ALBANY, NEW YORK

February 27, 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.

Will everyone please rise and repeat with me the Pledge of Allegiance.

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

I would ask everyone to bow in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, February 26th. The Senate met pursuant to adjournment, Senator Hoblock in the Chair. The Journal of Saturday, February 25th, 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.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Madam President, at this time, I would like to call for an immediate Rules Committee meeting in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in Room 332.

Senator Bruno, are you ready for the calendar?

SENATOR BRUNO: Yes, Madam President, at this time we are ready for the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 62, by Senator Kuhl, Senate Print 659, an act to amend the Agriculture and Markets Law, in relation to imposing liability for attorneys'

fees and costs based on sound agricultural practices.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 64, by Senator Kuhl, Senate Print 1385, an act to amend the Agriculture and Markets Law, in relation to exempting working search dogs from licensing fees.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of January.

THE PRESIDENT: Results. Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 71, by Senator DeFrancisco, Senate Print 769, an

act to amend the Public Authorities Law, in relation to the Onondaga County Resource Recovery Agency.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 73, by Senator Maltese, Senate Print 1654, an act to amend the Administrative Code of the city of New York, in relation to criminal possession of a knife, exception of ambulance personnel.

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 PRESIDENT: Results.

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 75, by Senator Lack, Senate Print 1294, an act to amend the Estates, Powers and Trusts Law, in relation to the exercise of powers of appointment in further trust.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 76, by Senator Lack, Senate Print 1623.

SENATOR PATERSON: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 78, by Senator Levy, Senate Print 355, an act in relation to requiring the Department of Motor Vehicles to compile information on driving while under the influence of drugs.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

THE PRESIDENT: Results. The bill is passed.

THE SECRETARY: Calendar Number 79, by Senator Levy, Senate Print 384, an act to

amend the Vehicle and Traffic Law, in relation to requiring school bus drivers involved in personal injury accidents to submit to a chemical test.

SENATOR PATERSON: Lay aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 80, by Senator Velella, Senate Print Number 1745, an act to amend the Vehicle and Traffic Law, and the Criminal Procedure Law, in relation to authorizing the discovery of blood samples and records relating thereto in certain cases.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 45.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President, could we now take up the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 62, by Senator Kuhl, Senate 659, Agriculture and Markets Law.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Thank you, Madam President.

This is a bill that essentially would define the liability for costs associated with a court proceeding to the losing party.

Two years ago this house adopted a bill called the Family Farm Preservation Act of 1993, and it was hailed as being one of the most responsible pieces of agricultural

legislation that was passed in several years. Part of that legislation allows for what is considered to be generally accepted agricultural practices to be determined by the Department of Agriculture and Markets, and what this bill essentially does, it says that, if that opinion of the Department is not accepted and is challenged by somebody in court, in the course of bringing a suit and they lose, that they will be responsible for paying the legal fees associated with that lawsuit.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Will Senator Kuhl yield?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Absolutely.

SENATOR PATERSON: Thank you, Senator.

I would imagine that a number of civil lawsuits may have brought you to this point where this legislation is deemed to be necessary.

My question to you is that, in a

sense, establishing a rule of law that becomes a penalty would dissuade individuals from bringing lawsuits in those cases where the lawsuit would be appropriate, or at least in the mind of the plaintiff the lawsuit is appropriate. Aren't we really, as the New York Trial Lawyers Association advises us, in a sense intimidating individuals from bringing lawsuits?

SENATOR KUHL: Senator, in response to your question, this piece of proposed legislation was not meant to be intimidating in any way, shape or form. As I indicated to you in the explanation, the part of the process that I would anticipate would be the action of the Department of Agriculture and Markets. It's a question as to whether or not a simple practice is generally accepted, a generally accepted practice in the course of carrying on the business of a farmer; so we will have or anybody would have a preliminary opinion. Then, of course, if you wish to challenge that and you have the perception that the Department of Law, with the expertise that

they provide, is not sufficient and at least not acceptable to you, then I think you should stand the risk of bearing the cost if, in fact, you're doing this out of your own desire and your own intent.

It's -- as I said, it's not meant to be an intimidating law. What it is meant to do essentially is to preclude people from using the courts, in fact to harass the agricultural practices that have been accepted in this state for years.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Actually, I want to apologize, Senator Kuhl, if I even suggested that the intention of the legislation was to intimidate people. What I was saying was that this would be the result of it. In other words, sometimes our intentions may be quite apt, but what I'm saying is from the point of view of the plaintiff, they go to the Department of Agriculture and Markets. The Commissioner renders an opinion. No one knows how much they

can research that. The individual doesn't like the opinion and then likes to sue and what we're saying is, if you don't win, you're going to then have to pay the attorneys' fees because we have had other lawsuits that were frivolous in their nature, and that all may be true, but I'm saying the precious ability of our society to seek legal redress when there is an injury with which we're concerned is what actually bothers me. But I didn't mean to suggest that the intention of the legislation was to intimidate.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 30th day after it shall have become a law.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 47, nays 1, Senator Paterson recorded in the negative.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 76, by Senator Lack, Senate 1623, proposing amendment to Section 15 and 16 of Article VI of the Constitution.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Lack, an explanation, please.

SENATOR LACK: Thank you, Madam President.

This is second passage of the resolution that passed both houses in 19... 1993 which would raise the monetary jurisdiction of the Civil Court of the city of New York and the District Courts to $50,000.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Would Senator Lack yield for a question?

SENATOR LACK: Yes, Senator. Yes, Madam President.

SENATOR PATERSON: Thank you.

My question, Senator Lack, is

simply that at this point raising the -- the monetary value of the jurisdiction is also at some point limiting the jury trials that individuals could seek, and I cite that as an issue that really is at the crux of this legislation. Just wanted to know what your point of view about it was.

SENATOR LACK: My point of view, Senator, is that I support that. I supported it in 1993. I would also point out that this is a supported measure by the Office of Court Administration and most specifically by the chief judge of this state, and it is one of her most important measures to pass.

THE PRESIDENT: On the resolution, all those in favor say aye.

(Response of "Aye.")

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 76, Senator

Abate, Connor and Gold.

THE PRESIDENT: The resolution is adopted.

THE SECRETARY: Ayes 46, nays 3.

THE PRESIDENT: The resolution is adopted.

THE SECRETARY: Calendar Number 79, by Senator Levy, Senate 384, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Madam President, can we lay that bill aside for one day at the request of the sponsor?

THE PRESIDENT: The bill is laid aside.

Senator Bruno?

Senator Kuhl.

SENATOR KUHL: Madam President, just a few minutes ago you passed Calendar Number 78, by Senator Levy. I'd like unanimous consent to be able to be recorded in the negative on that bill.

THE PRESIDENT: Without

objection, Senator Kuhl will be recorded in the negative.

SENATOR KUHL: Thank you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Yes, Madam President. My understanding is that the Rules Committee has finished its business and a message is on its way into the chamber and when it arrives, I would ask that we go back on the calendar to the reports of standing committees, and the Rules Committee report be read, and Senator Skelos, if you would.

SENATOR SKELOS: On its way.

SENATOR BRUNO: They're moving very slowly, Madam President, but we'll try and have them move a little quicker in the future.

THE PRESIDENT: Senator Bruno, we have the Rules Committee report at the desk.

SENATOR BRUNO: Madam President, may it be read at this time?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bill directly to third reading: By Senator Volker, Senate Bill Number 2469, an act to amend the Penal Law, the Criminal Procedure Law, the Judiciary Law, the County Law, the Correction Law and the Executive Law, with relation to the imposition of the death penalty.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I move that we adopt the report of the Rules Committee.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes. I'd like to object to the adoption of the Rules report and explain my reasons.

The Senate has a very fine committee structure. In the case of this bill which deals with the death penalty, probably undoubtedly the most significant piece of criminal justice legislation that will be taken up this year, and we find it reported out directly to third reading from the Rules

Committee. It's reminiscent -- and I know we'll never see it again -- but it's reminiscent of those days when important legislation came out at 3:15 in the morning directly from the Rules Committee.

Now, what we see is the hurry up, lack of respect for the committee process being done in the middle of the day instead of the middle of the night, but the substance is the same, if the -- even if the energy level of the members is quite different at three in the afternoon than three in the morning.

This bill, in the dead of night at 10:00 o'clock Friday night, was placed on the members' desks -- no members were here, of course, Madam President, 10:00, 10:30 at night -- so that it would have three days on the members' desks, being Friday, Saturday and Sunday.

It's now brought directly to third reading without benefit of stopping by the Codes Committee which is a very fine committee. The members on both sides of the aisle in the

Codes Committee, I think, among them are some of the finest legal minds in this state. That's a committee I once served on as one of my colleagues pointed out to me. I guess there are exceptions to that rule, having once served on it, and the -- my recollection of the committee, and I know it's so under its present chair and with its present ranking member and membership, is a committee where great thought is given to bills, bills are analyzed in great detail.

Bills are very often improved in that committee by the discussion of the members. The committee holds its meetings in public. The public gets some advance notice of it, and in the ordinary course when it reports a bill, it then comes to the calendar for a couple days until it's taken up.

What we're seeing here today is either one of two things: It's an attempt to do serious legislation in the old-fashioned hurry up way, bills on the desk in the middle of the night, members first get to see them on Monday morning perhaps. Rules Committee report is

directly to third reading.

This bill was not on the calendar. It wasn't on any active list last Friday. It didn't exist until Friday night, so I think there was a new rule about the active list that would be available 24 hours beforehand, and I don't want to say we didn't know it was coming. We certainly did get -- the Majority counsel certainly notified our counsel that they were taking up a death penalty bill on Monday. We just -- it wasn't printed until Friday night.

I don't think it's a good way to do business, and I don't really see the reason for doing it this way in February. The Rules Committee is a vehicle when the other committees shut down, that was always used in that rush to do hundreds and hundreds of bills in just a few days when the leadership, the Majority Leader ship realized, My goodness, it's getting awfully hot, 4th of July is either right around the corner or just behind us, and we have to get out of here; and Rules would meet, push these bills

right out.

There's no need for that in February, Madam President. There's no need for that whatsoever. I object to this procedure. I think we have a fine Codes Committee. I have faith in the Codes Committee, the ability of its members, its chair, its ranking member, to give due consideration to this legislation, and I think the public expects that, whether it's a big important issue like the death penalty where the eyes of the entire state are focused on the Legislature, or any other legislation.

We ought to use the committee system. We ought to give due deliberation and, you know, I know we're going to hear, Well, we've been talking about the death penalty for 17 years. Yeah, we've been passing a bill for 17 years that nobody pretends to think we can actually enact now.

This is not the same bill. This is a new bill. It ought to be in print for a much longer time than from a Friday night at 10:30 in the evening until a Monday in mid

afternoon. That's why, Madam President, I object to the Rules Committee report because I think it's not the way to do business. I think it's a bad way to do business when it's the last week of the session. I think it's certainly a terrible way to do business when we're only in February.

SENATOR LEICHTER: Madam -

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I appreciate the Minority Leader lecturing us on the procedures that are appropriate in the Rules Committee and in this chamber. Thank you very much, Senator, and while we are having notifica tion and full disclosure, I would have appreci ated knowing from the Minority Leader and his colleagues that they plan on handing up eight amendments that we just found out five minutes ago, and it would have been very nice to have been notified earlier today that you planned this exercise just by way of sharing information with your comrades and your colleagues. I think that's very inappropriate procedure, Madam

President. It isn't in the spirit of what we're trying to do here in deliberating and working together, and I would hope the Minority Leader might give us a little more notice. I think that's fair and appropriate and it strikes me, Madam President, that in order to have prepared these amendments, study must have been made of this bill. Plenty of time to study the bill, to review the bill, to know what's in it, so you must have had plenty of time apparently to do that. So, so much for disclosure and procedure.

We all understand what's going on in this chamber this afternoon. This house will pass a meaningful, constitutionally correct Governor's program pass penalty bill -- death penalty bill. Death penalty bill. Death knell -- death penalty bill. That's all right; wait until you hear the debate on that. I am giving notice today that that's next.

SENATOR CONNOR: Only two things are certain, right?

SENATOR BRUNO: And the Minority

Leader comments, and I will sit down, that these are the only two things certain in life, death and taxes.

THE PRESIDENT: Thank you, Senator Bruno.

I'll recognize you in a moment, Senator Leichter.

Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Just briefly, Madam President. My counsel informs me that we first got to look at this bill at 10:30 this morning and drafted the amendments since then, so I guess if four hours or five hours is a lot of time to study a bill, we have it.

Counsel did notify Majority counsel when we came to the floor that we had amendments. I think the amendments are hot off the press, but they're in reaction, and I do want to assure you, Madam President, and assure the public that when the day comes that we are in charge, we will do things differently.

THE PRESIDENT: According to Rule VII, section 2, on page 17 of the Rules governing this body, a Rules Committee report is always in order and, if the report is adopted, all inconsistent rules of the Senate shall automatically be suspended until the subject of the report has been disposed of, including the final action on it.

Senator Leichter.

SENATOR LEICHTER: Yes, Madam President.

In all my 25 years in the Legislature, this is the worst abuse of the committee system that I've ever seen. There have been other instances when significant bills have failed to go through committee, usually these are budget bills, maybe bills at the end of the session, but never have we had a bill of this significance, death penalty bill, that is being rushed through. It almost seems as if there's a blood lust by those proponents of this legislation that they've got to pass this bill, come what may, and to hell with the legislative

procedure.

Senator Bruno, I'm really disappointed because you committed yourself to an open process. You committed yourself to a fair process. You committed yourself to a deliberative process, and all of that is being torn up. Those promises are torn up and thrown in the wastebasket and, Senator, let me tell you, you made the best argument that I've heard on this floor yet why we should not proceed this way, and why we should allow this bill or any bill that deals with matters that finally come before this house to go through the regular committee process.

You complained about the fact, well, there's amendments here. We didn't have time to consider them, so oh, that's what the committees are for, because those issues are raised in committees and they're discussed in committees, and in the 20 years or so I've been in the Senate and I think we've had a death penalty bill before us in all of those 20 years, they have always gone through the Codes

Committee, and it's a very responsible committee. It's a fair committee. We may differ strongly on certain issues. I certainly differ with Senator Volker on the death penalty, but in all those years that bill has always come before the committee. It's been discussed and we've had a deliberative process, and I argue very strongly against the adoption of the Rules Committee report and rushing through a death penalty bill without allowing the members a chance to look at the bill, consider the bill, have it go through the committees and, in this instance, I think it would be appropriate to have public hearings, allow the district attorneys to be heard.

What's the rush? What are you hurrying for? What is the need? Is there a constitutional deadline? Does it say death penalty has to be adopted by February 27th, 1995?

There's no rush. It can be done in a deliberative proper way. Are we in such a speed to put people to death that we're not even

going to pay attention to our own rules?

Senator Bruno, I really urge you to pay heed to implement the promises you've made and let's have a deliberative body. Let's not disgrace this body by rushing through a death penalty bill without proper consideration.

SENATOR VOLKER: Madam President.

THE PRESIDENT: Senator Volker, do you wish to be heard on the adoption of the Rules Committee report?

SENATOR VOLKER: Yes, Madam President.

I just might say very quickly, Senator Leichter, I -- that was an excellent speech. I remember hearing it about 10 years ago when we did three death penalty bills in one year. In fact, I remember we reported one out of Rules; we did one out of the then Codes Committee. In fact, I think we did two out of Rules when we changed the bill, one bill that was on the floor.

Let me just point out that one

reason why the amendment process was much easier for the Senate Minority is that they had certainly a bill that they could look at because the bill that's on the calendar now, Calendar Number 100, Senate Print 2241, is basically the same bill with the few changes that were made since then after the agreement between the Speaker of the Assembly, the Governor and the Majority Leader on Wednesday when we left almost two weeks ago. At that time, the agreement was that we would do an agreed bill which was agreed in principle.

Of course, I would prefer to - to see the process move through my committee, but let me -- let me just tell you the problem, Senator Leichter. It's amazing that we have not heard anything basically from the Assembly until this morning. Well, maybe last night. Soon as we were prepared to move the bill, this bill, which probably represents about 99 and two thirds percent of an agreement -- I won't get into the comparatively minor issue -- that the Assembly just walked completely away from us.

Can I finish, Senator?

SENATOR LEICHTER: Yes.

SENATOR VOLKER: And I don't think it's wise to get into that debate here on the floor. I would only say to you this: Let's not kid ourselves. The issue here is the death penalty. This bill is -- is a magnified version of a bill that has been -- that we have been passing for 18 years actually. We've been trying to restore the death penalty completely since 19 -- basically since I've been here since 1973.

Admittedly, there are more protections for the defendants, and there are some changes in this bill that relate to constitutional issues. They're issues, by the way, that, as I say, that were in -- most of which were in the bill that was already reported out on the floor of this Senate that's been, in fact, debated in the papers. People have been discussing this all over the place.

If there's ever a bill, by the way, Senator, that doesn't need a public

hearing, I think this is it. The issue of the death penalty is not an issue of procedure. It's an issue of whether you want to do the death penalty or you don't want to do the death penalty. It really always has been. We want to make sure that there is a bill here that gives protections to the defendant and that properly protects victims and that's, I think, what this bill does.

But, Senator, let's not -- let's not talk about that this is the worst abuse of the committee procedure. That's not what the issue is all about. The issue is the death penalty, and the issue is moving this matter along.

SENATOR LEICHTER: Madam President. I just wanted to -- would you yield to me? I just want to ask Senator Volker a question.

THE PRESIDENT: Senator Volker.

SENATOR LEICHTER: Senator, would you yield?

Senator, I'm trying to understand

your argument, not on the death penalty because you and I have debated that and we know we disagree, and I think we respect each others' positions, but on the issue of what this body ought to take up and in what order and how the process should function, is it your view that if the Majority Leader and the Speaker agree on a bill, that that bill should not go through committee and need not go through committee?

SENATOR VOLKER: Senator, I would prefer that the bill go through my committee although I must tell you something, that I can not honestly say to you that if we put this bill through my committee tomorrow that we wouldn't be here next week still going through the same sort of exercise because the way this whole process has gone over the last couple of months, I certainly couldn't guarantee that, and I think if we're going to move this process along, this may be the only way to do it.

SENATOR LEICHTER: If Senator Volker would yield.

Senator, you really led me to my

next question, which is you could hold the hearing; in fact, I think the Codes Committee is having a meeting tomorrow, is that right?

SENATOR VOLKER: Right.

SENATOR LEICHTER: And you could put this bill on the agenda of the Codes Committee, isn't that right?

SENATOR VOLKER: Probably could with unanimous consent.

SENATOR LEICHTER: Unanimous consent! Have you ever asked unanimous consent when you put something on the calendar of the committee?

SENATOR VOLKER: The bill that was drafted on Friday would have to have unanimous consent to be on the calendar because as of Thursday -- and I must tell you something, I'm very doubtful that the Senate Majority, and I understand why, would ever give unanimous consent on that short a notice. That's why we use the Rules Committee, because I think it's the best procedure to get things moving along.

SENATOR LEICHTER: Senator, my -

the question I asked, and I'm not sure that the answer is correct. Are you saying that it would require unanimous consent for you to put this bill on the agenda of the -- of the Codes Committee tomorrow?

SENATOR VOLKER: Yes, would require it from the Minority.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Would Senator Volker continue to yield, please?

THE PRESIDENT: Senator Volker?

SENATOR VOLKER: Yes.

SENATOR LEICHTER: And if that consent were required and if it were given, and I know no reason why it wouldn't be given, and the bill were reported out of committee, could it not be acted on by the Senate on Wednesday?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Again, with unanimous consent, it would have to receive unanimous consent from the Minority. If you remember, when we -- when we report bills, you

have to list, as Senator Gold I think will tell you, that you have to get agreement in order to report a bill directly out of committee to the floor for the next day.

So that there is no guarantee that that would happen.

SENATOR LEICHTER: Senator -

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Yes, if Senator Volker would yield, please.

Senator, isn't it a fact that by the same way that you brought the bill here today without consent of the Minority you could have done that on Wednesday after it went before the Codes Committee? So the fact is that we could have this bill before your committee, discussed in committee, and still be voted on by the Senate this week if you wanted to follow deliberative -- a deliberative process.

SENATOR VOLKER: The Rules Committee is the only committee of the Senate that can report directly to the floor without -

without consent.

SENATOR LEICHTER: Calendar.

SENATOR VOLKER: To the calendar, I'm sorry, without consent, to the calendar and, Senator, if you're talking about last Wednesday, we didn't have a bill last Wednesday. We do have a bill right now which is on the calendar which is very similar to this bill which has been on the calendar, as I say, for two weeks now, but that bill is not exactly the bill that we have reported here out of the Rules Committee.

SENATOR LEICHTER: Madam President, Senator Volker.

THE PRESIDENT: Senator.

SENATOR LEICHTER: And the fact is, Senator, that that initial bill of two weeks ago was not considered in committee. We now have a different bill that came out Friday and my question to you is, if you wanted to do it this week, you could still have it go through your committee and there is a procedure to then bring it before the full Senate on Wednesday, or

you could wait one week, Senator, and have a deliberative process.

Is there any reason or any need, Senator, that that bill has to be passed this week, that you can not wait until next week so that you follow the procedures of the Senate so that you have the deliberation that I think we owe to this important subject?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, the Majority Leader last -- a week ago Wednesday, when the press conference was held that stated the agreement, the agreement in principle or agreement between the Speaker, the Majority Leader and the Governor, let it be known that whatever occurred that the Senate was going to move this death penalty today, and that it was -- it was his intention to make sure that a death penalty bill was passed today as best he could. That was his commitment, and that's why this bill is here.

I think I would prefer just to have the committee process, but I think, under

the circumstances, the Majority Leader feels that this is the best way to move this process along.

THE PRESIDENT: Senator Dollinger, do you wish to be heard on the adoption of the Rules Committee?

SENATOR DOLLINGER: I do, Madam President. I would, however, like to ask Senator Volker if he would yield to a question.

THE PRESIDENT: Senator Dollinger, do you wish to be heard on the adoption of the Rules Committee report?

SENATOR DOLLINGER: I do, but at this time I'd simply like to ask Senator Volker, does he still have the floor? If so, I'd simply like to address a question.

THE PRESIDENT: He does not have the floor. You have the floor.

SENATOR DOLLINGER: Well, could I then ask Senator Volker, since I have the floor, if he would yield to a question.

THE PRESIDENT: Is it on the adoption of the Rules Committee report?

SENATOR DOLLINGER: It is on the Rules Committee.

THE PRESIDENT: Senator.

SENATOR DOLLINGER: Senator, I'm intrigued because, in your comments a moment ago, you made reference to the bill on the calendar and referred to Bill 2241, is that correct? That is the bill that was in the calendar that was published on Friday, correct?

SENATOR VOLKER: 2241, yes.

SENATOR DOLLINGER: Right, but that isn't the bill before us today.

SENATOR VOLKER: No.

SENATOR DOLLINGER: And, in fact, the bill before us today, 2649, is twice as long, twice -- presumably twice as complicated as the bill -

SENATOR VOLKER: No, I wouldn't say it's twice as long or twice as complicated. In fact, Senator, although this is the Governor's program bill, it is the Governor's Program Bill Number 1, most of the languaqge in here does not change the process as regards the

death penalty. It does add quite a bit of language as regards the process after the -- how the death penalty is carried out, the Correction Law, amendments and things of that nature, but it is mostly detail as far as the Correction Law is concerned.

SENATOR DOLLINGER: But is it -

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Again, will Senator Volker yield?

But the bill that we have in front of us, 2649, is 29 pages long; the bill that you made reference to that was in the docket on Friday is only 12 pages long.

SENATOR VOLKER: H-m-m.

SENATOR DOLLINGER: So something happened between the publication of this document on Friday and the preparation of, I assume maybe 5:00 o'clock Friday, or some time in the afternoon on Friday when this was published, and this bill which I think Senator Connor properly pointed out was plunked on my

desk to meet the three-day aging period at about 10:00 o'clock Friday night.

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

THE PRESIDENT: Senator Volker.

SENATOR DOLLINGER: Again, Madam President, through you, could you explain to me what that process was, what happened between the publication of the calendar and the publication of the bill?

SENATOR VOLKER: Well, obviously what happened was that the Assembly, the Governor and the Senate discussed the -- the legislation and -- and made certain changes in the bill. What I'm tellin' you though, as far as the implementation of the death penalty is concerned, that a lot of it is just expanding on what was already there. That's what I'm telling you, which was in the previous bill. Sure, there was some additional language that was put in this bill, but I'm telling you and that's why, by the way, when you went to amend the bill, you're amending basically the same sections as you amended in a previous bill or

would have amended in the previous bill.

THE PRESIDENT: Senator.

SENATOR DOLLINGER: Again through you, Madam President, one final question. Were you, Senator Volker, a participant in the discussions that occurred presumably after the calendar was published and before the bill was put on our desks, about the contents of this bill? Were you a participant in this?

SENATOR VOLKER: I'd hasten to tell you I was, yes.

SENATOR DOLLINGER: Do you know anybody else who was?

SENATOR VOLKER: There was the Speaker's people, the Majority Leader's people, the Governor's people and myself, and some others also.

THE PRESIDENT: Senator Volker.

SENATOR DOLLINGER: Could you tell me whether there were any other members of the Senate who participated in those discussions?

SENATO VOLKER: Any other members

of the Senate who participated? No.

SENATOR DOLLINGER: Madam President, on the bill.

THE PRESIDENT: No, Senator, I'm going to recognize Senator Waldon now.

SENATOR DOLLINGER: No, on the resolution to accept the Rules Report.

Madam President, I rise to join the voice of Senator Leichter and Senator Connor. I guess I'm astounded that we're standing here today to change the law, probably the most critical law in the state, to impose the death penalty that hasn't even actually gone through committee, and I'll apologize -- I'll apologize publicly to Senator Volker, because I don't like asking Senator Volker picayune questions about the procedure when what we should be debating is about principles that we hold, perhaps different principles but principles that we hold to be very, very important about the death penalty.

It's a shame that I stand up here and talk to you about the little points of

procedure because the Senate has decided to bend all of its rules to accommodate what appears to be the political agenda of the Majority Leader, and that's what troubles me most, is that someone promised that the bill would be acted upon today, and when if agreement wasn't reached, all of a sudden the rules of the Senate, the body that I joined two years ago - and one of the first things I did was the last Majority Leader came out in the middle of debate over the bill involving the joint resolution to create -- to appoint a Comptroller, and he came out, Senator Marino came out and he and I had a little tussle on the floor and he lectured me about the importance of the Senate, the value of the institution he'd been in for 28 years and how this was the importance of the Senate and how I should be reminded of that and mindful of that, because we were debating a resolution about exercising the prerogatives of the Senate.

Well, here we are bending the rules, manipulating the rules again to

accommodate something other than an agenda about passing substantive legislation. We could easily do it, as Senator Leichter points out, through the Codes Committee. Senator Volker has been a leader in that, in the Codes Committee. He's been a leader on this bill, should have gone through the Codes Committee before it came here.

In addition, it doesn't appear to me, and I've got lots of questions on the bill which I'll talk about when we come to the bill, but I'll just point out that Senator Leichter's point about a public hearing is well taken, is very well taken. We hold public hearings in this Legislature about minor league baseball development. We've held them about grape price cuts and price supports for the grape industry. We've held public hearings in the last couple years about diapers in the waste stream. We held them about zebra mussels in our water system. We've heard them about tanning salons, and now we're not going to hold a public hearing on the imposition of the death penalty?

What's the rush? What's the big rush? Why did we change our rules? It seems to me and maybe cynically, that I have a view of why it's supposed to happen today. Tomorrow the Catholic Conference is coming down. They're coming down in part to lobby members of this chamber against this bill. But they won't get a chance if today this body, through the Rules Committee, receives a report which includes the death penalty and we pass it today.

It seems to me that the motivation is clear. It seems to me that it's obvious why this is happening today. I most strenuously object to the receipt of the Rules Committee report.

SENATOR BRUNO: Point of order.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Point of order, Madam President.

I believe the rules of the Senate are such that we can only debate for one half hour a report of a standing committee including Rules, and I believe that half hour has just

ended, so we thank our colleagues for their remarks.

SENATOR CONNOR: Point -

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: I believe the rule is a half hour on each side.

SENATOR BRUNO: Yes.

THE PRESIDENT: That's right.

SENATOR CONNOR: I don't know if we used all of it.

SENATOR BRUNO: Yes, that was your side. We have some time to go.

Madam President.

THE PRESIDENT: Senator Connor, you have used a half hour.

SENATOR BRUNO: Madam President.

THE PRESIDENT: Yes.

SENATOR BRUNO: I would move the adoption of the Rules report.

THE PRESIDENT: Senator Bruno has moved that we adopt the report of the Rules Committee. All those in favor.

SENATOR DOLLINGER: A point of

order, ma'am.

In reaching the conclusion, as I assume this body is, that the half hour has expired, is the Minority being charged with the time that Senator Volker used in discussing the bill?

THE PRESIDENT: No, no.

SENATOR DOLLINGER: Then there should be additional time because I know he spoke for several minutes.

SENATOR BRUNO: On -

THE PRESIDENT: But the entire debate, it's been more than half an hour.

SENATOR WALDON: Madam President, with all due respect, I wish to make -

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: I wish to make a reasoned rational decision on this resolution as a result of due deliberation. I did not see you timing a clock in regard to the debate on both sides of the aisle. I have some valid concerns about this resolution.

I respectfully ask this body to

recognize me to raise my concerns so that my decision will not be in the dark on this resolution.

THE PRESIDENT: Senator Waldon, can you do it in just one minute?

SENATOR WALDON: I can't guarantee -- I used to be quick enough, Madam President, to do a lot of things in one minute.

THE PRESIDENT: Senator, we have already consumed the half hour.

SENATOR BRUNO: Madam President, excuse me. I have the floor. We move the adoption of the Rules Committee.

THE PRESIDENT: Yes, you're quite right, Senator Bruno.

SENATOR BRUNO: And I would appreciate a vote on that.

THE PRESIDENT: All those in favor signify -

SENATOR ABATE: So -

SENATOR CONNOR: We'll have to have a slow roll call so Senator Waldon can explain his vote.

THE PRESIDENT: The question is on the adoption of the Rules Committee report. Call the roll, please.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Against it, no, and I'd like to explain my vote.

I'm a new Senator -

THE PRESIDENT: Senator Abate will explain her vote.

SENATOR ABATE: Yes, if I may be heard. I'm the newest member of this chamber and I'd hate to be hearing years from now that we followed some rules and we talked more about rules than we talked about the substance of these issues.

We all have to go home some day and answer the question of our constituents: Did we read the bill? It's not enough to say we're for or against the bill. Do we understand the nuances, the details? We're not being responsible legislators if we cut off debate at 30 minutes or we cut off debate at two hours because this is a critical issue.

Whether we're for or against the death penalty, we must understand what protection it will provide and what it does not provide. I'm -- I'm ashamed because I know that there are individuals in this room, and I include myself, I received the bill this morning. Did I have adequate time to read it and understand it? I don't think so. I don't think any of us did, and the fact that we've been debating it for many, many years, is not the same thing because legislation changes. One word can change the intent and spirit of a piece of legislation.

I ask that all of us, let's be rational. If we pass the death penalty bill at midnight, but it is said about us that we had fair and honest debate, we just do not live by certain rules that did not make sense for such a critical piece of legislation. Let's look to our consciences today.

THE PRESIDENT: The question is on the adoption of the Rules Committee report. We'll continue a slow roll call.

SENATOR ABATE: I vote no.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Bruno.
SENATOR BRUNO: Yes.
THE SECRETARY: Senator Connor.
SENATOR CONNOR: No.
THE SECRETARY: Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator DiCarlo.
SENATOR DiCARLO: Yes.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: Explain my vote, Mr. President.
THE PRESIDENT: Senator Dollinger to explain his vote.
SENATOR DOLLINGER: It seems to me, in the past, when we've done this bill that the Codes Committee has done a good job on the

bill. I think now, given the fact that this is a bill that's going to become law, I think the Codes Committee could have done an excellent job.

Unfortunately, Senator, the amendments, three of them are mine, I would have loved to have put them before the Codes Committee. Instead, I found out, whether or not -- I had to play sort of hit-or-miss on whether or not they'd be included in 2649. Turns out all three of them are not, even though I tried to get them in the discussion much earlier. That's why the amendments are now being presented. That's why they're being presented at this time.

All that could have been avoided. We might have had a discussion. I would have been glad to present you the amendments in the Codes Committee.

I'm going to vote no, Madam President. It just seems to me there's no reason to rush this. The people of the state of New York could wait for this body to engage in

the kind of deliberation that we're -- we should be well known for.

THE PRESIDENT: Senator Dollinger in the negative.

Continue, please.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: To explain my vote.

THE PRESIDENT: Senator.

SENATOR ESPADA: Just to depart a little bit from my colleagues on this issue, I for one find it altogether fitting that the precursor to a -- a full debate on the death penalty be as arbitrary and capricious as the bill itself, so I think we're living up to form, unfortunately.

I vote no on the resolution.

THE PRESIDENT: Continue, please.

Senator Senator Espada recorded in the negative.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber.

SENATOR GALIBER: No.

THE SECRETARY: Senator Gold.

SENATOR PATERSON: Mr. President, to explain my vote.

THE PRESIDENT: Senator Gold to explain his vote.

SENATOR PATERSON: And I will be brief. Senator Bruno, I've known you for a day or two, and you and I have had a number of conversations in the back of this chamber while other people happen to have been the leaders, and I remember your comments and your sympathies toward the particular late night sessions and starting on time, and I think that's why, when you took over, you initially announced some reforms that we've been fighting for because we've got to get down to business.

I think now you're, however, getting some very bad advice from some people and you're starting to confuse the concept of getting down to business and getting rid of a lot of the nonsense with what I call the

bulldozer syndrome.

Now, the fact of the matter is, Senator, that we do not vote on concepts. A lot of people wish we did. A lot of people would like to just go to the voters and say, "I'm for capital punishment." "I'm for abortion." "I'm against" or this and that, and not explain to people that bills have words in them and each word is something that affects the lives of people because it's a law.

Big mistake. If the Governor is waiting to sign this, that's one thing, but under the circumstances where you know that the Assembly is not going to do it, where it's only posturing, what you do is, unfortunately, tarnish what many of us hoped was a good start, a reformed start.

I vote in the negative.

THE PRESIDENT: Senator Gold reported in the negative. Continue the roll.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Goodman.
SENATOR GOODMAN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoblock.
SENATOR HOBLOCK: Yes.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Yes.
THE SECRETARY: Senator Jones.
SENATOR JONES: Explain my vote.
THE PRESIDENT: Yes, Senator Jones to explain her vote.
SENATOR JONES: I just want to join and echo some of the things I've heard my colleagues say today. Certainly, we all know that none of us sitting here is going to change our vote as far as the substance of the death penalty. We all know it's inevitable, and we

all know we will have a death penalty this year whether we're for or against it.

So where is our obligation now? I think Senator Abate explained it perfectly. Our obligation now is knowing what is in this piece of legislation. I'm not going to change whether I support or I don't support the death penalty but I do have to go back to my constituents and be able to say, when somebody involved with mental health said to me, Are these people protected under the death penalty; when somebody says to me, Is there going to be adequate defense for those who are going to be charged with murder and perhaps subject to the death penalty; or better yet, my local government who says to me, Am I going to be stiffed with the bill for the defense of these people?

I don't know the answer to these questions because Senator Abate is a half a day ahead of me. I got this an hour ago, so I haven't read it, and I certainly cannot support it being voted on today regardless of how I'm going to vote. The procedure is wrong.

I vote no.

THE SECRETARY: Senator Jones in the negative.

Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

(There was no response.)

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Yes.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: Here we go again acting at the whim and whimsy of the

Majority Leader. Rules mean nothing. Proced ures mean nothing. We rush ahead. We really make ourselves look foolish.

What is more important than the wording of a bill that deals with how people are going to be put to death, when they're going to be put to death, what their rights are, what the procedure is? To have a bill of that sort be printed over the week end, first seen by the members on Monday, and then rush ahead and not have it go through committee, it's appalling.

You know, what so often happens here, we're sort of within the walls, the thick stone walls of this building, and we lose all perspective. Senator Bruno, I think most of the people in this state support the death penalty, but I think that they would agree with me and with others who, say, have a fair, reasoned position. That's why they send us up here, to act in a deliberative, sensible, rational fashion.

This is not doing it, and it's going back to those procedures that I know you

and members on both sides of the house criticize. It's not necessary. You wanted to pass a death penalty bill this week. You could have done it, and I showed you in the questions to Senator Volker how you could have gone through committee and done it.

I would have hoped that you would have also -- I say "you", but that the whole body would agree that hearings would have been proposed, so on, you probably would have passed the bill by the end of March.

It's going to pass this year. There's no question about it, but to force this body to vote on a complex, complicated bill dealing with death and not give members an opportunity and a chance to do it in a reasoned manner is totally wrong.

I vote in the negative, Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter in the negative.

Secretary will continue to call the roll.

THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Yes.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
(There was no response.)
Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: No.
THE SECRETARY: Senator

Oppenheimer.

(There was no response.)

Senator Padavan.

SENATOR PADAVAN: Mr. President, I'd like to explain my vote.

ACTING PRESIDENT KUHL: Senator Padavan to explain his vote.

SENATOR PADAVAN: I listened very carefully to Senator Dollinger and Senator Leichter. Now, there are a few things that I think you overlooked.

Number one, are you aware of the fact that your counsel, your counsel for the Minority, a week end ago, not this past week end, the one prior to that, subsequent to a press conference which everyone could attend and where many questions were asked both by the media and others, were you aware that your counsel attended those negotiations? Apparently not.

Now, your counsel was there along with the Senate Majority and the Assembly and the Governor's people to discuss what's in this

bill.

Secondly, as Senator Volker indicated, the bill that has been on the calendar for a number of weeks, is essentially the bill that will be before us today.

Now, even after that, if you don't understand it all, if you still have questions, then we're going to have a two and a half hour debate probably, if not longer, with all due respect to the rules and you can ask them then.

The point I'm trying to make is that the Senate Majority has done everything within the last three or four weeks, including allowing your counsel to participate -- I shouldn't use the word "allow". I should use the word properly "permit" your counsel to participate in those negotiations.

Now, if you didn't get the information that was presented at that point in time, if it was not shared with you, then I suggest you have an internal problem to take care of, but it's not with the Senate Majority.

This bill came out of Rules, where it was also discussed, I might add, by some of the very same people who spoke here a little while ago, and where questions could be asked and answers given.

Gentlemen, there's been more - and ladies, there's been more than ample opportunity for everyone to know what's in this bill, and your rhetoric this afternoon really falls rather thin in terms of substance.

I vote aye.

ACTING PRESIDENT KUHL: Senator Padavan in the affirmative. Secretary will continue to call the roll.

THE SECRETARY: Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson to explain his vote.

SENATOR PATERSON: Mr. President, I feel like Lieutenant Columbo. I have the counsel that Senator Padavan is referring to sitting right here. He was part of the negotiations and actually we wanted to congratulate the Majority for really opening up

five-way negotiations since they have taken office and that's very good, and our counsel was part of the negotiations until they broke off.

We are looking at a substantially different bill than the one that was on the calendar two weeks ago Monday, two weeks ago Tuesday. We are now looking at a completely different bill and negotiations that we were not included in, and so it came as a surprise to us when we heard about the bill today, and this is the reason that we could only offer the amendments at this time. We're not saying we wouldn't have offered amendments to the previous bill, but we had different amendments and we would have made the notification. What we're saying is that we didn't know about the bill until today.

Now, in New York City, there's an inscription on the Supreme Court that says -- of New York County, "The True Administration of Justice is the Firmest Pillar of Good Govern ment." "The True Administration of Justice is the Firmest Pillar of Good Government."

Good government is not tested in the regular day-to-day procedures. Good government is tested at times like this when very controversial bills are brought to the floor. There had to be a better way. We could go to Manufacturers Hanover, there had to be a better way than to have done this today.

There had to be a way that the committee procedure could have even allowed for the discussion even if we then sent the bill to the Rules Committee. That is the only objection that we're making. That is why we have made the objection at this time, because we feel that the citizens of New York demand it.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, how do you vote?

SENATOR PATERSON: I vote no, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson in the negative.

Secretary will continue the role.

THE SECRETARY: Senator Present.
SENATOR PRESENT: Aye.
THE SECRETARY: Senator Rath.
(There was no response.)
Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
SENATOR SANTIAGO: No.
THE SECRETARY: No.
Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Yes.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Aye.
THE SECRETARY: Senator Smith.
(There was no response.)
Senator Solomon.
(There was no response.)
Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator

Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

(There was no response.)

Senator Stavisky excused.

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

ACTING PRESIDENT KUHL: Senator Waldon to explain his vote.

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

I have great respect for this institution. I have greater respect for life, and what I wanted to do earlier on the resolution was to ask the learned gentleman from

Wyoming, Erie and Livingston County, had something happened since we last discussed the bill which compelled the speed with which we were now processing this proposed resolution.

For example, had he any new information regarding the per capita murder rate? Had it gone up so dramatically that we had to act now as opposed to waiting? Was there a change in the mathematics of dollars from the last time I had been advised regarding the death penalty that to impose the death penalty on New York State will at the very least triple the cost of trials regarding the death penalty. Had that changed, and should I be edified and made aware of that?

Had anything else happened in terms of variables and invariables that would force this body to act now as opposed to waiting and having due deliberation to make the decision?

I was not afforded that opportunity, so hypothetically I ask Senator Volker to address those issues when we debate

the bill a little later.

I would like to know; I think we need to know. What's more important than my need to know though, is the fact that we're talking about the gravest of issues, the taking of life, and we're doing it in a very cavalier fashion.

I feel like I've been in a street fight where the bully said, "I'm bigger than you. I'll take your ball. I'll take your glove. I'll take your bat and get off the field." That is exactly how I feel. I feel violated that I did not have an opportunity to properly discuss this issue.

We're talking about life and death. We're talking about the undermining financially perhaps of our criminal justice system, and we're doing it in a very cavalier fashion.

I have great respect for this institution. I hope everyone here has great respect for this institution, but I can tell you that today I've seen a display which shows me

that perhaps others do not respect this body as I do.

I rue this day. I vote in the negative on this resolution.

ACTING PRESIDENT KUHL: Senator Waldon in the negative.

Secretary will continue to call the roll.

THE SECRETARY: Senator Wright.

(There was no response.)

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator Gonzalez.

(There was no response.)

Senator Hoffmann.

(There was no response.)

Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator Nanula.

(There was no response.)

Senator Oppenheimer.

(There was no response.)

Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Wright.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 33, nays 20.

ACTING PRESIDENT KUHL: Motion to accept the Rules report is adopted.

The Chair recognizes Senator

Bruno.

SENATOR BRUNO: Mr. President, we would now like to take up Calendar Number 106.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 106, by Senator Volker, Senate 2649, an act to amend the Penal Law, the Criminal Procedure Law, the Judiciary Law, the County Law, the Correction Law and the Executive Law, in relation to imposition of the death penalty.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Mr. President - Mr. President, could we, with the consent of the Minority Leader and Majority Leader, read the last section so that several people who have asked to vote could vote?

SENATOR BRUNO: Without objection, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The chair recognizes Senator Tully. How do you vote?

SENATOR TULLY: Aye.

ACTING PRESIDENT KUHL: Senator Solomon.

SENATOR SOLOMON: Yes.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Aye.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Aye.

ACTING PRESIDENT KUHL: Senator Bruno, are there any other Senators you wish called?

Senator Oppenheimer.

SENATOR OPPENHEIMER: This is concerning the resolution?

ACTING PRESIDENT KUHL: Secretary will withdraw the roll call. The chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, this has been a long -- and it's always interesting, I guess, that when you get to an issue such as this and we've debated this issue so many times over the years, that I guess there's bound to be, no matter what happens, some partisan bickering on this issue. It's just in the nature of the business, and then I guess I understand that.

One thing I think everyone should understand that this is the beginning of a process that has been going on really not for 18 years, but it's really been going on for 23 years, because what really happened was that when the People v. Gregg or -- Gregg v. Georgia was passed many years ago after the Furman case, it was really no surprise to some people that we would have to once again deal with the death

penalty issue because the Supreme Court had done a flipflop back in the '70s on the issue of the death penalty.

One of the things that the anti-death penalty people, many of them, don't understand, people that have gone around this country fighting the death penalty, and have paid little attention to it because they would rather not pay attention to it is the fact that there was a long period of time in this country when there was no death penalty anywhere and at that time primarily as the death penalty declined and there was no death penalty is when the murder rate surged across this country.

In talking to some of the younger people who talked to me about the death penalty, they are totally unaware of the fact that New York probably is an example more than any other state in the Union of what happens when you're not careful with the criminal justice system.

When we eliminated the death penalty in 1965, we set off not just because of that, but it was the harbinger of a huge change

in this state. My father, who was on the Bartlett Commission -- and there's only one member of this chamber now who was around at the time in the Legislature, Senator John Marchi - when the Bartlett Commission recommended the abolition of the death penalty, I've read so many misstatements about what happened.

I read in the paper the other day that part of the reason for the death penalty being abolished was because somebody almost got executed, which is all nonsense. The death penalty was abolished in part because the murder rate was low and the violent crime rate was low and people said, We want a more civilized society; we want a society where people can walk the streets, but also because we don't have the kind of terrible criminals that people say we really have, and we really need a more civilized society and, if we abolish the death penalty there won't be any enormous increase in murder as some of the critics have said, and there won't be an enormous increase in violent crime. That's all nonsense; that won't happen.

Well, the death penalty was abolished. New York City hit record numbers within a matter of a couple of years. The death -- the murder rate tripled. By 1971, I believe it was, it had doubled rather, and that it tripled in the '70s. Buffalo reached a record in 1971. It had never seen numbers anywhere close to that. What happened is that the murder rate went from around 800 to 2500 within a fairly short period of time, and I remember a quick story, and I realize that very honestly this is not the end of the process, that we'll be back here again dealing with this process.

But I must tell you a story that dawned on me the other day. When I was in law school as a police officer at the time and I was also in law school, and my criminal justice professor was Herman Schwartz, who some of you may know, a rather liberal professor who was just on television the other night regards the O.J. Simpson trial. He was my criminal justice professor, and we were discussing at the time - this would be about 1964, I would think, or

1965, right about the time the death penalty was abolished, and I remember saying to him, you know what's going to happen is, Herman, if we don't deal with the murder rate as it soars and the crime rate in our streets, what's going to happen is the rise of drugs in our streets is going to become enormous and, worse than that, guns are going to show up all over the streets. This is back in the '60s.

The interesting thing is, people are saying, you know, if we could get rid of the guns and drugs, why, the killings would go down. The truth is, the killings came first. The killings came before the guns and drugs. It's a fact. You have got to look at it.

If we're going to deal with society, one of the things we have to do, and it's not the be all and end all, nobody ever said that the death penalty was going to solve all of these problems, but the murder rate in this state, if there's anyone that thinks that we have a more civilized society since the death penalty was abolished, I'd like to know who they

are.

There's no question that it's time that we sent that message that I've been talking about for so many years. If there's ever a time we need a message to the streets in behalf of the people of this state, it's now. You know, there's no -- I talked to a person today, there's really no organized group that supports the death penalty. It's just called "the people". They're not really organized. They vote.

My good friend, Mario Cuomo, said over the years, you know, "If people really wanted to get the death penalty, they could vote against me, they could take me out of office," and they did.

I'm not telling you that it was by any means the only issue. It certainly wasn't. There were many other issues, but I will tell you that it was a very potent issue because criminal justice is a potent issue and the death penalty is really in a -- the harbinger of that issue.

Keep in mind that the murder rate in this state went from 4.3 per 100,000 to over 13 per 100,000, and it's hovered around that 12 to 13 per 100,000 for some decade now. It has never reached those proportions anywhere near that before we abolished the death penalty.

If there's ever a time to move, it's now. Now, across the country, by the way, people have recognized the importance of New York, and just let me just deal with a couple of issues very quickly. Over the years, we've discussed all sorts of issues on this floor. We've discussed the issue of race. If you look at the cases involving race, the interesting thing about it is, there's no question and I've said it before and I'll say it again, Georgia, South Carolina, Texas, and about three other states where really all the bad race cases were, the Supreme Court had to move. There was no question about it. None of those cases, by the way, occurred in the Northeast, Midwest or even the West. The far west there were a couple.

The reason I mention that is that

-- and I'm speaking only really for New York. We have had protections in our law for many, many years to deal with the issues that we are dealing with, in fact, in this bill, many of the things that are in this bill very honestly are already dealt with in the law, but there were so many, many people that felt that, since we're doing a death penalty bill, there's a lot of things that we ought to do to make it more clear.

One of the things that I always said, and I negotiated a death penalty bill many, many years ago with the Assembly, the bill that we've been passing over the years didn't come whole cloth from me by any means. It came from a negotiation with people, in fact, who were anti-death penalty in the Assembly, the majority of the Assembly at that time, the leader of that house was anti-death penalty at the time. We negotiated a bill we thought was fair, and I still do and, by the way, it's the basis for this bill that we have here, that dealt with the issues of representation, of

client -- of defendants. There's no question we have enough proper representation, dealt with the issue of payment. We faced some of the nonsense that has been going on. It's, I think, one of the things that has frustrated me the most is the issue of cost that has been blown completely totally out of proportion.

Some people did a study one time on costs, and it's still being quoted. We found out, for instance, that they went to the state of Florida. There was one death penalty case that year and they used the figure of $3.2 million. We found out that the entire -- the entire budget for the Attorney General's office was $3.2 million, and that's the number they figured because they figured that's all the Attorney General's office did for that whole year. It was a ridiculous figure and the Attorney General's office, the defense attorneys and everyone out there told us it was ridiculous and we checked a number of other cases.

We found one case that was hugely expensive, the Ted Bundy case. The reason the

Ted Bundy case was hugely expensive had nothing really to do with the death penalty. It had to do with the fact that Ted Bundy was dragged all over the United States of America looking for bodies. If you remember, he was a serial killer. That case cost millions of dollars because he was held by various states and went from state to state to find bodies until finally they got tired of listening to him and tired of the fact that his information was now very poor and stale and he was executed.

There is no question that the first couple of cases will be somewhat expensive. But after that, we have not been able to find any evidence that the cost of such cases will be anywhere near as enormous. That's because, once again, much of the myth around this issue has been blown up.

But what we've done to deal with that is to make sure that localities are not saddled with the costs, not only as far as the defense attorneys are concerned but also as far as the district attorneys, by putting provisions

in this bill that deals with the costs of expert witnesses and deals with the cost that district attorneys have to face.

It's interesting that, when we questioned some people about the costs and tried to really pin down what the costs will be, we never could get enormous numbers from anybody except that there was an assumption somehow that maybe there was some numbers out there.

The truth is that saving people's lives is incalculable. As the Governor said, when we deal with this issue, we intend to deal with a situation where we believe very firmly that we will save lives. Keep in mind some thing: We're talking about the taking of innocent lives by killers all over this state.

The amazing thing is that there are people involved in the death penalty issue who can only think of one thing, that somehow out there, there might be somebody who is innocent and might be convicted and executed. I've been asked the question, do I believe that if this bill passes, will anybody be executed

who is innocent?

I have said to them, no one can say that for sure, but I will tell you what I believe: In the history of this state -- and I have looked at the nonsense that was done by those two California professors who have been totally discredited; in fact, there was a Law Review article that totally discredited them - the one killing involving somebody in my - almost in my home town where the -- one of the killers said, "Oh, those other two guys were innocent." The two guys confessed; there were three witnesses, and the whole thing was a farce and it turned out to be a farce, but was it deliberately intended to misrepresent the issue of innocence.

What I happen to believe is that this bill has enough protections in it that this bill is set up the way it is that no innocent person will be executed under this bill, and I will say that I am convinced of that. I've had people say to me, Well, how can you say that? Well, I can say it just as much as anybody can

say that an innocent person will be executed, and I'm saying to you that because the history of this state shows that, and because the protections that we have put into this bill, I think, make that clear.

I think that what we have done here in this bill, and I can say to you and I'm being very honest now, that the differences between the Senate and the Assembly are very small, very small. Some of the things that you may have read in the paper about what's being said are not really issues that were big issues in the negotiations. There's been talk about different things.

The truth is, we were down to a couple of minute issues involving the issue of several hearings, and so forth, that are not integral to the death penalty itself, but the Assembly, very honestly, walked away.

The reason we're here today is because we are going to move this process and my thought is that the time has come that we must restore the death penalty and now is the time,

and you can all criticize the process, and I would prefer a different process myself, but the issue is that we have been trying since December to get this issue all wrapped up, and we have not done it.

We have a bill here that represents, I think, a balanced procedure. In fact, some would argue there is material in here that is absolutely not essential to the death penalty process, although what we have done with the Correction Law is to make changes in that that hadn't been made since the 1800s and I could detail that, but I don't want to get into that, that are not essential to the issue of the death penalty, but really more essential to the issue of what happens afterward and that's one of the big reasons why the bill is as expanded as it is.

But the final word, I think, is this: That what the Senate Majority is committed to, and what I think the Majority in the Assembly is committed to -- by the majority in the Assembly I mean the majority of people over

there in the Assembly -- and the Governor of this state, is a fair and just bill that will protect the citizens of this state, at the same time will protect the defendants who are to be represented by this bill, but will deal with an issue that must be dealt with that we have been so close to dealing with so many times and that is restoring the death penalty so that we can send the kind of message to the street that says that New York is not fooling around any more.

We're going to deal with those people who would kill, and we're not going to let people deter us from doing that, no matter how they try.

SENATOR SALAND: Mr. President.

ACTING PRESIDENT KUHL: Senator Saland.

SENATOR SALAND: Mr. President, I would request that we interrupt the proceedings for the purposes of recognizing Senator Oppenheimer to enable her to cast her vote on this particular bill.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Oppenheimer. How do you vote?

SENATOR OPPENHEIMER: I'd like to be recorded in the negative.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be recorded in the negative.

The roll call is withdrawn. The Chair would note that debate on this issue started at 4:10. There is a list currently in place, starting next with Senator Connor and Senator Saland, Senator Espada, Senator Maltese, Senator Montgomery, Senator Leichter and Senator Marchi.

The Chair recognizes Senator

Connor.

SENATOR CONNOR: Thank you, Mr. President.

In the past few years, we've seen some very perfunctory and somewhat abbreviated debates on the death penalty because, frankly, it got boring after 17 years in a row, knowing full well that it wasn't going to become law and, frankly, now the bill before us and the bill under negotiation prove that we were right. That bill is never going to become law.

The bill before us is different in some respects, in some respects it's better if you can, being an opponent of the death penalty, put a gradation on such things.

My position, frankly, has been unaltered in the time I've been here, and it doesn't relate to what the people say they want now because, in effect, when you're dealing with an issue like the death penalty, the people are venting a very understandable frustration and fear and dissatisfaction with the inadequate way we have secured our streets and allowed our

criminal justice system to function.

Why is it that the people's views aren't paramount? Well, in some respects they're predicated on a fallacy, the concept of deterrence. I will always concede that there is a certain elemental eye for an eye vengeance/ retribution element of justice in the death penalty, but no one has ever demonstrated that it's a deterrent, and I understand Senator Volker and the Governor will say, but if it's saved -- who knows, if it saves one life, it was worth it.

Well, I look to the states that have now, some of them Florida, Texas, become nothing but execution assembly lines. Their murder rates haven't gone down. If anything, I know in the case of Florida they've actually increased dramatically since they began executing with great frequency convicted murderers, to say nothing of the fact that in a couple instances both in Florida and in Texas, they executed a couple of people even though they weren't sure they were murderers. Just a

few weeks ago we had an instance of that in Texas.

The problem with the death penalty is two-fold: Certainly a rationale is justified to say you're saving innocent life. No one's pretending that in most cases the convicted murderer is an innocent life. My problem is with who's perfect -- who's perpetrating the killing? The state is doing it in a calculated way.

In the case of most murderers we recognize their culpability. We recognize the evil in their action. The inherent evil in the action of killing, killing is per se evil and the state ought not engage in it.

Deterrent? No evidence of that. Possibility of convicting and executing innocent people? It has happened before, it has happened in this state. It has happened everywhere that human beings through the state, the mechanism of the state, presume to play God and exact the ultimate penalty.

Now, I'm glad that Senator Volker

is confident that no innocent person would ever be subject to the death penalty under this bill. But the fact of the matter is we have - we are a state of laws made by human beings, enforced by human beings, the jurors, the judges, the witnesses, all the actors in this drama of a trial are fallible human beings and no one can ever be certain, all the safeguards in the world, that a mistake won't be made, and we've had enough instances of the mistake being made with respect to other crimes, including convictions for murder when we didn't have a death penalty, only to discover a mere few years later, how the system had broken down or a confluence of coincidences had made someone appear guilty or in one case, in fact, the person was convicted was the victim of -- of his ex-spouse who was given immunity and falsely accused him, and the jury bought it and it was only really through reinvestigation and the happenstance that she 'fessed up that it was learned that he was totally innocent.

So it can happen. It can

happen. It has happened. The state of New York has paid damages to people wrongly convicted in murder cases and other cases. The fact that the penalty is death absolutely makes it irrevers ible. We ought not play God.

The press most recently has been full of first-hand accounts of executions. I read with interest yesterday one account of a member of the Assembly, a new member of the Assembly, who witnessed a couple of executions on the same day in Texas, and in these accounts they talk about the -- the idea of -- of lethal injection somehow sanitizes the act of killing.

One of the more macabre aspects, I think, is when the technicians use an alcohol swab to prevent infection before they insert the needle. What's being created there is the myth, the illusion that this is some routine medical action performed by medical technicians when, in fact, it's just as deliberate killing as pulling an electric switch, dropping a trap door or firing a gun in a firing squad. It's the state killing, and that commandment, Thou shalt not

kill, is without a codicil. It's an absolute in my mind; it's an absolute direction as to how we ought to conduct ourselves.

We don't teach anyone -- we don't deter anyone from killing by doing killing in the name of the state. Inherently, in the death penalty, and the statistics bear it out, other factors come into play. Only a handful are executed of the many thousands of murderers.

What distinguishes this handful from all the other murderers who don't get the death penalty? Several things. Some - sometimes the race regrettably, the race of the perpetrator, of the convict. More often the race of the victim is a major factor in selecting those few who will pay the ultimate price from among the many who perhaps, if you applied the letter of the law, would deserve it.

Thirdly, economics: The best appointed counsel in the world, the best two appointed counsels in the world will undoubtedly in most cases just not be up to the kind of

legal talent a millionaire killer can purchase. The history of the death penalty in this country is replete with examples of very wealthy murderers who escape totally the death penalty because they have legal talents.

The famous case of Leopold and Loeb comes to mind. There was a case about 25 years ago in Texas where the multi-millionaire was allowed to plead out and finger the hitman he hired who then went to the chair, and the millionaire did 10 or 12 years and was paroled. Economics does play a part. Rich people don't fry. They don't hang, and I dare say they won't be injected lethally by the state.

What else distinguishes those few who pay this price from all the others who might be liable to it? Geography. Statistics show in virtually every state it's one or two D.A.s who account for a gravely disproportionate percentage of those who are sentenced to death because ultimately we have a fundamental principle in our jurisprudence, and that is prosecutorial discretion. The prosecutor

decides whether or not to seek the death penalty.

Perhaps the major distinguishing factor in all cases, the way 90 percent of the killers avoid the death penalty, is that initial decision by a prosecutor not to seek the death penalty, and those who pay the price, those who are executed, probably in 90 percent of the cases, their gravest or the reason why they are singled out is where they committed their crime, in a county with a prosecutor who is either a zealous advocate and adherent to the death penalty, believes in it to an extreme or, heaven forbid, for whatever political reasons in that year or the next year, feels that seeking the death penalty most frequently is a very popular thing to do with the voters.

So, for the reasons, why do you go to the chair? Why do you -- why is someone executed? Because they committed a murder? Well, that's not the reason they're executed. Lots of people commit murders, whether or not executed. They're executed because either

they're poor, they're from a group that's in grave disfavor because of racial or other reasons. Their victim is from a favored race or class, or they just happen to live or commit their crime in the wrong county, none of it having to do with the quality of the crime, none of it having to do -- and we can put in the law all you want about mitigating or aggravating circumstances. The fact of the matter is the major distinguishing traits are these things that ought not be part of the justice system, that ought not -- that are not equitable, that are not fair. They're not objective and these are some of the reasons why you find even a Supreme Court justice, upon retirement, upon reflection would say, you know, inherently - inherently, after all the experience that I've had with the death penalty, I've just concluded that it's inherently flawed, the irreversibility of the penalty, the flukiness and the fact that only a very, very small percentage of the convicted pay the price.

I would add another factor. This

Assemblyman who witnessed the Texas executions was quoted as saying he didn't think the person he saw executed deserved to die. Why? It was a different person. It was 18 years after the crime.

Because it's the ultimate price, naturally people will fight in courts and in collateral appeals, and so on, to prolong the situation, to try and escape the death penalty. In the end, they end up executing someone who in time, at a time that's so remote from the crime that it's very, very difficult to relate what that person has become after 12 or 15 years in prison, with the kind of person he or she was when the crime was committed, so I think we're dealing with a penalty here that is not worthy of a civilized state. It's one which this very state -- this very Legislature once all but abolished. It's one which some of the members who are still here and many, many more who have left in recent years once opposed and then came to support again.

I don't think that relates to

crime statistics. I think it relates to the public winds that blew based on people's frustrations and fears. I think there are better way to apply the resources that we might be able to generate for the criminal justice system to fight crime in a way that will protect more and more of our citizens than wasting millions of dollars to execute a very few who perhaps, and certainly we would hope in most cases, are murderers but a very few whose major fault is they're unpopular; they're poor; they just belonged to the wrong group; they were just in the wrong town on the wrong night.

We owe it to all of our citizens to use the resources and the law to protect them from -- from the crimes that really affect them and not simply to make an example of a poor, unfortunate few in a way that conveys to our children that somehow or other killing can be sanitized. Killing can be made to seem a positive value when, in fact, killing is killing.

(Applause)

ACTING PRESIDENT KUHL: There will be order in this chamber. I would remind the people here that we're not conducting any kind of a theatrical event. If you don't restrain yourself and your composure, you will be removed. So please honor the tradition of this chamber and maintain your silence.

Senator Saland is next on the list.

SENATOR SALAND: Mr. President, could we have just one moment, Mr. President?

ACTING PRESIDENT KUHL: Absolutely, Senator.

SENATOR SALAND: Mr. President, would you please recognize Senator Galiber for purposes of casting his vote on this measure as well.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Chair recognizes Senator Galiber for the purpose of casting his ballot.

SENATOR GALIBER: No.

ACTING PRESIDENT KUHL: Senator Galiber recorded in the negative.

Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President, and I appreciate the courtesy but, as I indicated I would just like to explain my vote and I will stay within my two minutes.

I think, first of all, my leader has said so much very well that it doesn't take too much more and -- but -- and when the real bill comes around, I'll have plenty to say but, number one, in Newsday today, a writer made an interesting comment, and that is that under this bill, it will not be the worst murderers that go to the chair, but the murderers with the worst lawyers. Interesting!

Secondly, I heard on the radio only within the last four hours the anniversary of New Jersey's ten years with the death penalty, no one's been executed in New Jersey in ten years.

I also would like to point out as to this particular bill that there really are constitutional flaws and, Senator Volker, you ought to take a look at them. This whole business of limiting the jury to two options out of three has to be unconstitutional, and the way that the psychiatrist is handled, forcing a defendant to be interviewed before a trial where that's not even an issue, and giving the prosecutor a crack at the defendant before he's even put in his defense, when you can't even use that testimony until the second phase, has to be a terrible prejudice.

But the last thing I want to make, the last point I want to make is that today's bill does nothing on the issue of the death penalty. It does one thing, however. It is the beginning of the vindication of Mario

Cuomo on this issue, because this bill before us proves one thing. It proves that George Pataki wouldn't have signed a bill for the last few years. It proves that, when Mario Cuomo vetoed these bills and when Governor Carey vetoed these bills, they knew what they were doing because those bills weren't real. They weren't real. They were political statements, and it's just like today is not real. It's a political statement because this bill will not go to George Pataki to sign.

So I'm going to vote no on this, but, Mario, you did good all those years. I vote no.

ACTING PRESIDENT KUHL: Senator Gold in the negative.

The Secretary will withdraw the roll call.

The Chair recognizes Senator Saland on the bill.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I note that the

bill before us is a Governor's program bill, one which I am sure that the Governor would be most willing and eager to sign, and I view this not as a vindication of former Governor Cuomo, but basically a reaffirmation of the persistence of those who have advocated for so long for the enactment of a death penalty, one which was carefully crafted, one which would certainly bend over backwards to accommodate the rights of defendants, those who would be accused under this particular proposed legislation.

Governor Pataki was unequivocal in his support for the death penalty and said he would eagerly await arrival of the death penalty measure for his signature upon becoming governor. He had labored with representatives of both houses, the leadership and their counsel, in endeavoring to craft a bill that can pass readily in both houses.

This represents the best effort to date. The Assembly, for whatever reasons, has yet to make their commitment and we intend to continue this battle, and I take an offense

at different times during the course of these debates -- and I've debated this bill some 14 or 15 times -- at somehow or other being cast as being less than sincere or being motivated by things political in advocating for a death penalty.

Nobody has cornered the market on sincerity or integrity on this bill. The people who support this bill, regardless of where they stand politically, what party they may be associated with, I would hope, feel as fervently as they profess to feel, and I would similarly hope that those who oppose feel as fervently as they profess to feel.

This is not the kind of issue where one should be posturing, certainly not at a time when what we see is certainly at the very least the precursor of a bill that's going to be signed.

Now, what does the bill do? The bill basically goes back to the cases in the '70s that came through the U. S. Supreme Court, the Furman and the Gregg cases, and makes a

statement that it's in compliance. It provides for a bifurcated trial. It provides for the weighting of aggravated and mitigating circumstances. It provides for an expedited appeal to the Court of Appeals, the highest court in our state.

Now, remember we're talking about a bunch of carefully enumerated crimes. This is not an example of some poor joker winding up in some town where he doesn't belong and having the misfortune or unfortunate circumstances, as the Minority Leader indicated, of being saddled with this onerous, onerous conviction.

The fact is, to have been convicted necessitated your committing one of a number of specifically enumerated crimes. These crimes have been determined by the state - we're part of that mechanism -- to be crimes so heinous and so beyond the power of anything that we would accept that the person who commits them by reason of the acts that they commit in a premeditated fashion, have made themselves candidates for the death penalty.

We're talking premeditation. We're not talking about somebody who gets liquored up or who's on drugs, drives a car, hops up on a curb and kills somebody. That's not premeditated. There we're talking about something in the nature of manslaughter. We're talking about somebody who, with intent to kill, kills a police officer while that police officer is acting in the course of their duties or who similarly kills a correction officer while that correction officer is acting in the course of their duties, or a peace officer under similar circumstances, or somebody who tortures somebody at great length and then kills them, or somebody who's a contract killer or somebody who -- who knows full well because they premeditated it, plants a bomb, for instance in a crowded airport terminal or a bus terminal, knowing that there will be countless lives at risk, countless people who may well be killed.

That, to me, is not some poor unfortunate soul who happens to be in the wrong town, and yes, there may well be differences in

geography. And I would only point out to you when we deal with things such as the felony offense law here in New York, what happens to you may well be a function of where you are sentenced, because if you get to major metropolitan areas, and particularly the major metropolitan area in the city of New York, the city of New York, and you get indicted on multiple counts, let's say, for instance, you're indicted for drug possession, which happens to be the lowest type of an indictment when you've broken into a house, committed a burglary and raped somebody. If that happens to you in Plattsburgh, if that happens to you in Potsdam, if that happens to you in Poughkeepsie, I can assure you you're going to get sentenced based upon either the rape or the burglary, not on the possession charge. But if you happen to come out of a situation in a major metropolitan area -- and again I cite the city of New York, where the system is reeling -- they'll take any plea they can get unless it's something that's so heinous that the newspapers have gotten a piece

of it, and you can well find yourself pleading out to a possession charge on a drug charge, controlled substance.

So yes, geography may well make an impact. Who's to say who's right? I'm not going to tell you that the fact that a prosecutor may not choose to apply the death penalty is not within his or her discretion. This bill provides a 120-day period within which to express your intent to do that.

There's talk about whether the death penalty is a deterrent. Now, we're talking here not exactly hard empirical data. We're talking social science at best. There have been reports indicating, based on studies, death penalty is not a deterrent.

As recently as January last year, there was a piece, if I remember correctly, it was a front page piece in the Times-Union -- I have a copy of it with me -- which went back and looked at death penalty rates in states with death penalties and without, and why the premise for which it's cited as to the effect that

there's nothing -- there's no reliable evidence indicating that the death penalty is a deterrent.

What it shows is, for example, among 15 states without a death penalty, murder rates have gone up in eight, down in four, and the same level in one, and the states having the biggest increases in murder rates, three of the five are states that do not have death penalties including the state of New York. Three of the states with the biggest crime, the states with the biggest decreases in death penalties all have a death penalty bill or law on their books.

So assuming that we can't make a conclusive argument on the question of deterrence by way of any of that data certainly the converse is not true. I beg to differ; certainly the converse is true. The repeal of the death penalty has not seen any marked reduction in the homicide rate here in the state of New York. If anything, it's gone up by mul tiples. We now have 2300 to 2400 homicides

being committed in New York. The number was less than a thousand when the death penalty ceased to be on our books here in the state of New York.

And I would ask who among us has the wisdom -- who among us has the ability to determine when somebody has contemplated committing a homicide and then because of the fear of being convicted and sentenced to death, decided not to fulfill that urge, that wish, that premeditation?

The person who goes out and buys a gun to kill the partner who cheated him, or poison? The person who goes out and contem plates placing a bomb in the car of someone who he believes is passionately involved with his spouse, and says, Whoa! I've thought about this for weeks. I actually took steps to do it, but I'm not going to do it; I don't want to risk the death penalty, and that person goes and confesses to their clergyman, gets it off their chest, feels a lot better, has this wonderful catharsis. Clergyman can't talk to anybody,

barred by confidentiality.

So who can identify those people? I did one of them, Lord only knows there's one, there's got to be one, and I'll venture there's more than one, not dozens, hundreds, perhaps even thousands of them who go undetected because nobody can prove a negative, nobody can prove that their fear of having to sacrifice their life by reason of the application of the death penalty didn't deter them from pulling the trigger, dumping the poison or planting the bomb.

I had in my county a number of years ago perhaps what was the ultimate. There was an individual who had already killed not once, not twice, not three times but four times, serving time at Green Haven, Dutchess County, maximum security. The fourth time wasn't enough. He killed a fifth time. He killed a female correction officer and, interestingly, that case went to the Court of Appeals because it was the one portion of a section left, the one section that said you could sentence a lifer

who kills while sentenced, while serving time, to the death penalty.

The Court of Appeals in a four-to-three decision were all agreed that he had committed the crime, but the four-to-three decision said that portion of the state's death penalty that was still on the books was unconstitutional because it didn't provide for aggravating and mitigating circumstances.

Lord only knows what those aggravating and mitigating circumstances may have been, but the man is still serving time in our prison system. I would not attempt to tell anybody here because I certainly don't believe that the death penalty is somehow a panacea or an cure-all for all of our criminal justice ills. It is not and, if anybody thinks it is, then they are sadly mistaken.

It is, however, and should be a portion, and an effective portion of our criminal justice arsenal. There are those crimes, and I cited some of them earlier, that are just so heinous that the death penalty is

warranted.

Nobody should take it lightly. Nobody should take joy or rejoice in the fact that we are going to have a death penalty bill enacted, but I would suggest to you that, as you read this bill -- and I have to assume that the vast majority of that which is in this bill will also be in the final bill -- that there are things in here that do require some fine tuning.

One of the things that is of concern to me that's in this bill is the provision for the second trial, and whereas Senator Volker's earlier bill basically placed that subject in such terms so as to enable in most cases the reading from "the impaneling of the second jury" the language in this bill clearly states a preference to stay with the first jury, citing extraordinary circumstances and good cause as being the main ingredients to get that second jury impanelled.

I must express my concern also about some of the language with respect to mental retardation and incompetence, not because

we shouldn't be attempting to address the issue, but the number of trials, the number of hearings, the stays that are involved, I fear, could result in a considerably extended proceeding.

Let me touch just on one other point, and that's the subject of race. This bill attempts to provide a mechanism whereby juries and jurors in the course of their being voir dired, would have the ability to be voir dired individually by either the prosecutor or the defense attorney out of the ambit of the remaining members of the jury on questions of racial bias.

Now, New York by no stretch of the imagination is some backwater state. This isn't exactly what you'd call the bastion of red-necked justice. I think we have a tradition here, notwithstanding Senator Connor's earlier remarks, of -- we have a tradition of being keenly sensitive to the rights of defendants.

We have a Court of Appeals who, by any stretch of the imagination, would be

viewed, I'm sure, as if not the most liberal, certainly one of the most liberal in this country. There currently is case law, whether it's the Batson case through the U. S. Supreme Court, or whether as recently as a year and a half ago in our own Appellate Division, People v. Pearl, basically you can't screen or remove jurors based on race. That's the law in New York. It's not something that can be accomplished readily.

There's a whole host of mechanisms that have been built into this bill. The reality is that this has been 18 years in the making, perhaps as Senator Volker says some 23 years. I believe Senator Volker is entitled to an inordinate amount of credit for his efforts. He has really been a giant in trying to sustain this issue.

There are a number of colleagues on the other side of the aisle who certainly have been outspoken and on this side of the aisle in their opposition to the bill. The time is here. The time is now. This, as I said, is

the precursor, but what we are debating today is certainly going to be substantially that which we will ultimately pass and sign into law.

Governor Pataki is entitled to an inordinate amount of credit. The man has said what he said he would do. He's been a player. This is a Governor's program bill, and he will continue to be a player and there will be a death penalty bill signed into law. It won't be time for rejoicing. It will be time for justice, justice that has long been denied here in the state of New York.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

We've heard throughout these protracted negotiations that happened mostly in the media, terms like a fair and just death penalty bill. It is the ultimate oxymoron. There is no such thing as a fair death penalty bill. What death penalty bill? The one before

us guarantees that the taint of racism and prejudice against African-Americans, against Puerto Rican and Latinos, against poor people - do I see a bill -- do I read a bill that guarantees that that won't happen? I hear a lot of people who are not eligible to be victims of racism, talking about how we're immune from racism. That's a Southern thing. That doesn't happen up here. That's old and tired, I'll have you know.

The death penalty bill is a crude and uncivilized, barbaric, political response, to the unbridled thirst for vengeance and retribution that exists out there in society today. It is the institutionalization of an irrational primal scream with no therapeutic value, my friends.

You know -- you want to know why we're really doing this? It has nothing to do with 18 years of this or crime statistics; it has to do with the sweet symphony that comes to the ears of those folks out there that you and I as political people visit. We know how to get

votes. We love it when people clap for us, and the easy way to do it is to say that we're for the death penalty. Automatically, the arms start waving, the hands start clapping, feet stomping, and we choose the easy way. We give in to that. It's so few that wouldn't, but most of us do. Most of us will.

I want to talk about -- as Senator Connors did, about Assemblyman Phil Boyle, and I mention him by name only because he was in the article in Newsday yesterday. He chose to be a witness to an execution in the murder capital -- state-sponsored murder capital of the United States of America, Texas, and so he traveled over there because he wanted to feel comfortable with himself. He went in a tortured soul and came out a tortured soul, and I want to borrow from that article directly because I don't want to misquote.

The columnist here was a Mr. Dwyer from Newsday. He did ask of the Assemblyman, who happens to be a Republican and who happens to be for the death penalty, and he

said -- we asked of the young Assemblyman, "Would you push the plunger on the IV?" In other words, could you be executioner? He said, "Never", Assemblyman Boyle, "Never." Dwyer says, "But you would ask someone else to do it," and Boyle says, "But that's their job," and Dwyer says, "Yes, but it's a job you're doing - that they're doing for you. You have empowered -- you have enabled them to do this job for you."

According to the article, Boyle decided and said, "You couldn't pay me enough to do it. You couldn't pay me enough to do it," and after reading this article, I was reminded of another -- another article that I read about Manhattan D.A. Frank Hogan's policy where, if you are a lawyer/prosecutor in his office, unless you are willing to attend the execution, you would not be allowed to prosecute a death penalty case.

And it's with all the respect in the world that I say to you, my colleagues, if you are for this death penalty, you are morally

obligated to attend those executions. You are morally obligated to attend and witness. As you do, be aware, that between 1973 and 1994, the courts have reversed or commuted 31 percent of all death penalties. 54 death penalties have been vacated because the defendants were innocent, and these were just the people that were fortunate enough or they were unfortunate enough through the persistence of friends and through plain luck to come out that way.

The fallibility of the justice system is -- is backed up by empirical data. We know the facts. Governor Pataki knows the facts firsthand. Nathanial Carter, the Governor's childhood friend, arrested, served two and a half years for a crime he did not commit. Had the death penalty been in effect, Nathanial Carter, the Governor's friend, would have been a candidate. The Governor, upon Mr. Carter's release said how terrible, how horrific it would have been if an innocent person had to remain in jail or die.

The Governor and lots of us have

been talking about creating jobs. We have a budget that we're having hearings on and we'll have full debate on that and, as I visit my district, I'm sure all of you are doing the same thing; you're visiting the health centers and the hospitals and the senior programs and they're telling us why. Am I going to lose my home attendant, my doctor, my teacher? Why am I going to lose that kind of assistance?

We say there's a budget deficit. There's no appropriation in this bill and in the real one that will come, there will be an appropriation. The Assembly will pass it on $11 million. Way, way too low. We all know that. Millions, millions for death, but nothing that I can report back to my constituents -- constitu ency about health care to the children out there on improving their education.

We're going to skirt the issue and we're going to create some new job descriptions, some new Civil Service titles, executioners. Who is going to do this? Some title, person, called an executioner. How many

of those will we need? We're going to have some strap-down specialists, some people that will put the straps once the person is on the gurney. Well, that's a specialty. It's a new found specialty. We'll have to develop some job titles for that.

So there's money, there's job creation for this new death industry and nothing to go back to my home district for health care, for education, for real jobs. These jobs are not going to be in my district. You don't even pretend that you're going to be fair even about that.

And so my colleagues, as you are a witness to these executions, please dress up for the affair, because there are already rumors that CNN and Geraldo and Oprah and Donahue, they're all going to be bidding for this air time, and I can just see the state participating in negotiations about whether there's a rightful and fair share of that money that comes back to the state treasury. Exaggeration?

Already, we are valuating through

some auctioneers the value of the two electric chairs that we have, 250,000 apiece, $500,000. It's not beyond our value system to behave that way.

We jail in this proud democracy of ours, over one million people, more than any other nation on this earth, this proud democracy does that, and so with enactment now of this bill -- we all know it's a dress rehearsal, but when we do it, and we will -- we will join the ranks of the Ayatollah, Saddam Hussein, North Korea, the perpetrators of the massacre of T'ien An Men Square. That's the kind of company this great democracy is going to be keeping when we finally enact this barbaric law.

I am, Mr. President, not naive to the fact that our hopes rest with the courts, that this state's system of jurisprudence will have to come in on this issue. I know when they do, they'll have to take up the fact that they'll have to weigh the necessity for the death penalty away from the political maelstrom that we're involved in here today, and when they

do, they'll consider that we have other alternatives -- life imprisonment, no parole. There are other options to this. Anything that goes into the realm of this kind of punishment is cruel and unusual, is uncivilized.

And so I dedicate my no vote to that resistance that is out there, that is manifesting itself to the young children. I apologize for the behavior of the adults that are for this bill who send the worst, worst message we can to young people, and to the future generation of political leadership that will one day repeal what we're about to do. Please heed the wisdom of Justice Blackmun who said that he would no longer tinker with the machinery of death. I choose not to do so here and now, and vote no.

Thank you.

(Applause)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Maltese.

I'll remind those people in the chamber once again that this is not a theatrical

event. If you continue with the disruption, we will remove all of you. We don't want to do that. Please bear with us and obey the rules of the house.

Thank you.

Senator Maltese.

SENATOR MALTESE: Mr. President, I think Senator Volker and Senator Saland have gone into a great deal the details of the bill before us. The issue before -- before us, as all have indicated, is a momentous issue. Those of us who have waited many, many years for the enactment of the death penalty, now take no pleasure in the probable passage and signing of a death penalty bill.

The bill before us and the bill that will ultimately be before us is not a perfect bill, but what it seeks to do is prevent further murders in the future, and at the same time enact, if you will, just retribution on those who would commit the most heinous crime, the taking of another human life.

If we speak about moral outrage,

if we speak about acts that are bestial, the acts we speak of, the moral outrage we speak of must be directed at the murders that have been perpetrated by the ones who face justifiable execution.

We see the figures. They're before us. Since 1940, over 65,000 murders have been committed in New York State. We are now at a deplorable stage where some 2500 murders are committed every year, more than the populations of towns, of villages, and in some cases, small cities wiped out in a single year. When references are made to possible racism, we can look at the victims of these murders, the victims that figures indicate are over 51 percent black and more Hispanics in the mix. They are the victims.

We have before us a bill that is not a perfect bill. I myself take some issue, if you will, with putting judges and prosecutors in a special protected class. Having been a prosecutor myself, I think I can say that there are others that possibly should be in that

class, having tried a case against a murderer who murdered a police detective from a D.A. squad. Should we also seek to protect police detectives? Should we protect others who take any part in the law enforcement process? But this we had to do in order to enact a death penalty statute.

I don't take any pleasure in the felony murder Corrections made, if you will, that remove what I have always considered a prosecutor's tool, the ability to give a co conspirator or a real man or a co-perpetrator of the person who actually pulled the trigger, the right to be able to negotiate with a district attorney and possibly provide very, very important evidence against the actual puller of the trigger, the perpetrator of the crime, but at the same time, we have before us the best death penalty bill that can be enacted at this time and at this place.

Am I happy that the little old lady or the man on Fresh Pond Road in my district or in Howard Beach in my district isn't

protected against the deliberate act of murder? No. But this bill will go a long way toward punishing perpetrators of murders.

It's enumerated, the witnesses, the contract killings, the multiple killers, the torture killers, the people that argue so vehemently against the death penalty, they talk about the bestiality of the act itself. What about the victims? What about the persons that have been killed?

There was reference made to whether we would go out and be able to witness an execution. I can only speak personally. I've been an advocate for years of pro-animal and pro-pets, and what-have-you, and yet, after being three and a half years in the Homicide Bureau in Queens County, in talking to victims -- in talking to victims who expired before my eyes, in talking to the families of victims who are killed in a variety of horrible ways, I could participate in that act, in that justifiable act.

We talk about equating the

victims with the murderers. We've tried in this bill to put every protection in, to protect the murderers, to protect the perpetrators who we are absolutely positive committed these crimes. We talk about the possibility of an error. Sure, there's a possibility of an error, but we've taken every step -- every possible step to protect against that happening. But what do we do about the 2500 homicides? How do we redress those wrongs? What do we do about the 100,000 robberies that have taken place in that same period of time? What do we do about the over 5,000 forcible rapes that have taken place in this same period of time?

We must take some steps, and among those steps is the enactment of a death penalty. We have an absolute obligation to attempt to pass this bill and enact it into law. This is what our constituents expect of us. Common sense tells us that it's a deterrent. Our constituents across the state and across the nation, the vast majority of which who have expressed an opinion, over 75 to

80 percent have come down on the side of the death penalty as justifiable. We must get across the fact that if you take a -- you commit a deliberate act and take a human life, you must pay the ultimate penalty.

Unfortunately, in so many cases, it's the same way before a jury. The perpetrat or is there. The victim is not. The victim's family in many cases is not. So what does a jury and what does a legislator and what do many lawmakers see? They see before them a perpetrator, as was mentioned earlier in the debate, who is a different man. He saw the error of his ways and is a different person with the passage of time. I'll even grant that, but then it is not the deterrent effect of the death penalty we're talking about; we're talking about an imperfect system that provides an excessive length of time between the actual commission of the crime and the execution of the perpetrator. It's the system that's at fault, not the enactment of the death penalty.

The death penalty now in this

statute, we take steps to provide that they shall be not the inexhaustible remedies available to the murderer, remedies that he never made available to his victim.

We talk about bestiality; we talk about how horrible these killings would be if perpetrated by the state. The state has an absolute obligation to restore order, to try to take steps to eliminate the killing of 2500 innocent people. What about the victims? The famous case of Grasso, how many people spoke about the 87-year-old lady who was strangled with a Christmas cord, her Christmas cord? Who spoke about the fact that he then committed another murder against a senior citizen?

Who speaks about other murderers who strangle, rape innocent victims? A murderer in Washington, D.C. who killed and raped a 90-year-old lady after nailing her hands to a chair, or in New York, about the rape murders of nine-year-old girls, of -- the rape murders of one-and-a-half-year-old girls that took place in our city? We are trying to do the best we can

to stop these murders from taking place. The best we can at this time and place is this death penalty legislation.

Mr. President, I urge its enactment into law.

ACTING PRESIDENT KUHL: The Chair -- yes, Senator Waldon.

SENATOR WALDON: I don't know if I'm in order, but I just wanted to know, has time been kept on the debate, and where are we in the time so that those of us who would like to speak later -- if you could share that information with the chamber, I'm sure it would be deeply grateful.

ACTING PRESIDENT KUHL: Senator Waldon, I will be happy to. The debate started at 4:10, so if you're keeping with the two-hour limit, the debate would be over at 6:10.

Currently, Senator Montgomery is next to speak and Senator Leichter, Senator Marchi, Senator Paterson wants to move up some amendments, so I'm told, Senator LaValle, Senator Dollinger, Senator Mendez, possibly and

Senator Abate. So that's where we are.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I think it is very interesting that we're having this debate at the same time as we are celebrating our annual "Corrections on Canvass" downstairs, and I am reminded each year of the number of prison facilities that we have in our state already, 68 facilities, I believe, and 65,000 people in those facilities.

Mr. President, I think we are, again this year in debating this death penalty bill, putting the cart before the horse, if you will, because, although Governor Pataki campaigned on the death penalty, he also campaigned on reducing costs to our state, and within that context, he campaigned that he was going to work with the Legislature to change the Second Felony Offense Law.

Now, I don't know if the Governor has backed away from that position, but I have not heard him come forth with a bill -- with a

proposal to the Legislature, unless it's going to happen in the way that our death penalty bill happened today. As we all know, the latest figure that I have, we are now spending somewhere around $9 million every 24 hours on our prison system in the state, and my assumption is or was that the Governor intended, by looking to change the Second Felony Offense Law, to reduce the overcrowding and the need for further expansion of the prison system by removing some of those inmates who are now incarcerated for non-violent drug offenses. That was welcomed, but we don't have that.

We're not discussing that today, and that's unfortunate, and at the same time, the proposal that the Governor has put forth, along the lines of a budget, is to reduce probation services, to reduce and back away from the expansion of alternatives to incarceration, to reduce spending for youth services, to reduce spending for preventive juvenile services, and so forth, and so on.

So we're not talking about

prevention. We're not talking about supporting especially young people because I suppose all of us are aware that it's -- a large percentage of the inmates in our facilities are young. They began with having -- having a negative relation ship with the Justice Department, judicial system, at a young age and continued along those lines. Many of them have been through our youth detention facilities and end up in the state facilities. So not to address this critical area, I think, is a crime.

And here we are discussing this death penalty which is, in fact, Mr. President, a budget bill, a budget buster, if you will. Now, the Governor has said -- I have heard him refer to his death penalty proposal as saving lives, and I'm not clear where he gets the idea that he is going to save lives, and I understand Senator Maltese talks about the victims, and I too represent a district where there are probably more victims of heinous crime or as many victims as are in any district in the state of New York.

So I also am very concerned and sensitive about what victims -- what happens to victims, but I think the people in my district want results, and as we look at, for instance, now the "death belt state" or the number one "death belt" state is Louisiana, the number two "death belt" state is Texas, and they have some of the highest crime rates in the nation. Louisiana has 20.3 per 100,000 inhabitants, so it is not helping the victims of crime in Louisiana, and Texas similarly has almost 12 per 100,000. So it doesn't help the victims in Texas either.

So I am not sure, and even the Attorney General of the state of Texas has stated that the incidence of using the death penalty is so prevalent, that nobody pays any attention, so it's as if it doesn't even exist.

And I know that Senator Volker is going to stand up in his closing remarks and he's going to say, "Senator Montgomery, you're totally wrong," but I have a quote here from Justice Powell. It says, "Capital punishment

has not deterred murders." This is -- this is a Supreme Court -- former Supreme Court Justice who was very familiar with capital punishment.

And we know that the justice system does not work perfectly. We have debated that point. We have statistics on that point. We have lives to prove, we have cases to prove that point. There is no such thing as an equal justice system. That's very unfortunate, but it's true.

We have many, many instances of people who have served time in prison, were in itially convicted only to have their convictions overturned. Many of them have served even on death row. So we do not have a perfect judicial system. We don't have a perfect process. It is not failsafe. So undoubtedly, we are going to make some mistakes or continue to make mistakes.

I have in my -- my records here from my staff one, two, three, four, five, six, seven, eight cases where people have been wrongly executed in the state of New York, Mr. President. So we're bound to do that again.

I was recently in Louisiana, and it was very, very interesting to me to find that a group of law enforcement people had been very instrumental in coming together to talk about prevention because they feel that the state of Louisiana is going to be bankrupted by the ex panded use of the prison system, including the death penalty, and again, I know that my col league, Senator Volker, is going to say, "That is hogwash; it's nonsense. You can't prove that", but there have been studies. There is information that we have that we can look at in terms of how much it costs to deal in this capital punishment business.

North Carolina spent an extra $2.16 million per execution. We have the figures from Texas. In Texas, a death penalty case costs an average of $2.3 million. This is three times the cost of imprisoning someone in a single cell at the highest security level for 40 years. That comes from the Dallas Morning News, March 8, 1992, Senator Volker. You can look that up.

The death penalty costs California $90 million annually beyond the ordinary cost of the justice system. Florida spent an estimated 57 million on the death penalty from 1973 to 1988 to execute 18 people. That's an average of $3.2 million per execution. That comes from the Miami Herald, July 10, 1988, for Senator Volker's reference.

And even closer, our own corrections service -- DOCS, Department of Correctional Services, estimated that the death penalty will cost New York State taxpayers $1 million per capital trial.

So, Mr. President, in addition to everything else, this is a budget bill, it's a budget buster, and while we're not talking about saving money with this -- with this bill, we're talking about saving money at the expense of the future of young people, because we don't want to support them in terms of their preventive activities -- involving them in preventive activities.

I want to leave with you a quote,

Mr. President, from the Attorney General of Massachusetts. He said, "Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime, is being cut even further to the bone. In this context, the proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is a sheer matter of equity, morally irresponsible. If this is really the best that we can do, then our public value system is bankrupt, and we have truly lost our way."

Thank you, Mr. President. That's the end of the quote, and the end of my -- my comments, except to say that this is a very dark moment. As we view the beautiful art from the souls of people who are currently incarcerated for any number of reasons, we are debating a moment in the state's history that, I believe, is going to be viewed in history as a darker, less fortunate one.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. I believe several members would - well, two members would like to vote at this time. So with the consent of the Minority, if you could have the last section read.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley. How do you vote, sir?

SENATOR FARLEY: I vote aye.

ACTING PRESIDENT KUHL: Senator Farley in the affirmative.

Senator Mendez, how do you vote?

SENATOR MENDEZ: Mr. President, I will vote no, and I want to explain my vote.

ACTING PRESIDENT KUHL: Senator Mendez, you have two minutes to explain your vote.

SENATOR MENDEZ: Mr. President, this is the 17th year that I say -- serve in this great chamber of ours, and this is going to be my 17th consecutive no to the issue of the death penalty.

We are all politicians here and we know that politics is the art of compromis ing, but on this issue, Mr. President, I con sider that it is absolutely impossible to com promise. It has been proven already that - that by polls, by service, that there are about over 70 percent of residents in New York State, and definitely my district as well, of people who want the death penalty.

The issue is, why are they clamoring for the death penalty? They're clamoring for the death penalty, Mr. President, not because they really want it out of their

frustration of being able to deal with the disastrous criminal justice system that has been operated in New York City.

I, for one, Mr. President, personally, I think that no government on earth should have the capacity to take life away from another human being. It is the most dangerous precedent history has shown us that that has been the case. Also, I believe that -- that the -- the courses of crime could be dealt with in a different fashion, and it has been proven that it is not a deterrent.

So, therefore, Mr. President, I say to my constituents, and all of them do want -- most of them do want the death penalty -- if the only way that I could remain representing them in a job that I love is by voting for this -- for the death penalty, I say to them, "No, thank you. Get somebody else to represent you." So it's an absolute belief that it will not resolve the issue of crime in New York State. It is an absolute belief that those that will end up in the electric chair will be people

who are poor members of minority groups.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, I believe that we have a procedure where, as a matter of accommodation, we allow people to cast their vote out of order, Mr. President, and I believe that courtesy was granted to Senator Mendez and others, but I don't think it's our practice that people explain their vote or go on for some period of time.

ACTING PRESIDENT KUHL: Senator Mendez, how do you vote?

SENATOR MENDEZ: Mr. President, I vote in the negative. I do not think that I exceeded the two minutes time. So, definitely, I do not appreciate being interrupted by my dear colleague, Senator Leichter.

Thank you. I vote no.

ACTING PRESIDENT KUHL: Senator Mendez will be recorded in the negative.

The Secretary will withdraw the

roll call.

Senator Skelos.

SENATOR SKELOS: Mr. President, I would just like to point out to the members, and Senator Leichter did raise a good point that, if we're going to accommodate the members where it's necessary for them to leave the chambers, that they should vote and perhaps not explain their vote at that time, and also that debate began at ten after 4:00 and it's the intention of the leader to close debate at ten after 6:00.

SENATOR MENDEZ: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes -- Senator Mendez, why do you rise?

SENATOR MENDEZ: I just wanted to mention that prior to -- that I did explain my vote on this issue because prior to my doing so, there was a member of the Senate who, in fact, did explain his vote before he left.

Thank you.

ACTING PRESIDENT KUHL: Thank you, Senator Mendez.

The Chair recognizes Senator

Paterson.

SENATOR PATERSON: I'm being recognized?

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, we have a number of amendments, and I would like to move the first amendment at this time.

ACTING PRESIDENT KUHL: Which one of your members, Senator Paterson, is going to offer up the first amendment?

SENATOR PATERSON: I will offer up the first amendment, Mr. President. It's at the desk and I'll waive its reading, and I will talk about the amendment at this time.

ACTING PRESIDENT KUHL: Senator Paterson on the first amendment.

SENATOR PATERSON: The Governor's bill, Mr. President, purports to exempt mentally retarded persons from the death penalty. Since 1980...

SENATOR MARCHI: Mr. President, out of all respect to Senator Paterson, are we

charging this time against the two-hour limit?

ACTING PRESIDENT KUHL: Senator Marchi, the -

SENATOR MARCHI: I would have to move for a closed call of the house under those circumstances.

ACTING PRESIDENT KUHL: Senator Marchi, the rules of the house say that any amendments and the discussion of the bill, prior bill will be -

SENATOR MARCHI: The subject -

ACTING PRESIDENT KUHL: -- a two hour limit. So, yes, the answer to that question is yes.

Senator Paterson.

SENATOR PATERSON: Mr. President, what confused me was I thought that Senator Marchi was ahead of me on the list.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Yes, Senator Leichter.

SENATOR LEICHTER: You announced an order of speakers, and I believe actually

that I was the next speaker; am I correct?

ACTING PRESIDENT KUHL: You are correct, Senator Leichter. Senator Paterson and the staff indicated to me that you were under standing of the need to present the amendments that are currently being offered up. Now, if that is incorrect and you wish to maintain your spot and preempt the Acting Minority Leader in offering up those amendments, then I'm happy to entertain you.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: That's your choice, Senator Leichter.

SENATOR LEICHTER: Mr. President, when you put it in those terms, may I just - excuse me just a moment, Senator Paterson.

I would hope very much that a bill of this significance, that there would be understanding, as I believe over the years, members have shown respect for each other, have shown respect for the issue.

I think Senator Marchi certainly ought to be heard on this. I know that other

members want to be heard. I would certainly like to be heard on it. I don't mind being preempted by as distinguished a person as my good colleague and Minority -- Deputy Minority Leader, Senator Paterson, and if he wishes to move ahead with the amendment, that's fine, but I would hope that members would have a chance to be heard on a bill of this momentous significance.

ACTING PRESIDENT KUHL: Thank you, Senator Leichter, who yields the floor to Senator Paterson to offer up the first amendment.

Senator Paterson.

SENATOR PATERSON: Mr. President, I don't want this to appear to be tennis, but I will yield the floor back to Senator Leichter. He apparently wasn't informed and we would like to hear him on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, the floor is yours.

SENATOR LEICHTER: I thank my good friend, and I'll say again that I believe

some of the most eloquent debate that I have heard over the years has been on this bill, because it is a bill of such significance, and I think members feel very strongly about it, and I would really hope that we would give each other the courtesy of listening to ourselves on a bill of this importance, but I appreciate the time is short. I think a lot of points have been made, and I will try to be brief on this.

What really concerns me is that I see on the part of the proponents of this bill, particularly the Majority in this house, such a rush, a drive to get death penalty enacted that it's no longer a means to an end. This has become the end in itself, to pass a death penalty bill irrespective of the procedures and the process of this house, irrespective of the provisions that are in this bill, irrespective that the public hasn't had an opportunity to be heard.

This has become political dogma. We will pass a death penalty bill. We will tell the public we will put people to death, and when

I listen to Senator Maltese, he's not just talking about horrible crimes, terrible crimes that need to be punished, must be punished. He talked about burglaries.

He -- I heard Senator Volker talk about guns, narcotics. This has become like the universal solvent, the universal solution for the Republicans to impose a death penalty and we will go back and have a nice, orderly, peaceful society as it was in the 1950s and 1940s. Wasn't that peaceful then? It was probably more peaceful than it is now, but let me say the reason is not as Senator Volker says, because then we had a death penalty.

Senator, there isn't one credible criminologist who will say the reason that murder is greater now in New York State than it was 25, 30 years ago is because we do not have the death penalty. The reason is very simple. It's the demographics. It's the young people. There's also undoubtedly a loosening of moral values. There's greater poverty in some respects, all of which have entered into what is

a violent society, and we have an obligation to try to deal with that, but not to come up with simple solutions, not to say, "Put somebody to death and we're going to have a nice, orderly society", because that's not the case. It's not true.

The point is that those who argue for the death penalty in the first instance have to establish clearly -- they have to establish by the preponderance of the evidence that the death penalty really deters murder, and that has never been shown. It has never been established.

Senator Saland, to his credit, admitted that the proof is mixed on it. I don't think that I could stand up here and say absol utely that the death penalty in each and every instance is -- will not act as a deterrent. There may be some instances where it will, but if you look at the broad scope of crime in this country and in the world, you can point to case after case, country after country, state after state, that has a death penalty and has seen an

increase in murders. Take a look at Western Europe. Western Europe does not have a death penalty; has a murder rate that is so far below that of the United States that we can only be envious.

Take a look at states that have imposed a death penalty in the last eight or nine years since the Supreme Court validated the imposition of this penalty, and many of them have had increases in the murder rate that exceed that of New York State. In fact, New York State, in the last couple of years, has had a decline in the murder rate, and we're going to have an increase probably in the murder rate and in the crime rate because the demographics show that we're going to have in the next 10, 15 years a younger population that is by and large younger people, mostly younger males that commit murder.

What we will undoubtedly do by the imposition of the death penalty is we will have the state put to death innocent people. Senator Maltese said, I cannot exclude the

possibility of error. Of course, you cannot and, as Senator Montgomery has shown us, there are documented cases. This weekend the New York Times gave us one of these cases, and there was a picture of the person who, when he was sentenced to life imprisonment, the judge said, "I wish I could sentence you to death", and the picture was that person who had -- after years in jail, new evidence came forth, he had been convicted on trumped-up charges, and now he came back to his community and there was a celebration that an innocent man had been freed, and with him at that celebration was his local representative, either Senator or Assemblyman George Pataki at that time and, of course, he celebrated the fact that an innocent person had finally been freed, but if you had the death penalty, that person would never have had the time to be freed. He would have been killed.

There's also no question that the death penalty is inherently racist, not that the people who propose this are racist. They are no more racist than I am or Senator Montgomery or

anybody else. That's not the point. The point is that society tends to kill those it looks down on and those may be minorities. It may be poor people. Do you think that under any death penalty bill that somebody with the notoriety and the wealth of an O.J. Simpson -- and I'm not commenting on whether he's guilty or not, but we know that somebody like that will never be executed because society does not execute those who either have the wealth to buy a good defense or who have a certain stature in the society. It is those who society, in some way or other, despises and looks down on, and no bill can avoid that sort of bias and that sort of error creeping into a system.

Clearly, the proof is there. Senator Volker, you may want to deny it but, frankly, I think you're in a lot of denial on this bill, but the proof is there that the death penalty is greatly expensive, much more so than if you had punishment of life without parole.

Clearly, anybody who commits a heinous crime must be punished. We're not for

letting murderers go free. We support imprisonment for life without the possibility of parole. Somebody who commits a murder of the sort that's dealt with in this bill, as far as I'm concerned, he is resigned from society; he is out, he or she are put in jail forever.

So we are for punishment, but we're for punishment with justice. We are for a form of punishment that does not brutalize society, that recognizes the dignity of life, and how can you establish and uphold the dignity of life which, I think, is what we're all about, and all of us care about that; all of us want to accomplish this, but how can you do it if you have the state engaging in what is the most brutal act, and that is putting somebody to death.

We will have a death penalty bill and I'm sure the courts will review it, and hopefully, will declare it unconstituional, but I would hope that our better instincts, our better care, our better -- our better desire for a tranquil, peaceful and just society will lead

us to see that the death penalty is never the answer. The answer is to affirm life, and by doing the death penalty, by going down this dark and vicious road, we are really surrendering to the basest and the worst instincts.

We as legislators, we as leaders of our society have the obligation, I think, to say that society can be better, and when we have the death penalty, we say that we cannot be better. We say that society has reduced itself to the acts, has reduced itself to the behavior of the worst within that society. I urge you to reject the death penalty. It is not an answer to what we need in this state.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

SENATOR MARCHI: Thank you, Mr. President.

My -- my concern with the death penalty goes back many, many years. I remember debating this under intercollegiate auspices in the late '30s. At that time, we had six states, Michigan, Rhode Island, Maine and three others

that did not have the death penalty, and the comparative statistics I'm not sure prove everything, but Michigan, surrounded by other states -- and I believe they still don't have a death penalty -- surrounded by other states that had the death penalty, did not -- did not have a -- as low a rate of homicides as the state of Michigan.

The twin cities of Detroit and at that time Windsor -- well, it's still - geography hasn't changed. In Windsor, Ontario, both Windsor, the capital of Canadian manufacturing of automobiles and Detroit holding that distinction in the United States, Detroit had a better record, and yet we know that Windsor, Ontario did have the death penalty.

I was going to go through some of the historical turns that have taken place, going back to Thucydides back in the year 247 B.C., this is almost 200 millenniums ago, raising the very same considerations that have been raised by some of the members here today, and he found that wanting -- he said we kept

escalating the punishment, yet we never found the one that worked. How far could you go?

I certainly give great credit to Senator Volker. On moral sensitivity, he has elevated everybody's concern about fairness in the administration of the -- of law and law enforcement. He has sensitized us. This is not the best vehicle, in my point of view, but, Senator, I admire you. You are a morally sensitive individual, and you have made a contribution because we are discussing it in much more realistic terms. Hopefully, it will help us also in identifying what I see will inevitably happen in orienting ourselves in better directions, not only in this aspect of illegal and violent behavior but -- but the problem of crimes generally.

You know, the whole -- the whole business -- we haven't really gotten into the vitals of what goes into a crime of this dimension. The mens rea -- and I appeal to those who are attorneys -- the guilty state of mind, the premeditation, the intentional

infliction of a wrong, even the President of the United States who was then governor and running for president did not stay the hand of the executioner in Arkansas when that individual had the problem of being mentally deficient and he was -- he was executed for a crime. Is it a crime if the person didn't even know perhaps - and I believe Senator Connor mentioned the fact that there are big problems in those borderline cases that make it very difficult to apply that, but I think everyone recognizes that problem.

I bring you up a little further into history, Charles Dickens conducted - conducted a -- an interview of 287 people who were to be executed. This was in these vast squares where they had thousands of people, and they could cut your hands off if you were caught pick-pocketing, and it was a field day for pick pockets. 200 and -- all but three, 284 had witnessed prior executions.

It's not a question of race or racism. It's a question of triggering the morbid propensity that an individual may have.

If you're going to go out and manifest that kind of justice, aren't you going to cheapen the feeling that we have for life itself, and shouldn't the state be the champion of life in that respect, in all respects? This was the experience that Charles Dickens had.

I go to the records -- you know, I don't like to prove the record one way or the other, even with Detroit and some of the statistics I cited, because there's a remarkable consistency. If you look back over the last 25 years, the homicide rate in this country has oscillated around nine homicides per 100,000 population and, as population increases, that has been the norm.

So are there better ways? Yes, there are better ways. There are better ways that are rooted in social justice. There are better ways in appreciating what we are doing and presenting a human face and containing the damage, taking that person out of circulation so that they cannot inflict. This is public mores. This is public policy that I'm talking

about.

We have today -- we have the death penalty; 37 states of the United States have the death penalty. You know what New Jersey, Connecticut, Pennsylvania, Ohio have in common? They all have the death penalty and they have not executed anyone and they've had it for over ten years.

We go to California and Illinois. Now we have better than 70 to 80 million people to each state. Are they using it? Maybe there's a wiser frame of mind that's taking over, and they don't intend to use it. I don't know whether we'll ever get around to using it. I am not advocating it certainly, because I oppose it, but there are better ways.

I would like to call your attention to what I thought was an excellent piece in the New York Times, an Op Ed piece by Robert Morgenthau, the District Attorney of Manhattan County -- of New York County. He said, "Last year --" this was a statement that he issued on February 7th. "Last year 6100

criminals were sentenced to state prison in Manhattan, and 9,000 more were sent to city jail."

Now, I -- I accept some of the characterizations that were made here about what constitutes a crime in Manhattan and what may - what it may constitute somewhere -- somewhere else in a more remote area. Now, this is the constructive way to be tough on crime.

In 1975, when he became district attorney, there were 648 homicides in Manhattan. In 1994, there were 330. That's less than half -- less than half that he found when he went in. Now, I don't think that's -- I think that's some indication that perhaps there are ways that have escaped people within and without those states.

Why is it that a nation such as England that had many homicides, the European community, they are only a tiny fraction of what we have? Their population exceeds our population. We have a good people, but if we glorify brutality, if we glorify -- and I'm not

talking about -- I'm not casting aspersions on comments that have been made here, but if we glorify violence, we're going to get violence, it's inevitable. The only way that we're going to make progress is to select ways and treat the problem -- treat the entire person holistically, as Morgenthau would like to do, and those circumstances are beyond him for a variety of social problems, but that is the way to approach it.

I liked his closing. "The only honest justification for the death penalty is vengeance", but the Lord says "The vengeance is mine." It is wrong for secular governments to try to usurp that role.

There are just wars. There are the right of self-defense. There are justifiable homicides, but when we come right down to it, when we treat the problem, a vast social problem, we're not sending messages to anybody. We're not sending a message that's going to be heard. It's not going to move people. We're not going to get better

behavior. I hope I'm proven wrong that this will be cited as a classic state -- understate ment of the century. I hope so, but I fear that none of these things are going to happen, but I do believe -- I do believe that the -- raising the sensibility of all of us to the problems that we face, with the death penalty which reflects, to some extent, the unease and the frustration of so many people, that we will move to better ways, but I submit the best thing we can do is to reject this legislation and to move to those higher grounds that we all want to see happen in this chamber at least.

ACTING PRESIDENT KUHL: The Chair recognizes the next person on the list, Senator Paterson. My understanding is you wish to waive?

SENATOR PATERSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The next person on the list is Senator LaValle. I don't see him in the chamber.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

Like Senator Marchi, I had the experience to debate this issue back in school. I debated it in high school. It was in the early '60s, Senator Marchi, and my memory doesn't go back to the year yours did, but my memory may not be as sharp as yours, and I respect your eloquence, and I would not have wanted to be your adversary in those debate sessions, but I remember that there was no more difficult issue to debate, and all of us were required to debate both sides, and to become facile with the arguments pro and con, and like everyone else in this chamber, I would imagine, I have given considerable thought over the years.

We have traveled a very long and tortuous road in this state to come to a point where we can now pass a death penalty bill in New York State without expecting a veto. And I do understand and respect the opinions of those who continue to feel bound by their consciences

to oppose a death penalty under any circum stances, and I remember even during the years when I debated the bill in a rather esoteric setting that my own mother, who was an avowed pacifist, was angry and disappointed that I was able to muster as much emotion to express the position in favor of a death penalty even back in those days.

But I am concerned that over these last few decades in New York State, the rights of the victim have been given less consideration than the rights of those who murder. Civilians as well as law enforcement officers are increasingly at risk in this state. Prison guards every day face the risk of knowing that they are guarding long-term killers who can kill again without any fear of further retribution, and over the years the debate has become clouded with issues other than the matter of appropriate justice for some murderers.

I want to make it very clear that I am not voting on the ancillary issues such as deterrence. I am voting on the simple issue of

justice.

We hear a great deal about the sanctity of human life from those who oppose the death penalty under any circumstances, but when I research this issue, I think inevitability about the sanctity of life of one individual whose life most likely would have been spared had the death penalty been in place in New York State in the 1970s. I'm referring to Donna Payant, a rookie prison guard, who was murdered in New York State in 1981 by a man named Lemuel Smith who was serving two life sentences for murder. He had been indicted, tried, but never tried for two additional murders of women in New York State. He was also serving a third sentence for kidnapping and rape.

Lemuel Smith's MO was particularly hideous. He mutilated his victims by biting them and then he murdered them. During the course of his trial, there was a great deal of drama and attention given to his MO because his defense attorneys worked so hard to prevent an imprint of his teeth being

admitted into evidence. They felt that there would be an invasion of his constitutional rights should an imprint of his teeth be taken.

I read the transcripts of the trial, and I noted with great interest that back on July 24th, 1981, after the defendant, Lemuel Smith, had been arrested for the first degree murder of Donna Payant, the prosecution moved for an order which would authorize the acqui sition of photographs and dental impressions of the defendant's lower teeth and bite. They did it noting that a forensic expert would then be able to analyze them in comparison to some previous murders in which Lemuel Smith's dental impressions had been the instrument that was used to convict him.

The court records further indicate in 1981, following Donna Payant's murder, that the attorneys for Mr. Smith resisted the motion to obtain the dental record, claiming that the court had no legal authority to compel the seizure of his dental records and that it would be a violation of the defendant's

constitutional right to privacy. The court in Dutchess County, however, felt differently, and ultimately the records were admitted at the hearing.

Reading from the court records at the time, June 12th, 1981, the prosecution called New York State Police Investigator Jack Fox, through whom a photo of the body of the deceased, Donna Payant, was introduced. The photograph depicts her as mutilated by apparent bite marks. The proof at that hearing further established that the medical examiner, Dr. Michael Baden, upon observing Donna Payant's body, contacted Dr. Lowell Levine, a leading forensic odontologist. Dr. Levine then testified that he examined the photographs of the deceased, Donna Payant, for possible bite mark identification. At the time of the examination, Dr. Levine was acquainted with the defendant's dental characteristics since he had in December of 1977, acquired and examined a cast of the defendant's teeth in an examination of a Schenectady County homicide. On the basis

of that examination, he had concluded that the defendant, Lemuel Smith, had imposed the bite marks on that victim, Marilee Wilson, in that other homicide.

On the basis of these compari sons, Dr. Levine concluded to a reasonable scientific certainty that the same person administered the bite marks to both Donna Payant in the Green Haven Correctional Facility and Marilee Wilson in Schenectady County. Dr. Levine added that it required a cast of the defendant's teeth to confirm that opinion, to make sure that they were in the same position they were in 1977, and the point was made in the court records that Dr. Levine testified that the process of casting and photographing Lemuel Smith's lower teeth would be painless and risk free. Remarkably kind and considerate of Lemuel Smith, I would say.

The court went to inordinate lengths to make sure that Lemuel Smith's rights were protected and that he was, quote, "not subjected to any undue pain", but what Donna

Payant went through was entirely different.

After Dr. Levine concluded his examination, the court records state, "The body of Donna Payant revealed torn nipples and mutilation of the abdomen." There was one distinctly discernible bite mark which formed the basis of his findings and proved beyond any question of a doubt that Lemuel Smith had murdered Donna Payant, mutilated her body and ultimately allowed it to be disposed of in a landfill outside of the prison walls where he served time.

Had the death penalty been in effect in the 1970s when Lemuel Smith was originally convicted of murder, there would be no doubt that rookie prison guard Donna Payant would be alive today. She was a young woman with three children who are now all young adults, and the question has to be asked about the justice for the Payant family. The question has to be asked by the taxpayers of this state if, in fact, we have been so preoccupied for the rights of the killers that we have overlooked

the rights of the victims of this state.

Mr. Smith, Lemuel Smith, continues to make appeals for improvements in his housing condition. He now has a fiancee who writes letters to the court protesting that the housing conditions in which he lives deny them an opportunity for conjugal visits. Mr. Smith's rights continue to be a preoccupation of the court system in this state, but the rights of Donna Payant and the justice afforded to Donna Payant and her family were non-existent.

Regrettably, Mr. President, I see no other form of justice that would address the situation in which a rookie prison guard guarding an inmate convicted of two previous murders charged with but not tried for two additional murders faces no other form of retribution.

In the name of Donna Payant, I will vote aye, Mr. President.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I believe the two hours has expired. Will you

call the question?

THE PRESIDENT: Yes. The question is on Senator Bruno's motion to close the debate.

Senator Paterson.

SENATOR PATERSON: Madam President, since under the rules I can't debate this motion -

THE PRESIDENT: No.

SENATOR PATERSON: -- I would like a slow roll call.

THE PRESIDENT: Slow roll call, please. The clerk will call the roll.

THE SECRETARY: Senator Abate.

SENATOR ABATE: It's with a great deal of regret that this afternoon -

THE PRESIDENT: Is Senator Abate explaining her vote?

SENATOR ABATE: Yes, I'm explaining my vote.

It's with a great deal of regret that I feel, and I think that regret is shared by many of my colleagues, that we did not have

extensive debate on the bill, and that the Minority Conference did not have an opportunity to present a number of very credible hostile amendments.

If I had had the opportunity to speak, and unfortunately, I only have about, what, a minute and a half, I would have talked about the need for open and full discovery in capital cases. I would have talked about quality representation issues, the funding of defense counsel to ensure that innocent people are not executed. I will not have that opportunity to speak this afternoon on these critical issues and we will not have full debate, and yet still we will pass the death penalty today.

I want to be on record opposed to the death penalty. I will not have an opportunity to explain why I vote this way. I will have to talk to my community. I will have to talk to the press because, in this chamber, I was not given the time to debate this issue.

THE PRESIDENT: Continue the slow

roll call.

THE SECRETARY: Senator Babbush excused.

Senator Bruno.

SENATOR BRUNO: Yes, and I'd like to explain my vote.

Madam President, I understand that people are very emotionally involved in this issue and people have a lot to say. I am also concerned in that we seem to get caught up in this house with procedure, and I hear loud and clear from people on that side of the aisle about procedure, and all I'm listening to is procedure.

Now, the rules of this house are very clear for everyone to understand, and they're there before the debate, during the debate and after the debate. Now, if we want to change the rules of this house so that when we agree that some issue is major, that we extend the rule to three hours instead of two, eight hours instead of two, I and my colleagues are open to that, but let's do it procedurally and

in an open and fair way.

And, Madam President, as for the amount of time for study, Minority counsels on both sides of -- both houses, both sides of the aisle have been in all of the debates and all of the negotiations on this issue. Hopefully, they have been keeping people informed. We have been talking about this issue in this state for 18 years. It is no mystery to anyone how we got where we are this afternoon, and having said that -- and I think I may be close to my time - I vote yes.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Madam President, to explain my vote.

I would point out, Madam President, that the rule of the house is not that no debate can run longer than two hours. The rule of the house is that after two hours, and only after two hours, can a motion to close debate be made, and nowhere in the rules does it

say it must be made. Nowhere in the rules does it say that all the members of the Majority party must vote for it if it's made. It simply is a measure to ensure that there is at least two hours of debate on any matter.

It has been the long custom of this house, and I have -- this is the 18th year I have debated on the death penalty, both in chief and also many of those years on motions to override, and it has been the custom of this house on issues like this, other issues involving abortion, other matters that are - that we all recognize are not party matters - and this is not a party matter, the death penalty.

THE PRESIDENT: Senator Connor, are you explaining your vote or are you debating the motion?

SENATOR CONNOR: I'm explaining my vote, Madam President. I'm entitled to do that in any way I choose.

And so, while I appreciate Senator Bruno saying that he would welcome a

rules change, I suggest that by at least the 18 sessions I have been here, by unvarying custom on this bill, we have allowed the debate to often run to three and a half and four hours. The members understand that they wouldn't make that motion because -- and I'm sure there are members who are for the death penalty who would like to be heard today, and I -- this is rather unprecedented.

I understand the rules are the rules. I'm opposed to the motion. I intend to vote no on the motion. I suspect that we will debate the death penalty once again in the near future, and I would just urge, as a matter of procedure, that if we can't do it in the old members agreement, quiet, unspoken -- of course, we let these debates go longer when they involve a matter of conscience, then we do it in some written rule, and I'll certainly ask my counsel to talk to Senator Bruno's counsel first thing in the morning about devising this new rule.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Explain my vote, please.

I don't take any great pride in voting for a death penalty in the state of New York. In order for me to be satisfied that this was a good bill to support, I had to be certain that there were certain -- there were sufficient procedures in sentencing in order to bring all factors before the jury to make certain that an individual will be given a capital sentence only when it's deserved, and that there were many options for the jury other than death.

In addition, I wanted to make certain that there was an opportunity since I have done defense work, for competent representation, and I believe that the Capital Offense Defenders Unit provides for that eventuality, provides for that protection.

The reason I am supporting the

death penalty is that right now, without it, there are certain crimes that have no punishment. If you're a corrections guard and someone is serving two life imprisonments, you have absolutely no reason -- or there's no deterrent whatsoever for an individual to commit the crime of murder. In some instances, if it's a police officer who's trying to -- may be the only witness to a crime that may be trying to apprehend that individual or a witness, why not kill the witness since it's -- there's a chance that maybe you will never be convicted? There's no additional punishment, especially in the cases that I have just mentioned. So these aggravating factors present those cases where right now I don't believe there's a punishment and there should be for all crimes, and as a result, I vote yes for this bill.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

SENATOR ONORATO: Are we voting

on the bill?

THE PRESIDENT: No. We are voting on the motion to close the debate, Senator Bruno's motion to close the debate on Calendar Number 106.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: I rise to explain my vote, Madam President. I actually had a whole series of questions that I wanted to ask Senator Volker about the bill. I wanted to turn to page 29 and ask him what the standards were for the financial burdens under which local communities could get state assistance for funding death penalty cases?

I wanted to ask him some questions about the cost of that. I wanted to ask him questions about the disposal of the body, an interesting issue that crops up in this piece of legislation. I had never seen it before. I wanted to ask him whether a 17-year-old could be executed under the statute because we rigorously say "No person under 18

years of age shall be permitted to witness one."

I want to know why we would invite six citizens to witness an execution. I wanted to know who would determine who would make judgments about death at the time of death? I wanted to ask all of those questions. I wanted to get up and agree with my colleague, Senator Marchi. I brought Charles Dickens with me, a Tale of Two Cities and Barnaby Welch in which the hangman, Ned Dennis, is mocked by Dickens because he believes that hanging people will change their behavior.

I'm not going to get a chance to do that. I'm not going to get a chance to get answers to my questions. I'm not going to get a chance to introduce further protections through amendments by doubling the penalty for perjury so if you lie in a capital case, you'll recognize that it's very, very serious. It's now only a D felony. I'm not going to be able to introduce one that talks about a double indictment and gives the power to a grand jury to indict you, not only for murder, but to

impose the penalty or at least put the penalty before the jury so we take it out of the hands of those politically motivated district attorneys.

And the last thing I won't be able to do is to put a sunset in this bill so that six years from now before we execute anyone, we'll actually have data about the trials. We'll actually have information about the racial implications. We'll actually know whether innocent people have been convicted, and then we'll be able to make an intelligent choice about this penalty. We should have a chance to debate those today.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: I vote yes.

THE SECRETARY: Senator Farley.

(There was no response.)

Senator Galiber.

(There was no response.)

Senator Gold.

(There was no response.)

Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Explain my vote.

I feel very uncomfortable about closing debate prematurely on an issue of this substance. For the last decade, when we have debated this bill on many other occasions, I remember us going over the time limit and with all due respect to Senator Bruno, who is running a very tidy house this year and has earned us great kudos across the state with his good housekeeping, I do feel that in this one instance that it would be inappropriate to

curtail debate prematurely, and I take some responsibility in having asked my colleague to hold off on amendments in order that some other members might be able to speak, and I apologize to anybody who may have had that opportunity foreclosed because it had not been made clear that the rule would be enforced so narrowly, and I do hope that Senator Bruno might reconsider the possibility of giving everyone an additional two minutes or three minutes to make abbreviated explanation rather than simply closing debate at this point.

If we could have a ladies' and gentlemen's agreement to conclude within the next 10 or 15 minutes, I'm sure that everyone would be satisfied under those circumstances. I understand the list only includes approximately, I believe it's only five people, three and two, and if Senator Dollinger would agree not to engage Senator Volker in a whole series of questions, the decision would be so much easier for Senator Bruno to make to allow a very abbreviated form of discussion.

SENATOR DOLLINGER: I never got my chance to ask my questions either.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Jones.

SENATOR JONES: No.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Yes.

THE SECRETARY: Senator Lack.

SENATOR LACK: Yes.

THE SECRETARY: Senator Larkin.

(There was no response.)

Senator LaValle.

SENATOR LAVALLE: Yes.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Yes.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Mr.

President. I'm afraid there's really a diminution in the civility and the courtesy that I think has characterized this house. It really is unheard of on a debate on a bill of this significance to impose a two-hour limitation and, as Senator Connor rightly pointed out, there's nothing in the rules that says you must stop after two hours.

I think that there are members who wish to be heard on this bill. They certainly should have had the opportunity but it's part of the rush of the Majority and of the Majority Leader to pass a death penalty bill. I mean it's as if there are drums here beating death, death, death, death, death without regard to the processes of this house, without regard to the committee system, without regard to the practice and the civility that has obtained in this house; and it is just wrong and it demeans this house, and I think it makes us look foolish before the people of the state of New York.

Senator Bruno, I think the people of this state, a majority of them, want a death

penalty bill, but they don't want us to act in this fashion. Maybe some members say it's 6:30, it's time for me to go out for dinner. I think we have more important business right here to debate this bill.

I vote no.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Yes.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Briefly to explain.

Senator Bruno, on this issue, we've waited 18 years. I support capital punishment. I'm certainly willing to wait another hour, an hour and a half, and I know the restaurants in Albany will welcome us no matter

when we come this evening, and provided it's not too late, because they close kind of early, that's true.

But I think for my colleagues, many on this side of the aisle that may be contrary on this issue, they certainly deserve, in my opinion, every opportunity. This is one of those issues that really touches us personally, not just professionally, and I think it would be very decent of you, if you would yield on that, allow those people on both sides that wish to have an opportunity for a few minutes longer.

Something tells me we're going to be back on this issue in the next few weeks any way, maybe even the next few days, but still because of the importance of the issue, I hope you will allow us to have a few more moments of debate.

I vote no on this.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: Explain my vote.

Madam President, I too, at the desk, had a hostile amendment that I am very disappointed that I will not have the opportunity, nor will we as a chamber here be able to debate and discuss.

I personally feel that it's a vital aspect of this legislation, one that has not been covered sufficiently, and that is the fiscal aspects of the administration and prosecution of the death penalty.

My amendment very simply requests a study by the Division of Criminal Justice Services, in conjunction with the Office of Court Administration, to analyze the fiscal impact of this legislation and, as far as I'm concerned, especially for the people of my district, this is an unfunded mandate, something

we're supposed to be getting away from. The local D.A.s, our criminal justice system, aspects that are being cut in this budget, at the same time are not being given a fiscal allocation within this legislation that would provide the resources needed to prosecute this penalty if the bill was passed.

I've had other reservations to the bill in the past. This, in my opinion, if we're going to be moving forward with this legislation, especially in difficult fiscal times as we all degree exist today, we should be focusing on the fiscal aspects of this bill. Again, I'm disappointed that we won't be substantively debating that on this floor today.

For that reason, I vote no.

THE PRESIDENT: Continue the roll call.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Explain my vote.

Mr. President, even though I'm a co-sponsor of the bill, I -- I do feel that there's an injustice being done here today. We've never been limited in prior years to a two-hour debate and, if the Majority Leader does insist in the future on limiting these two-hour debates, then I believe we have to change the rules to give each of the 60 members of this house an equal opportunity of perhaps having four minutes apiece so that we can all have an equal opportunity to speak, whereas some individuals may hog up the entire two hours leaving the rest of us out in the cold.

So under those circumstances, I would like the Majority Leader to reconsider his position today and reserve it for future debates.

I vote no.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: On the

vote, I have already -- I have already cast my vote because of the budget hearing on transportation, but from what I gather now, I would have supported precisely and I was about to say what Senator Onorato said, which is we have to give everybody in this body an opportun ity to be heard. It's sort of outrageous to cut off people who want to speak who are legislators and try to represent their opinion and their districts.

The idea of limiting so that each person gets an equal opportunity to speak seems to me the only way to go if you are going to cut this off at the two-hour limit. So I would strongly support what Senator Onorato has just said and would urge that Senator Bruno at this juncture, say, permit the five people to speak each for three, four minutes and it could be accomplished quickly, and nobody would feel any deprivation.

So I will vote no on the resolution and hope that the extra few minutes can be granted to the people who wish to speak.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President, to explain my vote.

There were a number of amendments that were offered by some members today -- by Senator Gold, Senator Abate, Senator Waldon, Senator Nanula and Senator Dollinger. I was going to introduce the first amendment and at that point I yielded my time and the time of all those members, who I would like to apologize to, because there were other individuals who wanted to speak on the bill.

We yielded our time as a matter of civility that Senator Leichter was talking about because this is an issue that's on people's minds pro and con. The amendments to the bill are supported by people who are for and against the death penalty.

This is the most significant issue that we are debating because this is the

issue that the Governor said he wanted to enact first, not because I agree with the Governor, but because this issue has risen to a very great point in our society where people feel a need to discuss it and the fact that these measures, such as the one that Senator Dollinger was going to talk about, about having a five-year sunset to take a look at the statistical data, the cost factor that Senator Nanula was going to discuss, the issue that Senator Waldon was going to discuss on racial justice in the death penalty, the issues involving constitutionality that Senator Gold was going to discuss where the jury is only allowed two electives, death or life without parole and only in the case of the deadlock would there be the regular life sentence meaning that a person could be sentenced to something the jury never arrived at, really infiltrating on the precious right that juries have to make a free and open decision; the issue of the constitutionality of the pre-trial examination of the defendant by the prosecutor's psychiatrist because the

defendant is mandated under our new law to give it notice of psychiatric mental state as being a mitigating circumstance, and finally, the Governor purports to exempt mental retardation from the bill and yet that exemption only comes after a finding of guilty by the jury meaning that there can be no discussion of the mental retardation of the defendant until after the trial.

Eight states and the federal government have gone away from that and don't allow mental retardation as a -- those who are mentally retarded to be executed at this particular point. These are some of the issues we would have discussed.

Our desire to let our other colleagues speak is all we're asking of the Majority Leader, to make sure that all the issues are heard. There is no conflict this evening with any other governmental procedure that I know of unless some of the procedures that will go on after this debate are considered to be governmental. And so the debate which

started at 4:10 had to be precluded and these issues were never heard.

By the way, by my clock it was 4:12, and I operate with -- under the U. S. Naval Observatory Master Clock, and so we should have had an extra two minutes that we were denied.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Madam President.

THE PRESIDENT: Yes.

SENATOR SMITH: To explain my vote.

I'm really dismayed that, after seven years, that for the first time people will not be given the opportunity to be heard. All of a sudden the rules of the chamber are being invoked. However, at the beginning of session, there was someone taking pictures with a flash and I believe that the rules of the chamber state that no one can use a flash in the chambers. However, I was told the permission was granted for that, something of lesser importance that can take precedence over an important issue such as life and death.

We've really come to a parting of the ways between what we have to be limited in what we can say about the life of someone. Life is still very precious to many of us and, therefore, I vote no on this amendment.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Solomon.

(There was no response.)

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford. Senator Stafford.

SENATOR STAFFORD: Yes.

THE SECRETARY: Senator Stavisky excused.

Senator Trunzo.

SENATOR TRUNZO: Aye.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

(There was no response.)

Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: To explain my vote.

In the year 1619 at a place that is now known as Jamestown, Virginia, a ship docked. There were 20 indentured blacks on that ship and America's folly with racism began and, despite the contributions of people who are - of my people from Africa in the wars, in education, in science and entertainment, we have not been treated equally in this country, and I believe that the place that we have been treated most disparately is in terms of justice, in terms of justice, and this is an example of gravity, so much so that Senator Bruno said earlier when he was explaining his vote, quote, when we agree that an issue is major then we can extend debate to three, four hours, close quote.

What issue is more important, more grave, more meaningful to people, than life and death? And yet we cavalierly slough it off. I believe that we've blown a tremendous opportunity, and I'm going to take this to a

higher level.

I'm a junior Senator in a relative sense. My budget is diminished because I am in the minority. My member items are diminished because I am in the minority, but I always felt that I had the right to speak on this floor. So despite the fact that I have been treated disparately in terms of my ability under the one man-one vote rule to deliver services to my 300,000 constituents because the Majority has guarded all the money and kept it for your own use, today I'm even denied the right to speak -- to speak in a free society on an important issue.

Mr. Bruno, I think that you blew it. I think this chamber blew it. I think the people of New York State have blown it, and I will be heard. We will have a press conference following this, outside, if the press wants to hear what I want and have to say, please come, on my hostile amendments and I invite anybody and everybody who wants to speak to join me in that exercise.

I vote no.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: Absentees.

THE SECRETARY: Senator Farley.

(There was no response.)

Senator Galiber.

(There was no response.)

Senator Gold.

(There was no response.)

Senator Larkin.

(There was no response.)

Senator Mendez.

(There was no response.)

THE PRESIDENT: The results, please.

THE SECRETARY: Ayes 32, nays 19.

THE PRESIDENT: Senator Bruno's motion to close the debate on Calendar Number 106 is agreed to.

The clerk will read the last section of the bill, please.

SENATOR PATERSON: Slow roll call.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September next succeeding date on which it shall have become a law.

THE PRESIDENT: A slow roll call is requested. The clerk will call the roll, please.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Babbush excused.

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Mr. President.

The -- I wish I'd had an opportunity to talk during the course of the debate. I was -- that opportunity has been taken away by the Majority, but it's unfortun ate, I guess, when I look at this bill which seems to have so many large defects still a part of it, things that could be improved upon.

Since when did we in the state of New York turn our backs on things that could improve a bill? But more importantly, I guess I just have to respond to the one thing that Senator Maltese said. He says we have to do the best thing we can for the people of this state.

Well, to the people of this state, I say very simply, it may be one of the cheapest things we can do because we're not

spending any money. It has no appropriation attached to it. I agree with my colleague, Senator Nanula, that this is a large unfunded mandate. We'll talk about that outside when I join Senator Waldon in his press conference and it probably is the most punitive thing we could do.

Sure, we can take away lives. But is this -- this bill, this hastily put together bill that has all kinds of questions - I went through just the back half of it, those procedural steps that I hadn't had before, I've got question marks all over it -- is this the best we can do for the people of this state?

It's the best we can do in two hours with our debate cut off, our opportunity for amendments cut off because the Majority wants to meet its political agenda. But don't anyone kid themselves. This is not the best that the Senate can do for the people of the state of New York.

I vote no.

THE PRESIDENT: Continue the slow

roll call, please.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

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

Senator Galiber voting in the negative earlier today.

Senator Gold voting in the negative earlier today.

Senator Gonzalez.

(There was no response.)

Senator Goodman.

SENATOR GOODMAN: Yes.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Yes.
THE SECRETARY: Senator Jones.
SENATOR JONES: No.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: Yes.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Yes.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin voting in the affirmative earlier today.
Senator LaValle.
SENATOR LAVALLE: Yes.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Yes.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Libous.
(There was no response.)
Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Ever so briefly. I know that we'll debate this issue again in the very, very near future. This issue each year, sometimes twice a year, is like a kidneystone. It's like a gall bladder attack. It's like a root canal that we don't want.

In a perfect world, we wouldn't have to face this issue. If Christ, Moses and Mohammed would appear on earth, I pray to the Lord that that would happen and cleanse all of us and save all of us human beings, that would be the best -- the best that can possibly happen.

There's no amount of refinement on this bill that can possibly cure for those that are against the death penalty. There is no bill that can be presented, in my opinion, to those of my colleagues, Republicans and

Democrats, that are vehemently opposed to the state's right to take a life, and so I respect your desire to make an imperfect bill as perfect as an imperfect bill can be, meaning that none -- none -- no bill can be presented that can dissuade you from your particular opinion.

I wish this wasn't an issue, but the fact of the matter is we live in this kind of society in which there are human beings born and raised, not necessarily because of their home life. Maybe it's something in the air, I don't know, that somehow causes someone to begin a life of anti-social behavior that, quite frankly, my colleagues, exhibits a complete disrespect for life.

There is such crimes that I believe call out for our society's right to impose the maximum sentence, and I recognize that there are few arguments that I could present that can possibly change the mind of those that are opposed to this death penalty.

Suffice it to say this, that I believe and the only reason why I support this,

Senator Montgomery, and some other of my colleagues, is that the great majority of crime in our state is caused by people in the minorities on fellow minorities. There's no question that every statistic reluctantly bears that out; and so I look upon the imposition of the death penalty not only to bring justice, justice to African-American families in our society that are -- that the end result is that are receiving the greatest amount of crime on themselves, their families and their communities, not only for that reason but also as I hope in a way to save -- to save the lives of African-Americans, Latinos and others in our society, to save their lives once and for all, to say to that one person that black life is equal to white life. Black life is worth no less than white life. We are equal. The days of slavery are over. The days of discrimination are over.

Yes, there is some racism; there is no question there is some racism in our society. I'm not going to deny that. There is

also anti-Semitism in our society, anti-Asian feeling in our society. I can go on and on, but I believe that, as a society, we have to make a statement and the statement is to save lives.

If the imposition of the death penalty can be implemented in our state, if we can get the message across to young people regardless of their ethnic and racial backgrounds, regardless, to value life, to value life, to know that, if they commit the ultimate sentence, the ultimate crime, that they have to be prepared to give up their own, perhaps then we will slowly begin to see a restoration of respect for life of the value of life.

Perhaps I'm wrong, perhaps I'm right. This is an issue. I've read every statistic there is, Senator Leichter, every statistic there is. We can make statistics go this way or that way to prove that it is a deterrent or not a deterrence.

I wish this wasn't an issue. I wish we didn't have to vote on it. I wish that violent crime did not happen in our society. I

hope and pray that in my lifetime and in yours that this issue will become a non-issue, that in fact there will be elimination of death and a restoration of value of life.

I vote yes.

THE PRESIDENT: Continue the slow roll call.

THE SECRETARY: Senator Mendez voting in the negative earlier today.

Senator Montgomery.

SENATOR MONTGOMERY: To explain my vote, Mr. President.

Just briefly, I certainly can agree with Senator Markowitz that my community is plagued with crime and my constituents are victimized far more than many other communities across this state, but I don't believe for one minute that this death penalty addresses the crime in my district, and I do not believe for one minute that this -- this death penalty is going to stem the tide in the kind of crime that takes place on constituents in my district by other constituents in my district.

So, while I certainly agree with Senator Markowitz, I wish that Jesus and Mohammed and Moses would come, but until that happens, I don't believe that we should put ourselves in a position to be judge, and I certainly agree with Senator Marchi about his quote from the Bible that I believe in as well, that God is the judge of all of us.

So I vote no, Mr. President.

THE PRESIDENT: Continue the slow roll call, please.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer voting in the negative earlier today.

Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: On January 25th of this year, there was an execution that was rather significant. It was an execution of a white American for the murder of a black American, and in the 258 executions that had preceded it since 1963 there had only been one such case, and that involved a contract killing.

In the history of the United States, there has never been an execution of a white American for the death of a Latino American.

Now, the reason I cite these statistics is because, although African Americans are 40 percent of the deaths in murders in this country, they are only 13 percent of the murders where the murderer received an execution. So the price of the life is not only that related to the individual who is executed, some of the racial discrimination involves the price of the life that is lost and

the vigorousness with which it is prosecuted.

Senator Montgomery said earlier that in North Carolina prosecutors sought the death penalty 78 percent of the time when the victim is white and only 39 percent of the time when the victim is black. As long as we have this kind of polarization in the administration of justice, I feel that the death penalty is not accurate. And I finally would close -- I mean that the death penalty is really not relevant.

And I would just close by saying that when Governor Pataki signed the declaration allowing Mr. Grasso to go to Oklahoma, he fulfilled his fantasy because Mr. Grasso wants to die. He considers the life without parole to be a torture.

There have been a number of heinous crimes described by advocates for the death penalty today. I'm sure if you talked to the perpetrators, the life without parole would be the torture that we would all admit that they deserve.

Thank you, Mr. President.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Madam president, I'm pleased to join with the New York State Criminal Justice Alliance, the New Yorkers Against the Death Penalty, the New York State Bar Association Criminal Justice Section, the

Women's Bar Association of the State of New York, the New York State Catholic Conference, the New York Civil Liberties Union, the Association of the Bar of the City of New York, the Committee on Civil Rights, the New York State Council of churches and the Interfaith Impact in opposing this bill.

THE PRESIDENT: Continue the roll call, please.

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

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

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

Senator Stavisky excused.

Senator Trunzo.

SENATOR TRUNZO: Yes.

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

Senator Velella.

(There was no audible response.)

Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(Negative indication.)

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: Absentees.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE PRESIDENT: The results, please. The results, please.

THE SECRETARY: Ayes 39, nays 18.

THE PRESIDENT: This death penalty bill is passed.

SENATOR LEICHTER: Mr. President.

THE PRESIDENT: Senator Bruno.

SENATOR LEICHTER: Madam President, may I have unanimous consent to be recorded in the negative on Calendar Number 62 which passed earlier today.

THE PRESIDENT: Without objection.

Senator Levy has a motion.

SENATOR LEVY: Yes. Madam President, on page 6, I offer the following amendments to Calendar Number 77, Senate Print 328, and ask that it retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

Senator Bruno.

SENATOR BRUNO: Madam President, there being no further business to come before the Senate, I move we stand adjourned until tomorrow at 3:00 p.m. sharp.

THE PRESIDENT: Without objection, the Senate stands adjourned.

(Whereupon at 7:02 p.m., the Senate adjourned.)