they are legal and whether they have passed all of the tests. The fact is that they have been given a right and they have proven themselves in one portion of New York State. Therefore, they should be accepted with that right in every portion of New York State

including New York City.

To suggest that someone should not be allowed to come to New York City, to say they are not welcome here with their guns is like telling people that they are not welcome because of their particular style of dress, because of the color of their hair or because of some other physical distinguishing characteristic.

Having the right, having been given the right, having passed the test and all of the safety and licensing provisions as upstate citizens in New York State, to legitimately possess a pistol, should be honored by the city of New York as well, period. No ifs, ands or buts. It is a right for New York State citizens, and it should be respected by all of us, and I hope that we will be able to put this aside soon. With all of the other winds of change afoot, this would certainly be a nice year in which we do recognize the right of legitimate licensed pistol owners to carry those pistols any place in New York City without fear

of an inappropriate arrest, without the fear of having been suddenly put in a position simply because they are traveling through New York City, in fact, of breaking a law that they would have no intention to violate and, in fact, are in complete compliance with in all other parts of the state.

I do take exception also with the use of the phrase "home rule message" as it's been bandied about today. Home rule messages historically are used by municipalities, including the ones that I represent, to obtain a special right and protection for the people within that municipality, labor agreements, special deployments of the police force.

I remember being on both sides of home rule messages in the years that I've been in here and in the years that I've served on the city of Syracuse Common Council. I remember a labor issue dealing with the deployment of police officers and a fourth platoon, a specialized time period not at that time allowed under state law. The city of Syracuse requested

a unique dispensation from state law to allow them to deploy the police department in shifts as they saw fit rather than in a state mandated format. That was respected by the Legislature of the state of New York at that time as a valid home rule request, but to suggest the city of New York, in its attempt to discriminate against every law-abiding pistol owner in the state of New York is, in fact, employing a home rule measure is not a valid comparison at all, and I reject that as do the citizens of the 48th Senate District.

So I would hope that this would be the final time that we would debate the statewide pistol permit bill in this chamber, and I once again will vote in the affirmative, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: Will Senator Johnson yield?

ACTING PRESIDENT HOBLOCK: Senator Johnson, will you yield?

SENATOR JOHNSON: Yes.

SENATOR STAVISKY: Senator Johnson, am I correct that there are parks and beaches and other recreational areas in your county and in the adjacent county that will not allow non-residents to make use of those facilities?

SENATOR JOHNSON: Senator, you talking about town parks?

SENATOR STAVISKY: Yes, and -

SENATOR JOHNSON: A town -- town parks, municipal parks?

SENATOR STAVISKY: Town parks, municipal parks.

SENATOR JOHNSON: For the benefit of those taxpayers, that's correct.

SENATOR STAVISKY: What is that?

SENATOR JOHNSON: The use restricted to those taxpayers that live in those towns, yes.

SENATOR STAVISKY: I see.

ACTING PRESIDENT HOBLOCK: Senator Stavisky and Senator Johnson, would you

please address your remarks through the Chair?

SENATOR STAVISKY: Yes, I think he's answered, but the answer is that no, unless you are a property owner there, you may not have access to the town, village, county parks, beaches and recreational facilities, am I correct?

ACTING PRESIDENT HOBLOCK: Is that a question?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT HOBLOCK: Senator Johnson.

SENATOR JOHNSON: Senator, you're supporting the proposal that everyone should stay out of New York City who is not a New York City resident, O.K.?

SENATOR STAVISKY: No, I'm asking you a question -

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: If you will please respond to my question.

ACTING PRESIDENT HOBLOCK:

Senator Stavisky, you asking a question of Senator Johnson?

SENATOR JOHNSON: I don't know who he's asking the question of.

ACTING PRESIDENT HOBLOCK: That's what I -- what I wanted to find out. Who is asking the question?

SENATOR STAVISKY: I don't know. May I repeat it?

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: So that it reaches that row. You have impressed me enormously, Senator, with the notion that we are one state, we are all friends and the farmers and the cowmen should be friends, they said in Oklahoma.

Am I correct, Senator Johnson, that there are local parks, beaches and recreational facilities in your county and the next county that will not allow people from other parts of New York State, this unified state of ours, to use the recreational

facilities?

ACTING PRESIDENT HOBLOCK: Is that the question to Senator Johnson?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT HOBLOCK: Senator Johnson.

SENATOR JOHNSON: The answer is yes, but I don't think it has any bearing on the subject at hand, but I mean it's an interesting diversion. Thank you.

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: Senator Holland yield?

ACTING PRESIDENT HOBLOCK: Senator Holland, will you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: In the interest of statewide fairness, will you accept an amendment to your bill, the present bill prohibiting any form of discrimination against

residents of other counties in access to beaches, parks, recreational facilities, operated by local entities?

SENATOR HOLLAND: I don't think it's an appropriate amendment, sir, and I must, in answer to what you asked Senator Johnson, do you discourage anybody who doesn't pay taxes in the city of New York from going to the city of New York, is that what you're -- is that the point you're trying to make?

ACTING PRESIDENT HOBLOCK: Senator -

SENATOR STAVISKY: Are you saying yes or no?

ACTING PRESIDENT HOBLOCK: Excuse me. Is that a question or -

SENATOR STAVISKY: Yes, I want to know. That's a question, yes. Do you accept that amendment to your bill?

SENATOR HOLLAND: No.

SENATOR STAVISKY: Thank you very much. Hypocrisy, thy name is embossed on this bill. We are one state. Therefore, bring your

weapons into New York City. Forget about the fact that the roads that are used and the public facilities that are used are paid for primarily by the taxpayers of New York City, and I accept that. I'm in favor of reciprocity, statewide support for each others' facilities and access.

I think that the unwillingness to allow residents of counties other than Suffolk or Nassau, and they may exist in Senator Holland's jurisdiction as well, is a denial of the very argument for statewide access by weapons. If you had said, we are welcome from any of the upstate counties or the downstate counties, in your county to enjoy a park -- the taxpayers didn't create the parks; God and nature did, and why are you barring people from all over the state from the ability to come and sit under a tree in a park that you put a protective fence around and deny us?

Is a bathing suit or sun tan lotion more dangerous than a gun? Why are you not willing to view this as a statewide access in more than one issue, firearms? Is it because

there isn't a lobbying group like the National Rifle Association supporting the fairness and the justice that I've suggested for neighbors? We are neighbors of yours. Why can't we use your park? It's not your park alone. It should be everyone's park.

And why do you discriminate against people from these districts all around us wishing to come to what you call your park?

When you are willing to bend a little bit on that issue of statewide fairness, I might be willing to bend a little bit in relation to this legislation that Senator Holland has sponsored, but don't use a double standard in dealing with us, if you want us to be absolutely open and fair in dealing with you.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

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

My country 'tis of thee, sweet land of liberty, of the NRA and our obsession to

handle guns, I sing.

Year before last, 37,000 people in this nation were killed at the end of a handgun. In the city of New York, more people are killed each year than in the entire nation of Japan. What is our mad obsession with guns?

I'm not supporting this legislation, but the point I want to make for our consideration is that the need for guns, any guns not in the military or in the hands of law enforcement personnel, is one gun too many. The most likely way for people to be injured in their homes is, even if a burglar comes in, with a gun that's legally there. More people in this nation are killed fooling around with their father's gun than burglars coming in and injuring those children.

I think that the history books will show that this was a nation which said in its preamble and other places, that we are free, but in actuality we are not because when we have such a need and a fascination for the violence that's at the end of a gun, we can never be

free.

I would encourage all of us to recognize that guns should be in the hands of those who are properly trained, in the military or in law enforcement and no place else, and then perhaps we can be about the business of saving lives instead of taking so many lives with the violent propensities that some of us in America have, both law-abiding and non law-abiding.

Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November next succeeding the date on which it shall have become a law.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 14 are Senators Abate, Babbush, Connor, Dollinger, Espada, Gold,

Goodman, Kruger, Leichter, Markowitz, Mendez, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Santiago, Smith, Solomon, Stavisky and Waldon. Ayes 36, nays 21.

ACTING PRESIDENT HOBLOCK: The bill is passed.

SENATOR SKELOS: Mr. President, if we could return now to reports of standing committees.

ACTING PRESIDENT HOBLOCK: Senator Skelos, excuse me a moment.

Senator Santiago.

SENATOR SKELOS: I'm sorry.

SENATOR SANTIAGO: Like to be recorded in the negative on Calendar Number 12, please.

ACTING PRESIDENT HOBLOCK: Without objection, recorded in the negative.

Senator Skelos.

SENATOR SKELOS: Now, Mr. President, could we return to reports of standing committees.

ACTING PRESIDENT HOBLOCK:

Without objection, we'll return to reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Trunzo, from the Committee on Civil Service and Pensions, reports the following bill directly for third reading:

Senate Bill Number 604, by Senator Trunzo and others, Retirement and Social Security Law and the Education Law.

Senator Cook, from the Committee on Education, reports the following bill directly for third reading:

Senate Bill Number 762, by Senator Cook and others, an act to amend the Education Law and the Family Court Act.

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

Senate Bill Number 95, by Senator Volker, an act to amend the Vehicle and Traffic Law;

619, by Senator Stafford, an act to amend the Highway Law, prohibiting abandon

ment of Crane Pond Road in the town of Schroon;

622, by Senator Stafford, repeal certain provisions of the Highway Law, state highway system in Washington County;

623, by Senator Stafford, an act to amend the Highway Law, in relation to the abandonment of certain town highways.

Senator Goodman, from the Committee on Investigations, Taxation and Government Operation, reports the following bills directly for third readings:

Senate Bill Number 198, by Senator Volker, an act to amend the Tax Law, in relation to the imposition of sales and use taxes by the county of Erie;

Senate Bill Number 253, by Senator Saland, an act to amend the Tax Law, in relation to authorizing the county of Columbia to impose an additional one percent sales and compensating use tax.

All bills reported directly for third reading.

ACTING PRESIDENT HOBLOCK:

Without objection, all bills reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until tomorrow, January 25, 1995, at 11:00 a.m., sharp.

ACTING PRESIDENT HOBLOCK: Without objection, the Senate stands adjourned.

(Whereupon at 5:01 p.m., the Senate adjourned.)