ALBANY, NEW YORK

March 7, 1995

3:00 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Senators will please find their chairs. Ask the gallery to rise with us and join in the Pledge of Allegiance to the Flag.

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

We're very pleased to have the Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing with us once again.

Father Young.

REVEREND PETER G. YOUNG: Thank you, Senator.

Dear God, we pray articulately today for our dear friend of 23 years who has served in a very dedicated way in this chamber. We are all moved and we gather in prayer to support this special friend from Queens and offer our condolences and our prayers for the loss of his loving wife Johanne. We ask, O God, that all the prayers of the Senators and their staffs and those who love him will give him

strength and courage so that he can bear with the sufferings, and we pray too for the repose of Johanne's soul.

We ask You this now and forever more. Amen.

ACTING PRESIDENT KUHL: Amen.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 6th. The Senate met pursuant to adjournment. The Journal of Sunday, March 5th was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Motions and -- communications and reports of state officers.

Motions and resolutions.

Senator Tully.

SENATOR TULLY: Yes, Mr. President. On behalf of Senator Levy, on page 14, I offer the following amendments to Calendar Number 79, Senate Print Number 384, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I offer up the following resolution and ask that it be read in its entirety and adopted.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution at the desk in its entirety.

THE SECRETARY: Senate Resolution, by Senator Bruno and others, authorizing the Temporary President of the Senate to file the required election allowing certain employees of

the Senate and employees of certain components of the Senate to be considered for the retire ment incentive authorized by the chapter of the laws of 1995 as proposed in Legislative Bills Number S. 2545, Assembly 4305.

RESOLVED that the Temporary President of the Senate is hereby authorized to file the election required by paragraph (f) and subparagraph (i) of paragraph (h) of subdivision (f) of section 1 of the chapter of the laws of 1995 as proposed in legislative Bills Number S. 2545, Assembly 4305, to allow certain employees of the Senate and certain employees of compon ents of the Senate to be considered eligible for the retirement incentive offered by such chapter.

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

(Response of "Aye.")

Opposed nay.

(There was no response. )

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. At this time, I'd like to adopt the Resolution Calendar.

ACTING PRESIDENT KUHL: Question is on the Resolution Calendar at the members' desks. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The Resolution Calendar is adopted.

Senator Volker for a motion.

SENATOR VOLKER: Mr. President, I wish to call up my bill, Senate Print Number 2649, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Volker, Senate 2649, an act to amend the Penal Law, the Criminal Procedure Law and the

Judiciary Law, in regard to the imposition of the death penalty.

SENATOR VOLKER: Mr. President, I now move to reconsider the vote by which this bill was passed and ask the bill be restored to third reading.

ACTING PRESIDENT KUHL: Motion is to reconsider the vote by which the bill passed. All those in favor signify by saying aye. No, I'm sorry. Clerk will call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 33.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, I now move to recommit Senate Number 2649, Calendar Number 106, to the Committee on Rules with instructions to said committee to strike out the enacting clause.

ACTING PRESIDENT KUHL: Bill is recommitted; the enacting clause is stricken.

Senator Skelos, we have a substitution at the desk. Would you like to

take that up now? Secretary will read.

THE SECRETARY: Senator Farley moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 2331 and substitute it for his identical bill Calendar Number 155.

ACTING PRESIDENT KUHL: Substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Could we proceed with the non-controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 57, by Senator Johnson, Senate 575, an act to amend the Penal Law, in relation to the adminis trative provisions relating to issuance of firearms licenses.

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT KUHL: Bill is laid aside.

SENATOR SKELOS: Lay that aside

for the day.

ACTING PRESIDENT KUHL: Lay it aside for the day.

THE SECRETARY: 65, by Senator Kuhl, Senate Print 1475, Agriculture and Markets Law and the Vehicle and Traffic Law, in relation to exempting farm vehicles from the Motor Vehicle Financial Security Act.

SENATOR PATERSON: Lay aside.

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

THE SECRETARY: Calendar Number 68, by Senator Holland, Senate Bill Number 211, authorizing the United States Military to recruit on the campuses of the State University.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 94, by Senator Johnson, Number 571, an act to amend the Tax Law, in relation to procedures for written communications.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 102, by Senator Holland, Senate Bill Number 35, an act to authorize the Salvation Army Eastern Territory School for Officers' Training.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 112, by Senator Holland, Senate 474, an act to amend the Penal Law, in relation to the possession of noxious materials.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 113, by Senator Johnson, Senate 574, an act to amend the Penal Law, in relation to term of licenses to carry a pistol.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay aside.

THE SECRETARY: Calendar 115, by Senator Lack.

SENATOR LACK: Lay aside for the day.

ACTING PRESIDENT KUHL: Lay aside for the day.

THE SECRETARY: 121, by Senator Levy, Senate Bill 372, Vehicle and Traffic Law,

in relation to increasing the penalty for aggravated unlicensed operation.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar 127, by Senator Johnson, Senate 2356, an act to provide for special vehicle identification numbers.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Proceed to the controversial calendar.

ACTING PRESIDENT KUHL: Secretary

will read the controversial calendar.

THE SECRETARY: On page 28, 211, authorize United States Military to recruit on the campuses of the State University of New York.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation has been asked for by Senator Paterson.

SENATOR HOLLAND: Simply, this bill would override Executive Order 28 issued November the 19th, 1993 and allow U. S. Military recruiters to operate on State University campuses.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Would Senator Holland yield for a question?

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Paterson?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator Holland yields.

SENATOR PATERSON: Senator Holland, this particular legislation, as I see it, is not in compliance with Article I, Section 2, of the New York State Constitution, which prohibits the discrimination of anybody in this particular state.

Now, the military right now has an active ban against gay and lesbians from serving in the military. That's the federal standard, but in this case there has to be some compliance by the state to allow this program to be in universities and, since there's a case, Doe V. University of Buffalo, which is similar to this point, we feel that the bill actually on its face is unconstitutional.

I guess you don't feel that way because you wrote the bill, and that's the explanation that I wanted.

SENATOR HOLLAND: No. No, sir, absolutely not.

As a former Marine, and all the money that is spent for education -- I am, yes -- and all the money that is spent for

education in this country and in this state, I just cannot understand how we can not allow a federal agency to recruit for a volunteer service on tax funded university campuses.

That's all it is. It's not discrimination. It's not bias. It's just allowing our federal government to recruit for a volunteer service to protect the citizens of this state and this nation on our university campuses. That's all it is to me, Senator.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you for the answer, Senator Holland. Then I just have this follow-up question. The executive order -

ACTING PRESIDENT KUHL: Senator Holland, do you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator Holland yields.

SENATOR PATERSON: If the executive order of Governor Cuomo is rescinded by Governor Pataki, that really would solve the

problem, and that's the problem we are trying to address. We don't have a problem with the actual recruitment on the campuses itself.

SENATOR HOLLAND: Senator, I'm almost positive, if not positive, that the Governor will rescind this executive order and solve the problem. However, in the meantime, I want to make it the legislative intent that we feel that it is only right and just that the federal military should be able to recruit for volunteer services on our campuses.

I think you're right, I think the Governor will rescind the executive order. However, in the meantime, I would like the people to know that we believe it is only fair that the federal military can recruit on our campuses. Fair and just.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Well, thank you very much, Senator Holland, for the explanation and I'm happy to hear that you believe the Governor will rescind this executive order.

What we are saying is that our Constitution is a precious document in this state. Our federal Constitution is very precious, but we have a history in this country of not always upholding what we write in print. We write some things that sound very nice and then manifest it in conduct that is often very much in opposition to what we are documenting.

Originally, we had Article I, Section 2, clause 3 of our original federal Constitution which was enacted in 1787, that allowed for slavery in this country. We had a further section, Article IV, Section 2, clause 3, which was the provision that allowed for the recovery of runaway slaves, which is still in our Constitution. If you open up the federal Constitution, and we have them right here in this chamber, you'll see it there and -- but in my version, it says in a very scholarly way that that probably doesn't have very much meaning after the passage of the Thirteenth, Fourteenth and Fifteenth Amendments, so hoping that the - that the Legislature in Washington doesn't

repeal those amendments so that I can still stand here, I would suggest that, in our state Constitution our mandate that there not be any discrimination against any individual is so important that I would wish that we would wait until such time as we can guarantee there won't be any discrimination.

And what is it that we are discriminating against people, whoever they are? We're discriminating in a form that we're telling them that they can not serve the United States of America. At times that we have all of the political dissension that we have in this country, we're talking about individuals who are willing to go overseas and fight and risk their lives for this country if possible, and because of their sexual orientation we're telling them that we don't want them.

Well, I don't think that we should have that attitude against anyone, whether it's because of their race, religion, their national origin, their sexual orientation, their sex, their age or any disability, and I'm

saying that I would have to vote against this bill until such time as we can provide, if we're going to be using any state facilities or any campuses as it's said in Doe v. University of Buffalo, that we can provide for an equity system such that all people, whoever they are, can be recruited in service to this country.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes, on the bill.

All of us -- maybe not all of us but most of us come from a long line of immigrants and our families, whether it be our fathers, our mothers, our grandparents, the relatives that preceded that came to America with the notion that it was a land of opportunity for all people regardless of who you are and what you stood for, and whether you were Irish or Italian-American or German or Scottish, people came to America. They risked their lives because America stood for freedom and is the

land that was free of discrimination.

I believe that we as legislators -- and let's put aside the Constitution; let's put aside Article 28; let's put aside case law -- I believe we have a moral obligation to protect the human rights of all people. If this was a law that discriminated against the Irish or African-Americans or women or Jews or anyone else, we would be offended that we would allow programs to be cut off or employers to be allowed in state taxpayer funded programs such as state campuses, that we would sanction discrimination. We would never allow it if it was closer to ourselves.

I have the privilege of representing a community that has probably the largest lesbian and gay community in this state. And who are they? Who are these individuals? They are our brothers and sisters. They are our children; in some cases they're our parents. They're our friends; they're our loved ones, but we should not lose sight that they are taxpayers and that many of these students work long and

hard to pay tuition, and I feel that not only are we turning our backs on individuals, tens of thousands, probably close to millions of people in New York State, but we're also turning our back on a 12-year commitment that we said that we would speak for all people in New York State.

And what are we doing here? Twelve localities -- and let me read some of the localities: Syracuse, Rochester, Ithaca, New York City, Albany, Plattsburgh -- all have civil rights provisions that prohibit discrimination whether it's in housing, employment, public accommodation. So these statutes, these local ordinances, cover 60 percent of the state. Are we saying that, if you happen to live and work and attend a state campus that's in your district that you're protected, but if you move beyond these local jurisdictions the state Legislature is saying you don't have those kinds of protection?

There should be some consistency. There should be some uniformity,

and I think we need to take the high road, and the high road is, no matter who you are and what you stand for that they should have equal protection under the law, and I again want to state and stress in no way should the state be allowed to use taxpayer supported facilities as a vehicle to sanction overt discrimination.

ACTING PRESIDENT KUHL: The Chair recognize Senator DeFrancisco.

SENATOR DeFRANCISCO: Senator Abate just mentioned Syracuse as one of those areas that has an anti-discrimination ordinance, and I happened to be on the City Council at the time and voted for it, and the reason I voted for it was because the legislation basically indicated that you can not discriminate in housing, and you could not discriminate in certain employment areas in the city of Syracuse.

The city of Syracuse does not make policy for the United States government nor does it make the rules and regulations for the United States Military which we all want to

protect us.

Similarly, this bill deals only with the concept that a federal agency, in this case the military, whether or not it can be allowed on campuses to recruit. Once again the state of New York does not make the policy that the federal government does, but we do get protected by the military, and I think it's logical for us to allow military to be on campus so that we can continue the voluntary armed services.

I have stated repeatedly that I am in favor of the so-called "gay rights" legislation that has been proposed in this house, but as a former member of the United States Air Force, as a member of this -- as a citizen of this country that must rely on the military and would much rather have a volunteer service than a selective service as we had in the past, I think it is important that we allow the military which we seek to protect us, to have all opportunity to make sure that the volunteer army works, the volunteer Air Force

works, and so forth, and that we allow recruiters on military bases so that the students can decide whether or not they choose to participate, they choose to enlist.

If they don't want to become a member of a body which they feel discriminates, then that's a choice they have, but the opportunity should be provided to give them that choice.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

I'm very pleased that my colleague, Senator Holland, has brought this bill before the house and I, too, hope that the executive will see fit to rescind the executive order of the previous administration. I think, when we have service men serving around the country and many thousands of them are from New York State, we must send out to these service men and women a very terrible message to think that this same service which they serve in so

willingly and honorably, is not allowed to recruit on State University campuses.

I had the opportunity in the other chamber to hear this type of issue debated. My former colleague over there, John Behan, who had a distinguished career although too short, in the Marine Corps, noted that the military, by its very nature, cannot always be what we as civilians might consider to be fair.

I've worn that hat of the military for many years. I've worn it proudly. I firmly believe that the military has to create certain norms of conduct within the military. It is a unique body. It lives by a different set of rules, and the very nature of its work requires it to.

I would expect that to continue. I would hope it would continue, and I would certainly hope that our recruiters would be allowed to recruit on New York State campuses.

Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Hoblock.

SENATOR HOBLOCK: Thank you, Mr. President.

I'd like to congratulate Senator Holland for bringing this legislation forward. You know, several years ago, I was a member of the other house, the New York State Assembly, and had similar legislation that was brought forth, and I didn't hear a lot of the same arguments that I'm hearing today, but somewhat similar.

I also have had the opportunity and privilege of wearing the uniform of our country and, although I didn't choose to, I did spill blood for this country, and I think as Senator Leibell has mentioned, the military does have to operate under a different set of rules in order to accomplish its mission and perhaps there's many in this house will not agree with those rules, but I have to tell you that if it were not for those rules, many of us may not be in this house having the privilege to debate this piece of legislation today.

And, as I have met with many

veteran groups over the past few weeks as chairman of that committee, and they've tried to impress upon me, like preaching to the choir, the importance that they played in our country's history and what they gave by way of sacrifice and living to a different set of rules and standards that perhaps they didn't want to do either because they might have been subject to the draft or some other involuntary enlistment.

I think we could go on and on and talk about what the military has done for us and what it stands for and, if we happen to disagree with some of their policies, rules and regulations so be it.

Well, I have to tell you I'm sure there's a lot of activity that goes on on our campuses day in and day out, with which I may disagree, but I'm not up on this floor to ban that, to do away with it, because I feel they may be discriminatory, but rather that's something that the university and the students attending that school decide whether they participate.

The campuses that I've been on, I've seen posters and signs and advertisement and I often wonder why they let those folks on when they preach against authority, they preach against the government, and they talk about rebellion, and they talk about taking this on and taking that on and, quite frankly, I feel that's discriminatory; but we allow it to go on because that's part of the education, it's part of the opportunity, that's part of getting a grasp of what's going on in the world, and I think giving a college student the opportunity to explore a career such as the military should be advantageous. We should encourage it. Maybe none will take advantage of it. But why shouldn't they be exposed to what is available?

Or we could put a sign up perhaps and say they're not allowed on campus because... but here's directions to the recruiting station. Maybe we could do that. I don't think there's anything wrong with it. If you think that there's somebody's civil rights are going to be damaged because of this, I think you ought

to go to those in uniform to thank them for giving you the right to express that displeasure now.

With that, I want to thank you, Senator Holland, for putting this legislation forward.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

As usual, you come into this chamber and you figure it's a short day and we're really going to have nothing to talk about and then some of the comments that are made are just so outrageous that we find ourselves with the best intentions to come in here and shut up being drawn into it. You know, this -- I think I told you yesterday, which I'm sure everybody remembers since you took notes, I saw this Sam Shark, whatever Redemption -

SENATOR ABATE: Shawshank.

SENATOR GOLD: -- Shawshank

Redemption, and some of the people I saw walked out of the movie and said, you know, it's the strangest phenomena. How can you watch a movie and you've got these fellows all convicted of murder and you're rooting for them over the guards? Well, when you see the violence that came from the guards, you know, you start to understand it. You say to yourself, There's got to be away to run a prison other than with the kinds of violence that they are portraying from guards.

Now, somebody gets up and says, if you've been in the military, you know there's got to be a set of rules, and I say to myself, boy, I guess when -- when Senator Leibell read A Few Good Men or saw the movie, he was rooting for Jack Nicholson. After all, you know, if you're a Marine and you don't shape up, you go kill them; that's all, Code Red.

There's got to be a set of rules, and I'm tellin' you, I, for one, just don't understand that philosophy. I think it was a proud day when Governor Cuomo came up with

Executive Order 28. Now, people stand up and they say, We can't wait for that day when Governor Pataki will eliminate that. And I'm saying to myself, why would they do that?

And then I remember, oh, yeah, I remember yesterday. Yesterday I remember that Governor Pataki's approval rating is terrible. Now, for a new governor to come in, you figure with a -- with a mandate from the people, you know, it's like a new president, the rates - ratings are already up. Why would they be low?

They're already low, so let's divert attention. People have been running around the Capitol saying, "Wait a minute. We voted for Pataki, and we didn't know this was going to happen, and we didn't know the budget cuts were going to be this, and I know govern ment is too big we've got to cut government down, and we've got to get it under control, but I didn't know my kid wasn't going to be able to go to school."

So I consider all of this as just diverting attention. You know, if we can get

everybody worrying about -- about gays and lesbians and the fact that they may be in the trenches fighting for America, then maybe people will forget about all of the other terrible things.

This is an incredible debate - incredible debate. Senator Holland, I don't see anything wrong with the military trying to get young people to get involved, and I think an awful lot of people have had their lives saved by going into the military and getting them selves straightened out and getting themselves set on careers, and I think that's fine. But when we have a situation where the kind of barrier and wall that's been discussed by people like Senator Abate, you know, exists, and there is something that's offensive to part of society, we can deal with that. We shouldn't have to sweep it under the carpet and raise the flag and push the flag in everybody's face as if we don't understand what military service is all about.

We understand. We understand,

and it's done a lot of good and we need a military service, but there's a problem. So why sweep it under the table? And worse than that, why in a bill like this do we get involved in a situation where everybody has to get on a platform and beat up gays and lesbians when the point of the matter is that, if the order stayed in effect, society would move along very, very smoothly.

It's the -- it's the elimination of something like Executive Order 28 and talking about it that causes the problem, not leaving it in existence. It's the -- it's the gay bashing that goes on within the concept of changing the military that causes the problem because there were gays and lesbians in the military, have been for years, and that has not been the problem.

So the answer is that I apologize for taking my three or four minutes. I tell you I didn't come in to talk about it, but that's what happens all the time. You come in and somebody has to, all of a sudden, find a scape

goat in order to justify or in order to talk down some idea, and we get into these silly kinds of discussions.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I want to thank all of the people, men and women, who serve in the armed forces to protect the rights of American citizens so that we can be standing up and having this discussion.

But for purposes of this discussion, I want to thank the African-American soldiers who fought in World War II who not only gave their lives for this country but were discriminated against and segregated during the same service, so I want to thank them for, number one, putting up with the indignity and, number two, the additional burden of risking one's life for our country.

What I'm saying is that that situation that occurred yesterday is occurring

today when this same kind of talk about the military being an operation that is governed differently than a government, which I understand, but then going on to say that there are certain norms of life style and procedure that have to be carried out in the military. They would have to be carried out for any kind of protection of these soldiers.

Now, it was deemed over 50 years ago that that protection involved segregating people because of the color of their skin, and what we are saying today is that there is no need for any different type of conduct in terms of the administration of the military whether the soldiers be gay or lesbian or whether they be straight or whatever it is that we define the rest of society, and when we look at government resources actually assisting the recruitment, then we are -- then we are talking about taxpayer dollars, the dollars that come from the same individuals who may be not allowed to serve actually financing this process.

Now, there's a way around it. At

the University at Albany and University of Buffalo, what they'll have is a foundation that is private that is near the college campus, they do the recruiting on the campus, and this is how they get around it. I don't know if I necessarily like it, but I know that my taxpayer dollars are not going toward it.

Now, there are a lot of things that we all pay taxes for with which we disagree, but there's one uniform thing that we pay taxes for that we do agree: Equal protection. It was in the same Pledge of Allegiance that we recited at the beginning of this session, and what I'm saying is, if this country was in a crisis, if this country were under attack and we needed people to defend this country in that dire circumstance, we would hope people went and got a gun and we wouldn't give a damn who they were, and I'm saying that this is the same kind of situation that we have always been faced with in our society. When there is an emergency, we will let anybody participate, but at a time that there is peace in the land

and that we are recruiting to try to make sure that our volunteer forces are secure, I think that this state has a right to insist on there being equality.

I'm just very happy to hear that Senator Holland believes that the Governor will rescind that executive order and that gives me some solace as I hear this bill today.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Larkin.

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

Senator Gold just said this is a very small bill. Yes, it's less than 50 words. As I stand here, having read Governor Cuomo's - former governor's executive order before, and the dialogue between then Senator Daly and the Governor on the opening up of our campuses, I'm really wondering what a young G.I. says who is serving in Korea, Haiti, just coming out of Somalia, some place else, said, you know, they don't want us to recruit the best, the

brightest, somebody who can make a career, somebody what can make a contribution to themselves or their country.

All we're asking for is an opportunity -

SENATOR GOLD: Mr. President. Will Senator yield for just one short question?

ACTING PRESIDENT KUHL: Senator Gold. Senator Larkin, will you yield?

SENTOR LARKIN: Yes.

SENATOR GOLD: Senator, what if the best and brightest on our campus just happens to be gay?

SENATOR LARKIN: There's nothing in this that says anything about gay. Senator, I will acknowledge to you that I spent 23 years on active duty, and I'm sure there was some gays and lesbians in the military during my tenure, but I also think that the military is a great opportunity for a lot of young men and women.

They have an opportunity to get a career that they may be denied of in this state because we have an executive order. The

Governor said in his correspondence that it was not his intent to deny recruiting. Yet he never took any action to correct it.

When we start to say here, all we're looking for is excuses around here to deny the military an opportunity to go onto our campuses. I think it's childish. It's defending something that's not defendable. We have a country, we have a down-sizing of country. We have men and women that can't get jobs because there are no jobs, but there's also an opportunity for them to go into the military and get a job, get a good career and be something productive.

You know, I shouldn't say this but I will: In 23 years I've seen some people that didn't come back. I wonder if they're looking down and saying, "What the hell did I do that for?" I hope that we're not that thick headed that we won't respond. This is an opportunity whose time has come.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

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

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Dollinger?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator Holland, I've read through the memorandum that accompanied this, and I was wondering whether you had any information that would suggest that during the course of the 11 or 12 years that this executive order has been in effect, whether there's been any change in the recruitment, total numbers of recruited people from the state of New York into the United States military?

SENATOR HOLLAND: I have no idea, Senator.

SENATOR DOLLINGER: So we don't know whether Governor Cuomo's executive order in any way affected the accessibility of the military?

ACTING PRESIDENT KUHL: Senator

Dollinger, are you asking Senator Holland to yield?

SENATOR DOLLINGER: That's the point.

ACTING PRESIDENT KUHL: Senator, are you asking Senator Holland to continue to yield?

SENATOR HOLLAND: No, that's not the point.

ACTING PRESIDENT KUHL: Senator Holland. Senator Holland. Senator Holland.

SENATOR HOLLAND: All right. I believe you have the floor. Now I'll yield.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR DOLLINGER: I withdraw the question, Mr. President.

So there's no evidence, again through you, Mr. President, that you have, Senator Holland, in effect that suggests that this executive order has in any way affected the recruitment of individuals into the United States Military from my place in the state of

New York, is there?

SENATOR HOLLAND: Senator, it could have gone any way. It could have gone - it could have fallen. It's -- it could have gone any way. I don't have any idea. I don't think you have any idea.

The point of the bill is the fairness and that tax subsidized universities should allow the federal government to recruit. That's all the point is. It's not a gay/lesbian thing. Your President said, Don't ask, don't tell. We don't care. It's not in the bill, as Senator Larkin said. It's only a question of fairness to allow the federal government to recruit on our campuses which are supported by our taxpayers, and it's a volunteer force.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I agree with the wisdom of Senator Gold. I came in here not quite knowing how I'd vote on this, but I guess

I get troubled when we talk about different rules and all kinds of different things. I guess I would tell that to the same people that Senator Larkin referred to, the gay men and women who have given their lives for their country, and to be told that they played under some different rules, I think, would offend them terribly, and I think it's a shame that we have those different rules in place.

I don't see -- and I know, Senator Holland, I understand the spirit in which this bill comes forward, but I don't see the evidence that this has one way or another affected the recruiting practices in this state and, number two, I think that it's within the province of the government -- the governor to have issued this executive order. If Governor Pataki wants to rescind it, he can clearly go ahead and do that and change those practices and it seems to me that there still is a principle underlying that original order and that was that we won't allow institutions that overtly discriminate to recruit on state campuses, and I

think that does send a message about what we believe in the state of New York.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes, on the bill.

I just wanted to clarify something I said. Every time we look at a bill there are often competing interests and the interest here, are we in fact denying the right to the military to recruit? And if we reject this legislation, we clearly are not denying them that right. They can go into private campuses. They can set up recruitment offices near state campuses, but this bill does, it says, even though you're the federal government you're a discriminating employer that practices overt discrimination against a large community within New York State, and it's really a question of values.

If, in fact, we are not hurting the military, they still have the right to recruit, but we're saying they don't have the

right to recruit when they discriminate on state facilities. So when you balance that we must, in terms of values, always protect the life and human dignity of our residents. Yesterday we talked about life and human dignity. Shouldn't we today be talking about the same protection to gay men and lesbian women?

And I believe and have said over and over again, if one group is discriminated against, isn't it an assault on all of us who have, once in our lives, felt pain and discrimination? We've felt the ugly arms of prejudice. If any of you have ever felt that, if any of your relatives have confronted prejudice, why are we allowing prejudice against any group in New York State?

It's a question of values. It's a question of balance, and the interests of gay men and lesbian women who are taxpayers, are students who are part of our communities, should be protected.

ACTING PRESIDENT KUHL: Chair recognizes Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

I was pleased last year to join Senator Daly and other colleagues calling upon the Governor to rescind his order at that time, and I'm equally pleased to join in co-sponsoring this legislation for a couple of reasons.

A year ago, we had representatives from the Tenth Mountain Division of the United States Army here in this chamber, and I was very proud to have all of you join with me recognizing those young men and young women who represented this country so well in Somalia, have done so again in Haiti, as well as served right here in our own country down in Florida addressing the concerns of the hurricane victims.

When we all join together to recognize those individuals, we're very proud to have the military in this state. We were very proud to have this state serve as host to that military, and now we as a state and many other states in this nation are competing to retain

those military bases, to retain the employment and the economic benefit of those military installations in this state, and in my district alone we're talking some 11,000 uniformed personnel who live and work, go to school, participate in our community, as well as another 3,000 civilian employees.

I think, in fairness to all of those individuals, we should be sending a message that New York State welcomes the military and welcomes them on our university campuses for the purpose of recruiting our students to join that military, and I think we're sending the wrong message when we're concerned about base closures at Fort Hamilton, when we're concerned about base closures at the Seneca Army Depot, when we're trying to compete with other states and say, the United States Army, the United States Military, should be here in New York State as a presence to create jobs and to participate in New York State's economy, I think we ought to be sending a consistent message, and that is we not only welcome you for

the purposes of jobs and economic growth, we welcome you for the purpose of recruiting our students and affording them a career in the military.

It's for that reason I support this legislation and would encourage my colleagues to do likewise.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

Would the sponsor yield for a question?

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Montgomery for a question?

SENATOR HOLLAND: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: Senator Holland, the court decision in Doe v. Rosa was interpreted to include prohibiting military

recruitment on SUNY campuses as part of the Executive Order 28?

SENATOR HOLLAND: The court had said that the legislative intent was not clear, and here we're trying to clarify.

SENATOR MONTGOMERY: Oh, so your bill attempts to clarify.

SENATOR HOLLAND: That's what we're trying to do until, if, or when the governor -

SENATOR MONTGOMERY: That case was brought as a discrimination case.

SENATOR HOLLAND: Yes, it was, yes.

SENATOR MONTGOMERY: Now, I'm just wondering if your -- if your bill in any way deals with the whole issue of discrimination.

SENATOR HOLLAND: No, I don't believe.

SENATOR MONTGOMERY: How -- how, do you intend to deal with that as an issue in and of itself; I guess that's my question?

SENATOR HOLLAND: No, it's not the purpose of the bill. The bill's only purpose is to allow the U. S. Military to recruit on State University campuses as they do in every other state in the nation.

SENATOR MONTGOMERY: O.K. Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Briefly. It's very unfortunate that we're not dealing with the whole issue of discrimination. I think that's obviously a very important aspect, particularly as it relates to the military.

However, I do want to speak on another -- another aspect of this issue if you would allow me, and that is the whole notion of access to the military, particularly by young people, and I would extend it to high schools, and this is a conclusion that I have come to recently, Mr. President, because it is of great concern to me that we have 65,000 young people or people in 68 state prisons in this state.

I was recently in Louisiana and as I was approaching the state Department of Health and Human Services, there was a van in front of me where there were about 25 young African-American men, every single one of them, boarding this prison bus, and I was told that these young men are now doing work, maintenance work, at the state office buildings and that Louisiana is, I think, the number one state with prisoners and Texas is next and New York is about third, and it occurs to me that as we have lost opportunity for young men to go into the military, we have increased the number of young African-American and Latino men who find themselves locked behind prison -- prison doors throughout this nation, and I am very aware that it was the military that brought these young men in and gave them the kind of discipline, gave them benefits, gave them education, the ones who were not as smart, the ones who were smart we had options, opportunities for them to go into the Reserve Officer Training Corps.

There was an alternative for

these young men at a very significant time in their lives and a very difficult time in their lives, and I have personally felt the loss of that opportunity notwithstanding the fact that I had brothers who have been to -- to war, and I'm very thankful to God that they came back alive. I've had relatives to die in the war.

But nonetheless, I really feel a very -- it's very troubling that we have not been able to somehow provide an opportunity for large enough numbers, particularly of young men at a time in their lives when they most need it and, therefore, the prison has consumed them.

And so I am going to vote for this legislation, because I think that it is now time for us to rethink the whole notion of what the military does, what its function is, and I think that its function is not only to protect us from war, but it does something else very special that I am not able to necessarily articulate. It's just that I know from what I see and what I've experienced in my own family and the lives of young men and how many young

men I see going in the other direction, and I'm not able to give -- I don't have an answer for those young men. But I know that the military has been an answer that's much more constructive and positive for young men.

So, Senator Holland, I abhor discrimination because I have suffered it on many levels, many levels, you know, because I'm a poor person, because I'm a woman, I'm an African-American. You name it, I have every kind of discrimination that there is. So I'm opposed to that, but I -- I must say that I would like to see much more opportunity for young men to have a kind of constructive structured experience at a time in their lives when it will make a difference for them, and I think the military is a possibility, and I would like to see that open and available and accessible for those young men where they are and where they are or their schools and including high schools. I don't know why you didn't add high schools in the bill, but I would certainly -- I would be in favor of that also.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm pleased to support this bill also. I understand the objections raised by some of my colleagues on this side of the aisle, but we are not going to have the luxury of redefining a perfect military in this chamber. And what we do have, however is an opportunity to enhance the participation and the active involvement of New York State's citizens in defining military policy for the future in this nation and, regrettably, that has not been the case for many years and we are now paying the price for that extreme imbalance in the form of actions brought forth by the Pentagon through the "bottoms up" review and through the BRAC Commission in announcing base closures, and some of these base closures that affect this state are done with a callous disregard to the economic reality and the educational reality in

New York State, but they're also done in part because the military decision-makers have no personal frame of reference for New York State.

And what better way for us to correct that imbalance than to ensure that the opportunity exists for the best and the brightest New York State students to become members of our military? Let's give them an opportunity on an equal footing with young men and women in South Carolina and Arkansas and California to find out about the advantages of a military career.

I'm not concerned solely about the technical and the educational opportunity for advancement or, as Senator Montgomery so eloquently put it, the opportunity to have a career track as an alternative to a life that could possibly be one with no hope and result in a life of incarceration.

I also expect that, with this recruitment option, we will have the generals and the admirals of the future from New York State making decisions that will affect our

national security and will bode well for the economy of this state.

Had we been as supportive of the military over the last 20 years, we might not be faced today with a situation where we're about to lose one of our few remaining military installations in New York State. I have the distinction of representing Griffiss Air Force Base and, like Senator Wright, I know the agony that's faced by a community faced with indecision and uncertainty, but like Senator Stafford, I know how that community feels when the word comes down that that base is going to be closed.

First, we thought that it would just be realigned. Realignment was a cruel hoax. It meant we'll take all the planes away; you take care of the runway. We'll let you have the lab, but you're going to have to pay for a big chunk of the lab and, after a few years with that arrangement, the military has now said, "We're taking the lab away too." A complete violation of the contractual agreement the state

of New York entered with the Department of Defense and Department of the Air Force a number of years ago, but brought on in part because we do not have the kind of shrewd, insightful military analysts in the top ranks of the United States Department of Defense.

It's our responsibility to prevent that inequity, both for the citizens of New York State and for the people of this nation because, as we look at the national security issues surrounding Plattsburgh, Griffiss and Fort Drum, we also have to recognize that we are the last outpost here in the northeastern part of the United States.

When they take the last planes away from Griffiss Air Force Base, the easternmost northernmost base in the United States from which planes will depart is Maguire in New Jersey, in the midst of a very congested air corridor that shares air space with the largest volume of commercial traffic in the world, the New York City metropolitan market.

It makes little military sense

for it to be that way, but that decision was made, in part, because we did not have the experienced military personnel with the right kind of clout to advocate for New York State. We will pay that price down the road. Within our lifetimes we will see not only an expanded runway at Fort Drum at enormous cost to the taxpayers while we lost one 60 miles away in Rome. We will probably see yet another base built in the northeast because it will have become necessary, but we've lost the opportunity because we were not aggressive in years past in inviting the military to recruit on our campuses.

So I'm proud to support this measure today, and I'm urging all of my colleagues on this side of the aisle to think of it not just as an issue around discrimination but to think of it as an issue around national security as well.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon.

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

I served in the U. S. Army, RA 12507507, September 19, 1956 until September 10, 1959. I was standing on the corner of Patchen Avenue and Decatur Street, and some of the guys from what now is characterized as "the Hood" at that time, at that time we called Bed-Stuy, and we didn't know where we were going. At that time in vogue was white port/lemon juice; people liked the moon glows, the harmonizing well, and we were trying to duplicate what they were doing under street lamps, but not with a whole lot of direction.

I had been in ROTC with, of all people, Colin Powell at City College, but Colin was serious at that time. When he was studying, I was in the cafeteria playing Whist, trying to become the world's greatest Whist player, but eventually I recognized that standing on the corner was not going to cut it, and the alternative for me at that age, that very tender age as a teen-ager, was the U. S. Army.

It was the smartest move, other than marrying my wife, that I've ever made in my entire life. I left a boy, came back a man. I had the G.I. Bill which allowed me to finish college at night and law school at night, the G.I. Bill which allowed me to buy our home. I also grew up and traveled. For a young man whose father couldn't read and write, met his mother and married her when she was 15, to understand the Louvres and Piccadilly, to have experienced Barcelona and Madrid, to understand that the Eternal City is Rome and has a lot to offer, did not happen other than the U. S. Army sent me to Europe and I was able to be exposed to these things, and now I'm able to speak sometimes on the level of my colleagues here with eloquence because of that exposure.

The point that I'm trying to make with all of this is that I absolutely see nothing wrong in recruiting on the campuses for those who wish to represent our nation when called upon to sometimes give their lives so that the rest of us can breathe free. I applaud

the military. I love the military. I was a guy who called cadence for the entire regiment, First Training Regiment. I was in Fox Trot Company at Fort Dix. It was one hell of a good experience. I wish more of you could have had such a good time as I as a teen-ager.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

I, after the series of debates that we've had of recent note, I was with Senator Gold, I was kind of looking forward to a quiet day but, again, here we have the product of a, I think, twisted logic. You know, we have these kids coming up throughout the building, they can't get into some of our colleagues' offices, they simply won't be heard on these cuts to education in our SUNY campuses, and so now we hear the -- again here's the twisted logic. We hear that we're trying to build

opportunity, we're trying to make opportunity more accessible, but yet these very same kids - and I'm old enough to call them kids, because I have one that's 21 years of age -- we're talking about they want to be veterinarians, they want to be doctors, they want to be businessmen, they want to be Senators, they want to be Assembly people, but they're going to have to go back home to AFDC, go back home to nothing really, and they're on our state campuses.

And so what troubles me the most is the context, not just the letter of the bill but the context and the history, the history that every opportunity that this Assembly has had, whether it be to contribute to the defeat of apartheid, to contribute to other forms of discrimination, the bias bill of recent note, we don't seem to get up the gumption and the courage to bring it out to the floor for debate; but here we stand on principle.

I don't think that this is solid principle here. I think it's rather on shaky ground because of the patterns and the

consistent behavior that has been shown here in this house on matters of prejudice and discrimination.

So I can't just flow with this, even though I could have originally, but upon hearing the real deal, upon hearing the real values that are going to drive this thing, I have to say no. I vote against this bill.

ACTING PRESIDENT KUHL: Chair recognizes Senator Stavisky.

SENATOR STAVISKY: Mr. President, on its surface, the legislation appears to be positive. It appears to be inane. It appears to be non-controversial. On the surface, it would appear that every member of this chamber should gleefully and proudly support this bill.

But why not write into the provisions of the bill the real meaning? And the real meaning is not necessarily contained in the language of this legislation. Would we, as a state, encourage a private corporation or public agency of any sort that practices discrimination to recruit on the campuses of the

state University of New York, the City University or the independent colleges. I think not.

We would not be so proud if it were stated that the purpose of this legislation is to deprive individuals of their opportunity to serve in the military for reasons that have nothing to do with their competency to serve in the military and the armed forces of the United States.

That is a privilege, a privilege that we encourage young people to engage in, but it is still a clouded area. It's an area where unless you're willing to follow the precept of "don't ask and don't tell", whatever that means, you might be in jeopardy as a member of the armed forces of the United States if you violate that "don't ask, don't tell" precept.

Why wasn't this legislation written in such a way so to say now that former Governor Mario Cuomo is no longer there, now that he's no longer able to exercise his influence in drawing up executive orders that

prohibit discrimination based upon sexual orientation, we are going to repeal that?

Fine, say that. Have government or the new governor of the state, whose views on this might be different from Mario Cuomo, take the responsibility by executive order of revising what is the current state policy. But let us not, by the side door, deal with this issue as a legislative issue when, in fact, the real purpose of this legislation is to erode and overturn former Governor Mario Cuomo's executive order.

There's an executive order you didn't like? Talk to Governor Pataki if you get off the elevator on the second floor. They seem to have it sealed off from some of the elevators, but I know you have the ability to get off at the second floor even if you have to walk around from one elevator to the other, and talk to the new governor.

That's what you really want but don't do it in this back of the room legislative comportment. It is not worthy of the

Legislature to do this when the real objection is to the executive order that former Governor Mario Cuomo had devised.

Now, if you really think that sexual orientation has a bearing on the ability of someone to serve in the military then, by all means, say that in the bill. Say what the bill means. Don't obfuscate. Don't come up with language that is so gentle and non-controversial that nobody knows what the real purpose is.

This legislation has not seen - this Legislature -- this house of the Legislature has not seen fit to pass a measure prohibiting discrimination based upon sexual orientation. That's your prerogative. You have studiously excluded that from any anti-bias bills, and this Legislature, this house of the Legislature has not seen fit to take a positive stance against life styles that you do not agree with, and I'm not referring to the life styles of the rich and famous. I'm referring to the life styles that some members may not agree with. I may not agree with those life styles

but say it, if that's the purpose. Don't conceal it. We don't need trappings that don't tell the public and didn't tell the members what is involved here.

If you want the executive order rescinded, go see the Governor. But don't do it through this back door approach. It's not worthy of this house. I hope that there will be some people, under these circumstances, who will have the good sense to vote against this bill, not as an affront to the military because that should not be the purpose, but against the policy that is invoked by the military to keep certain individuals, male and female alike, from serving this nation when they may have the skills and the talent to render exemplary service in behalf of the United States of America.

Don't let the privacy of a bedroom interfere with the public function to be rendered by people in the military and don't confuse these two things. They are not subject to the same standards. We are not passing on

life styles by this legislation, although we are, and I think we should come out of the closet. Come out of the closet, those of you who wish to challenge somebody's life style. Say it, proudly, affirmatively. You want to come out of the closet, you want to challenge somebody's life style, God bless you, and, if you say that in a bill, then nobody can quarrel with you because then the purpose will be clear.

I hope there will be some negative votes on this bill.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill before the house?

Hearing none, the Secretary will read the last section.

SENATOR OPPENHEIMER: I'll explain my vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: Thank you. As you all know, I do support equal rights for all people, and I mean those with different sexual orientation from mine.

I believe there is a problem in the military. I think the answer lies at the federal level, not at the state level. Therefore, I'm going to be voting in favor of this bill because I think we have to offer the equal opportunity to all of our students.

I wish it was a high school bill. I was very much moved by Senator Montgomery's speech, but since it is offered, recruitment is offered on all of our private campuses in New York State and offered on all public and private campuses outside of this state, I feel it does prejudice our students that are at SUNY and CUNY not to offer it and,

in part, I do believe that the military is a good option for -- for our youngsters who come from environments that have deprived them of many of the benefits, both culturally and academically, and I would like to see the military as an option for these students and yes, that is spoken as the daughter of an Army Colonel.

Thank you.

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

SENATOR OPPENHEIMER: Yes.

ACTING PRESIDENT KUHL: Senator Oppenheimer in the affirmative.

Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, very briefly.

Discrimination is discrimination no matter in what form and for what reason and, as I said, I am adamantly opposed to it including against people because of their sexual orientation and what have you.

However, I want to be very clear about this. I think that -- I question, in fact, whether it's going to ultimately be the best and the brightest even, because that has not been necessarily the history of who goes into the military and especially looking at the array of possible candidates for President, many of them were not in the military. They found a way to escape it, and the brightest and the best did and still do probably and probably still will.

However, it's the average person that the military -- who has access to the military, the kind of training that they do, the kind of support that is offered. Those are - that is where it makes the most difference, Mr. President, that it can take an average young man or woman and prepare them in a way even at the high school level that can prepare them to be able to go to West Point from states like Mississippi, Texas, Louisians and wherever.

And so that is why there is a possibility, that is why I am supporting this

because it is a possibility to open up options to people and, if it's not, if it's not brought to them, they may not reach out for it.

And so I am voting yes for this legislation, because of the intent and because of what I believe to be a necessary issue for us to open up in this Legislature and legislatures across this country and in Congress, what are we going to do in a very real sense for young men especially, young men and women, to prepare them to bridge them into adulthood in a more productive way than sending them by the hundreds of thousands into the prisons across this nation?

So I vote yes.

ACTING PRESIDENT KUHL: Senator Montgomery in the affirmative.

Senator Leibell to explain his vote.

SENATOR LEIBELL: Yes, Mr. President.

It may grieve some people in this chamber, but this nation is, and I hope for the

foreseeable future will be, the world's leading power. As a result of that, this nation with its two coastlines and its commitments worldwide is going to maintain a large military.

It's very distressing to me to hear some of the debate today, especially from I believe some members who have been probably the loudest in their complaint about the Department of Defense removing facilities from New York State.

I had the opportunity when I served in the other house to be before the BRAC Commission and to try to save Naval Base, Staten Island, but I remember meeting with a Navy Commander there who said to me, "I have a letter here from your mayor who says that he really doesn't want our Navy ships in New York harbor because they might carry nuclear weapons." Well, for over 200 years, United States Navy has been used to taking its weapons with them on board ship.

If we intend to be a part of the American military presence, if we intend to have

an officer and enlisted corps that's recruited north of the Mason/Dixon Line, we had better learn to put out the welcome mat in New York State to our own armed forces, and this would be a first strong signal in that direction.

Thank you. I'll vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Leibell in the affirmative.

Senator Jones to explain her vote.

SENATOR JONES: You know, it always seems to me in this house that we make such a complicated thing out of such a simple issue. I've heard us discuss everything today from nuclear weapons, military bases, patriotism, religion, God, country, geography, discipline, when the issue was clearly to me, one of choices.

I think what Senator Hoblock said was correct. It has really nothing to do basically with discrimination. I'd be the first one, I would love to debate on this floor the

anti-discrimination bill that we've avoided the last few years. Certainly the military should accept anyone regardless of what they may believe or practice or do, but none of those things have a thing, in my opinion, to do with what we just talked about today.

It's about choices. I don't want my child -- there's many things that happen, as Senator Hoblock said, on college campuses that I clearly would not want one of my children participating in. We send them there. They're adults. I think they should be allowed to make a choice if they want to join the military or any other things that are there, and I think that's a very simple thing, and I support it for that reason.

ACTING PRESIDENT KUHL: Senator Jones in the affirmative.

Senator Paterson to explain his vote.

SENATOR PATERSON: First of all, Mr. President, I want to apologize to Senator Holland. I didn't realize that he was saying

that he thought the Governor would rescind the executive order, and so the end of my last statement may have come across as sort of pious, and I just disagree. I thought the Governor should continue the executive order.

I see this bill as a matter of human rights. I think that, when we, as a state, sponsor anything that discriminates against people, in the Doe v. University of Buffalo case, the reason that the complaining witness brought an action was because they went into a recruitment office and the first thing they said to this particular person is -- this was a woman -- they said, Are you a lesbian? They asked her that question. Are you over 35 years of age? Most of us would never have to answer questions like that, but if you've ever had to answer a question and you happen to be whatever it is that they're excluding, you might understand why this is a human rights bill.

We have another resolution that Senator Montgomery had put forward in this chamber some years ago about withdrawing pension

funds from the 133 of the 408 corporations that do business in South Africa, and at that time I heard some of the same arguments. Well, you know, we don't want to ruin the pension funds. We don't want to ruin business in this state. But the fact is, we really are opposed to the conditions in South Africa, and so we found that in the years they did something about it and when they were ushering in President Mandela, we had a big ceremony in this chamber and I don't know what they were doing about it. We had no right to be in here, because they did it without us, and I guess perhaps they would desegregate the military or sexual orientation without us.

But I'd just like to close on this point, that child labor laws were passed in 19 states, including this one, before it ever became federal law. The overtime laws in this country were abolished in 27 states before they actually became federal law. We have an opportunity to do something as a state, as a state Senate, to influence our national government and to let them know how people in

New York State feel about the discrimination of people.

I think it's a principled issue. I vote no.

ACTING PRESIDENT KUHL: Senator Paterson in the negative.

Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 68 are Senators Abate, Connor, Dollinger, Espada, Galiber, Gold, Leichter, Nanula, Paterson, Smith and Senator Stavisky. Ayes 45, nays 11.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the roll.

THE SECRETARY: Calendar Number 112, by Senator Holland, Senate Print 474, an act to amend the Penal Law, in relation to the possession of noxious materials by members of auxiliary police forces.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation has been asked for by Senator Paterson.

SENATOR HOLLAND: Mr. President, this bill would allow auxiliary police, upon local authorization and upon appropriate instructions, to possess mace and to use it as a defensive weapon.

I might also just add that this is -- similar bills have been passed in this house, maybe with Senator Volker's sponsorship. In the late '70s, the state Legislature granted the auxiliary police the right to carry batons in self-defense, so this is not a new thing.

Also you might also know that most postmen carry some kind of mace and probably 30 percent of the women in this state carry some kind of mace. I really don't see any reason why auxiliary police can't use it as a defensive weapon and that's the whole purpose of the bill.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Would Senator Holland yield for a question?

ACTING PRESIDENT KUHL: Senator Holland, would you yield to Senator Paterson?

SENATOR PATERSON: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Holland, sometimes I don't really say these little expressions, I just say them to myself and expressions like mixing apples and oranges or putting the cart before the horse.

I wanted to know if you thought that perhaps we were putting the cart before the horse in this particular piece of legislation because for openers, I don't understand what the definition of "auxiliary police" is under the law, and I was wondering if you agreed with me that maybe what we really need to do is define what the auxiliary police are.

At least the New York City Police Department feels that auxiliary police, just in terms of their living definition, are those who

assist the police, not any who carry out arrests or any other police action.

SENATOR HOLLAND: Well, they do -- Is that a question?

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: They do assist the local police. They do not carry weapons. They -- the definitions of their jobs are done on a local level. Many of them wear bullet proof vests if they have the money to wear bullet-proof vests. They do get into dangerous situations and do not carry a weapon. They may wear the same exact uniform of the local P.D., and, therefore, people might assume that they have weapons.

So that's another reason, in my estimation, why they should be at least able to have a defensive weapon.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Holland.

Will Senator Holland yield for another question?

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: I agree with you, Senator Holland, if they're going to be wearing police uniforms and have the appearance of police, that is in many respects going to force them into the position of perhaps acting or having to act as police and, if that were actually the case, then I would agree with you that whatever they would need to protect themselves I'd be in favor of having; and they are volunteers. They do care about their communities. They are performing a service that they're not paid, and that's a terrific thing to have in this society.

But may I ask you, since we don't have a definition under the law of what auxili ary police are, do you have any information on what training the auxiliary police have?

SENATOR HOLLAND: I have Section 9185 of the Unconsolidated Laws, Powers of

Auxiliary Police, if that will help. The local legislative body of any county, town, city or village may, by resolution, confer or authorize the conferring upon members of the auxiliary police, the powers of peace officers subject to such restrictions as such body shall impose.

That's the only thing I have, Senator. I hope that helps.

SENATOR PATERSON: Would Senator Holland yield, Mr. President, for yet another question?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: My understanding of that section, Senator Holland, is that that applies in what would be emergency kinds of situations, that that's not a continu ing definition for what the auxiliary police is.

Do you have an opinion about that?

SENATOR HOLLAND: I don't know

that they use them or they work 40 hours a week, Senator. I think what they do is they call them out when they have crowd control, a problem and that's -- control. Does that answer your question, sir?

SENATOR PATERSON: Yes, it does. Thank you, Senator Holland.

Mr. President, would Senator Holland yield to another question?

ACTING PRESIDENT KUHL: Senator Holland, do you continue to yield? Senator yields.

SENATOR PATERSON: The question I have now, Senator Holland, relates to mace. If we permit people to sell mace, but we don't permit them to actually carry it under the law, it seems to me that we have to come to some definition of what we're doing about mace.

As you said, a number of women are carrying mace as a sense of protection and it's something that they may very well need and maybe something that we might have to look to as a body to assist them and doesn't necessarily

have to be women. It's anybody, men as well, who are in a situation that might not want to carry something that would be larger or something that would inflict more pain would be more of a forceful law enforcement weapon and all I'm saying is that it seems very difficult to interpret what this bill will mean when we don't know about the training of auxiliary police.

We don't really know who they are under the law. We don't really understand how much experience they actually have. Now, your bill, which is a lot more responsible, does say there should be training about how to use mace but that's just a functional definition of how to use mace. It doesn't say anything else about the position the auxiliary policemen or women might be in.

So my question to you is, just how can we pass this bill when we really haven't cleared up who should and should not be carrying mace in this state?

SENATOR HOLLAND: I believe,

Senator, that a bill has been introduced here in the past about legalizing mace and you might also note, and everyone must know that mace is sold in stores throughout the state. That's how the women and the men purchase it; so it's out there, whether we legalize it or not, or whether we let the auxiliary police use it as a defensive weapon or not. It is out there. We're a little bit behind the time as far as I'm concerned.

SENATOR PATERSON: My final question, Senator Holland, relates to just the seeming opposition that's coming from a lot of the police departments with respect to where their auxiliary police officers fit in, their belief that this already granting of self defense privileges of police to carry the batons, that now adding that they might also carry mace would empower them in a sense create a perception with the uniform and the bullet-proof vest, as you pointed out, that they are actually acting as police officers and we do see a number of departments around the state and

associations of police opposing this bill.

Do you feel that they might have some idea about where they think the auxiliary police should be limited?

SENATOR HOLLAND: First of all - first of all, Senator, auxiliary police cannot arrest, and it's up to the individual community whether they want to allow auxiliary police.

As far as the memo in opposition that you mention, that's simply an attempt by an organization to maintain their membership. They feel that the auxiliary police are taking over a part of their responsibilities. Therefore, if they allow it to grow and be successful in a volunteer force that some of their people will lose jobs. That's what their position is.

SENATOR PATERSON: Thank you, Senator Holland.

I think that that's Senator Holland's conclusion on what their position might be. They might actually be a little worried about how auxiliary police officers function. Also even if Senator Holland is

correct and where demur to his complaint and they are doing it because of the organizational purposes, these are the individuals who are trained, highly trained, all the police officers in this state.

I just feel that this piece of legislation is unclear and, in addition to that, it actually allows for the use of mace by individuals who may not be trained to do so.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Volker.

SENATOR VOLKER: Mr. President, I know this is not going to impress you, David, but before I was a police officer I was an auxiliary police officer, so I know that's not going to impress you at all.

The training throughout the state of auxiliary police officers is not as extensive as it used to be because years ago when there was a massive civil defense network in this state and, in fact, my father one time was counsel to the civil defense after he left the

Legislature, there was really, I think, much more training of auxiliary police than there is today, although virtually every area of the state that has auxiliary police -- and that's most areas of the state -- their prime function is really to direct traffic and in some places not as much as they used to, but they still occasionally will drive in a car with a -- with a police officer.

Now, the -- this bill came out of my committee, and some of the law enforcemnent agencies, yes, they are opposed to it, but the real reason they're opposed to it is not because of mace or this bill and the baton bill -- by the way, I believe I passed myself some years ago.

They're really opposed to it because in places just outside of New York City there have been proposals by some local officials to use auxiliary police to supplant police officers, but they need a lot more authority than the issue of mace or a baton, and these people, by the way basically have no more

authority than a private citizen except for the fact, generally speaking, that they're designated by the municipality. They have a uniform, and they can do certain designated duties. As far as an arrest is concerned, they have to have a police officer there or whatever to actually make an arrest.

As far as mace is concerned, we have sort of this ambivalence on mace. People are using what they call pepper spray now and various noxious materials which are really mace. In fact, postmen have been using them. I remember myself as a police officer carrying a canister, primarily frankly, for dogs because everybody was concerned about dogs running around, and so forth, and they were. They were used to discourage dogs from biting you, and so forth.

The truth is that this, I think, if we are on the verge, and I would hope that this year we will legalize mace in general, the Assembly has indicated that they -- on several occasions that they were very interested and,

Senator Johnson, we passed a bill in this house by overwhelming numbers on a number of occasions, it just seems to me that if this house is inclined to pass a bill that allows totally untrained people, if you want to call them trained -- untrained people, to use mace that it certainly behooves us to allow auxiliary police who -- most of whom have much more training certainly than the average individual to at least use something that people that are totally untrained are using now anyways, and I think we are about, in a very short period of time, to totally legalize.

A lot of the things that are being used now, as I say, like pepper spray and those things, are really mace in a little different -- a little different compound, so my feeling is, and I certainly support the police 100 percent and I -- and I have taken the attitude that a bill that would generally really damage police officers, I would not allow to come out of my committee, and I just don't think that this is -- is as big a deal as some people

are making of it, very honestly, although I understand the concern, and you have a right to be concerned, but I just think this is just another progress in just protecting some people who do a limited job on a limited basis.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

The Chair recognizes Senator Solomon to explain his vote.

SENATOR SOLOMON: Thank you, Mr. President.

Normally, I would vote for this bill. However, I am voting against this bill in view of the fact that the New York City Police Department and the office of the city, mayor of New York, Mayor Giuliani, who has been telling

us that he's particularly tough on crime is in opposition to this bill. In addition, the Police Conference of New York has come out in opposition to this bill.

That's why I'm going to vote no. Thank you.

ACTING PRESIDENT KUHL: Senator Solomon in the negative.

Senator Paterson to explain his vote.

SENATOR PATERSON: Because of the comparison, Mr. President, between the pepper spray which we know is in use and the fact that it is a noxious fume, that it basically is mace and Senator Volker is pointing that out, I would like everyone to know in this chamber that he has convinced me.

I will vote for this bill. Too bad he didn't have as good material yesterday. He might have convinced me.

THE SECRETARY: Those recorded in the negative on Calendar Number 112 are Senators Abate, Connor, Dollinger, Jones, Kruger,

Markowitz, Mendez, Montgomery, Onorato, Santiago and Senator Solomon. Ayes 46 -- also Senator Smith; also Senator Gold. Ayes 44, nays 13.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 113, by Senator Johnson, Senate Print 574, an act to amend the Penal Law, in relation to the term of licenses to carry or possess a pistol or revolver in the county of Suffolk.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, we're on Calendar Number 113. An explanation has been asked for by Senator Paterson.

SENATOR JOHNSON: Thank you, Mr. President.

This is a rather straightforward bill. It simply extends the term of a pistol license in Suffolk County from three years, as it presently is, to five years. There are no

fiscal implications except for perhaps it would save processing, because we understand in Suffolk County, it would cost more to process a license and then the fees, and perhaps it would save them some money by extending the term of these licenses.

When this bill was first introduced several years ago, we had a letter from the County Executive endorsing this bill. I think it's still valid; he's still in office. This bill passed two years ago and passed both houses and was vetoed by Governor Mario Cuomo. I believe, when we pass it this time, this Governor will sign it.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, on this bill, Governor Cuomo vetoed this bill last year because he would like to bring the entire state in compliance on some reasonable time period in which we would feel that there would be a review of gun licensing. If the time

period was three years, as it is in New York City, Suffolk County and Nassau County, we think that would be an apt time to make that kind of review.

If you had a periodic review of gun licenses, you could determine whether or not the individual has been involved in any orders of protection, any domestic violence, any kind of conduct relating to their ability to take on the responsibility of owning and handling a gun in a manner that would be commensurate with the licensing.

To have an unlimited license, which is what we have statewide, is really an invitation to an individual walking around carrying a gun who may have undergone some kind of psychosis or any kind of circumstance that would not -- that later on people might have said, that but for the circumstance, if someone had done something and taken the gun out of this person's hands, they wouldn't have done the damage that -- that they may have, as has occurred in a number of criminal cases.

For that reason, Senators Espada, Galiber, Leichter, Mendez and Smith voted for the bill last year, and -- I'm sorry, Senator Gold voted for the bill last year -- I'm sorry, voted against the bill last year.

Senator Galiber wants to know how he voted last year. He didn't vote. He voted affirmatively, and so I'm going to vote against the bill, but then again I'm not sure what I'm doing, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT KUHL: Announce the results when tabulated. Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 113 are Senators Abate, Connor, Galiber, Kruger, Leichter, Montgomery, Paterson and Solomon, also Senator

Smith. Ayes 48, nays 9.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Yes. Would you lay aside the next bill for the day. I believe it's Calendar Number 121.

ACTING PRESIDENT KUHL: Calendar Number 121 is laid aside for the day.

SENATOR SKELOS: Mr. President, would you return to reports of standing committees.

ACTING PRESIDENT KUHL: Return to reports of standing committees. Secretary will read.

THE SECRETARY: Senator Sears, from the Committee on Consumer Protection, offers the following report:

Senate Print 1667, by Senator Sears, an act to amend the General Business Law and the Personal Property Law, in relation to the cancellation of personal emergency response service agreements;

Senate Print 1716, by Senator Kuhl, an act to amend the General Business Law, in relation to automobile auctioneers.

Senator Hoblock, from the Committee on Veterans, offers the following:

Senate Print 256, by Senator Maltese, an act to amend the Real Property Tax Law, in relation to an optimal school tax exemption;

Senate 257, by Senator Maltese, an act to amend the Real Property Tax Law, in relation to exemption of the real property of seriously disabled veterans from taxation;

Senate Print 441, by Senator Maltese, an act to amend the Vehicle and Traffic Law, in relation to authorizing the distinctive license plates for veterans of the Korean War.

Senate Print 1739, by Senator Sears, an act to amend the Vehicle and Traffic Law, in relation to eliminating the annual service charge imposed on distinctive license plates issued to Purple Heart recipients.

All bills ordered directly for

third reading.

ACTING PRESIDENT KUHL: All bills going directly to third reading.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Yes. Thank you, Mr. President. Would you recognize Senator Oppenheimer.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you very much.

I'd like unanimous consent to be recorded in the negative on 112.

ACTING PRESIDENT KUHL: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar 112.

SENATOR SKELOS: Any further housekeeping items?

ACTING PRESIDENT KUHL: None at the desk, Senator Skelos.

SENATOR SKELOS: Then, Mr. President, there being no further business, I move we adjourn until Wednesday, March 8th, at

11:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, at 11:00 a.m.

(Whereupon at 4:41 p.m., the Senate adjourned.)