ALBANY, NEW YORK

March 6, 1995

3:02 p.m.

REGULAR SESSION

LIEUTENANT-GOVERNOR BETSY McCAUGHEY, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would you please rise and join with me in the Pledge of Allegiance.

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

Senator Bruno.

SENATOR BRUNO: Madam President, in the absence of clergy, can I suggest that the members in this house bow their heads in a moment of silent prayer and have their thoughts turned to Senator Frank Padavan, his family, and pray for his wife who passed away yesterday.

THE PRESIDENT: Yes. May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, March 5. Senator Farley in the Chair. The Senate met pursuant to adjournment. The Journal of Saturday, March 4, was read and

approved. On motion, the 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.

The Secretary will read.

THE SECRETARY: Senator Trunzo, from the Committee on Civil Service and Pensions, reports the following bills: Senate Print 1045-A, by Senator Spano, an act to amend the Civil Service Law, in relation to disciplinary action.

Senate Print 1539, by Senator Farley, an act to amend the Civil Service Law, in relation to notifying candidates of a preference for a resident.

Senate Print 1976, by Senator Levy, an act to amend the Education Law and the Local Finance Law, in relation to refinancing of payments.

Senate Print 2223, by Senator

Trunzo, an act to amend the Retirement and Social Security Law, in relation to allowing participating employers in the New York State and Local Employees Retirement System.

Senator Present, from the Committee on Commerce, Economic Development and Small Business, reports: Senate Print 899-A, by Senator Rath, an act to amend the State Administrative Procedure Act, in relation to guidance and compliance documents.

Senate Print 900, by Senator Rath, an act to amend the State Administrative Procedure Act, in relation to requiring that regulatory impact statements deal with conflicting state and federal requirements.

Senate Print 901, by Senator Rath, an act to amend the Administrative Procedure Act, in relation to advanced notice.

Senator Marchi, from the Committee on Corporations, reports: Senate Print 1038, by Senator Padavan, an act to amend the Public Authorities Law, in relation to the composition of a committee to review and report

on contracts.

Senate Print 1720, by Senator LaValle, an act to amend the Public Authorities Law, in relation to financing and construction of certain facilities.

Senate Print 1746, by Senator Goodman, an act authorizing the Dormitory Authority of the state of New York to plan, design and acquire a facility.

Senate Print 2198, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law, in relation to not-for-profit corporations.

And Senate Print 2496, by Senator Marchi, an act to amend the Public Authorities Law, in relation to and for the purpose of enabling the Dormitory Authority to construct and finance dormitories.

All bills report directly for third reading.

THE PRESIDENT: Without objection, all bills will go directly to the third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Madam President, can we now take up the non-controversial calendar?

THE PRESIDENT: There are two motions at the desk.

SENATOR RATH: Motions and resolutions.

SENATOR BRUNO: Without objection.

THE PRESIDENT: Senator Bruno, there are two motions here. Shall we take those up first?

SENATOR BRUNO: Yes.

SENATOR RATH: Madam President.

THE PRESIDENT: Senator Rath.

SENATOR RATH: On page 4, I offer the following amendments to Calendar 53, Senate Print Number 208-A, and ask that said bill

retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments are received.

Oh, Senator DiCarlo.

SENATOR DiCARLO: Yes, Madam President. On behalf of Senator Holland, on page 6, I offer the following amendments to Calendar 91, Senate Print 2046, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments are received.

Senator Bruno.

SENATOR BRUNO: Madam President, now can we take up the non-controversial calendar?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Calendar Number 52, by Senator Tully, Senate Print 187, an act to amend the Penal Law, in relation to the calculation of terms of imprisonment.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Senate - Calendar Number 60, by Senator Levy, Senate Print 773, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 74, by Senator Marchi, Senate Print 546, an act to amend the Judiciary Law, in relation to creating the 13th Judicial District consisting of the county of Richmond.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

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.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 95, by Senator Stafford, Senate Print 628, an act to amend the Tax Law, in relation to the distribution of the additional mortgage recording tax.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Johnson, Senate Print 1637, an

act to authorize payment of transportation aid to the Lindenhurst Union Free School District.

THE PRESIDENT: Read the last section, please. Oh, there is a local fiscal impact note at the desk. Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President, can we call for an immediate meeting of the Rules Committee, Room 332?

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

SENATOR BRUNO: Madam President, can we now go to the controversial calendar?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator Tully, Senate 187, an act to amend the Penal Law, in relation to the calculation of terms of imprisonment.

THE PRESIDENT: Senator Bruno - excuse me. Senator Bruno.

SENATOR BRUNO: Madam President, can we return to motions on behalf of Senator Levy -

THE PRESIDENT: Yes.

SENATOR BRUNO: -- and place a sponsor's star on Calendar Numbers 60 and 79.

THE PRESIDENT: The bill will be starred at the request of the sponsor.

SENATOR BRUNO: Thank you, Madam President.

The regular order.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator Tully, Senate 187, an act to

amend the Penal Law, in relation to the calculation of terms of imprisonment.

SENATOR PATERSON: Explanation.

THE PRESIDENT: An explanation is requested, Senator Tully.

SENATOR TULLY: Thank you, Madam President.

This bill removes the existing limit on adding a time period of consecutively imposed indeterminate prison sentences with regard to both adult and juvenile offenders. It's the outgrowth of the original problem that we had in the Westbury Diner incident where multiple felonies took place involving several defendants and at that particular time, we raised the then cap on sentences to no more than 20 years or if one of the sentences was for a class B violent felony conviction, no more than 50 years. This bill removes the cap on limits and provides for as long as the individual felonies contained sentences can go on to beyond as far as the individual will live.

THE PRESIDENT: Thank you,

Senator Tully.

Senator Paterson.

SENATOR PATERSON: Madam President, with the amount of time we're going to spend on other issues today, I won't debate this bill other than just to point out that last year Senators Espada, Galiber, Gold, Kruger, Mendez, Montgomery, Santiago and Smith voted against it.

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.

(The Secretary called the roll.)

SENATOR GOLD: Which calendar?

THE PRESIDENT: Calendar Number 52.

THE PRESIDENT: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 52 are Senators Connor, Espada, Galiber, Gold and Paterson.

Ayes 48, nays 5.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 74, by Senator Marchi, Senate 546, an act to amend the Judiciary Law, in relation to creating the 13th Judicial District.

THE PRESIDENT: Read the last section.

SENATOR BRUNO: Madam President, Senator Marchi should be in momentarily. He's in the Rules Committee. We've sent for him. I expect he'll be here any second. If you will give us a few seconds.

(Whereupon, the Senate stood at ease.)

SENATOR BRUNO: Madam President, I think in the absence of Senator Marchi, we might recognize Senator Tully who can start the explanation on behalf of Senator Marchi.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Thank you, Madam President.

In baseball, they have the designated hitter and they're thinking of doing something like that similar this year and - when they don't have the regular players available. I think that's really the situation I find myself in, but suffice it to say, there are currently under existing law, Section 70 of the Judiciary Law and Section 140 of the same law that provide for 12 judicial districts in this state.

This bill seeks to create a 13th Judicial District so that Kings County, which is now in the 2nd Judicial District with Richmond County, will be eliminated from the -- Richmond County will be eliminated and Kings County will remain in the 2nd Judicial District.

This measure would include enabling provisions in both sections of the Judiciary Law 70 and 140 which would ensure that the employment status of employees of the Supreme Court in the 2nd Judicial District in office on January 1st, 1997 will not be impaired. These employees would be continued in

office in the 2nd Judicial District and in the new 13th Judicial District depending upon former work site.

THE PRESIDENT: Thank you, Senator Tully.

Senator Leichter.

SENATOR LEICHTER: Madam President, if Senator Tully would yield, please.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: Yes, Madam President.

SENATOR LEICHTER: Senator, I appreciate -- think you referred to yourself as a designated hitter, not a replacement player, I was interested to see, and I think that's appropriate.

Now, I have a couple of questions on it, if you would yield, and my first one is, what is the cost of that? When we create a new judicial district, I assume you need a certain amount of support staff, and I wonder if you have a figure as to what that will cost?

SENATOR TULLY: Yes, Madam

President.

THE PRESIDENT: Senator Tully.

SENATOR TULLY: The first pitch has come in, I've let it go by as a ball and pending counsel's appearance, if not Senator Marchi who is here is going to tell you exactly the answer to that question, Senator Leichter. I'm glad you asked it. Senator -- Madam President -

THE PRESIDENT: Senator Leichter, you might want to repeat the question for Senator Marchi.

SENATOR LEICHTER: I just want to assure Senator Tully that that pitch was not aimed at his head but, Senator Marchi, we were just beginning to debate your bill on the 13th Judicial District and Senator Tully, very ably, seemed to have convinced all the other members of the Legislature and Senate and possibly even me, but I had a number of questions, one of them -- and the first one which I just posed to him related to the cost. What does it cost the state of New York to establish a new judicial

district?

SENATOR MARCHI: Well, frankly, Mr. President -- Madam President, I had put that question very directly to our administrator, Judge Milonas. He said -- he said that was a very, very miniscule, minor item.

THE PRESIDENT: Can't hear. It's getting too noisy in here. Go ahead.

SENATOR MARCHI: That is a very minor, miniscule item and it's awash with respect to those minimal services that would not be required in Kings County. We've gone through this with other areas without -- without impinging in any serious fashion.

I have to put in bold relief, Senator, your -- you know the price that we - that we feel, at least that minimal price that we ought to be disposed to commit ourselves to with -- in those circumstances where a -- people are denied any opportunity or minimal opportunity to formulate. I can assure you that, in my county, there is strong bipartisan support, so that the decisions are not made in

other surroundings that are distant and remote from the problems of the -- of the county of Richmond.

We have passed this bill before, but if you have any severe difficulty, I could -- and you would like to discuss it with Judge Milonas for any reason -- but I really don't see any reason why we can't take this bill up in the same fashion that we took Queens and other areas.

This -- the cost is not a factor, and this he assured me. Now, if things haven't changed -- I spoke to him, I guess, in November, December of '94, things haven't changed, I have to assume that we're not talking about something that would impinge in any serious way on -- on the budget allocation, which is stringent for every corner of the state.

SENATOR LEICHTER: Madam President, if Senator Marchi would continue to yield.

Senator, I'm not sure I understood your answer, partly because your

voice was uncharacteristically low -- I'm sorry. I see you're suffering from a cold.

SENATOR MARCHI: I just came from the nurse. She gave me a lot of -

SENATOR LEICHTER: I can offer you a cough drop, and I don't want to impose on you when your vocal cords aren't their usual strong self but, you know, you referred to this as a minimal cost, and it may be minimal compared, let's say, to the budget for education, but I think we're talking about a few million dollars, because you've got to set up a total structure now for a judicial district which means presiding judges, administrative personnel, and it really is not going to reduce the cost of the Kings Judicial District because it's really the support staff which has to be separately established which I think is going to be the cost of this. So would it be fair to say that we're talking of a few million dollars annually?

SENATOR MARCHI: No, I understand that.

THE PRESIDENT: Senator Marchi, can I -

SENATOR MARCHI: Again, if I - if you feel discomforted and you'd rather talk to Judge Milonas about it -- but he assured me that we're not dealing with anything significant, certainly not in that magnitude.

SENATOR LEICHTER: Senator, is OCA -- is Judge Milonas backing this bill?

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I wouldn't -- he said there would be no problem -- there would be no problem, and he had no objections at that point, but it would be misleading to tell this body that I -- that he -- that this legislation specifically has his backing. No, I wouldn't want to say that. I just assume from that conversation that he has no objection to its consideration, and he was very supportive of - if that's what we wanted to do, but again, I'm -

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Yes, Madam

President. Thank you very much, Senator Marchi.

I think there are some arguments for having a separate judicial district for the county of Richmond. Obviously, it's a very large county, and I can understand also Senator Marchi's sense of identity of sort of Staten Island nationalism which we've seen here, which is understandable and even laudatory in many ways.

I'm just concerned about the Legislature creating additional judicial districts, creating additional divisions as we probably should be doing it and doing it in this sort of an ad hoc fashion. I think it really ought to be looked at for the whole state. Maybe it ought to be part of the bill that deals with this very nettlesome question of the Fifth Department, although I can understand some practical reasons why you may not want that, Senator Marchi, but I think Senator Lack is approaching this in a very thoughtful and a very assiduous manner. I'm just concerned our doing

it in this fashion without fully understanding the cost, without having the backing of OCA -- I mean, this really is a judicial, administrative matter which certainly ought to have more input and, frankly, I would think ought to have the support of OCA before the Legislature wants to act on it. So possibly we could do it in a different fashion, in a more comprehensive fashion later on this session. I really question whether this is the proper way of proceeding and the wise way of doing it.

THE PRESIDENT: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Madam President.

As a co-sponsor of this bill, I want to applaud Senator Marchi. I happen to represent both counties that are -- that seem to be at odds on this issue, both Kings County and Richmond County and I reside in Kings County, and I support Senator Marchi and I'm a co-sponsor on this bill.

This is very simple to understand. The people of Staten Island do not

have equal representation. The people of Staten Island have absolutely no voice in the selection of judges that represent them in their county, and out of fairness, this bill should be voted yes, and I would strongly recommend that the vote be yes on this.

Thank you.

THE PRESIDENT: Thank you.

Read the last section, please.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: I'm sorry, Senator Dollinger.

SENATOR DOLLINGER: I just have one question of the sponsor on the bill memo. Perhaps Senator Marchi would yield to the question.

SENATOR MARCHI: Yes, Senator.

SENATOR DOLLINGER: On the final page of the -- on the second page of the sponsor's memo it says that the New York State Constitution prohibits amendments to the Judiciary Law during the ten-year period

subsequent to the last amendment. Therefore, it is imperative the New York State Legislature enact this proposal during the reapportionment process. Is this still pertinent today? I mean, we're out of the reapportionment process by two and a half years. My question is, is the matter still timely?

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Outside of the ten years, you can do it by statute, Senator, so I don't see where it's applicable in this situation.

SENATOR DOLLINGER: Could you just explain why that's -

SENATOR MARCHI: The last amendment was in the early 1980s, so we're well beyond that.

SENATOR DOLLINGER: I apologize, Madam President. I didn't hear the response.

SENATOR MARCHI: I'm sorry, Senator. The last -- the last amendment was in the early 1980s, '81 or '82. We're well beyond that.

SENATOR DOLLINGER: Okay.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Madam President.

I voted against this bill last year. I intend to vote against it again this year. I note that up in our neck of the woods, Senator Kuhl and others that live in the Eighth -- Seventh Judicial District, a county -- a judicial district largely dominated by my county, Monroe County, which has almost all of the state Supreme Court positions, and I would like to see a statwide approach where we would rectify the general inequities and hopefully get more people involved in both the nomination, creation of judges, whether they're from urban communities or suburban communities or rural communities, and I certainly wouldn't have any opposition to creating a Thirteenth Judicial Department, but I think it needs to be looked at on a statewide basis to make sure that all communities get an adequate reflection of their

population to be represented in state Supreme Court.

So I'll continue to vote against it on that basis but it's -- because I'm looking for a bigger picture and a bigger solution.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Those recorded in the negative on Calendar 74 are Senators Connor, Dollinger, Galiber, Gold, Kruger, Leichter, Montgomery, Paterson, Smith, Solomon. Ayes 44, nays 10.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President, can we now return to reports of standing

committees? I believe there's a report from the Rules Committee.

THE PRESIDENT: The Secretary will read.

SENATOR BRUNO: In the interim, recognize our colleagues on your right, my left.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Madam President, I was outside of the chambers when bill number -- Calendar Number 52 was passed. I wish to be recorded in the negative. Calendar 52, no.

THE PRESIDENT: I'll defer to Senator Bruno.

SENATOR MENDEZ: Thank you.

SENATOR BRUNO: Without objection.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: I wish to request unanimous consent to be recorded in the negative on Calendar Number 52.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Without objection.

THE PRESIDENT: Recorded in the negative without objection.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Madam President.

I would like unanimous consent to be recorded in the negative on Calendars 52 and 109.

SENATOR BRUNO: Without objection.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Recorded in the negative. The Secretary will read the report of the standing committee.

SENATOR BRUNO: Senator Bruno, from the Committee on Rules, hands up the following report directly to third reading.

Senator Bill Number 2850, by Senator Volker and others, 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 the imposition of the death penalty.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, can we move the adoption of the Rules Committee report?

THE PRESIDENT: All those in favor of adopting the Rules Committee report signify by saying aye.

(Response of "Aye".)

Opposed, say nay.

(There was no response.)

The ayes have it. The report is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, we have before us the death penalty bill, and I just want to take a moment at this time and commend Senator Volker who has, for a lot of years, worked on behalf of the constituency of this state to help get this bill before us and so many others that worked especially hard through the night literally to get this bill on the floor before us; Jim Collins, my counsel, Ken Riddett and I know the staff of Senator

Volker, as well as many others. So we're indebted to them to get this issue before us.

And times like this comes the question of debate, and I am asking, Madam President, that people in this chamber recognize this is an emotional issue. It's an issue that people feel very strongly about, and I recognize as do my colleagues that people want to be heard on this subject. So I hope all of us use good judgment as we express our thoughts on this very important matter before us.

Thank you, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 166, by Senator Volker, Senate Print 2850, 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 the imposition of the death penalty.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Mr. President -

Madam President. I'm sorry. Madam President, I might just start out by saying that it is, indeed, a historic day for many, I think here, some probably in exasperation, will probably say it's a -- it's a day that maybe some thought would never come.

Senator Leichter even followed me from the Assembly over to the Senate to make sure that maybe I couldn't do it, but we are finally going to do it. In fact, I think probably, Franz, you and I -- I'm trying to think if there's anybody else who debated against each other. I guess we've debated against each other on this issue in both houses of the Legislature, and I'm just thinking about that today.

Senator Marchi, as far as I know, is the only one here that was in the Legislature at the time that the death penalty was virtually abolished back in '65 and was part of the process then. It is, indeed, historic, and I would like to start out -- and although Senator Bruno was good enough to mention that there were

a lot of people that worked on this issue, both in the Senate and the Assembly, that our people here, I think, did yeoman duty on a very difficult issue and a difficult time. Tim Collins, who works for Senator Bruno, did a tremendous job along with Ken Riddett, who's been involved in this issue for a long time, and my -- my staff person, Ken Connolly, along with Ed Hallman, who is now toiling for the Governor in his -- in the midst of negotiations, went over to the Governor to help run Criminal Justice for him, as well as Mike Finnegan and Jim Maguire, who work for the Governor.

Nobody ever said that this issue was an easy issue to deal with. In fact, I told a story a couple times on the floor here about how when I first came to the Legislature, I was advised that nice people don't do death penalty bills; that it's the kind of issue that some of the really -- in fact, at the time, it was described to me the upscale people, the real social elite don't get involved in death penalty bills. What they really meant was that it was

-- it was the kind of issue, the down and dirty issue that is a difficult issue to deal with, and you always know and I always knew that we would have, for instance, the editorial board of the New York Times and Newsday and those sorts of people who would always oppose this sort of thing, and it's a difficult issue to deal with, a very, very difficult issue to deal with.

To the people here, by the way, I just want to say to you -- and some people said some nice things about me in committee and I want say the same thing. The debate on the floor of the Senate over the years, I happen to believe -- and we've had some emotional times, no question about it, but I think the debate has been as good on this issue as any place in this country. We haven't agreed, certainly, and we've come very close to overriding on a number of occasions and it got very emotional. There were times when there were even some -- some, what I could call almost threats, and so forth, back and forth.

Senator Gold will probably

remember that we had some incidents back in the '70s that were almost kind of comical that occurred but -- yeah -- but the debate, I think, generally was always on the issues. I may not have agreed with some of the conclusions that some people made or the use of some of the statistics, and so forth, and people have disagreed with mine, but I think we have generally done this in a way in which I think has made this Legislature, this Senate proud.

Let me just start out by just a quick description of the bill that we have before us here, and Assemblyman Graber is in town today who has initially sponsored the bill since 198... since 1977, which is really the precursor of this bill that we see here which has been fleshed out, but which is really a bill that just amplifies the protections that we have always had in the bill.

In fact, over the years, people who have opposed the death penalty, have said to me, you know, "If you have to have a death penalty, why, this type of bill is the one that

we would like to see even though we would prefer not to see any death penalty at all", but a lot of people have worked on the bill, this bill, over the last couple of months and part of this bill, by the way, is more than just the issue of how you do the death penalty or who's involved, but we also have done something in the bill that we talked about doing afterwards, and that is reforming the Correction Law and the whole process and procedure within this bill.

So you have more than just the issue of who's eligible for the death penalty and how it's done, but you also have a reformation of the Election Law, in all honesty that was long overdue, that relates to the -- to what happens afterwards and things of that nature and, of course, as I think everybody well knows, one big change in this bill is that instead of the death penalty being enacted by electrocution, it's by lethal injection, and that is within this bill.

The big changes in this bill, as opposed to the one that we passed last Monday, I

think can be summed up in a -- in a few short - a few short paragraphs.

As I said when we left here, really there weren't that much -- there wasn't that great difference between the Assembly and Senate. A lot of it was relating to language. There were just a couple of issues that needed to be clarified. For instance, who makes the appointments to the capital defense -- the Capital Defenders Bureau? It's been decided in this bill as opposed to the previous one that the chief judge of the Court of Appeals, rather than the Governor, would be the appointing person in conjunction, of course, with the Majority Leader of the Senate and the Speaker of the Assembly.

Another major change was, although it was never really one that was of major contention except in the paper, was the issue of when -- when the mentally retarded would be -- would be able to request or to bring an action for a -- for a hearing, and the hearing could be before the -- or would be

before the very trial itself, which was really not as much in dispute as was indicated. That's a change from last week's bill.

The torture provision of the - of the aggravating circumstance was changed somewhat, not -- not substantively but languagewise.

And maybe the most important change relates to the payment of defense attorneys. In the bill last week, defense attorneys -- the so-called enhanced payments would not begin until the district attorney made a final decision whether to seek the death penalty or not, which would -- could be 120 days after the indictment on a murder one -- in a murder one case.

In this bill, as soon as the indictment for murder one occurs or even if there is a murder two indictment and the prosecutor indicates that he intends to move for the -- to move for the death penalty or might move for the death penalty, then the defense is entitled to an attorney at the enhanced rate

rather than the so-called 18-b rate, which is the local or county rate.

I suspect very strongly that there is probably not a bill in America that provides any more enhanced protection for the defendant as far as the defense attorney than this bill does. It is, I think, a bill that not only provides funding and training for defense attorneys who will handle capital cases, it also provides funding and training for prosecutors who will handle these cases.

Now, let me just get rid of one other bit of -- bit of legal necessity that must be done. There are some provisions in here - one of the protections, one of the many protections on the issue of race is a -- a - several areas where there is individual questioning. One occurs before the trial where the judge questions the -- the questions are made separately of jurors on the issue of whether there is any race bias or anything of that nature. That was suggested to us, by the way, by a person who is an anti-death penalty

advocate and who suggested that we put that in the -- as part of the death penalty bill, which we have done.

There is also a -- a provision in the bill that provides for the judge to again question jurors between the time that a person is found guilty and before the new -- the additional trial on the issue of whether they should receive capital punishment or life without parole; and what has been suggested to us is that we should read into the record that it is the legislative intent to establish good cause, that the only way -- that the -- under Sections 14 and 20, which are the sections of the law which relate to the individual questioning out of the hearing of the other jurors and out of the hearing of other people, that the bill intends to provide as much openness as possible and that the only reason for sealing would be for protection of the juror or for some strong reason, other than just to the idea of keeping the -- of keeping the record sealed.

So, in other words, there is a strong intent here to provide as much of an open record as possible. In fact, what we're saying here for the record is that the judge will make specific findings based on clear and convincing evidence that a compelling govermental interest exists to seal the record, two, that any order sealing the record is narrowly drawn, and three, that no record shall be sealed unless the court has considered less restrictive alternatives. Furthermore, it is envisioned that the sealing of the record or any portion thereof of these proceedings will be rare and only for cause shown that outlies the value of openness.

The reason that I have been asked to do that is to read into the record so if our legislative findings -- that there's no question that we intend to provide as open and fair a proceeding as possible.

Now, let me just say, and I'll try to be as brief as possible on a historic day of this nature. I said it before and I'll say it once again. I remember the situation that

the state found itself in back in 1965 very, very well. I was not here. My father at the time was here in the Assembly. It is an interesting -- I think an interesting story that the Bartlett Commission which recommended against the death penalty said -- and a lot of law professors who are now making professorial statements, the reverse of what they said then, said, "Well, you know, if you abolish the death penalty, don't worry about it. There won't be a massive increase in murder. There won't be a massive increase in violent crime. Everything is going to be fine and society will be more civilized. There's no problem."

Well, the fact is that people like my father who wrote the minority report to the Bartlett Commission said, unfortunately, that's not going to happen. Unfortunately, we are going to see a massive increase in murder. We're going to see a massive increase in violent crime, and what's going to happen is that society is going to do some other things, which we did by the way in the years that followed

that. In keeping with the decision to abolish the death penalty, we reduced sentences and we did a whole series of things that followed up on the abolition of the death penalty. By the way, there was no death penalty in this country for many, many years. Even though it was on the books in a few states, it was thrown out by the Supreme Court of the United States, which is when the murder rate in this country really started to escalate.

If you'll look at the numbers, they are fascinating. By 1971, Buffalo set a record for murders that it had never even come close to in the 50 to 100 years where records were kept before that.

New York City, within about ten years, tripled the murder rate that it had. In fact, I pointed out on a number of occasions that what happened was that by ten years -- ten years later, we had reached such a point that where we had 4.7 per 100,000 killings in 1965, we had actually reached 12 per 100,000 within less than ten years. There was a peak, by the

way, of murders just a few years ago of 2624 in 1990, which was 14.8 per 100,000.

You know, when I listened to the discussion here the other day and I did not comment on some of the people's discussion on the reason for some of these things happening, there was one comment that somehow there was some demographics that had occurred that created all of this problem. It wasn't the death penalty. It had nothing to do with it. It was demographics, and some of the law professors had said, "You know, it was all these young people we have. All these young people are killing people." The interesting thing is, I was looking at the 1993 homicide statistics and it shows that of the 1372 known offenders, 30 percent were 16 to 24 years of age. The interesting thing about that figure is that that means that 70 percent were 25 or older.

And the truth is that we have not seen an enormous number in increase of killings by young people. We have seen an enormous number of killings by all age groups, including

young people. We have seen some spectacular killings that involved some young people. The truth is that, unfortunately, we have just seen a huge and an almost incalculable number of murders that has continued to ravage our streets.

If we are going to find the wherewithall to control our society -- and law enforcement officers, by the way, have been saying this for many, many years. They did not argue, by the way, that the death penalty is the sole solution to all of our problems. I have never argued that. The Governor has never argued that. Law enforcement people have never argued that, but what they have said is that this should be a vehicle, that is, a step that should have been in our arsenal all along, that if we are going to deal with the worst criminal element and the people that kill, certainly, I think, has to be classified as the worst criminal element in our society, whether it's through -- whether it's through vicious killings, whether it's through terrorism,

torture, whatever it is, and those kinds of killings are covered in this bill.

Somebody said to me the other day, "You know, the sad part of it is, if you want to get the best representation in this country, get an illegal gun, get on a train on Long Island and kill a whole bunch of people and you can get the best representation in the nation." There's something a little sad about that, and that's true that one of the things that is absolutely factual is that the people who have been subject to death penalty in this country, capital punishment, have been easily able to get some of the best attorneys in this country.

We understand the need to certainly represent those people. That's why we, in this bill, provide the kind of defense that is necessary, not only because we don't want to execute anybody who is innocent but also because we want to make sure that our statute is sound, both in the Supreme Court and in Court of Appeals. And let me give a warning to those

people who are so flippantly running around saying, "Well, the Court of Appeals -- this is going to be challenged." Of course, it's going to be challenged. Every death penalty statute is challenged, but I would be a little careful if I were the anti-death penalty people at taking too much solace in the fact that somebody in the courts is going to pull this out of the fire.

I happen to believe that, despite all that's been said, that there will come a time that the statute that we are passing today will cause the execution of a defendant and probably in a lot quicker time than some people would think, not in the immediate future, of course not because it will take some time, but it will happen, and it will, in my opinion, send a message, not just to the people in the streets of our state, by the way, but there is a reason why we in New York draw so many people here and why we have had all these people that have paid so much attention to New York. We are a key state in the Union.

Our criminal justice system, despite all the arguments against it and despite all of the nonsense about -- that it's going to cost tons of money and all of this stuff, much of which, by the way -- and I have heard some statistics the other day, that I have seen the numbers in some of those states that have been absolutely -- those numbers are grossly exaggerated. This state is a state that, despite what has been said here, there is no solid evidence that anyone was ever executed and found innocent later. The nonsense that those two California professors perpetrated has been disputed not only by the evidence in the cases but it's been disputed by even a Law Review article where a professor took a look at it and he said, "What were these two people thinking about? They're supposed to be -- they're supposed to be professionals."

And throughout this country, there is an assumption that, if somebody is found not guilty in a capital case, that somehow we have to think that they could have been

executed and that they never did the crime. Under our system, if you are found innocent, you are absolutely right, you are innocent under the law. As I have often said, that doesn't mean that you didn't commit the crime, and there are umpteen cases, by the way, where defendants have been able to get new trials after five to ten years. It's no secret how difficult it is to ever find those people guilty again under our system, because we have a tough system. It is a very difficult system to deal with and prosecutors know it, and that was their concern, by the way, when they looked with this bill and we dealt with their concerns.

In my humble opinion, this is one of the fairer bills, certainly in the country, for both prosecutors and for defendants. It is a bill that I think we can -- you may not be proud of it, those of you who are going to vote against it, but I think what you must realize is that it is a bill that we think is as fair as any in the country. There are some things in it that I probably would change if I had the best

of all worlds, because I think there are things in here that some defense attorneys will use to delay the process, but one of the things that we made sure in this process was to not allow those people who would play games with the system to continue to allow delays in the system any more than was absolutely necessary, and I think that's what we've done when we constructed this bill.

So let me just finish by saying to you all, I thank you for your patience with me over the years. I have -- I have tried to present what I happen to believe is the position of, not just at this time the people of the state -- it wasn't always, because when I began this battle, there were a lot -- probably the majority of the people were opposed to the death penalty, but I think I have given what is the strongest argument that I could give for making our streets safer by dealing with an issue that is a tough issue to deal with. It's not the final issue at all, but if you talk to law enforcement people and if you talk to people

that have been involved in this issue and have lived with it, they will tell you that if you talk, in fact, even to the criminals who have dealt with it, that most of the criminals will recognize themselves that many of these people would not have killed in some cases if we had a death penalty.

I say to you, finally, I have done my best to deliver to what, I think, is in the proper order, a bill that save lives, a bill that will send a message out to those people out in the streets who would kill, you better be prepared to give your own life if you take someone else's life, and all the talk that you have about nobody paying attention to what goes on, they pay attention. It's not going to save everybody by any means, but it is a first step in something that this state has needed for many years.

It'll also allow me to help me sleep a little better at night. I'll tell you, there were times when I saw -- for instance, I'll never forget one night, seeing a little

girl who was murdered and the suspect was a paroled ex-killer, and my thinking to myself, "Is there something that I could have done that if I had been able to enact the death penalty, that little girl might be alive today?" Or when I think about the time that an Assemblyman brought a gentleman to the floor of the Assembly when I was debating the death penalty and emotionally said, "Here's a fellow who might have been executed if there had been a death penalty, and I trust to have him with my child even though he killed a small child," and he went on to tell about this person had reformed and what if there was a death penalty? Two years later, that person killed another child. The Assemblyman involved called me absolutely in tears, and I said, "Look, you did what you believed in. Don't blame yourself." It was a very difficult time for him and in a sense for me too, because I felt for him because I knew that he was sincere and he had believed what he had done.

But, ladies and gentlemen of this

Senate, there isn't any doubt that, if you look at people like Lemuel Smith, if you look at some the other people who -- the multiple killers in in state, the people who would have been subject to the death penalty, there are people who are dead today who would have been alive if we had had a death penalty to deal with those kinds of people, and just don't ever forget that.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Here we are on the death penalty. It seems like only last week we were debating the same issue. Today is quite different than the 32 or 33 other times, counting overrides, which I have debated on this bill. No mistake about it, it's for real today, and no doubt about the short-term result. The votes are there. The politics is clear. The people of New York State today, as they have for the last few years, want the death penalty. Senator Volker quite candidly acknowledged that when he began his efforts 18 or 19 years ago,

the majority of the people in this state didn't want the death penalty.

I suggest, Madam President, that, as all of us in politics and government know, that people do change their mind. The pendulum swings, but it also swings back. Once upon a time in the state, the Legislature virtually abolished the death penalty in response to the public will and the consciences of many members of this Legislature. When we first began debating Senator Volker's bill, when I did some 17 or 18 sessions ago, I looked across the aisle and saw many members on the Majority side who had been here and voted to repeal the death penalty, and over time some of them had come to switch and go with the prevailing political wind.

So it's clear the Legislature's mind on this issue has changed. Indeed, there are some members still left in this house who had it both ways, who voted against the death penalty and then become supporters. The Legislature's decision changes, and the public's

mind changes over time with experience.

I suspect, to the public, the death penalty is one of those measures that looks a lot better when you don't have it than when you have it. It looks a lot better as a way to speak out in frustration at crime, at murder and mayhem in society, and after you have the death penalty for a while and it's used - and New York once upon a time led the nation in using the death penalty in actually executing prisoners -- after you see the parade of death officially done by the state, it doesn't look so good to the public anymore, because invariably, the somewhat freakish, arbitrary nature of the ultimate irreversible penalty becomes apparent.

Who gets executed when there's a death penalty? Well, if you're in Connecticut, the answer is no one, I guess. New Jersey looks like no one does. In Texas, it looks like everybody does because -- just because the death penalty is on the books, it doesn't mean it will be used at all or often or frequently, sometimes only a little bit.

But one thing is certain. If the death penalty is used -- is actually used, you can almost to a certainty bet that those who are executed will not be wealthy, a high likelihood they'll be poor. And I suggest, Madam President, in the context of what it takes to mount a sustained offense to the death penalty, most of our citizens are poor. They don't have millions to spend fighting the state, albeit that defend.. two lawyers will be provided, and so on.

Another thing you can be sure about when people are actually executed, that it's most likely they will not have had the best lawyers. Indeed, the experience, as much as this bill attempts to find qualified lawyers, identify qualified lawyers and make them available to defendants, a trial is a drama played out in an adversary system between lawyers, and you can be sure that those who are executed will have drawn the short straw when it comes to lawyers.

If New York, despite all of the

efforts in this bill to address the issue -- and I applaud those efforts, but the fact of the matter is nowhere in this country is there a death penalty that's used where race is not a factor, either the race of the convict to be executed, and even more overwhelmingly proved by statistics, the race of the victim seems to be a major determinate as to who is actually executed.

If we look further among the thousands of murders committed regrettably in this state, the mere handful who often -- who pay for their life, among them will undoubtedly be at least one person of a suicidal bent that throws up his or her hands and says, "Oh, execute me. I'm not going to appeal. I don't want to fight it. I deserve it," the state will become an accomplice to suicide in that particular case. It will happen. It has happened. It has happened in other states; it will certainly happen in New York, and when we look further at who will be executed, if enough people are executed after enough trials, does

anyone really doubt that somewhere in there at least one innocent person will be executed? And when I say "innocent", I mean in the sense not of the technicalities; do you get convicted or not, I mean somebody who didn't do the crime; who didn't commit the murder, and I make that distinction regrettably because the Supreme Court of this United States doesn't seem to think that's an important factor when you decide whether or not someone can be executed, and we know the cases. Newly discovered evidence proves you didn't do it. Well, if you live in Texas, you should have found out within 30 days. Sorry, we're going to execute you because we have to have finality here as if it were a case in small claims or landlord and tenant court.

Just a few weeks ago in another state, there was an execution of someone that the prosecutor stood up and said, "He didn't do it; his sister did it. The guy we convicted last year, we now believe him. He didn't do it. Somebody else did it". The Supreme Court

said, "Fine, execute him", and they did.

This is the freakish, arbitrary, discriminatory nature that is indeed inherent in any penalty that's irreversible. Why do I say that? Many of these factors, by the way, are inherent in any court case, in any criminal trial, but all the others have one thing that distinguishes them from the death penalty, and that is when it is recognized the person didn't do the crime or when it is recognized the person was convicted on the count of racial considerations, it shouldn't ought not to have entered the justice system, or when it is later recognized that, "Gee, there is new evidence that exonerates the person" or, "Gee, their attorney was incompetent or was not of the highest competence" -- when any of these factors that propel people to be executed are present in any other kind of case, there is a simple remedy; unlock the jail door, often pay a judgment or award as New York State has had to do for wrongful imprisonment and the person gets a chance to put their life back together again.

The death penalty is different. Saying, "Oops, we're sorry; we made a mistake" is not enough.

Now, there will be members here who say, "Well, at the slim risk of ever convicting and executing an innocent person, it's worth it because of the great deterrent value in the death penalty" -- and just as Senator Volker says, there's no evidence that the death penalty is not a deterrent, he feels instinctively it is, I submit that there is no evidence that it is a deterrent. Look at the murder statistics in those states that have turned executions into twice weekly events, sometimes with double headers. Has their murder rates gone down? Has their murder rate gone down? No, they haven't.

So for all these reasons, Madam President, I think that execution, the state willfully, calculatedly picking out but a few and killing them with premeditation and calculation is unworthy of New York as a civilized state. There are better ways to protect the public from all the murderers, such

as life without parole, that to just pick out a few for reasons totally extraneous to the quality of the crime, to all the other factors we write in the bill about mitigating and aggravating circumstances, to pick out a few for reasons having nothing to do with it, because they're not wealthy, they're not popular, they're not well represented by counsel, they're not of a favored race or class and say, you - "Of all of the thousands of murders, you three will be executed, you one person will be executed", and if we don't mean -- if we don't mean to use it at all as some states have, then why bother?

And I submit, Madam President, this issue will be revisited in this chamber, if not in this decade, in a later decade when the public, as it once did not 30 years ago, sees the parade to the death house, hears the stories of "why him and not him", recognizes -- God forbid, but it'll happen, recognizes a mistake made, a not guilty person executed, someone framed perhaps by an accomplice or acquaintance

who's really the guilty party, but under that - you know, we will have plea bargaining, Madam President, as we do in all cases. Can you imagine the temptation to bend the truth and finger someone else who didn't do it to save your life? It will happen, and when the public sees those instances -- and it may take ten years, probably twenty, because I can't believe anybody with the appeals process will be proposed for execution much sooner than that, but in this chamber, perhaps after all of us are gone and succeeded by another generation of legislators, the issue will be revisited, the pendulum will swing, the public will recognize the inherent cruelty and inhumanness in the death penalty and will also recognize that it's not a reasonable answer to the crime problem. It's not a way to deter crime, and this issue will be back here just as it was 30 years ago with a different resolve.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Connor.

Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President.

We have, as has been said over and over again, debated this death penalty issue, Senator Connor in his remarks said, some 32 or 33 different times over a 19-year period of time, and I don't believe there is probably an issue that has occupied more lines in our transcript than this particular issue.

The debate each and every time - and I'm amazed how professional the debate is, how interesting, how the points of view that are expressed go from philosophical and religious and legal. The issue really is one that, I believe, will shape how society exists for a number of years, whether it be the next decade or the next two decades. As Senator Volker has said time and time again on this floor, that this issue will change how the criminal justice system and the penalties in our criminal justice system will be changed as a result of this law.

It has been interesting that

since 1977, the membership in both houses, both the Senate and the Assembly have changed, every year, the makeup of this body and the other house have changed, and yet there there have always been 31 votes in this house to pass the death penalty, 76 votes in the Assembly. The only issue has been whether there were sufficient votes to override, and indeed we have found sufficient votes in this house over that 18-, 19-year -- 18-year period of time, and it always seemed to be illusive in the Assembly.

Today, we really are at a historic moment because of the persistence and the energy of Senator Volker. He would not be deterred, and we are at an important time in history, and that is the reason why I rise today. I have never spoken on the death penalty, but I feel it is important that the legislative record is clear about the sponsor of this issue. We are passing a very important bill, and through the time in the debate and - the transcript has never really talked about who is the sponsor of this issue and what are really

his motivations?

During the 19 years, Senator Volker talked about it a wee bit, colleagues in this body have been professional; they have been respectful of Senator Volker's continuous pursuit of trying to enact a death penalty, and certainly there has always been contrary views that have been expressed in the past as they will again today, but this year because the death penalty seemed more certain as we began this session, those who have lobbied in the halls have lobbied in the media, I felt, and I must say as all of us know -- but no one will know when they pick up this transcript a couple years from now or ten years from now or someone who wants to write about what happened in Albany -- I am Senator Volker's seat mate, colleague and friend, and so I have looked at the lobbying that has taken place this year in the media, and I have felt on many occasions that the motivations and the persistence of our colleagues have been blurred and really have not been presented in the true spirit of why he has

felt so strongly about this legislation.

We know him to be both steadfast and loyal to principle, to institution, and to people. Time and time again, not only on this issue, but other issues, he has plotted on for many, many years to see the issue through. He has taken positions because it was important to preserve the integrity of the institution of this Senate, and he has been steadfast and loyal to people in this body, staff, in the Legislature, and to all those who come to lobby.

He has probably one of the softest touches of anyone who has served in this body. He always has a moment to listen, to talk to, and I say this because I am trying to, in the sense of the record and sense of history, that this is a person who is both a humanitarian and a helper. It is a person who has pursued this and as he has said, because he feels it saves lives; because he feels that it is important that the victims' rights be given some consideration within our criminal justice

system.

He has forged his belief in terms of principle as a police officer and, yes, Senator Volker has talked about it from time to time and in his debate today, but what he has never mentioned is that he, as a policeman, was almost a victim. He, as a policeman, has had to talk to families whose loved ones were taken down by someone, and this has all touched him. This has crafted a belief that we have a system that is out of control.

He is an attorney, and through his experiences in law school and as a practitioner, has forged a belief in our Penal Law and an understanding, a very scholarly understanding, about what we should be doing and how we should go about it.

That view was strengthened as chairman of the Codes Committee and long before Senator Volker ever got here, and he has mentioned it, maybe he doesn't realize in each debate the very early discussions that he had with his father, Assemblyman Jules Volker, who

was chairman of the Codes Committee in the Assembly, the very scholarly reports that Assemblyman Volker was involved in and relayed to his son who he didn't realize would be Senator and would be able to, after a long and arduous path, bring to a conclusion something that they had discussed back in 1965. Dale Volker can't say that, but I can as his -- as a colleague who knows him, and he believes in that, in the principles, and we've heard that over an over again.

Senator Dale Volker who is sponsoring this bill that he talks about it's not maybe the kind of thing you do to show that you're warm and fuzzy, but it saves lives and he believes in that.

He's a family man who believes very, very deeply in the family. He's a church going and practices his religion and reads constantly, hasn't really discussed enough in these debates, the religious principles that he believes are important.

The legislation that he has

sponsored well beyond this death penalty bill that has improved his community, has dealt with our youth, legislation and education and higher education, and the arts, trying to ensure that Western New York remains an economically viable region of our state, and we could go on and on and on.

We know what I am saying is true, but I rise again so that the record is clear that the person who has sponsored this legislation had a very clear view, and that view was that it saves lives; that hopefully he made a difference serving in this body, and that difference was that if it saves one life, it will mean a difference, and that the democratic process does work when the people in our respective districts say that this is something that they support and have supported for a long period of time.

So today, we bring to fruition and to a culmination what is really a dream in seeing that this piece in our criminal justice system is brought back, and it's not for any

other reason that someone might say -- say macabre personality, and that's why he is pursuing this issue, and so it gives me pleasure to rise today to support this legislation, and I might say for the record, something that maybe people did not realize, and that is -- for the first time, I am a sponsor of this -- of this legislation, had not been previously because, certainly Senator Volker, by his words, has made a difference in my thinking about the legislation, but I think the people of our state have spoken, and I think at a time when this legislation will be signed into law, that the people of the First Senatorial District who support this by more than 70 percent will be represented.

Thank you very much, Madam President.

THE PRESIDENT: Thank you, Senator.

Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Madam President, I would be remiss if I didn't certainly acknowledge the overwhelming role of Senator Volker in having sustained this issue as long as he has.

I saw a bit earlier today in this chamber, a former Assembly colleague of mine, Vince Graber who similarly battled on the same front in the Assembly, and I don't think there's anybody in this chamber or anybody who knows Dale Volker who doesn't realize that he's a man of extraordinary integrity, not only a gentleman, but a very gentle man, and one who comes to the issue purely on the merits of the issue as he sees those merits, and I must confess, I'm very much in lockstep with him in the fashion in which he views those merits. That's not to take anything away from any of my colleagues who have battled long and hard in opposition to us. Their beliefs are as fervently held as ours and their passion, I'm sure, runs as deeply as does ours.

I have always said that I was troubled in those instances in which somehow or

other, cries of political expedience surrounded those who might labor in support of the death penalty. I have long stated, and certainly believed, that I'm not about to change anybody who believes that the death penalty, in its application, is inherently immoral.

I have said, however, that there are sets of facts to which we could all agree that are so outrageous and so heinous that you probably could carve out exceptions. Whom among us -- where they have sat on the Adolph Eichman jury some three decades ago in a country that does not permit capital punishment, state of Israel, trying a rather depraved man who had masterminded the most bestial of crimes, the most horrendous crime against humanity, who among us would have been twelfth juror who would have hung that jury? It's hard for me to believe that there would be such a person here, but if that person could say that, then I could not argue with them on moral grounds, but I certainly believe even among some of the opponents, that that would be so offensive to

everything that they could possibly believe in, that they too would agree that the death penalty would be appropriate in that case.

We may differ in terms of the quantum necessary for the enormity of the crime. I have no problem with the crimes that are enumerated in this bill, and perhaps I might be willing to go further -- not perhaps, I would be willing to go further, but if you look at this bill at pages 2, 3 and 4, you see some rather carefully enumerated crimes, crimes dealing with the premeditated killing. This is not a crime of passion. This is not a crime in which somebody's senses have been dulled by alcohol or drugs, the premeditated killing of a police officer engaged in the course of his or her duties, a corrections employee, a peace officer, a judge, someone who is serving a life sentence who commits life -- who commits a homicide while serving that life sentence.

And as recently as this past week when we debated this bill, I described a case to you which had occurred in my country a number of

years ago and, in fact, my law associate was one of the special prosecutors appointed on the Lemuel Smith case, and the things he told me about that case just turned my stomach.

Here's a man who, as I said earlier, killed not once, not twice, not three, not four, but five times, and when he killed the fifth time, the Court of Appeals, construing the last remaining section of our death penalty bill, in a four to three decision in which they all agreed that the man had committed the crime, killed a female correction officer at Green Haven, Donna Payant, but because the law did not provide for aggravating and mitigating circumstances, threw out as unconstituional that last remaining section; almost a bizarre interpretation by any common sense dictate, but the interpretation of the Court of Appeals nonetheless.

Contract killers, not exactly the kind of folks who you would bring home to show your parents, contract killers. Felony murderers, someone who walks into a crowded

terminal, plants a bomb knowing full well what's going to happen by reason of that bomb, that there's going to be carnage, multiple murders. Someone who walks into a church and, because of the color of the worshipper's skin or the creed and religion to which they adhere, begins to indiscriminately spray bullets into that church. That person is covered under this bill too. Now, I have no problems with any of those and I said, I may well go further.

This bill meets every constitutional test. It goes back to the line of cases from Furman and Gregg, provides for the very things that the U.S. Supreme Court has said in the '70s that you have to have, a bifurcated trial, the weighing of aggravating and mitigating circumstances and an expedited appeal to the Court of Appeals. And we do better, as Senator Volker pointed out to you in his earlier comments. We do far better than many, if not most or all states that currently have death penalty bills or laws on their books.

A few years ago I looked at some

of those death penalty statutes, Texas, Georgia, Florida. Interestingly enough, they were rather basic, didn't have all the protections for defendants that we provide in this bill. It's only been through a series of amendments over the course of the past few years that they have endeavored to do what we have been attempting to do with the passage of this bill all along, to provide rights beyond the bare necessity for defendants.

Now, there's always the question of deterrence, and last week when we addressed this issue, Senator Leichter later, during the course of his comments, acknowledged the fact that I had said that perhaps this wasn't a deterrent. Well, if that's what he thought I said, that certainly is not what I said.

What I had said at that point, I will repeat again. The statistics may vary, and as recently as January of last year, FBI statistics show that among the 13 states without a death penalty, murder rates have gone up in eight, down in four and the same in one. The

biggest decreases among the five states showing decreases in murder rates, four of those five have death penalties. Conversely, the biggest increases among those five states with increases, three of the five do not have death penalties, but the statistics may vary and I'm willing to concede they may vary. The one thing I will never, ever concede is how do you measure the negative? How do you get into somebody's head and find out that he was deterred or she was deterred? It's an absolute impossibility.

You plan the murder of your partner because he billed you out of tens of thousands, if not hundreds of thousands of dollars. You plan the murder of some supposed friend of yours because he's involve in an intimate relation with a loved one and you feel that you have been cheated. You go out and you buy a gun. You plant the bomb or you buy the bomb. You get poisoned, all with the idea of committing this premeditated murder and then you decide at the last minute to pull the plug for fear of the imposition of capital punishment,

the death penalty. You're not willing to go the last step in the progression because you fear that it's going to cost you your life. How do you measure that? It can't possibly be measured. There's no social scientist in the world who can measure it.

In Senator Connor's earlier comments, he made some remarks about defendants who might be of a suicidal bent, of the fact that you could be prejudiced because new evidence could occur subsequently and you would not get the benefit of that new evidence. Well, I would merely call attention to everybody, in the bill, page 17, CPL Section 470.30, Subsection (2), a defendant who has been convicted in a capital case cannot waive his or her appeal. It's not waiveable. So that person with the suicidal bent, "I don't want to appeal", has no choice but to appeal, and when he or she appeals, they're going to get some pretty damn good legal defense, because this bill is stacked to provide legal defense, not one counsel, but two counsel, associate and

lead, and all the investigative services that you need, all the expert witnesses that you need, it's provided for in the bill. New evidence? New evidence, CPL 4.40, always a motion, post-judgment motion, no problem making that kind of a motion. I've never really been a criminal practitioner, but that's basic criminal stuff.

You know, we hear about the death penalty again not being a deterrent. Well, certainly -- certainly the converse is clearly true. The elimination of the death penalty did not reduce murders in this state. Since the elimination of the death penalty, murders have gone up nearly three-fold. The reality is, I've said it before and I'll say it again, if there's anybody who believes that the death penalty is somehow or other the key to the solution for our criminal justice ills, they're sadly mistaken.

I believe Senator Connor, in his comments, said this is not a reasonable answer. I would beg to differ with him. This is not a solution, it's merely a weapon in the arsenal

and an appropriate one, but it is an answer and it is a reasonable one for those who would commit the most heinous of crimes, for those who premeditatedly would commit those crimes, they by their acts have effectively put themselves in the position to forfeit their lives, not by an act of an individual, but by an act of this society, the people of the state of New York, through a system that has been crafted so carefully as to ensure not only the protection of their rights, but representation of counsel, experienced counsel, well paid counsel, and you know what? I'm never sure who the best lawyer is.

I know a lot of successful lawyers who I consider to be lousy lawyers. There are very good lawyers who I know who may not been successful lawyers. It may well be their demeanor or it may well be the manner in which they market themselves, but let's not confuse the quality of legal ability with what someone charges as a billable hour or the way somebody postures themselves for purposes of

promoting their practice.

I would just call to your attention one other part of the bill which deals with the question of the appeal. That's over again on page 17. The required appeal -- again, when there's a capital sentence, keep in mind that the jury will have the ability to sentence to death, to life without parole, for an indeterminate life sentence, 20 to 25 to life, but where it imposes that death sentence and there is an appeal as is required, "the Court of Appeals has to determine whether the sentence was imposed under the influence of passion, prejudice, whether it was arbitrary or -- based on arbitrary or legally permissive --" I'm sorry, "illegally and impermissive factors, including the race of the defendant or the victim and whether it was excessive or disproportionate, and the court's decision shall include the aggravating and mitigating factors established in the record on appeal and those similar cases it took into consideration."

That, on top of the separate

mechanism for voir diring to determine racial bias among prospective jurors and the existing case law, not only U.S. Supreme Court, the Batson case, but courts in this state saying you can't dismiss based on race. Certainly not an enviable task to deal with the subject of the death penalty.

Nobody should rejoice in the fact that we're going to pass a death penalty bill. We should take some comfort in the fact that we've done right by our system of justice. We should take some comfort in the fact that we have now added to the weapons that we have to deal with crime, a measure that, in the circumstances described under this bill, is an appropriate message, appropriate measure and one which I very firmly believe will be a deterrent.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President. This is an issue that has been before us before. This is an issue that's highly publicized. This is an issue that has,

really, political symbolism. It is one that in many respects hurts the process and yet at the same time a number of people in their hearts sincerely believe that the death penalty needs to be established in the State of New York at this time. They believe that this would help to eradicate a great deal of the increases in crime, particularly capital crimes, and I respect that belief.

When you hear of the examples that, for instance, Senator Saland is citing and you hear of other examples such as individuals pumping bullets into a van on the Brooklyn Bridge because the occupants of the van happened to be Hasidic students, for that reason alone, when you hear about individuals getting on the Long Island Rail Road and shooting people randomly, there is certainly an understanding why people have that point of view, and there is no tear that will be shed for any of these individuals or those who commit similar crimes should they become some of the first to be executed in New York State.

And yet I think we have a message of necessity. It doesn't come from the Governor; it doesn't come from the Assembly; it doesn't come from a standing committee. It comes from a document whose interpretation we may disagree on but all of us seem to -- the overwhelming majority of us seem to believe in it, and that's the Bible. "Thou shall not kill." It's as simple as that, and yet that compromise that we have made with something that an overwhelming majority of us seem to feel is a self-evident truth, we have made that compromise because of conditions that abhor us, conditions that so unnerve our sense of humanity that we feel that it is important to exercise the death penalty against those who would manifest violence in the type of form that we've heard described and will continue to hear described in some of the examples this afternoon.

But it's that compromise, Madam President. That's the difference. The difference between the truest adherence to what we believe in and that part which we're willing

to sacrifice to accomplish something that exists in our time period that we see as out of control.

All of us believe that the increase in crime is out of control, although the crime increases have occurred whether there was or was not a death penalty. It speaks to more serious and difficult problems in society than a shrill cry for the death penalty or an imposition of it in a couple of states, such as in New Jersey where there hasn't actually been an execution since the death penalty was established in 1983.

We sit here today getting ready to enact into law a statute which we don't know when it will actually have use. It could be ten years from now. Senator Connor estimated it as high as 20 years from now. The fact is it will only affect a very few people, seemingly as random a selection as the multitudes who would commit crimes that would actually make us eligible.

We have had an alternative that

has been before us for nearly a score of years and that is the alternative of life without parole, and we have never used it. We've never used it, and yet once we have the death penalty being established, suddenly there is an alternative of life without parole.

So had we been approaching this situation seriously collectively, even if those of us individually, particularly the sponsor, who is as serious and as sensitive and as sincere as anybody in this chamber and really cares and has been very open and very willing to listen to suggestions and has incorporated suggestions into that bill, and there are a lot of hard-working people whose names we don't know who contributed, staff members who contributed to that process; and yet all of that effort, as sincere as it may have been, in my opinion, goes in the direction of feeding this frenzy that is going to create an illusion to the public that we are solving a problem when, in fact, we are only publicizing our contempt about the problem.

The families who sat around for years, watching individuals sit on death row, hoping they will be executed, never really getting through the mourning period, never really being able to discuss any other issues - there is a long article about a family in New Jersey that went through that. Over and over again trying to lobby to see the murderer executed for the crime that he or she committed and not seeing it. Yet we are going to tell the families of victims of crimes in New York after today that their problems are solved; that we are going to execute those involved, even though very few will actually be executed.

It almost reminds me of the way high school students are recruited to play for sports even though only one or two or three of them will actually reach sports like the National Football League or the National Basketball Association, yet we encourage high school and college students to think more about their activity than actually about receiving their education, and we now are intoxicating the

families who have already gone through the travail of losing a member of the family in a totally loathsome and despicable way. We are now going to offer them hope from this legislation. We are going to, in many cases, sincerely believe that these types of legislation are going to save lives, when we know good and well that we have had a way to incarcerate people for life without parole all along and could have saved lives.

We see this legislation as a deterrence, and yet we know that in states that actually endorsed and established a death penalty there hasn't been a deterrence. There has been an increase in crime in those particular states. We see these pieces of legislation that we have finally synthesized and are passing today in the form of a death penalty as an act of retribution against the individual, a punishment, yet those individuals who are on death row actually know that the greatest punishment is to make them sit there for the rest of their lives rather than to give them a

quick way out and execute them.

The real pain that Mr. Grasso, who's on his way to Oklahoma to receive the death penalty, the pain that he feared was life without parole; and so when we look at this legislation, we have to ask ourselves, what is it actually accomplishing other than allowing us the opportunity for a couple of days to feel as if we solved the problem when all of the criminal elements of society that have contributed to the increases in violence in our society will continue? And violence is exactly the way we're trying to solve this problem, fighting fire with fire and in many ways contributing to the perception of violence, the publicity and the attention that is given to executions in this country. The message it's sending to younger people, that when you are out of moves, this is how you solve a problem, and this is why we brought the death penalty back.

We agreed many years ago, after the last execution of Mr. Kemler on August 15th of 1963, that we wouldn't have a death penalty

in this state. We brought it back because we don't think we can solve the crime problem right now, and this is a shrill solution. This is one that we feel will help us escape from this tremendous problem that is enveloping us, that is making it even impossible sometimes even to walk down the street or for people to drive in their cars, and we're reading about these types of cases, but we're also reading about the way we as a society failed and were unable to handle the results of these particular cases.

Senator Volker was talking about how an individual can go on a train and shoot up the train can get the best defense in this country as in the case of the of the Long Island Rail Road. My memory is that the individual got the worst defense. He defended himself. He may have been competent to stand trial, but he couldn't have been competent to defend himself if he was going to stand against 16 witnesses who saw him do what he did to kill 6 people and injure 26 others, and they all had the same story and none of them ever met each other

before. They had a note with his signature on it about why he did it, and the only effective counsel would have been to have taken the insanity defense. Even if you lost, it was the only possibility from the standpoint of a lawyer to acquit this defendant, and yet he comes up with a bizarre conclusion of how this went on that never took the jury any time to determine. This was a mockery of the judicial system.

What if it happened two years from now? We were going to sit back and let this individual defend himself on his way to receiving the death penalty? Even if we institute the death penalty, we're going to have to change that law because we can not allow individuals to defend themselves when they are the prime candidates for the death penalty with a crime as despicable of any that I have heard of in my lifetime and we're going to let an individual get up in front of a jury and say that he didn't do it.

Senator Volker referred to the report of individuals that may have been

wrongful convictions. This is the report that was issued in the Stamford Law Review by the two law professors. Professor Bekar is actually from Florida, and Professor Ratali is actually from Massachusetts. Certainly it would be very difficult to establish the innocence of eight people executed in this country in the 20th century if there can't be any proceedings after the individuals are already deceased, and so this was an attempt to establish that, and if Senator Volker wants to refute that, I can understand it, but the House Judiciary Committee in 1993 issued a report that there had been 48 convictions since 1973 on capital crimes that have been overturned. It is possible that some of those individuals who had been convicted could have received the death penalty.

Since 1980, when there were 187 people on death row in this country, 6 of those sentences have been commuted, 46 of those sentences were overturned, 67 of those individuals are still on death row. But what's interesting is 18 were convicted; 18 of those

individuals were executed; 11 of those individuals died while on death row, but 32 of the actual convictions were overturned. Now, of those individuals, it appears that a significant percentage of them, maybe not a large percentage but certainly a percentage of those individuals could have been wrongly executed; and on May 4, 1990, there was a man named Gene Troferro who was executed. His wife who was convicted under the same circumstances and for the same crime in September of 1992 had her conviction overturned and was released because one of the codefendants who had pled out finally admitted to what actually happened, and neither the husband or the wife were part of that crime, but the husband was executed; and, incidentally, it was considered a botched execution because the husband was actually set on fire when he was still alive, and it is very likely that he is innocent of the crime. The wife, whose name is Sonja Jacobs, is now lobbying against the death penalty.

And so these are cases that we

feel demonstrate that there have been wrongful convictions. Maybe not a lot of them, but certainly one of them is a huge blunt on our society.

Then we come to the question of the jury selection and the establishment of those guidelines that make sure that those individuals who happen to be minority will be eligible to serve on juries in these types of cases in spite of the fact that prosecutors have the tendency to strike them and the fact that this bill does not include any type of de novo or searching procedure on the part of the Court of Appeals such that we might establish whether or not prosecutors are doing this.

And I would ask at this point if Senator Volker would yield to a question and ask him to explain to us how we can avoid that in the bill, in spite of the fact that I don't think there is anything in the bill that provides any guidelines.

SENATOR VOLKER: I guess, Senator, if I get your question, right, Senator,

I doubt there is a bill in the country that set up as many attempts to avoid racial bias as this bill. In fact, what I read under the -- read into the record before was a disclaimer as far as the constitutional requirements of an open jury system because there is two separate questioning of jurors on the issue of race, first before the jury in chief which -- in other words, the guilt or innocence of the person, and then between the time of the person being found guilty and the sentencing hearing.

The Court of Appeals has always -- in the old bill as well as this bill has the right to look into the issue of race bias. It was right in the old bill and it is in the bill right now, "...whether the imposition of the death penalty sentence was based upon the race of the defendant or the victim of the crime for which the defendant was convicted." The issue of proportionality is right in this -- is listed in this bill.

Senator, I have been accused at times of putting too much into the bill that

deals with this issue, but I think despite the fact that I don't think that there is real evidence that New York has gone through the kind of race problems that the southern states have gone through on the issue of the death penalty, we have been I think especially sensitive. The Governor has been especially sensitive and so have we to the issue, and I think we have dealt with it in as effective a way as we can.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Well, I want to thank Senator Volker for answering that question. I think that there is certainly no question that there is a lot that has been included in the bill, and there has been a lot of rigorous research. I'm contending with the results of that research.

I have another question, Senator Volker, if you would yield for it.

SENATOR VOLKER: Certainly.

SENATOR PATERSON: And this question relates to the venue of the actual case. Now, what we are finding in a lot of

these capital cases is that you have situations, particularly in racially mixed cases, where they can be held in a venue that would not provide for jury selection that would not be conducive to a fair trial. Do you have anything in the bill or any thoughts on how to prevent that from becoming a problem?

SENATOR VOLKER: No, we don't have anything in the statute as regards venue. But as you are well aware, Senator, New York law provides for presently -- I think that's one of the things about this death penalty bill is we build in all sorts of protections, but New York law provides a great number of protections anyways, and the issue of venue is one that, if there would be a problem or a potential problem, the defense attorney would certainly have the right to ask for a change of venue and if he could show -- he or she could show extenuating circumstances, that certainly could be done under the present law.

There is nothing in the statute that deals with that, but it is certainly

something that could become an issue, I suppose, in the case; and, by the way, if the attorney raised it as an issue and it wasn't dealt with, it certainly would be an issue on appeal that I would think the defendant could use; and since we have, as I said to you before the -- we have the possibility, specific language to deal with issues of race by the Court of Appeals. It's certainly something they would look at.

But the possibility of changes of venue are there right now, and I think that attorneys will tell you that. Of course, you have to have some real reason in evidence to show that there was a necessity for it, but it certainly could be done, and cases have been transferred. Venue has been transferred because of various -- most of the time because of the spectacularness of the case or the inability to get a fair jury, but that certainly could happen.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President. Thank you, Senator Volker. If you

would continue to yield.

SENATOR VOLKER: Sure.

SENATOR PATERSON: I'm turning to a different subject. At the bottom of page 26 of the bill, point two, and into page 27, there is the issue of the wish -- and it is a very thoughtful one on your part and the other sponsors -- not to execute a person who is mentally retarded, but I have a problem with that section because, assuming that the defendant can not afford counsel and assuming that the defendant has now used their first post-conviction counsel apparatus, as I see it, at the point that this would occur the defendant would not have counsel; and since the provision requires that there be a petition and the petition is accompanied by an affidavit signed by a psychiatrist, I don't understand how that petition can be issued without the presence of a lawyer, and I don't see a lawyer there. I see a list of individuals who could do it, but I don't see a protection for the inmate.

SENATOR VOLKER: Senator, I don't

think there is much question that Prisoner Legal Services as well as other lawyers are traditionally around, and let me read you the language here that deals with this issue where a person might be considered -- as we discussed in committee, the law says that a person cannot be executed if that person is not competent. It says, "The petition may be filed by the inmate, the inmate's counsel, an employee of the department, the inmate's legal guardian, a member of such inmate's immediate family or, in the event that the inmate does not have regular contact with a member of his or her immediate family, a bona fide friend who has maintained regular contact with the inmate."

I think we, frankly, went overboard to try to make sure that there is somebody who is able to deal with that inmate's problem, and I really think there is sufficient language there; and I think, Senator, in a prison system, particularly when you are talking about death row, you certainly have a lot of lawyers around who can represent anybody

involved in such a system if -- there is presently a great many lawyers, and I have a suspicion once we develop a death row, there will be a lot more that will be willing to get involved in these cases.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Well, Senator, I think I understand what you are saying in reality, but I'm really addressing what exists in this bill. I'm just trying to improve upon the bill so that I will feel comfortable in voting against it.

I want to tell you when I read this section that's what actually piqued my curiosity. I saw that you had "the inmate's counsel" who the inmate might not have. The inmate might not be able to submit the petition because the inmate may be insane at that point. The inmates's "family", the inmate's "friends", there are a lot of things that are there; and what I'm saying is the reason a lot of things are there, as generous as it may have been, is in a sense that it's shielding the element that

should have been there and wasn't; and that would be that I would recommend that the inmate have a counsel all the way through the actual proceeding.

I know there will be a lot of lawyers around. I know the case may be so public that there will be lawyers fighting over who can assist this inmate and maybe not even charge the inmate, but I'm just saying for the benefit of the bill that I think it should be, and I thank you for responding to the questions.

On the bill, Madam President.

I think that Senator Volker's experience is going to be a message to those of us who oppose the death penalty and will continue to oppose it from now on.

Senator Volker, as he described, came to the Assembly and, in 1974, issued this bill, and he didn't get a very positive response. He has worked on this bill for 24 years. He's fought and suffered and paid for it; but, today, he has won, and I guess he didn't do it to receive the accolades of

victory, and he didn't do it just to receive the flattery of his colleagues. He did it because he thought it was right, and the truth was the overriding motive.

And now that's going to be a challenge for us who oppose this death penalty and know that it's going to pass today and that the Governor may even sign it by the end of the day. We're going to have to start the fight. We're going to have tell a dispirited and confused society that has seen a lot of murders, in cases tripling of the number of murders in their cities and towns, and they want a response. Who can blame them? No one. But who can remind them? We can. Remind them of the terrible truth that the death penalty hasn't resolved any problems. It hasn't reduced the crime rate. It hasn't really exacted any retribution on the perpetrator. It has not made anybody in the states that have it feel any more comfortable. It is not administered properly.

The prosecutors seek the death penalty sometimes 60 percent more based on the

race or national origin of the victim of the crime. Prosecutors seek the death penalty more sometimes because of the race or national origin of the perpetrator of the crime. This whole process is riddled with holes that are self-evident that the death penalty is a shrill cry in the wilderness. It is not going to send any more messages than those that ring with the hollow sounds of empty pots or open cans.

What we need in our society is a controlled demonstration of real punishment that fits crimes and life without parole and no opportunity for individuals who hurt others to ever appear on our streets again when it's manifested in that fashion; and while I congratulate the sponsor and those who fought for it, I think that this is really a very sad day in this state, a lachrymose circumstance when we return to something that we had started in the late 19th century and then continued 613 executions into this century, and we finally got the message that this was not the best way to deal with capital crimes; that actually this

compromise that we make between our moral and spiritual values and our inability to handle day-to-day problems in our society should not be manifested in killing those who murder other people.

But now we have returned to it. Had the crime rate not gone up, are we saying that we would continue not to have a death penalties? What we need to do is to address the criminality in our society and not believing that passing this bill is going to intimidate anybody. We have people who face the death penalty on the streets of this state, all around the cities and towns that make it up, who are in that plight and know full well that their death penalty will be administered right on the street because of the actions that they engage in, and they go ahead and they do it anyway, and we have seen people in the highest echelons of society who knew what the penalties were for their crimes for all time, and it didn't stop them.

It's a passionate circumstance. We feel that the death penalty is not

constructed properly in this legislation, and it is not a solution that society should be seeking.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield to a couple of questions on the penalty portion of this bill?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: Senator, I just want to make sure I understand the options available to the jury, and the circumstances under which either a jury or a judge can render penalties under this bill.

Someone is indicted for a capital offense for which the death penalty under this bill would be an appropriate penalty. The options that the defendant faces are either to plead guilty -- enter a plea of guilty at the time of arraignment or enter a plea of not

guilty. Through Madam President, if the defendant enters a plea of not guilty, what options are available at that time.

SENATOR VOLKER: The options for the jury are you talking about?

SENATOR DOLLINGER: If he enters a plea of guilty.

SENATOR VOLKER: He can't enter a plea of guilty to the death penalty because we bar that.

SENATOR DOLLINGER: So if it's a capital offense and he enters a plea of guilty, he does not have to undergo the death penalty.

SENATOR VOLKER: He can not plead guilty to the death penalty. That's one of the provisions. He can plead guilty to life without parole, but he can not plead guilty to the death penalty.

SENATOR DOLLINGER: But if he pleads not guilty, then the only options available are 20 years, 25 years to life; or is life in prison without parole also available.

SENATOR VOLKER: No, that's -- if

he pleads not guilty are you talking about?

SENATOR DOLLINGER: If he pleads guilty.

SENATOR VOLKER: Oh, guilty. If he pleads guilty -- I'm sorry. I misunderstood you. If he pleads guilty, his options are life without parole or 20 to 25 years to life.

SENATOR DOLLINGER: Who makes that decision?

SENATOR VOLKER: The judge makes the decision.

SENATOR DOLLINGER: So there is no jury involved.

SENATOR VOLKER: There is no jury involved if he pleads guilty, right.

SENATOR DOLLINGER: He pleads not guilty and proceeds to trial.

SENATOR VOLKER: Exactly.

SENATOR DOLLINGER: At the time of trial, he is found guilty of a capital offense.

SENATOR VOLKER: Right.

SENATOR DOLLINGER: And then the

jury is given an option or given an instruction by the judge to do what? Again, through you, Madam President.

SENATOR VOLKER: Death penalty or life without parole.

SENATOR DOLLINGER: Is there any additional instruction given to the jury with respect to the penalties at that time?

SENATOR VOLKER: Yes. The judge would instruct the jurors that if they are unable to come to an agreement, a unanimous agreement, for the death penalty and if they are unable to come to a determination on life without parole, in that case the judge would sentence the person to 20 to 25 years to life.

SENATOR DOLLINGER: So if a jury, Senator, giving due weight to the aggravating and mitigating factors, how does a jury arrive at the fact -- can the jury arrive at the third option?

SENATOR VOLKER: No. A jury can not arrive at the third option. The third option would only actually be open to the judge.

SENATOR DOLLINGER: And then, under those circumstances, how do you avoid the problem of a jury that is hung up on the issue of either life in prison without parole or the death penalty of putting additional pressure on the jurors, knowing that if they failed to agree they are going to face a penalty that is less than either of the two penalties that they are currently in dispute over?

SENATOR VOLKER: That's, I think, the option that they face; and, by the way, there is ample constitutional basis for that. There has been cases that deal just with that issue. As you know, in some states the judge gets the option. If the jury can't decide, in certain cases, the judge can make the decision himself. In certain states, we found that under certain circumstances the judge can make the decision even without the jury as long as the jury hasn't made an adverse decision.

What we say here is that the jury -- in order to enact the death penalty, it has to be a unanimous decision. If there's no

unanimous decision, if they can't arrive at a decision for life without parole, then the judge has the option then to make the decision to sentence the person to 25 years to life, and that's the procedure, and I don't see where that procedure is necessarily something that would create such a problem.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Yes.

SENATOR DOLLINGER: My understanding is that the jury, then, does not get all three options. They only get two.

SENATOR VOLKER: Two.

SENATOR DOLLINGER: But they are instructed if they fail to agree.

SENATOR VOLKER: That's right.

SENATOR DOLLINGER: Then the penalty that will be imposed will actually be a lesser penalty, is that -

SENATOR VOLKER: That's right.

SENATOR DOLLINGER: Is that correct?

SENATOR VOLKER: Yes. The jury would be instructed that they are the ones that make the decision on the more severe penalties; and if they can not decide on the more severe penalties, then the judge would then rule, assuming everything else is equal, assuming the judge doesn't find some problem or something. We have to assume that the case is finalized and so on. Then the judge would rule on the 20-25 years to life.

SENATOR DOLLINGER: Again, through you, Madam President.

Was there consideration given to including all three possibilities in the instruction to the jury and not informing them? That's number 1.

And, number 2, was there any consideration given to the fact that they should deliberate life in prison without parole or the death penalty but that they shouldn't be instructed about what the alternative was?

SENATOR VOLKER: There was consideration given to that, and there was long

discussion at one point in the negotiations as I remember. There was a thought to have all three options open to the jury. There was another point at which there was a discussion that would give the judge the option of enacting life without parole or 20 to 25 years to life, but the decision was made that the jury should make the decision on the most serious of sentences, obviously the most serious sentence being the death penalty.

And I will be very honest with you, I have received some -- I don't want to say criticism but some flak from some people because of the unanimous verdict. You know, there have been several Supreme Court cases that said you do not have to have a unanimous verdict for the death penalty. But our feeling was if you are going to have a jury enact something as serious as the death penalty, you ought to have a unanimous jury; and, very honestly, when we discussed this thing with the Governor's people, with the Assembly, the decision was to give the jury the option for the most severe penalties

and let them know that if they couldn't choose one of those more severe penalties then the judge would enact the lesser penalty which is 20-25 years to life.

SENATOR DOLLINGER: Again, through you, Madam President.

But isn't it inherently coercive to tell them that you have to do this; otherwise, there is going to be another penalty imposed?

SENATOR VOLKER: They don't have to do anything. I mean what you do have to do, I think, Senator, the problem would be -- my own personal feeling is I think there could be a problem if you didn't inform the jury right up front as to what happens when they fail to make a decision. I think that would be a much more serious constitutional problem.

I think the fact that the jury is told what their options are and that they are given the options and that they know exactly what will happen if they are unable to make a decision or fail to make a decision or decide

not to make a decision, or whatever, then it seems to me that that is a proper procedure, and I think that is what we agreed on in negotiations.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Madam President.

Some have said that today is an historic day in New York. I think it may end up being an historically sad one. What we have today is a debate over the concept of capital punishment, and I can't help but think that a lot of what we talk about today is purely a matter of perception, and I went back to try to get some history about the death penalty in New York State, and I went back to the debate in 1965 when the death penalty was abolished; and, sure enough, I see almost a mirror of the debate today except it's coming at it from a different perspective.

I see Senator Anderson, who talked about the Michigan experience and said,

"Gee, Michigan doesn't have the death penalty. It doesn't have any different crime rate any different death penalty rate," but it suggests in Senator Anderson's mind at that time that the death penalty wasn't working; we ought to get rid of it. Senator Ohrenstein, of course, argued that we ought to get rid of it. Senator Quinn, Senator Thompson, Senator Erway, Senator Brydges, Senator Lentol, and Senator Laverne, all argued that we should get rid of the death penalty, because it wasn't a deterrent and it wasn't solving our crime problem. It wasn't doing anything humane for the people of the State of New York, and it was pure and utter vengeance. That's all that they wanted.

And, sure enough, we debate that issue again today with almost a reprise of that debate thirty years ago. Senator Saland stands up and says there's no evidence that it's not a deterrent. You can't prove a negative. I'd simply point out to him there is one study. Two psychologists who interviewed the 240-or-so people that sit on death row in Texas and asked

them, Listen, you are going to die for your crime. If you knew that you were going to die, would it have changed your behavior? Would you not have killed anyone? All but one said, Gee, I didn't get the message.

Senator Volker says we got to get a message out on the street. Their answer was, "I didn't get the message. I either didn't know or I wasn't thinking right when I did this. It wouldn't have deterred me. It wouldn't have changed my conduct." It's not a deterrent. The best evidence we have is that it isn't a deterrent.

But, in addition, what does the death penalty mean to the people of the State of New York. Well, let me show you what I think it means. I brought along a little hypodermic needle. It's not a "hypo." It doesn't have a needle on it, but it's actually sent out by the people from against the death penalty, and this is what it looks like, just a little needle. Carries about, oh, I don't know -- I won't. I'll be careful. It doesn't have a needle on

it.

But I guess what we're going to do today is we're going to fill this with what I think is the greatest venom present in our society today, pure and simple vengeance. That's what this is all about. We're going to load it with vengeance. It's going to have a little bit of politics in it, because at least from my point of view in this chamber we could have had a death penalty as long ago as twelve years ago. It would be a form of death penalty called death by incarceration. It's called life imprisonment without parole. We could have had it in this state.

The Governor, the previous governor, supported the concept of life imprisonment without parole. We could have had a form of death by incarceration twelve years ago if we wanted to send that so all important message out to the people of this state. But, no, we didn't do that, so we're going to have vengeance. We're going to have a little scoop of politics, and we're going to have a little

bit of political hype, too, because this is one of those where the comment made by Senator Saland is right on point. It's an answer to the crime problem. It's one of the answers to the crime problem.

Well, I guess from my point of view, it's very simple. You want an answer to the crime problem? Fill this with immunizations for children, fill it with hope for people that live in our cities and our towns, fill it with a sense of caring, fill it with a little bit of compassion. Fill it, most importantly, with jobs and a little bit of hope, and maybe we won't have to use this lethal injection to kill people in our state.

I think this is a sad day. I could go on forever about what I think this bill is and how I think it will change New York and what message I think it sends about what kind of society we are. But the one thing I think that dies today is the notion of civilization, a notion of a rational approach to the crime problem, the notion of rehabilitation, the fact

that someone who commits a heinous crime at 19 could at 30 be something different and should have an opportunity to continue to live even though they are confined and have an opportunity to make some contribution. That notion dies today with the death penalty.

I have here in front of me, and it's just interesting to peruse it, the names of the five most recent people who were murdered or killed in this country. They run from a man named Gregory Rezmover, who was killed in the state of -- executed in the state of Indiana because he was found guilty of the death of a police officer, even though the prosecutor - the prosecutor who prosecuted him and got the death penalty went to a clemency hearing and asked that he not be executed because he claimed that there were material misrepresentations made at the time of trial. An error was made. The prosecutor, the man who was most vested with fully prosecuting this crime said, "Give him clemency; don't execute him."

Raymond Carl Kinneman was

executed, as my colleague Senator Espada has pointed out, at the home of state-sponsored execution in the state of Texas. He was executed for bank robbery; and, sure enough, there were all kinds of claims about the adequacy of the evidence. His lawyer on his final appeal maintained that he received ineffective legal help in his early appeals and that the juries instructions were improper. What's interesting about Mr. Kinneman is, although he had a long criminal history , he had been on parole for 21 months before the crime was committed. During that time, he had obeyed all his parole regulations. He'd finished school, and he had earned $18,000 working as an auto mechanic. Guilty or innocent, he was executed.

Several of my colleagues have pointed to Mr. Jacobs, Jessie Jacobs. International attention. It's been described a number of times. He was originally convicted, sentenced to death, and later found out that his wife had actually committed the crime -- or

excuse me. It's correct. His wife had actually committed the crime. The Supreme Court held that they were going allow the execution, stating that it could not overturn the jury's determination of fact. The Vatican newspaper in Rome said the court's decision was pedantic and inhumane and likened the court to Pontius Pilate.

Mario Markez, again, executed in Texas, the 87th person to be put to death there, and the fifth mentally retarded person to be executed in Texas. He was a sixth grade dropout. He had an IQ of 65. As a child, he had been repeatedly beaten by his father. He was abandoned by both of his parents when he was 12 years old. The younger children were placed into foster care. He was left entirely on his own. He began using drugs, inhalants that caused brain damage and using additional drugs. He was charged with murder and rape. He was tried. He was convicted and he was executed despite his 65 IQ.

Then there is Kermit Smith, who

was executed in North Carolina. The trial and sentencing only lasted four days. His lawyer represented no evidence on his behalf. Jurors were informed that if they imposed a life sentence -- oh, excuse me, they were not informed that if they imposed a life sentence Smith would never have been eligible for parole. A woman was allowed to sit as a juror after she admitted during jury selection that she could not give him a fair trial. The woman later voted to impose the death penalty.

The last is Dana Ray Emmons. Virginia executed him by lethal injection using a little syringe just like the one I've got in my hand. He had an IQ in the low 70s. He was executed for killing a grocer in a $50 robbery of the store. The district court judge who reviewed his conviction said he had been denied his right to effective counsel but said the issue was raised too late for consideration.

I submit that as we sit here today, we can't forget the names of those five people. Sooner or later, sometime in the next

decade unless we reconsider this decision, those names and names like them will simply carry one other little tag next to them "Executed in the State of New York."

I'm not so sure what we accomplish today. I know we don't solve the crime problem. I know Senator Volker knows that, but it seems to me we cave in to a view that somehow punishment alone is going to deter people's behaviors.

I said to my wife today when I left that we were going to debate the death penalty, that it would pass, and we will have capital punishment in this state; and she reminded me why we gave up striking our children when they did something wrong, and the reason was because we learned that violence did nothing than begat other violence. State-sponsored, family-sponsored, personal-sponsored, no matter who the sponsor is, we have to turn away from our violent ways in this state.

Enacting a death penalty only marches us down the road to further violence,

and I'm afraid what that violence could mean to all of us. I do have to close, despite my strong disagreement, as I said in the Codes Committee, Senator Volker has conducted himself with grace. He has conducted himself with skill. Although I strongly disagree with it, I do understand that he is performing, as Senator Paterson said, something that he believes is right.

I believe he is wrong; and, therefore, I will not vote in favor of this bill.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: Madam President. Would Senator Volker yield to a question?

SENATOR VOLKER: Sure.

SENATOR ABATE: It's my understanding that two attorneys will be assigned to a defendant during the trial phase of a capital case, but post conviction only one attorney would be assigned for the direct appeal to the Court of Appeals and for one collateral motion such as a 440 motion. Except in the

initial case of a direct appeal if good cause can be shown, two attorneys would be assigned.

SENATOR VOLKER: Right.

SENATOR ABATE: Other than those -- that motion appeal and the direct appeal to the Court of Appeals, it's my understanding that no attorney will be assigned in addition to those two procedures.

SENATOR VOLKER: No, it's not true. What you are talking about is that under the -- under this bill, this represents, of course, a difference in the law now. After the appeal and the motion and the appeal to that motion, then you would revert back to the 18 B section so that -- in other words, the defendant then, if he wanted to go further. Remember, we're going to the Court of Appeals. He has the right to that. He has a right, in effect, to two attorneys because -- I think you are aware that if there is any showing that the fellow needs another attorney, the likelihood is that the Court is going to be very accommodating in these kind of cases, in capital cases, where I

assume we're all well aware that, certainly, in this state, there's going to be flocks of attorneys that are going to be willing to represent people.

In fact, one of the reasons that we're a little careful, very honestly, Senator, is that we are well aware of what some of the law firms in New York City have been doing in some of the southern states in piling on cases and motions, and so forth, and making a lot of money with the motions that in some cases could be considered to be some rather spurious motions in delaying these cases forever.

We think that what we have given here, the Assembly, the Governor and the Senate, is a bill that goes a long way toward providing the best possible defense that there is and give that person the best available representation right through the Court of Appeals and even beyond that, with the motions; and, thereafter, that nobody says that person can't continue to appeal if he or she wishes to, can use the 18 B procedures that are presently in place in our

courts and, of course, can utilize himself of all the services that are available by anti death-penalty groups who carry these cases ad infinitum to the Supreme Court and to the federal courts.

SENATOR ABATE: But it is my understanding that this bill represents a critical departure from the former Volker-Graber bill which provided assigned counsel from arraignment all the way to the Supreme Court because there was a recognition that it is an adversarial process. There is a need to insure adequate and competent counsel; and in order to do so, written in the bill was an assignment of counsel through the entire appeal process. Why today does this bill represent a departure from the bill that passed this floor for the past 18 years?

SENATOR VOLKER: First of all, it represents a departure to start with because the bill that we passed, it is true, had a guarantee of counsel. It did not have a guarantee of two counsels, as I think you are aware, as far as

the trial court is concerned, and we have set all kinds of additional standards into this bill for those that represent defendants. But one of the things that we tried to make sure in this bill -- and it's true that the bill that we sponsored many years ago before all the changes occurred could have been interpreted and could have interpreted to say that a counsel could represent a person all the way to the Supreme Court of the United States, but the feeling was that the primary representation of that person should be in the trial phase, in the appeal to the Court of Appeals and the motions after that, and that what we are giving that defendant is the best possibly representation and that there is no saying that he won't get representation after that, but that we are giving that person an enormous amount of -- if you want to call high-paid talent or whatever in setting up the process, and so forth, and that that is certainly sufficient I think under the circumstances to get that person to a point where he or she has certainly been able to plead

their case. After that, they certainly have the right to go on from there, but the feeling was that the state should not be -- should not be mandated to pay the kind of costs that are being paid up to that point.

THE PRESIDENT: Senator Abate.

SENATOR ABATE: Yes, I would like to speak on the bill.

As I spoke last week, I am in opposition to the death penalty, and I know that today's vote is probably a foregone conclusion, but I still feel the moral obligation, as an attorney, as an elected official as many of you do, the proponents and opponents of this bill, to speak out; and I have thought over the last couple of days and I searched for words. What could I say to cause anyone, just one member of the Senate, to look at this issue with a fresh look, to examine the facts in a new way, to be reflective? What could I say that would cause us to put partisan politics aside and to be reflective?

And I found that there are

probably no words that I could express that could do that. So I come here today with no props, no gimmickry. What I bring today are voice, voices of people in law enforcement, voices of survivors, voices of crime victims, individuals that cannot be heard today on the floor, and this is what I think they would say if they had the opportunity to speak. I'm talking about Robert Morgenthau, former Justice Louis Powell, Justice Harry Blackmun, Kathy Dillon and Thomas McDermott, two victims of heinous crimes.

If we look at Robert Morgenthau, he has spent a lifetime as a federal and state prosecutor, and he talks about how enacting the death penalty is a grave mistake, and he also speaks about the dirty little secret among district attorneys, knowing that when the death penalty is enacted it will take critical, valuable resources from law enforcement and other kinds of police strategies.

Former Justice Powell, along with Justice Blackmun opposed the halting of the

death penalty in 1972 and supported its return in 1976. Both were appointed by President Nixon. Both experienced and saw the implications and impact of the death penalty, and both are vehemently opposed to the death penalty today; and Justice Blackmun has said that he would no longer tinker with the machinery of death and he was morally and intellectually obligated to cede that the death penalty experiment has failed.

What these law enforcement and judicial leaders have said, that for sentencing to be effective and rational, that sentencing and punishment must be swift and certain, and they understand the impact on victims and survivors of crime, and they understand that the death penalty further harms victims because they can not rebuild their lives. They can not deal with the mourning. They can not say that there is some kind of conclusion to the case because they must wait years and years and make sure due process is served and that all the appeals which justice demands are exercised.

But all these experts agree, and I agree with them, that life imprisonment without parole with restitution to the survivor is a sound and human criminal justice policy, and they agree that victims never gain, and I don't think we will find a victim that will say the taking of one life for another will bring solace to the survivors.

There are two letters that were written by victims. One was to her legislator and the other was to the Association of the Bar of the City of New York. Kathy Dillon, who is from Liverpool, New York, wrote a letter in April 1994. And I just would like to read a couple paragraphs from that letter. On October 24, 1974, she lost her father. He was a New York State Trooper. He was shot and killed in the line of duty on the New York State Thruway. She was 14 years at the time, and she knew then that the death penalty was wrong, and she said that the death penalty would not bring her father back. Ten years later in 1984, her fiance was shot and killed in Poughkeepsie, New

York; and she said in this letter, "I felt as a result of suffering a second tragedy of this nature that I would change my feelings about the death penalty. It did not. Simply stated, it only continues" -- and this is her words, "it only continues the downward spiral of violence, sadness, pain, suffering, and needless loss." She says, "I know how it feels to have loved ones murdered. I would not wish that on anyone. The person sent to the electric chair has innocent loved ones who will be made to suffer like I did. It is senseless. It can't right the wrong that has been done. The death penalty is another wrong, and two wrongs do not make a right." This is spoken by Kathy Dillon from Liverpool, New York.

And then there was a recent hearing in New York City, and Thomas McDermott, who was injured in the Long Island Rail Road case -- he witnessed the carnage. He thought during that incident he too would die. He was a former prosecutor; and prior to December 7, 1993, which is the date of the incident, he was

a part of the so-called majority of New Yorkers who favored the death penalty. But that's because, he stated in his letter, that he never gave any thought to the death penalty and what it meant. Was it a deterrent? What was the cost? He had no idea around these issues, and then he said in the letter, "I then started to talk to my now friends from the train, and we started saying, 'Hold it. Is this going to come back into existence and is it going to be more costly? Then why are we doing it? If it's not a deterrent, why are we doing it?' And therefore it is our judgment that it is only for the reasons of punishment." And he went on to say, "Let's look at what's best for society. Yes, if we pass the death penalty, it will cost enormous amount of money. Yes, we can vent our passion. We can vent our anger; and then twelve years, ten years from now, some of us may remember the name of the murderer who faces execution, but most of us won't remember the face or the name."

And he goes to say, "Let's talk

about the living. The living are the victims, the survivors of crime. He points to the members of the Legislature, and he asks why aren't there monies going to the survivors? Why aren't we talking about the cost of implementing the death penalty and taking those monies to make sure the streets are safer and make sure the children who have lost their parents are left with a better world so that they can be directly helped? We have lost sight," he said, "of the victims and this is no solution for survivors of people who have been killed."

So, then, if we're not doing it for victims because victims are not a monolithic group of people, and the experts say -- many of the experts say that it's not a solution to making our streets safer, so then why are we tinkering with the machinery of death?

I have heard today that the death penalty will save lives. I submit that is still conjecture. There are no studies. There is no scientific evidence. There is no proof that that is the case. In fact, the contrary I

believe is the case.

And then there is the reason to tinker with the machinery of death is that it's a cheap alternative to life imprisonment without parole. But if we look at the cost and we compare it, that's also not true; and, in fact, the reality is if we implement the death penalty, it will drain our precious resources in the criminal justice system, the resources that are needed to build prisons, that are needed for rehabilitation and drug treatment and probation and parole and law enforcement and more police on the street.

What we need to do is take these heinous criminals who commit murder and put them behind bars and make sure they never see the light of day and to ensure that we have monies for other parts of the criminal justice system so victims can be made whole and our streets can be made safer.

And there's nothing that convinces me that when we tinker with the machinery of justice, there's no guarantee that

innocent people will not be put to death. We have seen chapter and verse. We have seen in New York State 59 people were wrongly convicted of homicide between 1965 and 1988.

And I ask this question, what is in this bill that would change human nature and make an imperfect system perfect? I know, like many of you on this floor, I practiced law for a number of years. I tried a number of cases for ten years. I have worked in a prosecutor's office. I was a trial attorney. This is a system of criminal justice made up of men and women. Our human judgments are subject to error. They are subject to overstatement and overzealousness and sometimes -- sometimes incorrect behavior, but nonetheless it is an imperfect system. It is an imperfect system yesterday, today and tomorrow, and there is nothing in this bill that will change human nature.

So we know the ugly power of racism in our society, and the death penalty again will give racism its most brutal face. So

whether we are talking about racism, innocent lives, three times the cost of life imprisonment, no deterrent value, those are the facts; and what's left before us is the moral argument.

Should we answer the violence of our most heinous criminals with our own more cold and more calculating violence? Shall we make an eye for an eye the law of the land. We already know that the law of the streets, the law of the prisons, the law of the jails, are an eye for an eye; and I believe if we enact the death penalty today, we will perpetuate the cycle of violence and give legal credibility to the violence that we see on the street.

So I believe we need to look at sound, good policy that makes good common sense, that protects our communities, that protects our loved ones, a bill that provides not just short term solutions but long-term solutions to public safety. I do not believe this bill today represents sounds public policy, and I hope that even after the vote today -- and I know that

many people will vote their conscience. I hope we understand the implications of today, and I agree with Senator Dollinger this is a very sad day, and I also project that in the future we will be back here repealing the death penalty because we will see that it hasn't worked. It hasn't worked in the past, and it will not work in the future; and that today we will pay by passing this bill an awful price of violating sanctity of life and that we will begin to undermine the values that distinguish us as a civilized nation.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Yes. Madam President. With the consent of the Minority, could we have the last section read for the purposes of Senator Saland voting.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 38. This act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Saland, how do you vote?

SENATOR SALAND: I vote in the affirmative. Aye.

SENATOR SKELOS: Close the roll and resume the debate, please.

THE PRESIDENT: Okay. Withdraw the roll call, please.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you.

In prior years, I did not stand up to debate the death penalty, but I think it's important that I at least put on the record my reasons for supporting it.

I think anybody can argue empirical data one way or the other. The fact that homicides have risen in states that happen to have the death penalty doesn't necessarily mean that the death penalty did not work. There may have been more homicides had the death penalty not be in place.

There is no one in this room,

also, that is saying that the death penalty is the cure to violence in this society or that with the death penalty violence is all of a sudden going to be corrected. It is not a cure-all.

But I think in some instances that it's legitimate to argue that -- and I feel strongly that in some instances the death penalty will be a deterrent. The one that's very clear in my judgment is a situation where an individual is serving a life imprisonment term and a corrections officer is killed or for that matter a fellow inmate. Both of those individuals are in a situation where without a death penalty there is simply no additional penalty for many of the inmates who are in the position of the same environment that they are living in.

To suggest that life without parole is an alternative sentence for an individual who is serving the rest of his life for all intents and purposes in a jail and kills an individual, simply is inaccurate. I firmly

believe that if you are in a prison or an individual in a prison or at least some individuals in a prison would think twice about stabbing an inmate or killing a corrections officer if they know that there is another punishment other than merely staying in that same facility.

In addition, I think in some instances where a witness to a crime -- it may be a violent crime like a rape and a witness sees the assailant and their punishment for that rape, if caught, would be 25 years in jail. I think some might feel that under those circumstances they have a better chance of getting away with their crime if they do away with maybe the only victim -- the only witness, namely, the victim of that particular crime. I think in some instances people might consider that.

And I believe strongly that police officers, our last line of defense, have to be protected; and by providing a death penalty under these circumstances is

reasonable.

Now, with all that said, unless there were procedural safeguards I couldn't support this bill, and I believe there are ample procedural safeguards. The sentencing procedure has been discussed by other individuals, and I won't go over that again, but there are opportunities for a jury to be convinced that even though one of these terrible things have occurred, one of these aggravated homicides occurred, that even in those instances they are not required to give the death penalty. They must consider all factors before they make that decision, and there is ample ground for appeal in the event there is some procedural defect in the way this all occurred.

And, finally, we all know that there are different abilities in various provisions including the legal profession. With the Capital Defenders Unit, I think it's very likely that there will be competent attorneys who are representing individuals who are charged with capital crimes.

So for all those reasons, I firmly belief that my vote is the correct vote although it is not an easy one, and I would support this bill as a reasonable approach to a situation that we now have existing, namely, that there are some crimes that simply do not have penalties.

And for those reasons, I will vote yes.

THE PRESIDENT: Thank you.

Senator Leichter.

SENATOR LEICHTER: Madam President. Yes, we have heard all the arguments; and, yes, this bill is going to become law probably before the end of this day, but I tell you I, for one, will not go into the dark night of the death penalty in New York State quietly.

We are surrendering to brutality and violence. This is really an admission on our part that we have failed to deal with violence in our society. We have failed to deal with the crime that clearly is the most

horrifying, and that is murder because I truly believe the people of New York State do not want the death penalty, per se. What they want is a peaceful, tranquil society, and we here in this Legislature to the extent that we can deal with it certainly have not.

The people of New York are not blood thirsty, but I don't know whether one can say the same thing for some of the leaders of New York State, because this debate in the last few weeks in this Legislature has been on the part of those who want to kill the most number of people and do it most quickly. That's what this debate has been about. I think it's shocking and it's appalling.

The fact is that the death penalty is a cheap and illusory approach. You can go out, and you can tell people we're doing something about crime. You can tell people that we're going to make this a safer society, but you are certainly not doing it with this bill. You are not doing it with the death penalty.

I want to say that Dale Volker -

and he and I have debated this for many years and I have the world of respect for him. There really is no fairer, more decent person among us. But, unfortunately, on this issue, I just find such a blind spot not in his approach but in his arguments, in his reasons. I just really with all due respect to you, Senator Volker, it is sheer fantasy for you to get up and to support the death penalty as being a deterrence by pointing to the fact that since the death penalty was abolished in New York State in the middle '60s that murder has increased. I think it would be more credible for you to his that since the consumption of milk went up in those years that there is a causal relationship between the consumption of milk and murder. There is not a credible criminologist who will support your argument; and in fact, if you take a look at the history of executions in the United States, you will see that very often where there was no death penalty that in fact the rate of homicides went down. That was precisely the experience in Canada.

The point is that you come down to the statistical data, and it offers no support whatsoever for the proposition that the death penalty is a deterrent. The New York Times had an article where they reviewed very carefully the FBI records, and their conclusions were -- and all of the statistical data was set forth. This wasn't a columnist. This wasn't a reporter expressing his own view. This was a serious studied analysis of the figures; and it said the statistics, using state homicides rate issued this weekend by the FBI, that cover the modern period of the death penalty lend little support for the view that the death penalty is a deterrence.

I said on this floor a week ago that certainly those who argue for the death penalty have the burden of proof on this issue, and you have never, never been able to meet that burden; and, frankly, it cannot be met, because it you take a look at what happened in countries that apply the death penalty and countries that don't apply the death penalty, if there is any

correlation it's almost that those countries that have the death penalty have the higher murder rate.

I'm not suggesting that necessarily the death penalty will actually increase homicides, although there seems to be some statistical data which shows that where there are executions that in the short period following those executions there is a greater likelihood of homicides occurring. But I think what it shows is that those societies that impose the death penalty are basically violent societies, and what happens is that the state is part of that violence.

Take a look at South Africa, which applied the death penalty more harshly, more severely, more frequently than anyone else, had one of the highest homicides rates in the world; whereas, if you take a look at the countries of Western Europe which do not have the death penalty, they have very low homicide rates.

If you take a look -- I want to

meet the argument that Senator DeFrancisco said. Well, he said, that, after all, somebody in prison who is serving a life term, it would be more likely to commit murder, and that person might be deterred if there was a death penalty. I think part of the problem with this argument is that we, being essentially lawful people, yes, for us death penalty might be a deterrence although I think that we don't need obviously the death penalty to deter us from committing particularly this crime or any crime. But those people who commit these crimes are by and large not subject to the reasoned argument that would convince other people.

But if you take a look again at the statistics of murders that are committed in prisons, it shows that there is very, very few that involve people who are in prison because they have already committed homicides. Recent studies showed that law enforcement officers are not protected by the death penalty, either, which is why most large city police chiefs and at least a majority of district attorneys in New

York City are opposed to capital punishment. In 1993, Texas led in deaths of law enforcement officers for the sixth straight year even though it has the highest execution rate, as well. In that year, two men were executed for killing police officers.

So where is the basis, where is the rationale for the death penalty? I submit that, unfortunately, in great measure it is political. It is political because politicians go out and campaign on the death penalty. They campaign on simplistic solutions to very complex and difficult problems, and it's a lot easier to say I will give you the death penalty than to say I will work with the difficult problem of crime and with the solutions that need to be applied and the painstaking work that goes in creating a less violent society.

Unfortunately, this country, great as it is, wonderful as it is, we know that we've had an aura of violence since colonial days, something we have never been able to effectively address, and that has been

particularly difficult in the last few decades with drugs, the violence that's shown on television and other factors that have become part of it.

But I tell you to say to the people of New York State we have done something to make you safer by imposing the death penalty, I think that's being at best disingenuous but it's essentially being dishonest, and there's no way that you can escape from the fact that you are going to be killing innocent people. Senator Volker, you sort of dismissed the fact that good, sound studies show that innocent people have been executed in this country. You made the sort of amazing statement, "Well, the fact that somebody is later found not to be guilty doesn't mean that he didn't commit the crime." I thought if you were acquitted in out society, it means that you're not guilty.

Senator Volker, let me give you the case of Nathaniel Carter. The case of Nathaniel Carter -- you ask Governor Pataki whether Nathaniel Carter was guilty of the crime

of murder. He had been found guilty of the crime of murder. The trial judge said I wish I could sentence you to death, but it later turned out that is he was framed, framed by the very person who was then found to have committed the murder. That man was innocent. Under your law he would have been put to death, or he might have been put to death. He might have been put to death, and Governor Pataki was the first person then, as either an Assemblyman or as Senator, who greeted Nathaniel Carter when he came out of jail and said, "Thank God we have corrected a mistake." Under your bill when that is law, there are going to be mistakes that we can not correct.

I just think that people here when they talk about, oh, we're not going to be executing innocent people are in a state of denial, because you will be executing innocent people. Maybe some people can take pride in the fact we have given New York State a death penalty. I say it's a sad day for New York State. It's a sad day for the people of this

state. We have taken a big step backwards. We have brutalized our society. We have given in to violence. We have failed to do what we should be doing, which is making this in reality a safer society.

I will vote no as I voted all these many years; and when I go to bed tonight knowing that New York State has the death penalty, I will be ashamed of what we have done.

ACTING PRESIDENT DeFRANCISCO: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

You know, I know we've been going for about 2-1/2 hours, and I look around the room and I think of a scene from 1776 where George Washington sends a messenger to the Continental Congress, and he walks in and sees basically an empty room, and the message says from Washington, "Is anybody there? Does anybody care?"

We debated this so many, many

times and it's interesting. Today, it's almost anti-climatic. I have been involved in debates on the death penalty when there was a tension in the room and the walls were lined with people. Today, I understand that it's anti-climatic. We have a governor who says he is going to sign it and we have two houses that are going to pass it, and so does anybody care? Is anybody there?

I'm almost embarrassed for us that a situation like this was decided not by the Legislature the way we're supposed to be doing it in open debate but with counsels working weekends and nights; and then when the Senate and the Assembly and the Governor agree, it doesn't matter what we do after that. We look at our watches. Well, last week was two hours, and we called debate. This week, we'll let you go three maybe if you need a little bit more, and it really hurts me that the people that I know in this room, 60 other people who I know are feeling, sincere people, can talk about killing, butchering as a society and just take

it as such a matter of fact kind of thing.

Senator Leichter, I thought that your reference to somebody up in Putnam county or Peekskill was interesting, but did you know that Senator Volker actually voted for a law I sponsored to create a situation where Izzy Zimmerman could sue the state. Izzy Zimmerman was convicted of murder, sentenced to death, and at one point before they were going to pull that switch, Governor Harriman said, "Well, look, we'll commute it to life," and it wasn't because Governor Harriman thought he was innocent. They commuted it to life. Well, thank God. Because when it turned out that Izzy Zimmerman was innocent and they had to let him go after some twenty years, we let him sue the state he won a little bit of money, and died within six months. So don't tell me none of us know of these mythical stories.

I just want to make a few points because so much has already been said. I understand that as a result of this magnificent negotiation $750 is being put on one side and

$750 on the other side to get this going.

And my question is, is that for the first week? Will that get us through a week? I mean are we serious about this? You are talking about a huge procedure now where you are going to have special offices of counsel, and you put up 750,000. I know why you are doing it. You are doing it because you don't want to be honest with the people and tell them what it's really going to cost in dollars. It's not a question whether it's a deterrent or not. This is big dollars, and you really don't want to deal with that.

I don't know whether I should give Senator Connor credit or not. I really told him it was in my notes, but it really is his point. If there are people in the State of New York who are petrified of the death penalty but there are people in the State of New York who say, "Well, if I go out and kill somebody, then I can only get 20 to life, there is nothing to do it," I assume that from now to September 1st, when this becomes the law, we're going to

have massive murders in this state because people are going to say, "Hey, I better get my kicks in before September 1st because then they're going to kill me. If I kill somebody in August, it's only 20 to life. Piece of cake." I mean if that isn't ridiculous, and don't tell Senator Connor I gave him credit for that. This weekend I saw something in the movies, "Shawshank Redemption". It's a film about prison life, the brutality of prison. And today in the New York Post, there is a really wonderful story by one of their writers. I won't mention his name. But -- all right. It's Fred Dicker. But "Terror in the Teenage Prisons."

You know, for any of you who have not been involved in the Crime and Correction Committee or have never gone to any of these prisons, you really should. If you are sixteen or seventeen years old and you go to one of these institutions and are brutalized and are subjected to the gangs and the guards and everybody else, you tell me how you expect those

young people to come out of those institutions and not go out and kill, and this bill doesn't deal with that.

The fact of the matter is there is nothing that you put Senator Lack that deals at all with the prison systems and what we do to people and why we have people coming out of prison every day who are recidivists. I mean this is something to take a look at. It is something serious you should take a look at it.

There was another thing in the New York Post today. Don't ask me why but this is really the only day of the year I read that paper, but I read it today. "Believe That Crime Rate is Dropping," it has in here that from last year to this year the murder rate for the first two months is down 36 percent. Now, you know what you can learn from that figure. It's not the death penalty that's a deterrent. Maybe it's talking about the death penalty that's a deterrent. So we shouldn't pass the bill. We should just keep talking about passing the bill, and that might do something. That's how your

figures work out.

Maybe there is another way, I don't know. I see Senator Marchi, Senator Marchi, who many of us hold on a certain level and pedestal when it comes to compassion and feeling. Maybe, Senator Marchi, if more people on your side listened to Puccini they would come out with a better answer on all of this.

There was a radio program in September of last year. It was called "All Things Considered," and their guest was a Judge Myron Love, and I tell you who Myron Love was. Myron Love is the administrative judge of all of the district courts in the county of Texas that finds more people guilty of the death penalty than any place I guess in America. Good old Texas. We are always hearing they are killing someone.

And what Judge Love says -- and if you want the transcript, I will be glad to give it to you. We're not getting what I think we should be wanting, and that is to deter crime. We're not getting it at all because

we're having more and more capital indictments filed; and, in fact, the result is the opposite. We're having more violence and more crime. Texas has the death penalty. More police officers are killed in Texas than are killed in other places.

Texas and Florida lead the way on society butchering people and their death rates go up and up and up. Tell me one of you, one of you, who hasn't heard about murder in Florida. My wife and I went on a vacation about a year ago in the Bahamas, filled with foreign people from Europe who said they used to go to Florida. They won't go to Florida any more. Florida is a dangerous place to go to. We said it can't be dangerous in Florida. Florida has the death penalty. Florida executes people. How could that be a dangerous place to go?

USA Today, February 23, 1995, "Death Penalty Useless" -- useless. Well, you can expect that these wild liberal maniacs - now, wait a minute. This isn't wild liberal maniacs. This is the Police Chiefs of America.

What do they say, "Attitudes Towards Death Penalty," and when they asked 386 chiefs of police throughout America if you had to choose one way to reduce crime, what would you choose? The death penalty was given as the solution by one percent. Most of them said reduce drug abuse. That was 31 percent, biggest answer. Seventeen percent, improve economy, jobs. Sixteen percent, fewer barriers to prosecution. One percent, the death penalty. But you don't want to hear that.

I have a brochure here from some people I respect tremendously. New York State Catholic Bishops, and when they tell you that abortion is wrong, it's killing, those of you who want to hear that, hear that. But when they tell you that death is the answer, so many of you who are willing to listen out of one side of your head will not listen out of the other.

Somebody asked me. I was just interviewed on the radio, and somebody said to me, "Senator, do you think we ought to have hearings on this bill?" And I said, "Why?"

Why? If somebody testifies at that hearing and says the death penalty is a deterrent and it's this and that, those people who like the death penalty are going to smile. They are going to ask supportive questions. Then somebody will get up and say it can't be a deterrent because look at this and look at that, and those same people will frown, and they will have different kinds of questions; and at the end of the hearing, there will not be anyone who has changed their mind.

I want to be very candid with Senator Volker. He deserves that of me. I haven't read too much about this bill because I don't care about the procedures. I will not vote for the death penalty, so don't talk to me about the procedures. I think that that's silly.

One of the things I heard -- some things seem to get a life of their own, and one of the things I heard over the weekend from a number of different sources -- oxymoron. Great word; right? A jumbo shrimp is an oxymoron -

jumbo shrimp. "Humane execution" if that isn't an oxymoron. Humane execution. Isn't that something? You are this brutal SOB, killed 50 people, slaughtered them, and we're worried about a humane execution? If you want to kill the son of a..., kill him! Tear him apart. Let's get one horse on each arm and one horse on each leg. Let's do it. Humane execution? That's what we're worried about?

By the way -- by the way, I said it before, I'm going to say it again. Mario Cuomo, God bless you. Today is another day of your vindication. George Pataki would never sign the bill that you vetoed. Never. Why did they have all of this nonsense going on for weeks and weeks, "Got to have a bill"? Never had that with Mario Cuomo. Why? So they could create a political issue, but they didn't worry, and Mario Cuomo was right. He said, "This is not only wrong, it's a terrible bill." So, Mario, God bless you. You should enjoy a good healthy long life with your family. You were right to veto the bill, because I assume George

Pataki wouldn't have signed it anyway.

I also want to pay a tribute to -- I think it's Dwyer, a writer of Newsday. He had that article a couple -- I guess about a week ago, and his conclusion was that if you have the death penalty under the system that we have in America it will not be the worst murderers who will be executed; it will be the murderers with worst lawyers.

If there ever was a situation which I would have hoped would have sobered up America, it's the O.J. Simpson trial. I'm not judging O.J. Simpson. That's not mine to do, and I don't watch the circus, to tell you the truth. But you can't live in America without picking up some of it some place, so I have seen some of it some place. And what is going on? Is there a trial out there to determine whether or not O.J. Simpson is responsible for the slaughter of two people?

Well, let's start at the beginning. California could indict O.J. Simpson for a crime where he could get the death

penalty, and they didn't do it, and they didn't do it for good reason. Now, was that reason because the crime was a piece of cake? Somebody walked in and injected two people and they died in the middle of the night. The crime was disgusting. Two people were slaughtered, butchered. So why wasn't this individual indicted for a crime where he could get the death penalty?

Well, there are some really good reasons. Number 1, he's got a lot of money, and a lot of money means a lot of big name lawyers and O.J. Simpson has a rep, and here's this idol with a lot of money and a lot of lawyers before a jury, and if the jury is saying, "Wow, it's not only a question we could convict him but we could fry him," I don't know. So O.J. Simpson with a lot of money and big lawyers doesn't get indicted in a crime that could bring him the death penalty; and if you see from day to day what's going on there, I mean how can you put American justice on the level that can tell you that it's fair to execute people?

There is one other point and I'm going to make it much shorter than I had planned to, but, you know, I have a district that has a very large Jewish population, and as a result of a loss in my family, I have been pretty good about getting to the synagogue about every day, and let's face it. Let's face it. If you read the Bible, if you read Talmudic Law, the death penalty is in there. And I said to myself you know maybe -- maybe I ought to go along with that, and I want to tell you I could vote for a death penalty bill today, but I looked at yours, Senator Volker, and to tell you the truth, I didn't see the Talmudic stuff in there. I didn't see 23 judges. I didn't see two witnesses, one of whom tells you before you killed, "Do you know that if you kill, it's the death penalty." I didn't see in there some of the crimes for which you get the death penalty -- being disrespectful to your father and mother, that's certainly one you wanted to include, et cetera, et cetera.

So the answer is that, you know,

I'm glad that this year, different from other years, we have not been dwelling on an eye for an eye and blaming the Almighty as we vote to kill people.

In conclusion, I just want to say this. This is not a great day for us. This is a day where we have basically surrendered and said we have no answers; and, therefore, the barbarians win. The barbarians win.

And, you know, I got to make a comment about something today. I would think that we would want to either teach those people who are not as good as we are or think we are or find people to use as examples that we think are better than we are. I read a press release today which I thought was incredible. I don't support this bill, but there are people on my side that do, people on your side. This is a nonpolitical issue, and I'm told that because the Speaker of the Assembly didn't act in such a terrific way towards some of his members that instead of saying to the Speaker, "Mr. Speaker, you're acting as a petty politician, we are

better than that," the Majority Leaders o this house said, "Mr. Speaker, I can be as petty as you can be." Now, if that isn't picking the worst example rather than setting the best example, I don't know.

I would have been prouder of Senator Bruno if he said, "Mr. Speaker, I don't care what you do." This is an issue that is important to people and Senators ought to be able to line up and say their feelings.

Now, that is relevant to what is happening on the bill. Because we are not saying to the barbarians, "We are better than you are; you are going to go to jail, and you are going to spend your life there, and we will not kill, and we will not be brutal because you are going to be brutal." But, instead, we say, "Okay. You want to be a barbarian? Let me tell you something. We can be barbarians."

And the result of it is very simple. We are curing nothing, and the streets that we want to make safe will be just as violent; and when all is said and done, our

teenage prisons will be just as violent; and those teenagers that get out of jail will be just as violent because they know no better.

There are things that are worse than death, my friends. Living without hope is worse. Living without hope is worse, and there are people who every day are going to take the opportunity and take the risk that they may die for a crime rather than live in what they know is utter despair. They may also decide to take a look at New Jersey which just passed the tenth anniversary of its capital punishment law, and no one has been executed for ten years, and you tell me who that deters.

So I thank you for your patience. I thank you for those few who stayed around to listen to their colleagues, and I say, Senator Volker, you can always call me for a reference. You are in my opinion the ultimate gentleman. You are the ultimate person who does what he believes in.

But just as, Senator Volker, with every other human being who is as sincere as you

are, we can be wrong, including me, and I hope I am sincere. We are talking the state in a wrong direction; and just as you have started this fight so many years ago, all it means is that others will take up the cudgel. 1965, death went out; 1995 it comes in; and the year 2000-something it will go out, et cetera, et cetera, et cetera.

So I will vote no, Senator, and it is not because you are missing a comma on page 3, and it's not because this happened and it's technical. I'm voting no for a very simple reason. I think society is better than this bill demands. I think society ought to be able to cure its problems without resorting to the vulgarity and the barbarism as the criminals on the street.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Is there a list of speakers?

THE PRESIDENT: Yes, there is. There are 13 more -

SENATOR SKELOS: How many speakers -

THE PRESIDENT: Speakers on the list.

SENATOR SKELOS: I beg your pardon?

THE PRESIDENT: There are 13 additional speakers on the list.

SENATOR SKELOS: Could I just remind the members that we are now into three hours of debate at this time.

THE PRESIDENT: Thank you.

Senator Galiber.

SENATOR GALIBER: Madam President, thank you for my recognition.

I didn't speak on this bill last week, and Senator Volker and I almost had an understanding on certain years because our beliefs were there, and we almost knew how we were going to vote.

Senator, I don't move as fast as I used to move, so I want you to know that I missed your Code meeting this afternoon not

because you weren't serving lunch. It was because I just couldn't move that fast.

Madam President. I'm going to try to be as brief as I possibly can, and that will be brief because it's all -- really has been said. Senator Abate said it, Senator Gold said it, Senator Connor, and many others of my colleagues. I can recall as I sit here another reason why I decided to speak on the bill is that this is a period when we are now shifting the burden, if you will, shifting the burden from those of us who have been opposed to this so long to those who have now the responsibility to show the people of the State of New York that they have been defrauded a bit because those persons who are in favor, basically, of the death penalty are persons who believe that there will be no more muggings after the Governor signs this piece of legislation. It will be safe. In my house, there will be no more burglaries. There will be no more drugs. There will be no teenage killings in the streets of New York, in the State of New York, for that

matter, and we all know that is not so.

I can recall a former Senator - no, he is still a Senator because once one, always -- who made a mistake in my judgment because I'm opposed to the death penalty. He sent out a questionnaire in his community, and my community is contiguous to his, and the question was a very simple one, "Are you in favor of the death penalty?" And it came out overwhelmingly, "Yes."

I dare say that if I had sent out a questionnaire that the answer would have probably come out the same, but we are all elected to office to deal with our own thoughts on occasion to try to represent, if you will, the general population and also what we think is right and wrong. Senator, we are going to revisit this issue, and I can recall some of the comments that were made before during the course of debates over the years. In one of them, Senator, there was a clear indication that you said something to the effect that so if we by chance kill, execute an innocent person,

sobeit. Now, I know that you didn't really mean that, but that's what you said. So we do, in fact, on occasion kill innocent people.

I can recall history, those of us who went to law school and most of us -- some of us did, anyway -- can recall that -- and you've heard it before. It's worth repeating when we talk about deterrence. Certainly this piece of legislation, death penalty, if you will, is not a deterrent. History has shown that at one point in time there were 150 crimes -- Senator Gold alluded to it before -- that carried a death penalty if you were convicted, and one of them was picking pockets, and everyone would go to the hanging, and the pickpockets would go there because the crowds were there and pick the pockets.

So, Senator, I say to you as brief as I possibly can, no one within the sound of my voice respects you more for your excellence and your industry and most of all your patience. I agree with Senator LaValle almost with all of what he said with the

exception that you're soft. You are definitely not soft but you are someone that we all respect.

As we approach -- and I will end on this note. Senator, recall as we approach Easter that there was the first Christian martyr who rode into town and people were saying hosannas to it, and we know that the following week thereafter, the crowd changed; and they had a practice at that point in time where the people decided who would go free from a hanging of three; and they let Barabbas go free, if you will; and Barabbas had a yellow sheet from here to here, but the people changed their minds. So, therefore, we find that innocence is a factor that we wind up killing our first Christian martyr, the first recordation, if you will, of homicide, and he was on a garbage pile between two thieves; and we found out, very recently after that, that he was innocent.

So, Senator, I believed and I will continue to believe that a death penalty is not a deterrent; that we are going to find crime

running rampant again in our streets; that the people -- and we will revisit, as I mentioned before. The people will be back to this chamber through their representation to say that "We did not understand" or "We were misled." We are living in a community where our doors are open, but we can't come out at night, locked in our houses with open doors.

So, Senator, in appreciation for all your excellence and your industry and what you have put into this, the fact of the matter is that this is not a deterrent; that this will go down as one of saddest days that we have in the history of New York, and we may not be around to see the reversal of this what is going to happen today.

This is a piece of legislation that I have fought with all my heart throughout the years because I do not believe that this is the way that we do things. This is strictly a political move; and as a result, as we review this, we find that persons for political reasons, also those persons who believe in

retribution, are the ones who are in favor of this, an eye for an eye, a tooth for a tooth. The victims, if you will, that we are all concerned with -- doesn't sound that way sometimes, but we are -- the closest I ever came to changing my mind on a death penalty was this nut that killed seven people out there on Long Island, the spraying of a van across the Brooklyn Bridge, the bombing of the World Trade Center, and I can go on and on and on.

But in my heart's heart, I do not believe that this is a deterrent; that the better way would be life imprisonment without parole.

Thank you, Madam President.

THE PRESIDENT: Senator Jones.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Oh, I'm sorry, Senator Skelos.

SENATOR SKELOS: If we could -

THE PRESIDENT: Excuse me, Senator Jones, just a moment.

SENATOR SKELOS: For the purposes

of Senator Gold voting, again, and Senator Galiber, could we have the last section read and the roll called.

THE PRESIDENT: Yes. Read the last section, please.

THE SECRETARY: Section 38. This act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR WALDON: No.

SENATOR GALIBER: No.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: No.

THE PRESIDENT: Senator Galiber.

SENATOR GALIBER: No.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: No.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: No.

THE PRESIDENT: Shall we withdraw

the roll call now?

SENATOR SKELOS: Please withdraw the roll call and resume debate.

THE PRESIDENT: Senator Jones.

SENATOR JONES: I certainly agree with my colleagues that we are at a moment in history today. I think this is only the first chapter that we're writing today.

I bet there are many emotions if everyone were really honest with themselves in this room today, perhaps myself included. If I were purely selfish, or even my colleague Senator Dollinger, we would probably say, "Thank God. We will never see another brochure or another TV ad that says I'm not worthy to be here because I'm opposed to the death penalty."

Maybe all of us feel an element of relief because, basically, what we're doing now whether we are for or against it is passing the burden of this responsibility onto the prosecutors, the defense attorneys, and the juries of 12.

I had an opportunity to be in New

Jersey this weekend when a very famous, at least down there, verdicts was handed in on a trial. It was very interesting to me to read all the accounts in the paper and see what happened with that jury of 12. It was a heinous crime. It was a carjacking of the worse kind, a woman and a 3-year-old child in the car. They believed that apparently the woman convinced him to let the little girl out of the car where she sat in a yard all night long, a 3-year-old child. The woman, of course, was found murdered and raped, a cruel, terrible killing.

However, the jury did not impose the death penalty. When talked to some of the people afterward, several of them commented, "As long as I knew he wasn't going to get out of jail, ever, I didn't feel comfortable doing that." I wonder if our juries will be doing the same thing years from now.

I didn't come here with any kind of a preconceived notion. Death penalty was never a topic of discussion in first grade classrooms, I can assure you. So what I've

learned and what I've studied about it all came from being here, and I assure you I have read every piece of literature that's available on this. I've looked at the numbers like you did. I agree with both sides that they're contradictory, and none of them are totally conclusive.

But what do I believe? Well, I certainly believe that racial issues are going to be a factor. As my colleague said last week, I can count. I visited prisons. I've looked at the faces that look at me from behind those bars, and I know how many of them are clearly black faces. I know it's going to effect the poor. Look at the cost of a defense. How can you say any different.

Do I believe an innocent person can be convicted? Well, I'll tell you what. Juries are people, 12 real people. If I just went around this room today and said to you how many of you believe Rosa Lopez told the truth? I guarantee you I would not see every hand raised yea or nay, and that may be the deciding

factor that says whether O.J. Simpson is guilty. Real people are listening to this, and all of them come, as do you and I, with notions, with beliefs, and with things that we think are important, so of course it's possible.

I listened to a woman over the weekend tell me, with pride, her story of being on a jury. She was the only one who wanted the person let go. She convinced 11 other people and thought it was great that she did that.

So this does happen on juries in our country, and don't -- I don't come from a law background, and I didn't try the cases, but I do know real people. I was one of them, and I hope I still am.

I have to believe we're putting a burden on our local governments. Our own district attorney who has always been a strong proponent of the death penalty railed in the paper the other day that one of these trials could mean his whole budget. This is a person who believes we're doing the right thing today, but he still questions what the cost is going to

be.

And I also believe, Senator Volker -- I think the one thing we could get a unanimous vote on today is that clearly the righteousness of your position is something you truly believe in, and your sincerity wouldn't be questioned by anybody in room. If you didn't believe it, no one could persist all the years that it appears that you have to get to this day.

But now let me tell you what I wonder about because I wasn't here and I don't know. I wonder if you hadn't held all these years to the position of all or nothing and you did go with life without parole, would we be here today? Would it have made a difference? I wonder if maybe you'd spent a little more money for job training or drug treatment or education, would that have made a difference in the crime? I wonder if maybe we worked harder at revitalizing our cities, maybe more low-income housing, maybe that would have helped; and maybe the crime picture would have been the same. I

wonder if we had taken a stronger position on gun control, would that have made a difference?

Well, you know what, my colleagues, I don't know the answer to any of those questions; but you know what, neither do you because none of them were tested. So what we're doing today is making a decision that killing is the answer; and regardless of whether it would mean there would never be another successful election as long as I lived, I couldn't change my position, nor could any of you, because I know that you truly believe that what you're saying is right.

So I'll just end by borrowing a quote from one of our local newspapers, and surprisingly enough it was not the so-called liberal Gannett paper. It was our conservative weekly newspaper who -- I frankly was stunned when I read it, but the bottom line it said, very short, "We shouldn't do it. Killing is killing whether it's done by the criminal or the state."

And that's, finally, the

conclusion that I reach, and I will continue to vote no.

THE PRESIDENT: Thank you.

Senator Rath.

SENATOR RATH: Thank you, Madam chairman.

Senator Volker, I believe, at the beginning of the debate framed the issue when he said that he has done his best to make our streets safer, that he has done his best to deliver a bill which will save lives, and he asked a question when he had seen the young girl who had been brutally murdered, "Would a death penalty have made a difference to the perpetrator? Would the little girl be alive today?"

When I came down this morning - I had a very early flight. As I was reading the Buffalo News, I happened to see on the front page that a gentleman who was always part of the debate in years gone by -- and it's former Governor Cuomo -- spoke out against the death penalty, and let me say what the Buffalo News

quoted him as saying that the law makers will succumb to a tendency we have to be swept away with the current mood of the people even if it's wrong. Quote, "It's politically popular. So are a lot of things politically popular that are wrong."

I think the question then is begged, if it's politically popular, is it necessarily wrong? What about other issues that we would have to consider now being politically popular, are they always going to be wrong just because they are politically popular? I don't think so. I think all of us would recognize how specious that kind of an argument would be.

I listened to the debate last year. I listened to the debate last week. I listened to the debate today, and I think everything has been said. Maybe there will be a few more things that will be said as we wind this on down. It's not an easy vote for anyone. It's not a casual vote for anyone. But in the course of human events that have been brought forward today and will happen as this

item passes, I think we need to look back to the goal, and I think, again, Senator Volker set out the goal.

All of us in so much of everything that we do here are trying to make our world a better place to live, a better place for our children to live, a better place for future generations, and that's a road we travel down together. But are we traveling down a straight road? I don't think so, and I think that's so much of what I heard all of you say today. That road takes a little shift to the left, a little shift to the right, a little to the left, a little to the right, but it is moving forward all the time, but it is not a straight road; and, today, that road is shifting a little bit to the right. It shifted a little to the left in 1965, if you will, if you want to take a conservative and/or liberal brush to it but we aren't moving forward.

And there are enough people today who believe that what they're doing is right, and a vote will take place and a death penalty

will be put in place, but let us remember that as we move down that road, it's a road to a success, hopefully a road to a goal that we believe in, and that road is presently under construction and it's not going to be finished with this bill or most of the other things that we pass; and as our time in the Legislature passes, the road will continue on, and hopefully we will make some progress. Whether we like the way we're making it or don't like the way we're making it, hopefully it will be progress.

THE PRESIDENT: Thank you.

Senator -- she's not here. Pass her by.

Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President. It's been a long day. I will try not to extend the day too much.

First, I would like to compliment Senator Volker on the crafting of this legislation. I think all of the concerns within reason raised over the course of the last few days and weeks in preparation have been

addressed. I do believe that with his whole heart he believes that what he has done is correct, and I respect that and, in fact, I admire his tenacity and admire his belief that this is the correct thing to do. I respect that and I hope that he respects the fact that I believe what I believe and for all of the reasons that make Al Waldon who he is.

I would also like to commend the Majority Leader for having received a copy of the bill timely at my home over the weekend so that we would not have the agita and consternation as previously experienced regarding absence of due notice on this issue.

Those of us who are somewhat Biblically-oriented Christians can look in Exodus and see that Moses when he came down from the mountain received a mandate -- not a mandate, but a directive from God, quote, "You must not murder", close quote, and that's a strong admonition, and I'm sure that it's present in our similar treatises, the Koran or the Torah; and so those of us who look to our

past history as a people are given guidance that we should not do what we're doing here today.

We're taking the road that is less traveled; and in taking this road, which I call the road of retribution, the via of vendetta, the rue of revenge, the boulevard of base instincts, we are separating ourselves from nations which do not act in a similar fashion; and for the record, let me tell you that we are separating ourselves from Australia, Austria, Denmark, Norway, Germany, Switzerland, Ireland, Israel, Brazil, New Zealand, France, Spain, Sweden, Italy, Netherlands, Finland, Portugal, Iceland and the United Kingdom. We have encouraged other countries to extend human rights to all of their people and many have.

The nations that gave rise to Hitler, Franco, Mussolini; Pol Pot, Cambodia; and Ceausescu, Romania, have all abolished cap ital punishment. Let me remind that Israel is under constant continuous terrorist threats and has been since its birth as a nation, and it has suffered the tragic deaths of literally

thousands of innocent people in a most brutal fashion, and yet Israel has no capital punishment.

But with what we do today in this chamber, we are now in the company of and will be forever associated with Iraq, China, Libya, Vietnam, Syria, Cuba, and the Commonwealth of Independent States formerly the USSR.

What legacy is this, this death penalty? What will our children -- what will, in fact, our children's children say about our failure with this act, this action, this superceding of the Almighty who said, "Vengeance is mine." What value are promises made? What value are political promises made which result in such barbaric action in the name of the people of the State of New York?

And when it comes to the poor especially those of color, this legislation is an even greater tragedy. Let me give you some examples.

The race of the defendants recently executed in this nation are as

follows: 55 percent were white, 143. 38 percent were black, 99. 6 percent were Hispanic, 15. Less than one percent were native Americans, only 1.

On death row as we speak, 49 percent of those on death row are white, 1,446. 40 percent of those on death row are black, 1,180. 7 percent are Hispanic, 204; and the others comprise 4 percent or 117.

Yet black folk, African-Americans, Caribbean-Americans, constitute but 14 percent of the population. January 23, 1995, marked the first instance in which a white person in this nation was executed for killing a black since the death penalty was reinstituted in 1976.

What I'm really driving at is, though Senator Volker has carefully crafted this legislation and though there were promises made, I called them the punitive promises of Governor Pataki, that he would deliver the grim reaper of death and this grim reaper has honed his scythe to an irreversible edge -- eternity; that even

though these promises were made and this grim reaper will forever guard the door of this chamber, it is going to be most negative and most disparately impact those who have been most disparately impacted in this nation from time immemorial -- the poor, the blacks, the Latinos and other people of color.

So even if I had an inclination to recognize the intelligence in terms of crafting of this legislation, because it took an intelligent mind to bring it along for so many years; even if I wanted to say, Gee whiz, the political process had to be refined -- he had to stroke a lot of people; he had to make sure that everyone fully understood what he was putting together, meaning Senator Volker, because this doesn't just happen, even though it took so many years, happenstance; even though I might recognize that somehow the will of some of the people of the State of New York said, "We want to be barbaric, we want the death penalty," I could not vote for it and will not vote for it because I do not believe that we as a people

have the right to supercede the Almighty, and I do believe in my heart of hearts that it will always and forever more disparately impact most of the people who look just like me and the taint of death will reek in this place for a long, long time.

Thank you, Madam President.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Madam President. I want to join my colleagues in recognizing the long hours of work and commitment of a dear colleague that we respect and so very much -- Senator Volker. He really has shown tenacity and conviction in an issue that he believes very strongly in. So, therefore, for the past seventeen years that I have been in this chamber, I have consistently also -- have shown strong commitment to the opposite view regarding this issue.

And pertaining to the bill that we are voting on today, I have one little question. I have been told by lawyers, I am not a lawyer, that often times the criminal mind

develops a tremendous sophistication -- a tremendous sophistication concerning the in's and out's of legislation, anything that has to do with the criminal law. So since the options that are presented on this bill stipulate -- and I don't -- want my clear colleague, Senator Volker, to correct me. If I understand correctly, the options are that the jury will be instructed and will be deciding on whether to unanimously decide on imposing the death penalty or unanimously deciding to impose life without parole.

So my question is could it possibly be, then, that a lawyer who is defending a person who committed a heinous crime will, say, advise the person by saying, Look, don't risk it to go into a trial. Just declare yourself guilty and at least you will be alive with a sentence of 20 or 25 years to life?

If that scenario occurs, then the main motive that Senator Volker has to impose the death penalty in terms of saving lives would not -- wouldn't be occurring because most of the

people, the hardened criminals, the ones that commit those crimes, will be opting for declaring themselves guilty.

So, Madam President, I would like Senator Volker to answer a question.

THE PRESIDENT: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

SENATOR MENDEZ: I was just saying that the options that are offered in your bill, one is that the person would declare him or herself guilty. In doing so that person would be he is escaping the death penalty.

SENATOR VOLKER: True.

SENATOR MENDEZ: Is that the case?

SENATOR VOLKER: In the bill, Senator, a person can not plead guilty to the death penalty, you're right. But the person could plead guilty to life without parole, or I suppose the person would try to -- more likely to plead guilty to 20 to 25 years to life, that's true.

SENATOR MENDEZ: So if that happens, then, many terrible criminals would be -- because they become so sophisticated about Criminal Law, isn't it likely that they would be declaring themselves guilty of the crime that they are charged with? So, therefore, we would not be executing that many people.

SENATOR VOLKER: Senator, there's one small problem with that. First of all, you can not pled guilty to the death penalty; but if you are going to plead guilty to anything else, you've got to get the consent of the D.A. The D.A. does not have to accept your plea of guilty to 20-25 years to life or to life without parole. He doesn't have to accept it. He can move on, but the person under the law can not plead guilty to the death penalty. But other than that, you have to have the consent of the D.A.

SENATOR MENDEZ: Well, Senator, I'm not saying that the person will plead guilty to the death penalty. I'm saying that if a person pleads guilty to the crime that he or she

committed.

SENATOR VOLKER: Yes, I'm saying he can't unless the D.A. consents.

SENATOR MENDEZ: Oh, so it needs the approval of the D.A.?

SENATOR VOLKER: It needs the approval of the D.A., yes.

SENATOR MENDEZ: Oh, I see. I see. I see. Thank you.

SENATOR VOLKER: You're welcome.

SENATOR MENDEZ: Thank you.

So we all know, Madam President, that anything that I might say here or anything that any one of us will say here will not change an iota the conviction that for such a long period of time many of my colleagues have concerning the need to impose the death penalty to provide greater safety in our communities; and I, for one, knowing that the people out there are clamoring for the death penalty in the belief -- in their frustration -- rather, in their frustration that it would be a panacea and therefore, the frustration about the criminal

justice system that has been a mess, having the full conviction that -- the full conviction that we do have, in fact, a criminal justice system with double standards, I think it's risking too much imposing the death penalty because built in within the system is the horrendous reality that those who have money will never feel the impact of the sentences based on the crime that they committed and those that do not have any money will, in fact, feel that full impact of the law.

But above everything else, the reality is that I strongly believe that the death penalty, taking the -- no state, no government, should ever have the power to take lives away from anybody; and since everything that is done by all of us human beings here is very fallible, the only kind of infallibility that I believe in is in the Pope's infallibility. The rest of the things that we do here are very susceptible to error.

So, as usual, I will vote no on the death penalty.

Thank you.

THE PRESIDENT: Senator Espada.

SENATOR ESPADA: Thank you, Madam President. If fear and the reality of crime needed intelligent, courageous and workable solutions and if they were to be found in this bill, then I would vote for it. But this bill, instead, provides the protocols of death. We have been down that road before.

This bill not only tinkers with the machinery of death but, in fact, creates it; and we're ready now to feed this evil impulse that many of my colleagues have spoken to.

But we're also putting out this hoax that Senator Galiber spoke to, that many others spoke to; and, in fact, that's been reported throughout the papers who are continually trying to tell us that the crime rate is going down. "Murders and robberies take dramatic dive," says the New York Post.

Senator Gold did an excellent job sharing some other information from the conservative think tanks and the conservative

literature even backs this up.

Local law enforcement people, the people we turn this over to, four out of the five district attorneys in the City of New York have told us they can not trust this new law to fight crime, that it will not remove the taint of racism, that innocent people will die; and the fifth one in Staten Island says that a couple of these cases will devastate his budget.

That is the reality of the impact that we know so far, and there's much that we can't measure today that future generations will measure, all of it mostly bad, because all of it feeds into this new death industry where all new jobs as described last week, executioners, strap down specialists, will be created. Our law enforcement officials tell us that not only will this drain them of their budgets and the initiatives that have led to these kinds of results that have been reported but that it also will thwart and take away from the efforts that deal with rape, the efforts that deal with

juvenile delinquency prevention, and all of it comes back to our obsession and our zeal with the death penalty.

You know, Senator Galiber did an excellent job of talking about this eye for an eye kind of mentality, and I have heard Senator Marchi do an excellent job in the couple of years that I have been here on this whole immorality that's endemic and inherent in this kind of approach, but this eye for an eye kind of mentalitiy will some day result in people getting up in these chambers and talk about maybe proposing raping the rapist for having raped, abusing the children of pedophiles for their crimes, torching the arsonist. Why not? It's all in keeping with our visit and our head plunged into the moral abyss.

You know, the Governor, despite the admonitions of Senator Saland, will celebrate this tonight and many others will celebrate and sign onto this death penalty today or tomorrow, and the supporters of death will say, "Hey, we've had our loan deferred, loan

delayed, dreams come true," but I say that what we've really done is revisited a nightmare that I thought we buried in 1963 and that we outlawed in the mid-'70s, and we will pay a price for this.

You know, the anti-death, the pro-justice, the anti-violence groups out there, need not despair. We have a court system and we have a Constitution in this state, and that will not come to an end this evening, and we will visit this issue in our court systems, and we will also be everywhere and anywhere where the capital punishment will rear its ugly and vengeful, hateful face. The moral fortitude, the moral authority that led a couple of generations ago to outlast and overcome the old death penalty bill, that same sort of dedication will be reinforced and it too will outlive this one.

My colleague, Senator Jones, issued an invitation. I just want to make it a little clearer or at least put it in my own words: To all those forces that have made this

-- this a success today, your dreams have come true. You have summoned all of your forces, all of your energies, all of your courage, and this is your result.

The invitation is very simple. Can we extrapolate with that sort of passion, with that sort of vigor and visit some of the issues that she outlined -- the kind of hopelessness, the lack of employment and opportunity, teenage pregnancy, all of those things that have been wrapped up into this so-called welfare reform. But we can't do that, because the first thing that Senator Holland and many others will say, it's fraud and abuse. It's mistakes with that kind of approach, and so when we talk about the fact that some innocent people may die as a result of this approach, we say, "Well, that's okay. I mean, that will happen", but we can't take the same kind of approach, can't have the same kind of value system with respect to welfare reform, with respect to ending poverty and hopelessness because just a few of those out there will take

advantage and steal from the system. It is a moral inconsistency, the kind of contradiction that will have us still fighting after the day is done for real solutions to violence in our society.

Thank you so much, Madam President.

THE PRESIDENT: You're welcome.

Senator Bruno. Senator Bruno, did you ask to be recognized?

SENATOR BRUNO: Madam President, we have been -- at 7:30 we will have been talking about this and debating this bill for very, very close to four hours. There is still a long list of speakers at the desk. We asked at the opening of debate that people just be mindful of how many would like to talk on this issue, and some of you have and most of you haven't. I would just ask those remaining to speak, just recognize the fact that we would like to aim at stopping this discussion and getting to a vote some time in the neighborhood of 7:30.

So let's see how we go, Madam President.

THE PRESIDENT: Senator Solomon.

SENATOR SOLOMON: Thank you, Madam President.

Senator Bruno, I had this hour and a half speech ready, I don't know what - I'm going to try and be brief.

I was first elected in February of '78, and I think I voted for the death penalty one year three times; otherwise, generally, it's probably been an average of over 30 times now that I voted for this bill, 34 times. However, this is a different occasion. (a) The bill is quite different from the ones we initially had, and I really wish there wasn't the need to even be dealing with this legislation today. However, there is a need.

In my own personal beliefs, I have always believed in representative government and representative democracy, and I think the operative words are "representative", and there's a perceived fear out there among the

public. The public thinks this bill is going to result in the reduction of crime. It may or may not happen. However, I think the highest courts in this land have certainly gone forward and said, "Yes, the death penalty can pass legal muster; it can be instituted in the various states in this land."

Now, I plan to vote for that bill again this evening. However, I really want to carry a warning to the members of this house and to the citizens of this state. I think we have to be careful, and I think the ones we have to also be careful of are the prosecutors who take an oath to seek justice but in many instances only seek press, and that's why I'm glad that we've put some of the changes in these -- in this bill, and I just hope that prosecutors are mindful of their oath of office and not of the glare of television lights and newspaper reporters, because we know and we've all seen instances where prosecutors can use their overwhelming resources to take advantage of a defendant and, in fact, it's the very cases that

upset prosecutors where the defendants can muster resources to match the prosecutors that they have problems with.

And for this bill to work, we in the Legislature and the citizens of this state have to make sure that it's not abused, not abused by individuals who, for whatever their reasons, seek to take advantage of this severe penalty, because nothing can be more severe than death, and take -- to use this penalty for their own political advantages. It has to be done with justice, and they have to think what they're going to do.

I hate to see the day where the prosecutors try and protect themselves with the grand jury and hide behind that grand jury as they do in many instances. We have to be vigilant in this house to make sure that those capital defender funds stay there to make sure that this isn't abused by people, the one group that has the power to abuse this law; and there's only one group in this state, and I vote for this bill because I think we can have this

-- as I said, the United States Supreme Court has said that you can have this penalty instituted in this country in certain instances. I just hope that in the institutes -- instances where it's called for, that it's applied fairly where people are really seeking justice, not press.

Thank you.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, certainly I believe that Senator LaValle struck a common chord in imputing some of the qualities that he exemplifies to Senator Volker, and I don't think I've ever differed with you on any issue except this one, but you certainly have a tremendous -- you're of tremendous moral stature. I remember your father, I co-sponsored many bills with him and it's a continuity that has graced and enhanced the workings of this chamber.

Nevertheless, that does not relieve us of the responsibility of making a very careful analysis of what we're doing. We

ought to be putting this whole issue under a jeweler's eye, and to some extent, this has been done. There are redemptive aspects to the bill, the question of proper and informed and qualified representation for a -- for defendants certainly received a powerful lift in some of the provisions that are embodied in the legislation that has been submitted to us.

I won't go back into some of the historical review except a very brief reference to Charles Dickens who interviewed 287 people who were about to be executed in crowded squares, and all but three had witnessed prior executions. If that didn't tell me that a morbid propensity was not triggered by the spectacle now sanitized with -- with out-of-the-way lethal injection, it's still - it still is operative.

I would remind you that since 1977, when we -- when we started -- we commenced the executions, the first execution was in 1977. California at that time introduced the death penalty. They have 138 -- they have 403

people on death row, but they have executed two people during all those years.

I cite Colorado, Connecticut, Kansas, Kentucky, Montana, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, another 70 million with 30 million in California. You've had two executions in California and all those other states have not executed a single individual. There must be some realization that we are dealing with a very, very regressive, in terms of human respect, penal system. All of these states coming in zero, almost 100 million people, yet we've had 352,000 homicides since then. Are there better ways? Yes, there are better ways.

Robert Morgenthau, who has been quoted last time and this time, stated "To deter crime, punishment must be prompt and certain. In 1975, when I became district attorney, there were 648 homicides." We want some statistics. I'm going to give you some, and from Manhattan. "In 1994, there were 330." He cut it in half.

The number has been virtually cut in half without executions, proof to me that they are not needed to continue that trend.

I won't be repetitive on arguments, but mention was made a little earlier about the Eichmann execution in Israel and the action taken at that time. Adolph Eichmann -- I believe that was his first name -- personified -- personified the shuttling of millions of people in an organized fashion and feeding them into the charnel houses of Europe where they were destroyed by acid, by gas, by the most vial systems imaginable, and that was an act to kill -- kill in a physical way -- the greatest - the greatest series of crimes that this planet has ever known.

But what does Israel do today, and what has Israel been doing since the founding of the Republic? Israel does not have a death penalty. Mind you, when you read that five people in Israel were slain by fanatics, you've got to multiply that by a factor of over 80. It's as if we had 400 people wiped out by

fanatics, and Israel does not apply the death penalty. Don't you think that, if it was a matter of survival, that they would have resorted to that? We had over 20 in Israel that were slain recently. That would be almost 2,000 homicides in this country if you applied the rationale that -- of the experience that was - that took place in the state of Israel.

What did I see in Israel? I saw the Hadassah Hospital that one day a week, in the waiting room, there were many Arabs that were waiting for treatment, and they treated them, and I asked them, I said, "Might they come back and perhaps cause some problems", and they said, "No. We feel that this is an investment in humanity and we should continue it." This is at the same time that they were experiencing living in a fortress state to preserve their life. Going into a supermarket, you were frisked because of the fear that -- what might happen, yet they did have a face of compassion in the face of this, and they continued after the Eichmann -- after the Eichmann example.

So when we -- when we show our face, this is the state speaking. These are the people. We don't want to mime the killers. We want to show a face of respect. Yes, society has to defend itself, but it has to do it in a way that Israel, in its wisdom, has found to be highly beneficial -- highly beneficial because when Sadat sealed his pact with Begin, he went to Cairo and there were a million people there to -- to praise these two people for having brought peace, so that 3- or 4- -- 3.5 million Israelites would not be able to survive in a city surrounded by 60- or 70 million people, not because of their brute strength, but there's a great deal more going for them, and this is the great deal more that we ought to be having for ourselves, and this is the great deal more that is functioning for most of the nations in the western hemisphere, in the so-called West, and in Europe. These are the functions and this is the response that we ought to be making if we scramble to high ground and solicit and elicit a greater respect for human life.

I would hope, Madam President, that -- I know Gus Bliven was here many years ago when he saw us -- when we enacted the - when we abolished the death penalty. My prediction is that -- and there will be many of you who will be here to see it, I think -- when we will undo what is certainly on the horizon at this moment, but I would hope -- none of you have voted yet. I don't want to give up on you yet. I would hope with all respect to the concerns that are felt here and so sincerely expressed in civilized terms, that you vote this measure down. We don't need it. Violence begets violence, and I don't think we ought to be doing -- in that business.

THE PRESIDENT: Thank you.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I'll only take a minute due to the hour.

I, like everyone else, believe that Senator Volker is an honorable man, and I think I heard something else when Senator LaValle was talking about the background on

Senator Volker's father, and I have a feeling that Senator Volker has been sticking with this issue, not only for himself, but also as a mission which he is carrying on for his father who also deeply believed this. At least that's what I thought I heard, but I do disagree when he says that this will provide safety on the streets. I can only say that my fears would be of muggings, of rapes.

This bill does nothing. This death penalty will not begin to impact on -- on the fears that many ordinary citizens, men and women, have when they walk in some areas of our state. So I don't believe it makes us feel any safer. It certainly doesn't make me feel any safer, and I also believe that it doesn't save lives.

We have seen many prosecutors and many D.A.s come forth saying that they support -- we have heard this this afternoon and this evening -- that they support the death penalty, but almost none of them will say that it is a deterrent. They don't know if it's a

deterrent. They don't believe it's a deterrent even though they do support the measure. I personally feel it won't change a thing and that we might be executing an innocent person.

I do not understand why we need this. There is no other industrialized nation in the western world that has this penalty. I don't understand why it's necessary for the United States to be so much more vicious and violent than other nations in a similar position. Furthermore, almost all religious leaders in our state have approached us and asked us not to adopt this measure.

My question is, in a few years when we have adopted this and we do have a death penalty in New York State and we see two, three years from now that really nothing has been accomplished, what at that point will we do to make our streets safer, to allay the fears of our residents, and what will we do to decrease crime at that point, because this will no longer be the panacea. It will have been shown to be of little use -- probably, in my opinion, of no

use -- and then what do we do? I hope we think about attacking some of the major issues that cause crime in our society at that point as we are not doing it now.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

This is an historic occasion for many reasons, and I too want to congratulate and thank Senator Volker for his unflagging leadership on this issue. You have never lost your composure or your patience through the 10 years that I have been here; this makes 11 which I have had the opportunity to vote on this bill and several which I have been a co-sponsor, and I thank you for both of those examples of leadership; and I would also like to thank Senator Bruno for having the courage to take an appropriate stand of leadership in this house that will show that we are committed to justice in this chamber in the form of sponsorship of important measures.

Even if the other house is

sometimes unfair or does not allow co-sponsorship to members of the minority party, I'm proud that the leader of this house has decided to make sure that those of us on the Minority side of the aisle who had previously been sponsors will continue to be sponsors on this bill today. Thank you, Senator Bruno, for your leadership by example.

Taking the high road is not going to hurt us in this Senate, and I believe that there are people around the state who are watching much more than the debate on this bill. They are watching our conduct; they are watching our manners; they are watching our civility, and it's important as we pass this bill, to let people know that our principal concern is justice. It is the administration of justice for which we seek the death penalty, for those situations in which there is no other form of justice appropriate.

I have made this speech before. I will not belabor the issue again of Donna Payant, the rookie prison guard who was killed

by Lemuel Smith, a murderer serving two life sentences for murder. He had also been convicted -- he had also been arrested, indicted but not tried for two additional murders and was serving a third sentence for a rape/kidnapping.

Donna Payant would be alive today had the death penalty been in effect when Lemuel Smith was originally sentenced and convicted for the original murders; the murders that he was serving at the time that he killed in a most horrendous way, in a hideous fashion, a young woman with three small children who was doing her job as a correction officer at Green Haven Correctional Facility.

We're sending today a message to the public who felt that their wishes on this matter had been thwarted year after year, that we hear their desire to reinstate the death penalty in this state. We're sending a warning to those people who commit the crime of premeditated murder, that there will be punishment in a way that there has not been punishment for many years in New York State, and

we're sending a message to citizens and law enforcement officers who have been at risk because their rights have been secondary to the rights of the murderers themselves many times in this state.

Finally, we send a message to the families of the victims like the family of Donna Payant, for whom there was no justice, that their pain has been recognized by this state, that we acknowledge the need to do what we can to see that there will be justice in the future.

I thank my colleagues. It's with a heavy heart that we have to introduce and pass a measure of this sort for any reason because it is a symbol of the deterioration of some of the fabric of our society that the issue of murder is out there at all, that requires us addressing it in a punitive manner, but we must -- we have done it as fairly and carefully as we can, and we should go forward with the passage of this bill.

I vote aye.

THE PRESIDENT: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Madam President. I will be brief.

Senator Volker and I have a little bit of history going on here. Both our fathers were involved with this legislation. As a matter of fact, my dad was the chairman of the Codes Committee when a slightly younger Assemblyman Volker, a member of the committee, got the death penalty bill, and I was on the phone with my father earlier today and he's very proud of you, Senator Volker, and so am I.

Let's set the record straight. Capital punishment is a deterrent, the people know it and, as the Senator before me just said, it is justice. It is just that those who kill and commit the worst types of crimes in society are put to death.

My conscience is clear and there are those who would argue that -- all of the religions talk against capital punishment, and let's set the record straight here, at least for me as a Roman Catholic.

"Preserving the common good of

society requires rendering the agressor unable to inflict harm. For this reason, the traditional teachings of the church have acknowledged as well founded the right and duty of legitimate public authority to punish malefactors by means of penalties commensurate with the gravity of the crime, not excluding in cases of extreme gravity, the death penalty. For analogous reasons, those holding authority have the right to repel by armed force, aggressors against a community in their charge." Pope John II in the Magisterium as explained in the Catechism of the Catholic church, page 546, Canon 2266.

I have absolutely no problem with my vote in the affirmative on capital punishment. My conscience is clear, and after many, many years, I think it's about time that the voters and the residents of the state of New York had their will done and their will is for the capital punishment to be put back into the law books.

I commend the Governor, and I

commend Senator Volker.

THE PRESIDENT: Thank you.

Senator Markowitz.

SENATOR MARKOWITZ: Thank you very much, Madam President.

It is with a great amount of grief that we have to once again revisit this and, as Caesar Trunzo would say, in the past for our many years that most issues are not for real, this evening it is for real.

I've heard, as I have heard in the past, some very valid, meritorious arguments for those that believe in capital punishment and those that are opposed. In fact, I don't believe there's any of us here this evening that really know with 100 percent certainty that our positions are, indeed, the correct solution. Not one of us here can say that with 1,000 percent.

I know all the arguments certainly against this bill and, yet, when I read about Joanne Byrne -- I'm sorry, Denise Raymond who was shackled with three sets of

handcuffs, blind folded and gagged with a sock that stifled her screams, then she was shot twice in the back of the head, and here in the community that I serve, they created a wall for the young men that have been shot and killed. Richard Green, head of the Crown Heights Youth Collective, he's certainly one of the most charismatic community leaders in this city and state. He said it's young men like them who make up most of the names on the wall, they're between 16 and 25, some in gangs and some in the drug business, others just trapped in neighborhoods that consume them. If the walls were reserved for spotless souls, most of their space would be blank. Basically, they have been killed because someone wanted their sneakers or their shirts or coats.

Lost cabby riding in part of the Bronx -- I'm sorry, in East New York, came out and asked for directions, three teenagers approached the car and killed him.

Mr. Nesbitt -- Mr. Nesbitt was convicted of the murder of an innocent Bay Ridge

resident, Mr. Winslow, a teacher, a beloved teacher. The murderer just wanted his bicycle. Mr. Winslow, I guess, didn't turn it over fast enough. Murdered!

An infant daughter survives sidewalk attack, but I'm afraid her mother was killed.

Claudia Diaz Ruanova, the murderer took refuge behind the mother of his daughter to protect himself from the gunfire from some druggies across the street. Dead!

Beloved businessman slain -- this is all, by the way, within the last year - suspect tackled by two men in the street, 70 year-old jewelry merchant, Greenwich Village. Passerby -- engaged a passerby, his throat was cut with a steak knife. Dead!

Three young men charged with the killing of a Korean minister in Flushing Queens. Killed, dead!

Bloodbath -- the woman played dead, but the five others that were with her were all butchered. She lived even though her

throat was cut because she faked being killed.

And a retiree, a woman 88 years old, Chaquita -- Chaquita Morris in Manhattan, known in the neighborhood as "Grandma", a druggie murdered her.

Here's what I'm trying to say, my fellow colleagues, listen. This is the most difficult vote for a lot of us here.

I want to go past the issue, Senator Bruno, because I believe, and I know that this bill, as best human beings can construct it, even though not all of us are sure, Senator Volker, this bill will pass, and it will pass the Assembly, and I know that the Governor will approve it, but I want to go beyond it and I want to raise some questions, Senator Bruno, and that is looking at tomorrow, rather than looking at today. I hope that you and Governor Pataki and a lot of my colleagues, especially among the Republican Party, understand that when people are not part of the game, they don't play by the same rules that you and I do. If they're not part of the game, they

don't play by the same rules.

If we continue to allow the movie industry, for instance, to continue to glorify murder and death, is it any wonder that some of our younger people who are being brought up without solid parental direction and discipline, that they begin to emulate what they believe is the norm in society? It doesn't surprise me. And so we have to make sure that the movie industry and the television industry act more responsibly, much more responsibly, in ending the glorification of crime.

Secondly, the gun manufacturers. Any 19-year-old in my district in Brooklyn for 50 bucks can buy a gun. Every single one of them could buy a gun, and they believe that guns make them all sorts of macho, all sorts of macho and manliness by having a gun, by carrying a piece, and you know as well as I do, the 19-year-olds have not -- do not have the discipline yet, the wherewithal to know the difference of resolving complaints peacefully and amicably rather than taking a gun out, and

so the availability of guns also certainly drives up our crime rate.

Senator Rath, I enjoyed your comments, because I think you're right on in terms of your sensitivity on this issue. Most of us here are not very happy campers this evening about this issue but, Senator Bruno, I would hope that you also understand that, if we take away programs such as education, if we take away monies from public schools, if we take away decent food programs, if we take away decent medical care, if we take away all the programs that the Governor has proposed in this budget, God forbid, if the Legislature approves the budget as we have seen here in Albany and as we're watching in horror in Washington, if that happens, Senator Bruno and my dear colleagues, I don't care if we have the death penalty or not, there can be no possible reduction in violent crime if we don't take away the reasons why crime occur.

People that are happy generally don't murder. That's true. People that are

happy with their life and their station in life don't murder. People that have been given solid education and see a hope for the future, for livelihoods for themselves and their future families, generally don't murder.

And so, while tonight I vote for this death penalty bill because I believe in life -- I believe in life, I believe that the society has a right -- a right to say to all that the most dreadful crime against other people is to take that life away, and be warned that, if you do that to someone in society, that that life of yours can be taken away. How else do we express a value for human life?

Over and over again, every one of these young people that have committed these murders, every one of the lives they've taken, it's a total disregard for human life. Whether they're black folks who have murdered black folks or white folks that have murdered black folks or whites on whites and blacks on blacks, which is the usual number, to me, as I said last week, all life is equal. White life is worth no

more than black life and black life is worth no less than white life. We are equal to the greatest degree in this society.

Let's move forward -- let's move forward, Senator Bruno, and I know you're here and you're a strong leader and you're raring to go and make your mark. The way you can make your mark is by sensitivity and caring and creating the kind of programs that give people in our society hope for living. So have them have a value for life, and I'm convinced that, if government programs can be enhanced especially for the populations in our society, great is the need, and I think that in the near future, death penalty, all of this will be third and fourth on the list. The number of jail spaces we'll need, the number of judges and all the billions of dollars that we spend on criminal justice in prisons, all of that will become secondary to helping people make something of themselves, to become the success that we all want for all of us in New York State.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, can we have the last section read on this bill so that Senator Libous might vote?

THE PRESIDENT: Yes. Read the last section, please.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Senator Libous, how do you vote?

SENATOR LIBOUS: I vote aye.

THE PRESIDENT: Withdraw the roll call, please. I'd like to recognize one more speaker, Senator Onorato.

SENATOR ONORATO: Thank you, Madam President.

I rise as one of the sponsors of this bill. I have been a co-sponsor of the bill for the past 12 years, and I want to thank

Senator Bruno for allowing me to go back on again this year. I also want to thank him for opening up the floor to debate beyond the normal two-hour period today, giving everyone an equal opportunity to speak on the bill. We've heard both sides of the aisle and both sides of our commitments pro and con on the issue.

I certainly believe that the death penalty will certainly make a difference. Whether it's a deterrent or not -- I think Marty Markowitz stated my position very eloquently, that the taking of a human life is the ultimate in crime on this earth, and likewise, deserves to be meted the same type of punishment.

Some people don't believe in the eye for an eye or tooth for a tooth, but in this particular case, I certainly do believe that it makes sense. Some say that it doesn't make a deterrent, but we can apply the same rule of reasoning to all of the laws that we have on the books today regardless of the crime that's being committed, whether it's petty crime, grand larceny or felony. We have recidivism at the

rate of about 60 or 70 percent, so it really means that the crime that we are punishing is not a deterrent, but does that mean that we should no longer put people in prison for committing the crime?

And I think that the crime -- the punishment should fit the crime, and in this particular case, death certainly deserves to be met with death. We've got to get a loud and clear message out to those people who may be contemplating it, that New York State is now, while it's guaranteeing more protection than any other state around, they're also telling you that, if you do commit one of these particular crimes, it's going to be met swiftly and it's going to cost you your life.

So I'm agreeing with my colleagues today and I'm urging them to go along and give it an aye vote.

THE PRESIDENT: Thank you.

Read the last section, please.

SENATOR PATERSON: Slow roll call.

THE SECRETARY: Section 38. This act shall take effect on the 1st day of September.

THE PRESIDENT: A slow call call, please.

THE SECRETARY: Senator Abate.

SENATOR ABATE: I vote no.

THE SECRETARY: Senator Babbush, excused.

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Connor, no.

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: To explain my vote, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: This is, I guess, a forgone conclusion. I would like, however, as we fallible people create a fallible law, that it will be instituted and executed by fallible people, I would just ask for one minute of silence so that the one thing we all agree on, we perhaps join in a prayer, will never happen, that no one innocent of a crime will be executed under this statute. I would ask for one minute and then I will be voting negative.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Explain my vote.

Madam President, for 19 years, I voted for this death penalty legislation. Society has a right to regulate itself. The people of the state of New York have asked for,

as a matter of fact, spoken very clearly on this subject. They want restoration of the death penalty. Our first duty in this chamber is to be representative, and I choose to represent the people that sent me here.

I think this is a well crafted law. Senator Volker has worked very hard with this to stand the constitutional test and to make sure that anybody that is charged with a - with one of these crimes to make them subject to the death penalty would be adequately represented and treated fairly under the law.

It's a good piece of legislation, and it pleases me to be able to vote for this legislation which I expect will be signed into law very shortly.

I vote aye.

THE PRESIDENT: Continue the roll call.

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

Senator Gold voting in the negative earlier today.

Senator Gonzalez.
SENATOR GONZALEZ: No.
THE SECRETARY: 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: Aye.
THE SECRETARY: Senator Jones.
SENATOR JONES: No.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: Yes.
THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Aye.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

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

Senator Leibell.

SENATOR LEIBELL: Madam President, to explain my vote, please.

THE PRESIDENT: Senator.

SENATOR LEIBELL: I have had the opportunity 12 times previously to participate in debates on this issue and to cast my vote as a sponsor in favor of death penalty legislation.

This is the first time I've had an opportunity in this chamber to listen to the deliberations, to sponsor this legislation and to cast my vote in the affirmative.

I don't think anyone in this chamber or any of our constituents takes lightly the concept of taking another life. It's a tragedy that we have reached that point in society's history where we find it necessary to take such draconian steps. I'm absolutely convinced, though, that the overwhelming number

of people throughout New York State -- and I can certainly feel this way for my own Senate district -- feel most strongly that at this point in time in our history, the death penalty is most critical to our survival as a society.

I compliment Senator Volker and his colleagues in the Assembly who have over the years labored on this legislation. I don't believe any piece of legislation is perfect, and certainly this will not be a complete solution to the most violent acts which occur in our society, but I do feel it is a first strong step forward and delivers a most powerful message.

Similarly, I salute our governor for the strong stand he has taken and for making this such a strong part of his agenda for the future of New York State. I cast my vote in the affirmative.

THE PRESIDENT: Continue the roll call.

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

Senator Levy.

SENATOR LEVY: Aye.

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

Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Madam President, I only rise for one purpose. Earlier a reference had been made to the Catholic -- the most recent Catholic Catechism. I believe the record should also show where there was consent given in extreme gravity, the death penalty - the rest of it goes, "If bloodless means are sufficient to protect public order and the safety of persons, public authority should limit itself to such means because they better correspond to the concrete conditions of the human good and are more in conformity to the dignity of the human person." I just didn't want to have that stand as the -- as the position of the church on the question. It's still a matter of conscience and you're addressing it, I assume, on that basis.

THE PRESIDENT: Senator Marchi, have you voted?

SENATOR MARCHI: No.

THE PRESIDENT: Thank you.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: Madam President, if I can explain my vote.

I have risen recently in regards to this legislation primarily in criticism of the fiscal aspects or lack thereof. I felt that in previous drafts of this legislation we've not given enough attention to the cost of the implementation, the prosecution of the death penalty, to the state, to local municipalities, to our government in general.

I still don't feel we've properly addressed that issue, and from a more philosophical perspective, in my opinion, whether we've addressed that issue or not, I don't feel certainly in times of fiscal restraint, in times when we all agree, Democrats and Republicans, our Governor, Assembly people, Senators, that we need to cut back, that we need to restructure the way in which our government provides service, that we need to cut, that we're going to be allocating the millions of dollars in resources to this legislation.

In my opinion, I think that money could be far better spent, as Senator Markowitz would refer to as allocating our time, our energy and our financial resources to the real solutions that will avert crime in the future, the real solutions that will stop the 10-, 11 and 12-year-old children who I see in the city of Buffalo, and we hear about, and Senator Markowitz talked about, who are giving up on their own lives, who have given up hope, who have lost any sense of dignity or self-worth.

They don't care about killing because they don't care about themselves.

I'm hopeful for the future of this state, for the future of those being affected most by violent crime, our youth, our at-risk youth, that we can work together to find productive solutions that will provide for a more safe society, one that will restore hope in all, but especially in our young.

For all of those reasons, Madam President, I vote no.

THE PRESIDENT: Continue the roll call.

THE SECRETARY: Senator - Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President -- Madam President, I ask for permission to explain my vote.

THE PRESIDENT: Senator.

SENATOR NOZZOLIO: Madam President, my colleagues, I rise in support of this penalty. As chairman of the Senate Crime and Corrections Committee, I have a unique

responsibility of visiting the correctional facilities of our state. Those correctional facilities have housed in them many who have committed one or more murders. Those inmates are now behind bars and are existing in a situation where they have absolutely nothing left to lose.

Every year at Auburn Correctional Facility, the largest maximum security facility of the state, there is at least one or two stabbings perpetrated by an individual who's behind bars, who ostensibly has killed before and is there to kill again. To those who say the death penalty is not a deterrent, I say to you, look at those types of murderers who are existing in our facilities today.

The death penalty is not a panacea; it's not going to end crime, but it will stop that type of repeat murderer, and most importantly, it will send a signal to those who are committing the most heinous of acts, the most violent of crimes, that New York will not be a place where murder will be tolerated.

Madam President, my colleagues, I rise in support of this measure.

THE PRESIDENT: Continue the roll call, please.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan, excused.

Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, to explain my vote. When you hear about the heinous crimes that Senator Nozzolio describes and the ones that we've heard described all day, the first reaction if this had happened to anyone that we knew, the reaction is that you would want to kill the person that did it. I think that's the natural reaction, but in this case, it's not the correct reaction.

We are a society of laws. We are a society of civilization. We are a society of reasonable thinking. We think that the reasonable punishment for those crimes is life without parole, no opportunity to ever live in a free society but, at the same time, an understanding that society knows that we are not going to punish anyone by proliferating the process that created the crime, which is violence. Violence begets itself in those cases, and we feel, as I vote no, that violence is not going to intimidate any future perpetrator.

THE PRESIDENT: Thank you.

Continue the roll call.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

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

Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE PRESIDENT: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Madam President, to explain my vote.

THE PRESIDENT: Senator.

SENATOR SMITH: Several of my colleagues today have referred to a speech which was given by John Cardinal O'Connor on the 4th of February of this year to the Association of the Bar of the City of New York, and I would like to leave you with his last thought in that speech, and his question was about capital punishment.

He said, Whether it is a quick fix capable of lulling us into believing that we have solved problems that we simply refuse to face. Today we are refusing to face the

problems of society, and we are trying to give a quick fix with a death penalty.

I vote no.

THE PRESIDENT: Continue the roll call.

THE SECRETARY: Senator Solomon.

SENATOR SOLOMON: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford. Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE PRESIDENT: Senator Bruno, would you care to explain your vote before Senator Volker?

SENATOR BRUNO: Madam President, yes. Thank you.

We're -- as we close debate on an issue that's as important as this one, I would just like to commend our Governor who was elected by the people of this state to represent them, and this is an important issue on their minds and on his mind, and I would also like to commend Senator Volker for his diligence over all of these years and perseverance, and Speaker Shelly Silver for, in his house, having this on the floor and moving this to become law.

Because we have differences of opinion in this house and in the other house, the fact of the matter is, the majority of the people in this state want a death penalty because they do feel that it delivers the right message to the perpetrators and they, as potential victims, feel comforted and safer that violent felons will get the message that, in

this state, we are going to be concerned about the citizens of this state and protect their interests, and this is a message to all of those that would create violence in this state and bodily injury.

And, Madam President, I do think it's the right message and I consequently vote aye.

THE PRESIDENT: Thank you.

Senator Volker.

SENATOR VOLKER: Madam President, to explain my vote.

Let me just say to my colleagues, first of all, thank you for your kind thoughts. I appreciate it, and I used to try to think over the years as we went through so many of the override votes, tried to think of what it would be like to finally have this issue done. Tonight it's still hard to believe, I guess, that after all these many years that we finally have come to that point, and I said to Vince Graber who was here just a little while ago - and I congratulated him for his work, of course,

in the Assembly, and I said it's still rather hard to believe.

I expect, by the way -- and I probably shouldn't say this. I expect that I will receive a phone call from a former governor before this week is out, because if I know that former governor, he will call me to tell me how he won because the death penalty didn't happen during his watch. And that's true. It didn't happen, and I would have liked to have been able to override, not just for the fact of overriding, but because I believe so strongly in the necessity for restoring the death penalty.

Keep in mind one thing. You can talk all you want about whether the death penalty is a deterrent and all those other things, but something the anti-death penalty people nationwide have had a terrible problem with in New York. Why did the murder rate soar in this state right after death penalty was abolished? Of course, there were some other things that happened, because what happened was we began a trend, and the trend was to blame the

wrong people. We started blaming the victims and we blamed society.

What this death penalty says is that the people who commit these crimes are going to have to answer for their crimes, and I say to you, I happen to believe -- people have asked me, "Will you accept the death of one innocent person?" No. I don't accept the death of any innocent people, whether they're in the streets of this state or whether it's done by the state, and I challenge -- and I have challenged the anti-death penalty people, and I continue to challenge them for the nonsense about the literally reams of people who have been executed in this country; they don't have the evidence to back that stuff up, and I'm tired of it, frankly, and I want to tell you, they don't have any of it; it's in New York.

What we want to do here is to see that a law is passed that says that people have to live up to their actions and, when it comes to murder, this is the only way, in my opinion, to deal with it. Is it the only way we deal

with crime? Of course not, and the Governor is committed. Senator Bruno is committed. We're all committed to moving on from here. I'm certainly committed, and I think we all are. This isn't the end. This is the first step. I think it's a very important step. I think that all of us tonight that have had this debate, I think, realize how serious it is.

And one final note. If the death penalty is not a deterrent and if it really doesn't matter, why are so many people afraid of it? Why are people all throughout this country so afraid of it? The answer is, it is so serious that it does send a message and the message is one that no one can ignore.

THE PRESIDENT: Continue the roll call, please.

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

Senator Wright.

SENATOR WRIGHT: Madam Chairman, to explain my vote.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: As I commence my second term, I recognize fully that no one has come into this chamber without understanding the seriousness of this issue. I don't think any colleague that I have served with in the last three years views this as a quick fix or something that you take lightly in terms of making this decision. I also think anyone who has sought the office of Senate and served in this chamber is very cognizant of the issues and understands fully the matter that's before us.

I'm supportive of this bill because I believe it represents the changing priorities within this state, because the people of this state expect that, number one, we're going to provide added protection for our police officers and for our correction officers, and, number two, we're sending a very clear message that individuals will have to answer and be responsible for their actions particularly when that action is a violent crime taking the life of an innocent victim. The message we are sending is a very clear message, that victims

and their families have the first priority when it comes to rights, not criminals.

As a result, I vote aye.

THE PRESIDENT: The results, please.

THE SECRETARY: Ayes 38, nays 19.

THE PRESIDENT: This death penalty bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, there being no further business -

THE PRESIDENT: Senator Bruno, we do have a few housekeeping items.

SENATOR BRUNO: Would you proceed.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Seward, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause:

That's S.2539.

THE PRESIDENT: The bill will - the bill will be recommitted.

SENATOR FARLEY: On behalf of Senator Levy, Madam President, on page 10, I offer the following amendments to Calendar Number 128, Senate Print 2591, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR FARLEY: Madam President, on behalf of Senator Volker, I move to recommit Senate Print Number 2241, Calendar Number 100, on the order of third reading to the Committee on Rules with instructions to the said committee to strike the enacting clause.

THE PRESIDENT: Recommitted.

Senator Paterson.

SENATOR PATERSON: Madam President, I move that the current bill, Senate Number 2703, be removed from its committee and recommitted, striking the enacting clause.

THE PRESIDENT: Recommitted.

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.

THE PRESIDENT: Without objection, the Senate stands adjourned.

(Whereupon, at 8:12 p.m., the Senate adjourned.)