ALBANY, NEW YORK

May 23, 1995

11:05 a.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. Members please find their chairs, the staff their seats. Ask everybody in the chamber to please rise and join me in saying the Pledge of Allegiance.

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

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 22nd, the Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Sunday, May 21st, was read and approved. On motion, the 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.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Mr. President, on behalf of Senator Levy, please place a sponsor's star on Calendar Number 841.

On behalf of Senator Cook, Mr. President, on page 4, I offer the following amendments to Calendar Number 23, Senate Print 762, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments are received and adopted to Calendar Number 23. The bill will retain its place on the Third Reading Calendar. Calendar Number 841 is starred at the request of the sponsor.

Senator Paterson, why do you

rise?

SENATOR PATERSON: Mr. President, we have a, on the calendar, Resolution Number 1326 honoring Myron Holtz who has stepped down from the Division of Housing.

Senator Connor would like to open this resolution for any member to go on if they would so desire.

ACTING PRESIDENT KUHL: Anybody who would like to be a co-sponsor of Resolution Number 1326, please indicate to the desk and we'll leave it open so that anybody who determines that they would like to during the course of the day, please notify the desk. Senator Marchi, Senator Stachowski, Senator Onorato.

The Chair recognizes Senator Rath.

SENATOR RATH: I also -- Mr. President, on page 11, Calendar Number 337, I would like to place a sponsor's star on that item and also on page 45, Calendar 883, please place a sponsor's star.

Thank you.

ACTING PRESIDENT KUHL: At the request of the sponsor, both bills will be placed on the starred calendar.

Senator Sears.

SENATOR SEARS: Calendar Number 894, would you star that bill, please.

ACTING PRESIDENT KUHL: Calendar Number 894 will be starred at the request of the sponsor.

Senator Hoblock.

SENATOR HOBLOCK: Mr. President, on the Resolution Calendar, Resolution 1322 commemorating Armed Forces Day and Resolution 1323 commemorating Memorial Day, I would like to open that up to co-sponsorship, both resolutions.

ACTING PRESIDENT KUHL: Is there any member who does not want to be on either Resolution 1321 -- excuse me, 1322 or 1323?

(There was no response.)

We'll place all the members on the resolution as a co-sponsor, Senator

Hoblock. If anybody does not wish to be on them, please indicate to the Secretary.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332; immediate meeting of the Senate Finance Committee, Room 332.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we go to the Resolution Calendar and move its adoption.

ACTING PRESIDENT KUHL: The question is on the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is

adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now take up the non-controversial calendar.

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

THE SECRETARY: On page 10, Calendar 299, by Senator Padavan, Senate Print 3380-A, an act to amend the State Finance Law, the General Municipal Law, the Personal Property Law, the Public Authorities Law and the Administrative Code of the city of New York, in relation to authorizing agreements.

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

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 338, by Senator Farley, Senate Print 1275-A, an act to amend the Education Law, in relation to residence with parent for determining tuition assistance awards.

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

THE SECRETARY: Section 2. This act shall take effect July 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Padavan, Senate Print 3089-A, an act to amend the Education Law, in relation to the exclusion of illegal aliens.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 409, by Senator Levy, Senate Print 4034, an act to amend the Transportation Law, in relation to projects funded under the Airport Preservation Program.

ACTING PRESIDENT KUHL: The 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 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 591, by Senator Skelos, Senate Print 394, an act to amend the Vehicle and Traffic Law, in relation to increasing the period of time during which a driver's license is suspended for repeat DWI offenses.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 606, by Senator Leibell, Senate Print 3681-A, an act to amend the Private Housing Finance Law, in relation to the definition of a limited profit mutual company.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I was wondering if the Majority Leader would let us have a day on this bill; we have some questions on it that we just would like to prepare.

ACTING PRESIDENT KUHL: Would you like to lay the bill aside?

SENATOR PATERSON: For the day.

SENATOR BRUNO: Lay it aside temporarily.

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

THE SECRETARY: Calendar Number 615, by Senator Farley, Senate Print 2675-A, an act to amend the Retirement and Social Security Law, in relation to negotiation of retirement benefits.

ACTING PRESIDENT KUHL: The 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 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 643, by Senator Levy, Senate Print 4337, an act to amend the Transportation Law, in relation to

the creation of regional citizens advisory councils.

ACTING PRESIDENT KUHL: The 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 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 700, by Senator Stafford, Senate Print 1261-B, an act to amend the Insurance Law and the General Obligations Law, in relation to limiting liability for property owners.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 721, by Senator Skelos, Senate Print 413, an act

to amend the Public Health Law and the Correction Law, in relation to requiring certain applicants for employment in home health care services.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 722, by Senator Saland, Senate Print 2039, an act to amend the Public Health Law and the Executive Law, in relation -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 777, by Senator Lack, Senate Print 4789, an act

to amend the Estates, Powers and Trusts Law, in relation to shares of stock of a cooperative apartment corporation.

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

THE SECRETARY: Section 3. This act shall take effect January 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 825, by Senator Volker, Senate Print 4262, an act to amend the Criminal Procedure Law, the Penal Law and the Civil Practice Law and Rules, in relation to assault against a child.

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

THE SECRETARY: Section 8. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 830, by Senator Volker, Senate Print 4588, an act to amend the Penal Law, in relation to issuance of licenses to have and carry pistols.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 844, by Senator DeFrancisco, Senate Print 673, an act to amend the Vehicle and Traffic Law, in relation to speeding while being pursued by a police officer.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 879, by Senator Levy, Senate Print 976-A, an act in relation to directing the State Fire Administrator to study the Hazardous Materials Emergency Response Training Program.

ACTING PRESIDENT KUHL: The 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 884, by Senator Padavan, Senate Print 3091, an act to amend the Executive Law, in relation to

cooperation between police agencies and the United States Immigration and Naturalization Service.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 896, by Member of the Assembly Brodsky, Assembly Print 6220, an act to amend the Environmental Conservation Law, in relation to the length of scup.

ACTING PRESIDENT KUHL: The 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 905, by Senator Present, Senate Print 993, an

act to amend the Tax Law, in relation to penalties and interest assessments with respect to sales tax reporting.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 907, by Member of the Assembly Kaufman, Assembly Print 1811-B, an act to amend the Arts and Cultural Affairs Law, in relation to contracts for theatrical and musical performances.

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

THE SECRETARY: Section 2. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

911, by Senator Present, Senate Print 1691, an act authorizing the Commissioner of General Services to transfer and convey certain state lands in the county of Cattaraugus to Holimont, Incorporated.

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

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 913, by Senator Farley, Senate Print 1726, an act to amend the Public Officers Law, in relation to the power of the state legislators to administer oaths of office.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 914, by Senator Bruno, Senate Print 1860, an act to amend the Tax Law, in relation to the inspection of tax returns.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 917, by Senator DeFrancisco, Senate Print 2153, an act in relation to authorizing the conveyance of certain real property to the state of New York adjacent to the Hutchings Psychiatric Center to Syracuse University.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 918, by Senator Farley, Senate Print 2305, an act to amend the Tax Law, in relation to the requirement to file a personal income tax return.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 928, by Senator Stafford, Senate Print 3312, an act to amend the Tax Law, in relation to authorizing the county of Washington to allocate certain proceeds from the tax on mortgages.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 931, by Senator Lack, Senate Print 3552, an act to amend the Tax Law, in relation to mortgage recording taxes on credit line mortgages.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

936, by Senator Goodman, Senate Print 4002, an act to amend the Public Buildings Law, in relation to deleting the value limitation on contracts authorized to be let to meet construction emergencies.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 941, by Senator Padavan, Senate Print 4745, an act to amend Chapter 172 of the Laws of 1992, amending the Tax Law, relating to releasing the Cooperative Housing Corporation from transferee liability.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 960, by Senator Maltese, Senate Print 489, an act to amend the Vehicle and Traffic Law, in relation to providing for distinctive license plates for members of the Catholic War Veterans.

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

THE SECRETARY: Section 2. This act shall take effect on the first day of April.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 961, by Senator Skelos, Senate Print 1965, an act to amend the Vehicle and Traffic Law, in relation to distinctive license plates for gold star mothers.

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

THE SECRETARY: Section 2. This act shall take effect January 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 964, by Senator Hoblock, Senate Print 3407, an act to amend the Military Law, in relation to providing legal authority for obtaining background checks on individuals.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 965, by Senator LaValle, Senate Print 3508, an act to amend the Vehicle and Traffic Law, in relation to distinctive plates for widows or widowers of former prisoners of war.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 966, by Senator Bruno, Senate Print 3654-B, an act to amend the Vehicle and Traffic Law, in relation to authorizing issuance of distinctive license plates to "legion of merit" recipients of the United States Armed Forces.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 971, by Senator Cook, Senate Print 286, an act to amend the Agriculture and Markets Law, in relation to examination of horses for equine infectious anemia.

ACTING PRESIDENT KUHL: The 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 46.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Johnson, that completes the non-controversial calendar.

SENATOR JOHNSON: Can we please take up the controversial reading of the calendar?

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar.

THE SECRETARY: On page 11, Calendar Number 339, by Senator Padavan, Senate Print 3089-A, an act to amend the Education Law, in relation to the exclusion of illegal aliens from attending public post-secondary educational institutions.

ACTING PRESIDENT KUHL: Explanation.

SENATOR JOHNSON: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 700, by -

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: Also, Mr. President, please lay aside 914 for the day.

ACTING PRESIDENT KUHL: 914 - Calendar Number 914?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: Okay. Calendar Number 914 is laid aside for the day.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 700, by Senator Stafford, Senate Print 1261-B, an act to amend the Insurance Law and the General Obligations Law, in relation to limiting liability for property owners.

SENATOR PATERSON: Explanation.

SENATOR JOHNSON: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 722, by Senator Saland, Senate Print 2039, an

act to amend the Public Health Law and the Executive Law, in relation to court author ization for immunodeficiency virus-related testing of certain sex offenders.

SENATOR PATERSON: Explanation.

SENATOR JOHNSON: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 830, by Senator Volker, Senate Print 4588, an act to amend the Penal Law, in relation to issuance of licenses to have and carry pistols.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been asked for by the Acting Minority Leader, Senator Paterson, on Calendar Number 830.

SENATOR VOLKER: Mr. President, this -

ACTING PRESIDENT KUHL: Senator Volker, just -- excuse me just a minute. May we have some quiet in the chamber, please? There's

a lot of noise in the back of the chamber. Could we please quiet it down?

Thank you.

Senator Volker for an explanation.

SENATOR VOLKER: Mr. President, this is a bill that's passed this house on a number of occasions and sponsored in the Assembly by Assemblyman Bragman.

This bill has been termed the "proper cause" bill, and it's a fairly simple bill that obviously is also very controversial, and it would basically create a presumption that a person of clean, moral, criminal and mental record has proper cause for the issuance of a license to carry a firearm.

Presently, the way that firearms licenses are issued in many parts of the state, the presumption is in reverse, and what this bill would do basically is still allow, obvious ly, background checks and all the rest of the things that go with licensing statewide, but there would be a presumption that a person with

a -- that would have a clean, moral, criminal and mental record and, of course, when the checks were made, if that person was found not to be in that sort of a position, then the courts say a pistol permit could be denied.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Volker yield for a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Paterson? The Senator yields.

SENATOR PATERSON: Senator Volker, I think one of the mistakes that often advocates of gun control make is the presumption that restricting guns just uniformly and individually cuts crime, and we are not trying to suggest in our opposition to this piece of legislation that it is going to address the real major problems that we have with crime in our state.

However, it would seem that we would not want to add to what is already a

crisis situation when it comes to violence and violence committed with firearms in our state, and so my question to you is with that kind of climate already existing, why would we ever want to limit any kind of regulations with respect to an individual obtaining a firearm when the decent citizens of the state, even though encumbered by a little more than would be the result if this bill passes, can still obtain firearms? It is not illegal to obtain a firearm and conceal it in this state.

SENATOR VOLKER: Senator, I think that -- and I'm glad that you said it, although I would certainly argue that there are some people in this state and certainly in the Con gress of the United States who seem to have only one -- one criminal justice agenda, and that is limit firearms and maybe add a few police officers occasionally, but I agree with you, and I'm not making light of it, and I agree that there are many more reasonable people who, I think, certainly should recognize because, unfortunately, the people with the toughest gun

laws in the United States of America, Washington D.C. and New York, have some of the highest crime rates in America.

Let me point out to you once again something that I think many people have pointed out ad nauseam, that the problem is not now nor has it ever been legally licensed handgun owners. The problem with firearms relates to -

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: I'm having some difficulty hearing Senator Volker.

SENATOR VOLKER: There's a little bit of background noise.

ACTING PRESIDENT KUHL: There's quite a bit of background noise, Senator Volker. I don't know if you're used to having that kind of accompaniment. Why don't we quiet it down in the chamber and if we could get Senators Leibell and Holland to take their seats -

SENATOR JOHNSON: Can I interrupt

for an announcement? Senator Hannon would like to make an announcement.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: Mr. President, I would like to announce that we're going to call a Health Committee meeting in Room 332 immediately at 11:30 today.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Health Committee in the Majority Conference Room, Room 332; immediate meeting of the Health Committee.

Thank you for your indulgence, Senator Volker.

Senator Volker.

SENATOR VOLKER: Yeah. Getting back, I think those of us who have been the proponents of this bill -- Senator, I can assure you that if I thought that the passage of this bill would truly increase the proliferation of illegal guns in this state and truly create any more of a criminal justice problem, I would be the last one that would sponsor such a bill.

I think the problem is that we have had an irrational attitude toward crime in many ways in this state, and I think what we're trying to do here is develop a coordinated system, that we don't have a system such as the city of New York, where, in many cases, what happens is that the licensing people just sit on applications and don't grid them at all, and we have situations in other counties where there are all sorts of different rules.

I think the argument that we make here, and what this bill is that this sets a rational method of licensing, still does not allow the people who commit -- who indulge in criminal conduct from obtaining weapons legally, because the problem is that people who indulge in criminal conduct obtain their weapons illegally, and that's the real problem that we have had to deal with, and I don't think this bill will -- will create any more problems than the present licensing structure in some ways has created because, unfortunately, what we've done, I think, is create pseudo-criminals out of

people because they want to protect themselves and I think that's a huge mistake.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Volker for answering the question. I also want to thank him for recognizing the point I was trying to make, which is that I don't think that we have to necessarily talk about the crime rate when we are talking about licensing firearms. We don't necessarily talk about the crime rate when we license automobile drivers. It's just that we understand that a firearm and an automobile can turn into very dangerous weapons when not operated correctly, and so what I'm saying is we just discount the crime rate and just on the issue of maintenance and obtaining a firearm, we recognize that it is a highly dangerous weapon and not try to create the stigma of the citizen who legally wants to obtain the firearm, but to just give notice to that citizen and as a notice to society that it's public policy that what we

would really want people who would like to own firearms to know is that it carries a high degree of responsibility which should take far more in the criteria than I feel Senator Volker sets forth in his bill.

I understand what Senator Volker is saying. Probably there is a feeling that increased restrictions cause individuals to feel as if they're being treated like the criminal when, in fact, they are purchasing the firearms to ward off criminals, but I don't think that's what we really are saying.

In voting against this bill, what I think we should be saying is that this is just a dangerous weapon, and it is one that has a threshold of regulation that the -- that the candidate who would like to own such a firearm should reach, and I think that that threshold is a lot greater than what Senator Volker sets forth in this bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yes, Mr.

President. I can't be as benign in my judgment of this bill and as accommodating and civil as my good friend, Senator Paterson on this bill, because I think this is really a very, very dangerous bill.

This is part of the far right wing agenda in this country which is almost to force guns upon everybody, and I don't mean to call my good friend and respected colleague, Senator Volker, a member of the right wing fringe. He isn't, but this is part of the agenda, where a line seems to have been drawn in this country where the greatest issue is to try to make it as easy for people to possess firearms. In fact, in some instances we've seen where localities have compelled people to have firearms on the totally insane idea, totally insane, that people are going to be protected if they have a firearm in their house or in their possession when, in fact, every statistic shows the great increase in the number of crimes that have been committed with firearms and the number of deaths and the number of injuries that have

been caused with firearms.

First of all, just the number of injuries and deaths caused with firearms by people, no crime involved, but they left a gun in their drawer and the kid found it, and every day we read about these. Secondly, of course, is the fact that firearms get stolen, and Senator Volker says, "Well, it's not going to lead to a proliferation of illegal handguns." Of course, it will, because the more handguns you have out in society, the greater risk and danger there is that these are going to be stolen, and while I don't have the exact statistic in mind, a large proportion of the illegal handguns, Senator Volker, come from people who originally had -- or people who did have a license to have handguns and had that handgun stolen or lost it, and that handgun then finds its way out in the street and ends up being used in a crime and ends up in shooting a store owner or in a shoot-out in the street where someone gets shot.

I don't know what it is about

this wonderful country -- and it is, it's a wonderful country -- but this madness that everybody's got to have a gun, and it's not just a gun, to have a rifle, go out shooting, that's fine. You insist that people have -- are allowed to have these murderous assault weapons. We can't pass a bill through this Senate barring people from having assault weapons. It has nothing to do with protection. It has nothing to do with sportsmen who want to go out and shoot, and that's fine. It has no other purpose than to kill, to maim, to destroy, and we can't pass a bill because you are so scared of the NRA.

I don't know how many of you are members of the NRA -- I know Senator Johnson proudly says -- well, Senator Johnson, may I say to you, I think I'm a lot prouder and have more respect for George Bush for saying "I'm not going to belong to an organization that calls federal law enforcement officials" -- what do they call them -- thugs or some other booted thugs?

I could just say to you, Senator Johnson -- and I know your high moral standard, and so on -- maybe you ought to review whether you want to belong to that sort of an organization.

But we are at a critical time in this country as far as the social compact is concerned, and much of it relates to this driv ing force by what, I think, is a relatively few people that you've got to make guns available to everybody who wants it, whether they're trained to have guns, whether they're qualified to have guns, whether they're experienced with guns, has been satisfactory or not. Just let everybody have guns.

What are the militias all about? The militias are all about people who are saying we're taking away their right to have guns and, therefore, now they have the right to blow up federal buildings and kill children and kill innocent people because that right to have guns in their mind is so sacred and is so paramount, and that's why I say this bill -- and I know you

have introduced it for years, Senator Volker, before maybe the gun issue became as inflamed as it has in our society, but this is now part of the extreme right wing agenda, and you ought to reject it, and you ought to acknowledge that we need a sensible, careful system of regulating who has firearms in their possession.

So I'm grateful that the Assembly once again will protect the public, Senator Volker, because it's fashionable for the Majority here to get up and talk about security, and so on, and since we have been following your path, this state has become more and more unsafe. The only thing you have been able to do is create a lot of prisons and put a lot of people in prisons. In the meantime, everybody is less safe whether in the city, in the suburbs or in the rural areas, but the fact is that this bill which will increase the number of crimes committed with guns, the number of people killed with guns, the number of people maimed with guns, should not be before us. This is a bad, bad, bad bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

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

I would like to speak on the bill. I echo the sentiments of Senator Paterson, Senator Leichter, but I would like to take you to another step.

This is not a bill about dangerous instruments. This is a bill about a deadly weapon. Pistols, revolvers, whatever you want to call them, are made for one purpose, to take lives, and what we're saying with this act proposed, if it should become an act, by Senator Volker, is that people can declare themselves okay under the law. I am a moral person. I am a good person, therefore, I should have a deadly weapon in my hand, so that if someone comes upon me in the street and I feel apprehensive and it's a dark night, and I feel that they may be a threat to me, then I may wish to exercise the deadly physical force allowable with this deadly instrumentality in my hand.

When you hear that, you think about what about all the people who live in Brooklyn where I grew up? What about the people who live in South Jamaica, part of where I represent? What about the people in the Bronx and in Manhattan, who, like Anthony Stewart, a young man I represented in an auto accident case, a college student on his way home from school with his books, driving the Honda that his parents can afford to pay for him is stopped by the police, dragged out of the car and searched, and then they say, "Oops! A mistake. You look like somebody we're looking for." Could we later on declare that I am a moral person and I should have this deadly weapon?

What about what happened on 97th and 150th on July 3rd of last year? A man who is an engineer, his wife has a Master's degree, works for the state. Their two children are "A" students, one in junior high school, one in high school. The police came by to stop fireworks from being fired off. The two boys happened to be outside when others were firing off fireworks

and happened to move too slowly when the police became angered. It ended up the father was arrested and beaten, the mother was arrested and beaten, the boys were arrested and beaten and all of the witnesses, including the New York City Police Department's Internal Affairs Division found that they had done nothing, but now they have a record, which will be expunged eventually, but the point I'm making is these are moral people. These are good citizens, each of them, and they may want to one day qualify to have this deadly weapon, but the system is making it very difficult for them to have the weapon.

The point I'm really making is that we don't need this in this state. We don't need this in America. We don't need to arm ourselves against the possibility that someone who way not look like us or act like us may attack us. That's foolish, and all the data subscribes to what Senator Leichter said, when you have these weapons, they end up hurting more innocent people than those who are guilty of

doing something wrong.

The point, though, is that do we need this creeping fascist approach to governing ourselves? I think not. I would hope that my colleagues in their wisdom would not allow this to happen.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

I will try to be brief, but I wanted to explain to my colleague, Senator Leichter, that his comments were very significant, but he doesn't understand really what this is all about.

This is about slogans. If it wasn't about slogans, it wouldn't be on the floor, because it's not going to pass the Assembly as he pointed out.

If we wanted to do something in this area, I want you to know that when you talk

about education for people who have guns, that bill is in. It won't get reported out of committee. We won't have a chance to vote on it. A simple bill that says that if you're going to own a gun, just as you have to take a driving course, you ought to take a course just as with boaters now, we want them to take courses, but boating you're going to have to take a course. Driving, you have to take a course, but a gun, no reason you should be trained at all, but we have that bill. You won't have a chance to vote on it.

What about all the talk about people protecting themselves with guns? Now, the people that sell guns tell you that you need a gun to protect yourself. There was a simple bill that was introduced in this Legislature that says if a gun is actually used in an incident it ought to be reported to the police so we'll have some records. You will never see that bill on the floor, I guarantee you that. Certainly the gun dealers and the people who manufacture don't want you to see it because

you'll find out how that argument doesn't hold weight.

There were people killed on campuses of this state where someone walked in and in the heat of rage, bought a rifle, a shotgun, went out and killed people on the campus. We have a bill introduced in this Legislature for a four-day waiting period for a rifle. It doesn't say they can't get it. It doesn't say if you're a hunter you can't own as many rifles as you want or shotguns. It says four days. People that go hunting know they're going to go hunting in four days. They got to apply for hunting licenses. You'll never see that bill before you on the floor of the Senate. It's introduced.

I don't understand all of that, and I think that the reason you won't see some of these bills is that my colleagues don't understand the NRA, and I say this with respect. I thought it was fascinating that this last week we read that 70 percent of the people who belong to the NRA disavowed the terrible

comments that Senator Leichter referred to. Well, I wasn't shocked, because I have been educated by some of my friends up here, Senator Volker, Senator Stachowski, people who have NRA families, Senator Hoffmann, in their districts who say, "What are these peoples?" These are hunters. These are decent people who use guns in proper ways. Unfortunately, after these comments were made public, the NRA had its, I think, national convention and who goes to these conventions but I guess the people who feel the strongest and they re-elected a leadership which this country should not necessarily be proud of, but you're misreading the average person in the NRA.

I get calls in my office. My name is on some of these flyers that they hand out in the gun stores, you know, with "Enemy of the People" in it, and people call me up and they say, "Senator, why are they against you? What are your bills?" And I talk to these people and they say, "There's nothing wrong with that. There's nothing wrong with education. We

have kids and we make sure they get a course in education. We do it voluntarily." I said, "Fine. Don't you think everybody should?" They said, "Yeah. I don't know why the NRA is against you, Senator", and I explained to them about some of the other bills I've introduced about waiting periods and the average person, your constituents who are NRA people, are not against sensible solutions. So maybe you ought to talk to them and get away from some of this radical leadership.

As far as this bill is concerned, Senator Volker, you've made it very clear what it does. There are judges, I guess, in upstate New York and other people who throw in some regulations which you feel are not statutory and I understand what you're trying to do, but the bottom line, in my opinion, Senator, is not opening the door to more guns.

I would like to remind you that there are, I believe, 168 dead people in Oklahoma City from fertilizer and other items, a bomb that was made and, by the way, if you don't

know how to make that bomb, I guess you didn't read the right newspapers, because God bless freedom of speech, I think almost every newspaper printed it, so if you didn't know how to make a bomb, after you read the paper, you knew how to make it.

But the answer, Senator, to bombs that blow up 168 people and the answer to the kind of violence we have in America is not by encouraging more violence and arming your citizens against violence. It's preaching against violence. It's trying to teach our kids respect for one another, and we've done that. I've told you before, I'm very proud of the fact that last year we passed a bill which would mandate teaching the Holocaust, teaching the evils of slavery, teaching the inhumanity to man and hopefully the kids will start to see each other in a different light, but none of that happens because we pass a bill that says that it's easier to get a gun. It's the wrong focus on the wrong syllable.

I vote no.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

SENATOR MARCHI: I'm not sure that -- you know, I'm a little perplexed by the dangers that are alluded to in this bill.

However, it does change, in a way, the burden of proof so that instead of having the applicant have to at least respond to a number of requirements, there is a presumption that, in effect, is rebuttable -- is rebuttable, but it shifts the burden of proof.

I fail to see where there's any impediment throughout the rest of the state, except in the city of New York, and in New York they exaggerate the other way. I'm sure if the cardinal asked for permission to carry a gun, it would take him a couple of years before he got it, unless he knows -- unless the police know something about him that we don't, but I - there are over 650,000, I believe, gun permits issued throughout the state of New York outside of New York City, and I don't argue with that. I think they are issued properly because good

cause or entitlement is established, but to jump and say that is there anyone being denied -- is there a need, in other words, for something like this to establish a presumption that would put this burden on the state or on the public in the absence of an indicated need which I don't see?

I voted against this measure last year for the same reason, and this is not to blanket all NRA people as evil, because I have many of them in my own district and not all of them follow some of the crazies that George - Senator Dole -- no, ex-president or President Bush characterized most properly, but I fail to see where anyone today is being hampered in the process of obtaining a consent to an application under the present rules, and to establish a precedent that we don't -- to shift that burden, I just don't see the need for it, and I am going to vote no on this.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Volker.

SENATOR VOLKER: Go ahead.

ACTING PRESIDENT KUHL: Senator

Volker yields to Senator Hoffmann.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

Along with Senator Volker, Senator Johnson, Senator Kuhl, Senator Larkin and Senator Saland, I'm a sponsor of this measure, and I want to make clear to those who pay attention to the deliberations in this chamber that there is at least one member on this side of the aisle who believes very strongly in the rights of Americans to be able to own and carry pistols when it suits their purpose, when it suits their convenience as is guaranteed by the United States Constitution.

Unfortunately, we have a history in this state of some discrimination where the matter of gun ownership is concerned, and there are numerous incidents in various counties where people in a clerical capacity or purely minis terial capacity have taken it upon themselves to impose restrictions that were in no way appropriate or reasonable when an individual

applied to obtain a pistol permit.

I'd like to note that one of the largest categories of growing gun ownership in this country is with women, and women resent the notion that they should somehow portray themselves as potential victims in order to be given a pistol permit to which they are legally entitled. It should be a simple matter of stating the obvious that they are choosing to exercise their rights as American citizens, that they are of high moral character, have done nothing that would create any kind of legal restriction to their exercising this right but, in fact, they are sometimes put through an unnecessary and very arduous process of justification that they have, in fact, a need or a right because they are potentially a victim in society.

Well, all of us are victims - potential victims in society. We cannot begin to protect ourselves from most of the evils out there. We can't anticipate an automobile accident. We can't anticipate a fire. We can't

anticipate a natural disaster, any better than we can anticipate a fertilizer bomb in Oklahoma City, but it is reasonable, in fact, it is prudent for people who feel comfortable carrying a firearm, who are trained in the use of that firearm to exercise their right to have a firearm with them when they see fit. That is a matter that is guaranteed by the Constitution of the United States. It should not be usurped by the state of New York. It should not be usurped by a clerk or a sheriff or somebody in the ministerial role in some county who handles these applications.

I want to make clear people realize that those of us who do represent large rural constituencies are in touch with the people who own or might consider owning a firearm, and it is generally not such a big deal, and I'm a little troubled by Senator Gold's comments earlier that he has talked to some people in the NRA and he believes that he understands them better than those of us in rural areas. I don't understand any of that

logic. I respect Senator Gold's brilliant legal mind and I listen to him debate quite frequently, but I do take exception to his characterization of my constituents.

I know that many of my constituents who never intend to own a firearm in their lives are offended that this state or some other jurisdiction of government would choose to preempt their right. This is a matter of personal exercise of freedom, and I believe that it's a perfectly logical measure for us to be passing.

In the other house, the prime sponsor is the Democratic Majority Leader, Mike Bragman, also from central New York, so this is not a Republican versus a Democratic issue. It is not a matter of debate against the NRA. I resent the stigmatization of gun owners in general. I resent the stigmatization of some people who happen to be members of the NRA. Let's deal with this on merit. Let's deal with it as an issue of personal freedom.

I would urge all of my colleagues

to consider that at some point you may want to exercise a measure of freedom guaranteed by the Constitution that is totally unrelated to gun ownership and how would you feel if you were told that you had to demonstrate extreme need in order to be able to exercise that constitutional right; then consider how people who want to obtain a pistol permit feel when they discover their rights have been usurped as well.

I would urge all of my colleagues to vote aye on this measure.

Thank you.

ACTING PRESIDENT KUHL: Senator Hoffmann, would you yield to a question from Senator Waldon?

SENATOR HOFFMANN: Yes, Senator Waldon.

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

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Senator, I heard you say "constitutional guarantee" in regard to

right to have this weapon as characterized by this bill. I am in the dark about that. Would you please enlighten me and tell me where the Constitution specifies that we have a right to own pistols or carry pistols?

SENATOR HOFFMANN: Well, Senator Waldon, without getting into a lengthy discourse with you, I think that's a fundamental differ ence of opinion that many people who oppose gun ownership in general take, because the Constitution does not specifically spell out pistols or specific types of firearms. There has lately been a characterization that somehow this is not a guaranteed right.

I take the broader interpretation of the Constitution that the Second Amendment guarantees that right to all Americans. More over, I believe that our founding fathers, when they crafted the Constitution, intended personal freedoms to include possession of firearms and a large number of other freedoms that were not anticipated at that time. I think that to be as picayune as some people have been and say, "I

don't see the definition in the United States Constitution that person number, serial number, Social Security number, whatever, does not have the right to carry a .38 pistol", I find that that's a rather diversionary approach to this issue, but one that has been happening quite often, just as the introduction of the NRA in this debate really has little to do with the issue of gun ownership.

I believe that the Constitution of the United States guarantees us as American citizens the right to be responsible gun owners and that right cannot be eroded by any other jurisdiction of government.

SENATOR WALDON: Thank you, Mr. President.

Thank you, Senator.

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

Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes -- no, I would like to -

ACTING PRESIDENT KUHL: Speak on the bill?

SENATOR MONTGOMERY: -- ask the sponsor to yield to a question, if you will.

ACTING PRESIDENT KUHL: Senator Volker, do you yield? Senator Volker yields.

SENATOR MONTGOMERY: Does -- this bill to establish presumption of eligibility to own a pistol, does it violate the current federal law, the Brady Bill or is this in anticipation that the Brady Bill will be overturned?

SENATOR VOLKER: No, in fact, the Brady Bill really had virtually -- had very little impact on New York, because we had a much more stringent law in licensing than the Brady Bill.

I think one of the things that should be understood is the fact that I've seen some circulars sent out that says, "Look what a wonderful job the Brady Bill --" but in New York, it had virtually no impact because we already have a much stricter law than the Brady

Bill -- is involved in the Brady Bill. The Brady Bill just provides for a waiting period. We provide for a licensing period in the city of New York that may be forever. Certainly it will be a year to two years even upstate, and if we got into this, I could tell you a story about a friend of mine who applied for a license who, in fact, is a very good friend of mine, and I could get into how long it took him and all the hoops he had to go through. I think it took him like eight months, and the fellow was a bank executive and had a totally clean record and had to go through -- the reason I mention that is that anyone that thinks that this is an easy process and if this bill passed through both houses, which I will predict at some point in the next few years, will happen maybe with a little different -- some restrictions on it, but I believe that at some point will happen, it will still -- you'll still have a licensing process, and in the city of New York, you'll have -- they'll still be very reluctant to grant licenses and will delay them, and so forth, but

the answer is the Brady Bill had virtually no effect on New York and this bill would still provide a licensing process. You still have to go through the fingerprinting and all that sort of thing that you're going through now, so the answer is it does not violate the Brady Bill. It does not violate any federal statute which, by the way, the bill that was on the floor yesterday of the Assembly that was debated and passed with one vote after all sorts of -- that bill definitely violates some of the federal laws and, unfortunately, for the Assembly, I don't think they completely understand how the guns laws work, but this bill certainly would not.

SENATOR MONTGOMERY: Okay. Thank you for that clarification.

Senator, the -- you speak of - in the memo that I have before me, you talk about random predatory violence and the concern for that, and I would just ask in your -- the issue of random predatory violence being the rationale for the bill, is that -- are you

trying to put into my hands a pistol so that if someone approaches me and I assume that that person is going to commit some violent act toward me, I should just shoot them; that I should be allowed to own a gun for that purpose? Is that the purpose of your trying to get pistols in the hands of citizens, that you want them to be able to protect themselves by killing another person who appears to be posing a threat or danger to them and vice versa, if I approach you in your district on a late evening, I'm walking on your block and you -- you -- you feel threatened by my presence, that you should just pull your pistol out and shoot me since we're talking about random violence in dealing with it based on your bill?

SENATOR VOLKER: No, Senator, that obviously is not -- is not what we're looking for. When we speak of random violence, what we're really talking about here -- I think I don't have to remind you that I do have a little bit of knowledge, although as I get older, it gets farther and farther, I guess,

from my law enforcement days, but what we're talking about in the memo when we talk about random violence is the issue of personal protection, and this business in Oak Grove and various places, I guess, where it was where they tell people they have to have firearms, that's a little much and, obviously, is a reaction to the other side of the coin that says you can't have any guns and, of course, we know that neither one of those have any relevance with reality, and I think what we're trying to do with this bill -- and I think the media, of course, that has had such a frenzy about guns and, frankly, because of their opposition to the death penalty and opposition to tough criminal statutes in general, the editorial boards of the Times and all the rest of these papers have tried to deal with this issue as some sort of panacea. The real truth is there's just been nothing shown that real gun control has done anything anywhere.

Now, that doesn't mean that we are saying, Senator, that we should just hand

guns out to anybody that wants weapons, but what we are saying is that this is a rational system for dealing with the -- if we have a licensing system -- right now we have a licensing system that is somewhat irrational. In fact, Senator Waldon without realizing it, just brought up one of the problems with the licensing system because he was telling about some people who were improperly dealt with by the police. Under the present system in New York City, those people could never get a license. Under this bill, if they applied for a license, they would have a presumption and, therefore, they would have an opportunity that they don't have now to be able to possess -- to purchase and possess a firearm.

And what I'm saying with this bill is I'm not saying that everybody should have a gun. I'm not saying that everybody should confront other people. What I am saying is, though, we should set up a rational process throughout this state that deals with this issue up front if a person has a criminal record or if

a person has mental problems, and so forth, that are desirable then they shouldn't have the weapons, but if they don't, then we should present a process that allows them to have that weapon to protect themselves because that's what we're talking about as far as random violence is concerned.

SENATOR MONTGOMERY: All right. Thank you, Senator.

Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery on the bill.

SENATOR MONTGOMERY: This bill is, I think -- my assumption is that it's Senator Volker's attempt to address the issue of random violence, and his way of addressing it is making it much easier for a person like myself or anyone in this room to go out and buy a pistol. We just present ourselves and say we want to buy a pistol and essentially it would be presumed that I would be eligible or anybody would be eligible, and the ultimate result of

the continued explosion of availability of weapons, concealed weapons as well as weapons that are not so easily concealed, automatic, semiautomatic, et cetera, essentially people killing machines has been the number one source of unnecessary death by violence in this nation.

We have one of the highest murder rates in the world, and I think that is in and of itself enough reason for us to revisit - reconsider how we view the possession of guns, but despite all of that information, knowledge, understanding about the relationship between the murder rate, our murder rate in this nation and the availability of these weapons, these killing machines, we still continue to see legislatures, including ours, and legislators, including Senator Volker, come forth with attempts to make it far easier to possess -- purchase and possess these killing machines.

It is a very sad state of political correctness that people view the fact that we should -- we should have guns as a means

of dealing with crime, politically correct, that, in fact, the way that I view it is that there are some people whose view of America and whose view of dealing with each other in America goes back to a time when any two men confronting each other on a street had their guns on their hips, and if those two men had an argument and it had not been resolved up to that point, they would just simply take a draw and the best man -- the quickest draw would win.

That seems to be where we're headed. That's where everybody wants this nation to go, so that if we are going that far back, why don't we just say everybody shall have a gun, shall have a holster, the women included -- Senator Hoffmann wants the women to have some too. They didn't in those days but they will now. Maybe they'll have pretty little neat holsters with their guns, and when we meet each other on the street and we have a -- I have an argument with Senator Smith, I'll just pull out my pistol and shoot her if I don't like how she deals with me at that moment and we will resolve

a lot of problems. Why don't we just go all the way if that's where we're going, because that's where this legislation points to. It does not resolve the random crime. It does not help to reduce crime in this state, in the City and it certainly does not help to reduce crime, the murder rate in this nation, for us to continue along these lines, but if that's our vision of America, let's take it all the way back.

Mr. President, I vote no. I think this is very -- a very wrong message to be giving young people and to be giving New York people at this point in time, especially when we're trying desperately to reduce the murder rate in our nation and desperately to send a message to Americans that we do not approve of this kind of violence, using violence as a means of resolving our issues.

This is wrong, and I am opposed to it. I will always be opposed to it because I think it's wrong, and I hope that my colleagues will all vote no on this bill.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Can I speak on the bill, Mr. President?

ACTING PRESIDENT KUHL: The debate is still open. The Secretary recognizes Senator Dollinger on the bill.

SENATOR DOLLINGER: Mr. President, this discussion about this bill and what it really means has been wide ranging, talking about constitutional rights and I guess possible duals between members of this Senate, but what I would like to do is just focus on exactly what I see this bill doing and perhaps trying to get away from the absolutes of this discussion on the practicality of it.

This bill would amend a section that allows the possession of a concealed firearm. This is the provision, section (g), which -- excuse me, section (f) which says that

you can have and carry concealed firearms without regard to employment or place of possession. You can carry it anywhere concealed by any person only on -- based on one condition, one condition to get the license to be able to do that, and that is when proper cause exists for the issuance. That's the only restriction, the only requirement that we put on carrying a concealed pistol so that Senator Montgomery's comments about running into someone who would suddenly turn around and shoot someone, the only thing that this bill affects is if that person appears like me with a suit coat on, but what I don't tell you is I have a concealed weapon under my coat which I can settle our argument with.

The concealment of a weapon in this state requires that there be proper cause demonstrated by the person who wants to conceal it. That's what our law currently requires, and under the current process -- and Senator Volker could correct me if I'm wrong, but under the current process, in order to carry that

concealed weapon, the bearer of the concealed weapon has to prove that proper cause exists.

The decisions of this case - this state, my understanding is are replete with a very broad reading of what proper cause is. Threatened violence, the possibility of violence, of living in an environment in which there is significant violence, all of those things would constitute proper cause for the issuance of a consist -- a concealed pistol permit.

It seems to me that what this legislation does by presuming proper cause is, it says you can carry a concealed weapon any time you want without any restrictions. You get a license for a pistol permit simply by asking for it, because you will be presumed to have proper cause for the possession of a concealed weapon.

This exception swallows -- this exception swallows the rule created in section (f). It seems to me that this goes too far, that what we will do is we will have everyone

possessing a concealed pistol in this state. We have chosen -- this Legislature has chosen not to do that in the past, and we are not eliminating the proper cause requirement. We have chosen not to do it because we believe in the proper use of pistols -- and I'm not one of those who wants to take pistols away from people, but in the proper use of a pistol, in order to carry it concealed, you have to show some cause to do that. If you create a license which is presumed to qualify, you no longer need the license, and it just seems to me that in this day and age, requiring that proper cause be shown by the bearer of the pistol before he or she can carry it concealed is one of the fixtures of our gun laws in this state which we should not amend and should not change.

We could talk forever about the Second Amendment, what it means and whether it creates a right to carry this -- the mere fact that this statute is on the books and has been on the books for more than 50 years suggests to me that no one has challenged this statute. We

can restrict access to permits. We can -- we can restrict access to pistols just as this statute does. It would clearly survive constitutional attack.

So there isn't an unfettered right, in my judgment, as evidenced by this statute, to bear a pistol, but what we do require is before you carry one concealed in your possession, you have to show proper cause and the burden of proof is on you to show proper cause for the issuance of that permit. We ought to keep this in this statute.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Waldon to explain his vote.

SENATOR WALDON: Thank you very

much, Mr. President.

This is a place of spin masters. We can put words together and create pictures. We can put words together and create movements. It is interesting that in this state we do not presume if someone -- if someone wishes to fly a plane that he can say or she can say "I just want to fly a plane. I'm of good moral character", and we permit them to fly the plane. We do the same thing regarding automobiles. When our children become of age and wish to drive, they can't say, "Hey, Daddy, I just want to presume that I'm able to drive your car" and jump on the road without some sanction from government. The same things happens with motorboats.

The government in its wisdom says, "You can't do these things cavalierly. There has to be a check and balance so that the greater society is protected from you, and you are protected from yourself", and yet, in my opinion, this bill will allow someone to say, "I'm okay for carrying a deadly weapon" and

that's sufficient.

I think that is wrong. I think it's improper. I think it's stretching, but the greatest stretch I heard here today was the spin master of the Constitution says it's okay, so people in the gallery will walk away and say, "Gee, I didn't know that the Constitution guaranteed that women could carry weapons if they wish in their Gucci holsters or men can carry in their Coach holsters, pistols."

I think that is dangerous, and I know that some of you sometimes wonder what the heck is Al Waldon talking about with some of the things that I say when I speak of the creeping to the right or the rapid movement to the right or the invasions against and incursions against that which has made this nation strong in terms of our constitutional guarantees, the bastions, the underpinning of this society are being attacked at times in this chamber with this kind of philosophical approach to what we do as a government. I urge us to deny the presumption and to assume that all of these years we have

been right.

I vote in the negative on this.

ACTING PRESIDENT KUHL: Senator Waldon in the negative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar 830 are Senators Abate, Connor, Dollinger, Gold, Goodman, Kruger, Leichter, Marchi, Markowitz, Mendez, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Santiago, Smith, Stavisky, Waldon, also Senator Jones. Ayes 36, nays 20.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Johnson.

SENATOR JOHNSON: Mr. President, may we please return to reports of standing committees. I believe there's a report from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: Senator Johnson, there is a report of the Finance Committee at the desk. We will return to reports of standing committees. I'll ask the

Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Donald C. DeWitt, Esq., of Albany, Commissioner of the Tax Appeals Tribunal.

ACTING PRESIDENT KUHL: Chair recognizes Senator Hoblock on the nomination.

SENATOR HOBLOCK: Thank you, Mr. President. I rise -

ACTING PRESIDENT KUHL: Senator Hoblock, excuse me just a minute. There's a lot of noise in the chamber. Will you please have the members take their seats, take the conversa tions out of the chamber.

I think we're ready now, Senator Hoblock. Excuse the interruption.

SENATOR HOBLOCK: Thank you, Mr. President.

I rise in support and move the nomination of Donald C. DeWitt as Commissioner of the Tax Appeals Tribunal.

Don is extremely qualified and

most deserving of this nomination. Don graduated from law school and was admitted to the bar in 1979 and spent several years in private practice in the litigation area and then went to work in 1982 for the New York State Department of Equalization and Assessment as a senior attorney. In 1990, Don moved to the New York State Department of Taxation and Finance where he has been a senior attorney on the Department's litigation staff.

While he was practicing law and serving his state, Don also did a great deal of work for his community in a legal way. He served in a pro bono status for the Legal Aid Society of Northeastern New York and the Albany County Bar Association. Don also has an extensive reputation and background for service to his country, having been a Marine and served his country during the Vietnam war.

He's an individual who is committed to his community and, as stated, he's been committed to his state and his country. I've got to know Don quite personally over the

past several years and I've been extremely impressed by his perseverance, his dedication, his energy and his sense of responsibility, and in moving the nomination of a person into a very important position such as the Tax Appeal Tribunal where an individual has to sit there in judgment and weigh the various issues and positions by the litigants, I think Don is extremely qualified from a personal standpoint because he is the father of 11 children ages 3 to 20, and I'm sure he's had to litigate a number of disputes over the years. So I think he's most deserving of this particular position.

I'm extremely proud of Don and his family, and I know we will be of him as he continues with his work. He's here today with his wife Mary Ann and, Mr. President, it gives me a great deal of pleasure to move the nomination of Donald C. DeWitt.

ACTING PRESIDENT KUHL: The question is on the nom... excuse me.

Senator Farley, on the

nomination.

SENATOR FARLEY: As somebody from the Capital District, I'd like to rise to second Senator Hoblock's nomination. It's my understanding that Donald has 11 children.

SENATOR HOBLOCK: Yes.

SENATOR FARLEY: And anyone with all those kids really needs the job, and I'm going to vote with enthusiasm for him. He's an excellent nominee, and I'm sure that Senator Hoblock's recommendation is enough to make for a fine appointment, and I applaud the Governor and I'm going to vote aye.

ACTING PRESIDENT KUHL: The question is on the nomination of Donald C. DeWitt, of Albany, to become the Commissioner of the Tax Appeals Tribunal. All those in favor of the nomination, please signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

We're very happy to be joined by

the Commissioner, Donald C. DeWitt, his wife Mary Ann, their two daughters who have been most patient listening to what we've been doing here, Katherine and Karen. Good luck in your new job. Thank you for joining us. Godspeed.

(Applause)

Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers the following nomination: Alexander Samuel Jess, of Ilion, sheriff of Herkimer County.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: It's a pleasure, Mr. President, to move the nomination of Alexander Samuel Jess. He has an excellent background in law enforcement, in administration and I'm sure he'll serve Herkimer County well.

ACTING PRESIDENT KUHL: The question is on the nomination. Excuse me, Senator Sears.

SENATOR SEARS: Thank you, Mr. President.

I'm happy to second and move the nomination of Sam Jess to be sheriff of Herkimer County. I don't know Sam Jess real well, but I know of his background and his experience having come up through the ranks as a deputy sheriff and then being appointed as the undersheriff of Herkimer County.

He has a long, long record of achievements, and I'm sure that he will carry out the duties of the new sheriff of Herkimer County to the best of his ability, and I'm happy to move that confirmation.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Seward on the nomination.

SENATOR SEWARD: Yes. I want to join my colleague in congratulating the Governor on the nomination of Sam Jess to be the new sheriff of Herkimer County. He has a long history of service to the people of Herkimer County in an appointive capacity related to law enforcement, most recently as undersheriff of that county.

I know he's going to do an outstanding job as the new sheriff of Herkimer County and I join -- I'm pleased to join in seconding the nomination of Sam Jess to be Herkimer County Sheriff.

ACTING PRESIDENT KUHL: The question is on the nomination of Alexander Samuel Jess to become sheriff of Herkimer County. All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The sheriff's appointment is confirmed.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 339.

ACTING PRESIDENT KUHL: Secretary will read the title of Number 339.

THE SECRETARY: On page 11, Calendar Number 339, by Senator Padavan, Senate Print 3089A, an act to amend the Education Law,

in relation to the exclusion of illegal aliens from attending post-secondary educational institutions.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Padavan, an explanation has been asked for by Senator Leichter on Calendar Number 339.

SENATOR PADAVAN: Thank you, Mr. President.

This bill would provide for the exclusion of illegal aliens from attending our State University and City University.

ACTING PRESIDENT KUHL: Senator Paterson? Senator Leichter? Your choice.

SENATOR LEICHTER: O.K. Would Senator Padavan yield?

ACTING PRESIDENT KUHL: Chair recognizes Senator Leichter.

Senator Padavan, would you yield to a question from Senator Leichter? The Senator yields.

SENATOR LEICHTER: Senator, do you have any data, information as to alleged

number of illegal aliens that are attending post-secondary educational institutions in the state of New York?

SENATOR PADAVAN: Mr. President, in response to the question that was raised, in a recent report that we published just last month dealing with many economic issues and other related issues involving immigration, we did compile significant data based on a variety of sources that would answer Senator Leichter's question.

If we go back to 1989, the City University itself announced the fact that there were some 2,000 illegal immigrants attending City University. That's six years ago. Based on other data that's been provided and made available since, we estimate that between SUNY and CUNY, there are over 4300 illegal immigrants residing in those universities which, as you know, is subsidized -- State University we subsidize at approximately 11,000, a little more than that, per pupil and City University we subsidize a little over 7,000 per pupil.

So we do have a pretty good idea based on this information that's been made available of the relative magnitude of the number of students in our state and city system that are in this country illegally.

SENATOR LEICHTER: Mr. President, if the Senator would be so good as to continue to yield.

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

SENATOR LEICHTER: Senator, that 4300 figure is -- am I correct in understanding that that is a guess or surmise on your part?

SENATOR PADAVAN: Well, Senator, no, it's far more than that, I can assure you. If we accept CUNY's own report which, as I indicated, goes back six years and, as we know, the illegal immigration problem has ballooned for the last three, four, five years in the aggregate, so their data -- their report would obviously be the minimum threshold in terms of numbers.

No, it is not a guess. It is not a surmise. It's a factually based statement and I'll be glad to give you a copy of the report, Senator, in which you can analyze the data which is significant and, I'm sure, come to your own conclusion.

But, Senator, whether it's 2,000, 3,000 or 4,000, the fact remains we have illegal immigrants in our City and State University, violating the laws of this country and, as we at this point in time in the Legislature, grapple with some very serious economic problems as they relate to education, both elementary and second ary and higher education, fighting to hold onto tuition assistance programs, SEEK programs, HEOP programs, which benefit not only citizens but legal immigrants, people in this country lawfully, trying to hold onto those resources and those programs, it seems to me that it's terribly wrong to reward people who have come to this country illegally by giving them a subsidized education. In addition, by the way, many of these illegal immigrants have applied

and received TAP and are benefiting from SEEK and are benefiting from HEOP. So, in addition to the subsidy we provide within the State and City University, they are benefiting from other programs as well.

SENATOR LEICHTER: Senator Padavan, if you would be good enough to continue to yield. Other than -

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, other than the report that you prepared, is there any information or any independent data about illegal immigrants receiving TAP awards?

SENATOR PADAVAN: Yes. As I indicated to you before, we have information from City University itself. I might also add that the -

SENATOR LEICHTER: I'm sorry. Referring to TAP now.

SENATOR PADAVAN: Yes. We have indications, statistical data in terms of the number of students who are in this category, this 4,000 figure, who are applying for TAP, O.K.? I can't give you name and address.

The only requirement that is currently in effect is that they have a place of residence, and I might add, to add insult to injury, they are paying resident tuition. They're not even paying non-resident tuition, so you have someone in this country illegally paying resident tuition. You know, non-resident tuition is approximately twice as much. To me, that's also an irony that I find hard to accept.

SENATOR LEICHTER: Mr. President, again -

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

SENATOR LEICHTER: Senator Padavan, right now, if somebody applies to State University and identifies themselves as an illegal immigrant, undocumented alien, says,

"I'm in this country illegally," would the University accept them?

SENATOR PADAVAN: Yes.

SENATOR LEICHTER: You -- you've checked with the University?

SENATOR PADAVAN: Yes.

SENATOR LEICHTER: And you've been told -

SENATOR PADAVAN: I've been told that -

SENATOR LEICHTER: -- that someone who is here illegally -

SENATOR PADAVAN: First, your question is somewhat academic because they don't make that inquiry, but if they did, if they did, based on current policies that prevail, they would currently enroll that student.

SENATOR LEICHTER: Mr. President, on the bill, please.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: Senator Padavan, I have no problem with the basic notion

with the problem that somebody who is in this country illegally should not be entitled to attend a state-supported institution. I have no problem with that and, frankly, I'm surprised and, while I've no reason to doubt your answer, I have a certain amount of skepticism that when you say that if somebody informed the University "I'm here illegally" that the University would say, "You're still entitled to be admitted," because I would think that the University would respond and say that you must have a legal status in this country to be admitted to a state university.

The problem I have with this bill, Senator, is really two-fold. First of all, I think that you create an administrative nightmare that is far worse than any problem that we have and, while you gave a figure of 4300 and so on, which is -- in itself is very small when -- when we have over what? -- the total enrollment in our public educational institutions is well over 200,000, maybe more than that, but I suspect that far fewer

undocumented aliens than that have actually applied and been admitted to attendance at a state university.

Now, you require an administrative determination which means that a lot of resources, a lot of effort, are going to be required to find out whether people are here legally or not, and it's not that simple a determination in every case. Somebody may determine that they're here legally and, in fact, they may be here legally and they may not have papers at the moment that can establish - that can prove it.

It's not always a simple thing, and I speak, by the way, because I came to this country legally. I was really one of the very, very fortunate people who escaped Hitler Europe. I came here on a visa, and so on, but I know of instances where I could not establish immediately my -- my citizenship.

I remember once coming from Montreal, it was not that many years ago. I was already a Senator here and going from Canada,

gone up to Montreal for dinner, came back at night and was asked at the immigration point at the border, Where were you born? I said, Vienna, Austria. Oh. Are you a citizen? Yes. Can you establish it? Well, at that moment I thought well, wait a second, what do I have that says I'm a citizen, and then I pulled out my Senate card, identification card, and he looked at it, didn't think much of my being in the Senate, but didn't -- that wasn't yet grounds for keeping somebody out of this country. It may soon be, but, in any event, determined I must be a citizen if I -- if I'm a member of the Senate.

So that when you say O.K., they've got -- somebody has really got to establish their status, sometimes there are arguments. Somebody will say, "I'm here legally." There may be a question and now the University has to make that determination. I assure you that the result will be two-fold. One is a great administrative burden on the University, SUNY, CUNY, the community colleges, and secondly, that there will be people who, in

fact, are here legally, they are documented aliens but may not be at a particular point able to establish it.

And that leads me to the second problem I have with this bill. We know and understand there's a certain degree of illegal immigration into this country. There obviously are population pressures. People seek to come to this country. We know our borders are not secure. They're large borders, difficult to keep out people, and there are illegal immigrants here, but it's a federal matter to determine immigration, and to thrust this burden if you will, on the states -- and it is a burden already, but to do it in this particular regard, I submit to you, makes no sense whatsoever.

It's a federal matter. It ought to be dealt with by the federal government, and this sort of reminds me of a bill that John Daly used to present every year, and that was that he wanted the State University to determine whether somebody had registered for the draft, and we pointed out there's a federal function. Why

should we use our state institutions as a means of enforcing federal laws? That's up to the federal government.

Finally, I'm troubled really by what underlies this bill, Senator Padavan, because I don't think that rising costs at the State University are due because we've had such a large influx of illegal immigrants at state universities or other publicly funded institutions of higher education. Not at all. This is part of what, unfortunately, is becoming a scapegoating of immigrants. Our problems are due to illegal immigrants.

It's not true. It's scapegoat ing, and while I know that's not something that you would engage in, and so on, but I think that element is unfortunately very much present at this time in our society. I happen to agree with the mayor of the city of New York when he talked about the fact that what really has been wonderful about the strength of this country are the immigrants who come here, and all of us at one time, there isn't anybody here as far as I

know who can say, Well, I or my ancestors, we were not immigrants.

Reminds me of this wonderful story about FDR when he greeted the Daughters of the American Revolution shortly after they'd refused to let Marion Anderson sing at the hall that they had in Washington, and he greeted them as they came in and said, Welcome, fellow immigrants.

We're all immigrants at one time, and I'm sure or believe at least that most of our ancestors probably came here legally, but to set up this notion that our social problems are caused by illegal immigrants, that the cost at the State University is so great because of illegal immigrants, that, I think, partakes of scapegoating.

I don't think there is a problem. I don't think there's a difficulty. I don't mind saying as public policy that we should not pay for people who are clearly identified, who identify themselves as illegal immigrants. But to set up this, if you will, a

police -- policing administrative function, put that burden on the state institution, I think it's unjustified, unnecessary, and I think it takes away something that makes this state - makes this country great, and that's the way that we deal with people who live in this country and live in this state. I think this bill is a mistake.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan, why do you rise? I have a list going, Senator Padavan.

SENATOR PADAVAN: I'd like to respond to certain questions that I felt that Senator Leichter raised. However, if you feel you should preclude that -

ACTING PRESIDENT KUHL: We have five speakers ahead of you, Senator Padavan: Senator Paterson, Senator Stavisky, Senator Waldon -

SENATOR PADAVAN: I'd like to respond to the comments, if I may.

ACTING PRESIDENT KUHL: Would you like to ask Senator Leichter to yield to a question? If you wish to do that, Senator Padavan, that's the only way we could take you out of order.

SENATOR PADAVAN: If you wish me to do it that way -

ACTING PRESIDENT KUHL: Senator Leichter, would you yield to a question by Senator Padavan?

SENATOR LEICHTER: Yes. I was going to say, am I not right, Senator Padavan?

ACTING PRESIDENT KUHL: Senator Padavan to respond to Senator Leichter.

SENATOR PADAVAN: Senator -- and, Senator, I was about to say that there's much of what you said that I agree with, and let me start off with the things that I agree with you on.

First, I believe largely the immigration issue is federal. On May 6th, the

President, in his address to the nation -- radio address -- I'll just read one paragraph from it, stated: Our immigration policy is focused in four areas: First, strengthening border control; secondly, protecting American jobs by enforcing the labor laws against illegal immigrants in the workplace; thirdly, deporting criminal and deportable aliens; fourth, giving assistance to states who need it and deny illegal aliens benefits for public services or welfare.

It's that fourth one that I'd like for you to consider. The President of the United States, earlier this month, in a national address, highlights the simple fact that we should not be providing public services to illegal immigrants.

He bases much of what he says on a report rendered by his Commissioner, Presidential Commission on Immigration chaired by a brilliant woman, Barbara Jordan. If you had had the opportunity of reading her report, the Commission's report to the Congress, in the

fall they make a significant point that states: Certain regions -- of which we are near the top of the list, perhaps second after California - are providing services to illegal immigrants in such a magnitude that it is undermining our ability to provide services to legal immigrants as well as to the general citizenry.

This report is quite comprehensive. It deals with a whole bunch of other issues, including the one we're dealing with, education.

Now, all of what you said about immigrants -- and we are a nation of immigrants unless we're native Americans or Mexican Americans -- we came here as you said yourself, or our forebears came here in the main legally. In the city of New York a significant percentage of our City University population are legal immigrants, non-citizens who are here on student visas and a variety of other categories, of which I think there are 13, attending our City University, community colleges, and so on, lawfully. They followed the rules, Senator, and

we welcome them because they do provide an enrichment, a dimension that is beneficial.

However, we do have thousands, and I cited and you questioned me on my sources and one of them was the City University itself, and that's six years ago, we know the problem has gotten far worse in terms of the number and if we use 4,000 as a figure and we look at the subsidy, we're talking about $28 million. The mayor is looking for that and City University is looking for that kind of money right now as we grapple with their fiscal problems.

So when you say the benefits are negligible and the problem is inconsequential, I have to tell you, with all due respect, you're wrong.

Now, with regard to the administrative burden, the other point you made, currently we have this in written form from CUNY and SUNY: Right now a student is required to indicate very clearly as to whether they're resident or non-resident, and the reason is because the tuition is significantly different.

It would not be any greater administrative burden for that individual on one more line on that form to indicate their immigration status if they're non-citizen. Very simple thing to do, no heavy burden, no outrageous cost, part of the admission process.

Now, with two youngsters in college, and I know that you have had, you know, you had to fill out forms before you were admitted. This would not add any great dimension to that process, and it would save, I think, a great deal of money to both SUNY and CUNY.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, why do you rise?

SENATOR LEICHTER: If you would yield to just one question, Senator Padavan.

ACTING PRESIDENT KUHL: Senator Padavan, do you yield to Senator Leichter? Senator yields.

SENATOR LEICHTER: Should your bill become law in this form, would it comply

with the requirement of this bill if all that the University did on the form, on the admission form, were to ask, Are you legally in the United States, however they would phrase it, but with that purport, and have the applicant either check yes or no; or do you envisage that the University has to make some independent investi gation or require proof if you have a name such as Lopez or Mendez, would you have to show that you didn't come here illegally and that you now have a legal status?

SENATOR PADAVAN: As you know, Senator, to answer your question fully -- it's a good one. If you are applying for employment, under current law, you must demonstrate to your employer that you're in this country legally. You cite a visa number, whatever is appropriate in your case, green card number, so on. That would be applicable here.

Beyond that, obviously if that document is fraudulent or whatever, that becomes an INS issue, but right now that is not being asked for, and so we have a problem.

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If permissible that Senator Padavan would yield for a couple of questions.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: What I would like you to tell me, Senator, is after the application is filled out and say we put this third category on, resident, non-resident, immigrant or legally permanent resident, we have 13 categories of legal permanent residents and 31 different types.

The individual fills out that they are a legal immigrant, but there's reason to believe that they are not. How is that investigated?

SENATOR PADAVAN: I'm not sure.

Just take the last part of the question.

SENATOR PATERSON: How do you find out that a person is not a legal resident, not a legal immigrant?

SENATOR PADAVAN: How did you find out? Well, obviously, City University, employers, social service agencies, and so on, are not investigatory bodies. If they have such an indication, they would refer the matter to INS.

SENATOR PATERSON: Mr. President, if Senator Padavan would yield to another question? What would give us the indication that we would have to investigate?

SENATOR PADAVAN: That's a question I can't answer for you. Whatever -- if -- if, in the admissions process there is in the minds of the admissions office some indication that the document is fraudulent, there is a notation on it in any category, then an appropriate referral would be made.

SENATOR PATERSON: Mr. President, that's exactly why many of us so strongly oppose

this bill. At the point that there's an indication, we might have a problem being assured of what the proper investigation procedure would be, but what brings us to the indication that a person may be an illegal immigrant?

I guess if you worked at Hostos College, where the large percentage of the students are Dominican, it might be because they speak Spanish or because they look like they are not naturalized citizens to the eye of the beholder or perhaps their names, as Senator Leichter pointed out, indicate that there's at least a chance that they are not currently citizens of this country. They have an accent, that could be an indication, and the problem that I have with it, Senator Padavan, is that it opens the door for abuse, and so in an attempt to -- to catch some, we are stigmatizing the many.

Now, earlier in the conversation about the licensing of weapons, Senator Hoffmann raised the issue of individuals who just want to

apply for guns who are being stigmatized by clerks, so I certainly think that in just the same way that we now have individuals who are not employees of the Immigration and Naturalization Service, they are not professionals in this field, they are not members of an investigating body, but they must -- may just decide for some reason that they think that this person is answering the questions incorrectly and may be an illegal immigrant; and my question to you, Senator Padavan, is the cost of stigmatizing the many worth catching the few?

SENATOR PADAVAN: First, I strongly disagree with you on your contention that such a process would stigmatize anyone. I think it's an affront to those people, those youngsters who are in our city and state legally, non-citizens attending our universities to have someone come in illegally and enjoy the same benefits. There's the stigmatizing if you want to have one.

Another fact remains, Senator, admissions officers do check very carefully the

issue of residency and, as I outlined in my response to Senator Leichter, because it has direct bearing on the tuition to be paid and they do that as a matter of routine, so, therefore, you could say, are they stigmatizing people who are non-New York State residents, which would be absurd.

SENATOR PATERSON: Mr. President.

SENATOR PADAVAN: Therefore, Senator, in response to your question, I do not agree with your underlying premise and, therefore, my answer to your question is no.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator Padavan, I don't want you to use your conclusion as a basis for the argument because no one in this chamber is disagreeing with your conclusion. All of us are affronted by the fact that people who would come into this country illegally, have not gone through our process or our system and are now using our facilities

probably in the way of American citizens or legal residents who more rightfully have a right to those services and we all are affronted by that, but that's not the answer to my question.

My question is, how do you protect the legal permanent residents who are here and the citizens who may be stigmatized by the process, and you're telling me that there's no stigmatization.

I guess it's clear that you would think that there's no stigmatization because you don't have in this bill any due process for the wrongly accused. You don't have anything that indicates that we will provide a due process for anyone who is now challenged at that particular point, but I would want you to know, Senator, that at our borders right here in New York State that people are challenged every day just in the same way Senator Leichter said that he was challenged when he was riding back on a train from Montreal.

It's a real problem, and we accepted it when it was raised earlier today

that people who were going to apply for guns were harassed by clerks, and we have all kinds of documented evidence from the Puerto Rican Legal Defense Association, from immigration organizations, from a number of groups, that this stigmatization does occur, and what I'm saying is, Senator Padavan, I have to believe that you recognize that it does occur.

The question I'm asking is, how do you address it in this legislation?

SENATOR PADAVAN: I don't accept that it occurs, and I'll give you an analogy possibly that will rationalize when I respond. Two people are applying for a job, both non-citizens. One provides information that shows he's in this country legally. The other does not in the mind of the potential employer, and a referral is made. That happens to be law today.

And why is it law? Number one is to protect people in this country legally in terms of gainful employment. It's also to discourage the employment of illegal immigrants

who not only take jobs away from others, but also can be manipulated in the workplace.

Now, is there stigma... is that person who was referred to in the second instance being stigmatized? The answer is no. They both might have, to use your phrase, an access, but the fact remains the law is very clear there. One is legally entitled to employment and the other is not.

We wish to make that applicable to City and State University. Therefore, your question about stigmatizing people is not relevant, in my mind.

ACTING PRESIDENT KUHL: Senator Paterson, you have the floor.

SENATOR PATERSON: If Senator Padavan would continue to yield.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator

Padavan, you first indicated that there are a number of people who have been victimized by that process who are walking, talking proof that it does happen. Many of them are in this chamber right now and would probably like to tell you their stories; but my question is, isn't it true if we -- if your law is passed that we are going to apply this to students who are already enrolled -

SENATOR PADAVAN: Yes.

SENATOR PATERSON: So then my question is how are we going to check their immigration status?

SENATOR PADAVAN: The very same way that the bill outlines, Senator. They would be required to provide indications that they are in this country lawfully, student visas and a green card.

SENATOR PATERSON: All right. Thank you, Senator Padavan.

On the bill, Mr. President. I'm really just afraid of the kinds of situations that occurred in The Great Escape where they

walked to the train and just asked people to show their papers. I hope we would never get to that point of view, even though Senator Padavan raises an issue that everyone in this chamber is in agreement with, that we do have a circumstance where there are people who are illegally using services in this country and probably obfuscating the right of Americans and legal permanent residents to use those services. However, with the number of situations that have occurred where there has been, although Senator Padavan does not believe that it occurs, harassment of individuals who happen to, for some reason, arouse in others the suspicion that they may not be legal residents, I really think that this bill is merited, but needs more protections and the protection that I would suggest at least would be a due process opportunity for those who have been accused.

ACTING PRESIDENT KUHL: Senator Cook, why do you rise?

SENATOR COOK: Mr. President, if

I might, the regular meeting of the Education Committee is about to convene in Room 124.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Senate Education Committee in Room 124. Immediate meeting of the Senate Education Committee in Room 124.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: I ask whether I would be the next name on the list.

ACTING PRESIDENT KUHL: Senator Waldon had indicated he wanted to speak next and, Senator Stavisky, you are next after him.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon.

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

Mr. President, if Senator Padavan would yield to a question or two.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Thank you very much, Senator. Senator, I am looking for edification with respect to the process to be implemented if this were to become law. Let me give you the hypothetical and then, if you will, you could explain to me what happens.

Someone comes to Baruch College, the CUNY system, makes application to be admitted. The interviewer believes that the person may be an illegal alien and, therefore, wishes to report it. Who does that interviewer report this illegal alien suspicion to?

SENATOR PADAVAN: First, Senator, if the applicant provides valid documentation - my youngsters, I recall, in helping them fill out their applications, there was a block said, Are you a citizen? If you're a non-citizen, what is your immigration status? Both of them are in private colleges, but the same would apply.

So as an example, the one I gave Senator Paterson, if they were here on a student visa, they would put that information down on that line and that would be the end of it. However, if information was not provided or there was some problem with regard to it, the bill specifically tells you in paragraph 3, page 2, the process that the admissions officer would follow in terms of reporting such a situation to certain individuals, including the United States Immigration and Naturalization Service.

SENATOR WALDON: If the Senator would continue, Mr. President.

SENATOR PADAVAN: Yes.

SENATOR WALDON: If the Senator would continue to yield.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: The requirement of making those reports, is there any money

built into this bill to cover that, to defray the cost?

SENATOR PADAVAN: There's no money built into the bill for any part of it because, in my view, if properly implemented, based on the data that's been made available to us which, as I indicated to others I'll be happy to share with you in our report, there would be huge savings to both the City and State University.

SENATOR WALDON: I -- Mr. President, if I may continue, if the Senator would -

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, I'm not attempting to be convoluted at all, I'm just trying to get some information.

SENATOR PADAVAN: I thought I answered.

SENATOR WALDON: I simply am asking -- perhaps I -- well, let's create some body with a hypothetical name. I have someone who wants to come into Baruch College of City University. They do not show me to my satisfaction that they are a student who should be admitted because of proper documentation. I suspect, because of their language and their color, that they are not a citizen of the United States. I want to report it to the proper authorities.

I ask if there is any money provided here for that, not is there any money saved to the CUNY and SUNY system, but is there any money built into this to defray the cost?

SENATOR PADAVAN: Senator, let me answer it. Your comment about the language and color, I take strong exception to, very much so. If you look at the enrollment at our City and State University today, a significant percent are people of color and people who are foreign born where English is not their native language, and they provide a high level of

enrichment to that University. So let's, if you will take that part out of your question, but now let me answer it.

There is no money in the bill to provide a referral in an instance where information has not been provided relevant to immigration status that would meet the requirement. The answer is no.

SENATOR WALDON: Thank you very much, Mr. -- Senator.

Mr. President, if I may on the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

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

You have -- the situation that I foresee because of the many numbers of people of color who speak languages not necessarily in sync' with the language of this land, who may be illegal aliens, are the ones who I think will perhaps be stigmatized, as Senator Paterson characterized, in this process and I think

that's a danger, and I think that's being very honest to say, as I see it, as I view the world, as I understand the racism that's practiced in this country and in this state and certainly in the city of New York, that these are the people who will become the brunt of this kind of policy.

I have said here before in this chamber and will say again, I'm sure, if God allows me to live long enough, that there's a lady who sits in the harbor in New York City and she has a tablet under her arm, and on that tablet is inscribed words which sound something like "Send me your poor, your tired, your troubled masses yearning to breathe free."

I think this approach, this attitude, this posture is in sync' with all of the things that I dislike about what we're trying to do and where we're going as a nation. I oppose it. I think this doesn't help anyone. I think this nation should have an open arms policy and find mechanisms that would allow people to be educated so that they can be

productive citizens and bring the riches of their culture and their background and their intelligence and allow all of us to benefit from it.

I will have to vote in the no on this, and I thank you very kindly.

SENATOR PADAVAN: Will Senator Waldon yield to a question?

ACTING PRESIDENT KUHL: Senator Waldon, do you yield? Senator yields.

SENATOR PADAVAN: Senator, are you familiar with the President's Commission on Immigration chaired by Barbara Jordan?

SENATOR WALDON: I am somewhat familiar. I'm not cognizant enough to speak for it.

SENATOR PADAVAN: Do you know who Barbara Jordan is?

SENATOR WALDON: I absolutely know who Barbara Jordan is. I served in the Congress -- she was not there, but her history, her reputation in the Congress was replete in every feature. I had occasion to meet Barbara

Jordan. She is a great lady, a distinguished Texan, and one of the icons of the Congress of the United States.

SENATOR PADAVAN: I agree fully. Now, here is the gist of the question. In her report, she states, "The Commission recommends that illegal aliens should not be eligible for any publicly funded service or assistance except those made on an emergency basis." This lady who you very well described, in her capacity as chairman of that commission, makes that state ment. Do you think it's a valid one? Do you think it's appropriate? Do you think it makes sense?

SENATOR WALDON: Mr. President, if I may respond.

Barbara Jordan has the right to make any statement that she wishes. She's sufficiently intelligent to analyze situations and come to a conclusion and to share those conclusions with whomever. I do not necessarily adopt her conclusions. I respect her right to make them. I respect her right to publish them,

but I do not profess to march to the same drummer that she does.

I have a wife who has a genius level I.Q., and is certainly far more intelligent than I, and I don't even listen to what she says all of the time; so I respectfully submit that it is right for Miss Jordan to say what she said, but I am an independent human being, a free thinker, and I think for myself.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Stavisky.

SENATOR STAVISKY: Mr. President, we have had legislation proposed in this house that would require as part of the duties of citizenship the teaching of citizenship to provide students at New York State institutions with instruction in the United States Consti tution. Sometimes that instruction is needed in other places. Sometimes even we who serve in government have to be reminded that, under the federal system, we do not do everything, neither

does the federal -- the United States government, and neither do the municipalities of this state.

We are talking about a provision of the United States Constitution and, when I last looked at that Constitution, it had not been amended to give the state of New York and the educational institutions of the state of New York the responsibility of implementing what the United States government is ill-prepared to implement itself.

You want to have implementation along these lines? That's not for the state of New York or for any educational institution to do and to absorb the cost. Get the Immigration and Naturalization Service to do its job.

To quote a President of the United States, his name is Bill Clinton, Neither Bill Clinton nor George Bush nor Ronald Reagan nor any of their predecessors provided money or support for the kind of intensive analysis and scrutiny that this legislation proposes to do.

Educational institutions are in

the business of educating. You want them to do more? Make it within the jurisdiction of what the New York State Constitution says that we shall do or else amend the federal Constitution and the federal law to make it our responsibility.

I see no effort. I've seen no money, and I still see at the airports cases that come to our attention every month of the year where people who can afford to have an airline ticket pass through the authorities, United States government authorities, and they say, We are here on political asylum.

What kind of scrutiny is that? You're on political asylum. You're asked to answer a question or two. You're let through the gates and they're never found again. Now, if these people are here illegally, that is the responsibility of the United States government and not the educational institutions in the post-secondary field that happen to be public educational institutions.

If we're looking to catch people

who shouldn't be attending our schools, what about kindergarten? What about elementary school? What about high school? Aren't these also expenses borne by the taxpayers of New York State? I am not proposing that we take that route, but there is something inconsistent in beginning with higher education when the individual may have been here illegally throughout the educational system prior to higher education instruction.

I think we are better served as a nation and as a state by having people educated so that they will be law-abiding, hopefully law-abiding citizens of this state and nation. I don't ever want to see us adopt a policy where, because of the response of a teen-ager 16 or 17 years of age, that teen-ager may have fingered the parents and caused the parents to be evicted from the United States. I think that would be a tragedy, and it is a tragedy that other societies have encouraged and permitted to happen, and I think it was wrong.

We have had cases where, under

totalitarian systems, and I am not suggesting that this legislation in any way parallels that, but I know that under totalitarian systems, children would be encouraged to let the authorities know about illegal actions of their parents, and I think that was reprehensible whether practiced in Germany or practiced in the Soviet Union or practiced anywhere else.

Finally, why do we single out the public higher educational institutions? TAP is available to any student, public or non-public, and that is paid for by taxpayers of New York State. Why have we singled out the public higher educational institutions? Why is your bill silent? I'm not asking you to yield on this. Why is the legislation silent on this issue? You can take from the taxpayers if they're going to a non-public institution but not if they're applying to a public college and I think there are sufficient reasons here to be aware of the problem and ask the United States authorities no matter who is in charge, whether it's Newt Gingrich or his predecessor, whether

it is the Governor of New York State, the present governor or his predecessor, comply with the law by having each level of government do what it is supposed to do and not have the schools assume all the responsibilities for what public officials have been unwilling to do.

We don't want them to attend our colleges, fine. Do not admit them, but how do you find out? You can't turn to the census data because the last time I looked the census data is confidential, and after the questions are asked, all of those responses are put in a vat and they are treated with chemicals which destroy the answers on the census data, and sometimes even the illegal immigrants have been counted by the census authority to qualify New York State with federal aid which is disappearing and representation in Congress which is going down.

How do you get the answers? How do you get accurate answers? Do you send a special agent from a college to ring the door bell? With or without a gun, I don't know which

proposal you'll be following, and if you ring the door bell and say, I'm here from a college and we want to know whether you're here legally or not, I can imagine what the answer to that question would be if you were bothered during the day or at night and asked to answer that kind of a question.

You say, Well, I don't have any papers available. I'll have to look. I'm sorry, we can't admit your son or your daughter to college unless you answer that question. We have to understand that the idea may be a good one, but you don't want to spend taxpayer money in New York for those who are not entitled to it and I agree with that, but at what cost? How do you verify -- how do you prevent a kind of police state that many people in this room would not wish to see, Republicans as well as Democrats?

You would not wish to see that finger on the door bell and that finger of authority demanding to know the documentation, and I am most certain that you would not want

your children to betray the confidence and the rights of their parents which could very easily happen if the answer turns out to be negative.

For these reasons, I'm appealing to you, if you believe in certain individual rights of citizenship -- and I've heard a lot of discussion on the prior bill, a lot of that discussion, we have a right as free Americans not to be hassled, not to be asked too many intrusive questions, but we have a presumption that we are of good moral character, well, college applicants have a right to say, Isn't there a presumption that we have a right to an education? They may not have a right to have it free. They should be charged as non-resident New Yorkers, but to remove them would require action by the federal government, which does not appear to be overly enthusiastic in implementing what the law requires it to do.

ACTING PRESIDENT KUHL: Chair recognizes Senator Espada.

SENATOR ESPADA: Thank you, Mr. President.

Will Senator Padavan yield to a question.

ACTING PRESIDENT KUHL: Senator Padavan, will you yield to Senator Espada?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ESPADA: Senator Padavan, prefacing my questions, I wish you to know that in no way are my questions or the comments that follow it directed toward you as a person.

Would you please define to me the term "xenophobia"?

SENATOR PADAVAN: Pardon?

SENATOR ESPADA: Would you please fine to me in these chambers the term "xenophobia"?

SENATOR PADAVAN: Xeno...

SENATOR ESPADA: Xenophobia, yes.

SENATOR PADAVAN: I think that's a fear of foreigners, fear of aliens, whatever. Yes. Does that help you?

SENATOR ESPADA: I don't know if

you were being serious. My question was a serious one.

SENATOR PADAVAN: And I gave you a serious answer. I think it's a fear of foreigners, by definition.

SENATOR ESPADA: Thank you. Perhaps someone from out west, but maybe some unfounded fears of foreigners would contribute to the condition known as xenophobia, would you not agree?

SENATOR PADAVAN: Again, I'm afraid you lost me on that one. Would I what?

SENATOR ESPADA: Xenophobia is mostly founded on unconscious positions in the bearer's mind, in the unconscious, not the reality?

SENATOR PADAVAN: That may be the answer you want, but I don't know if it's relevant to this legislation but, you know, could you -- I'll be glad to answer any question. I would appreciate, however, in all due courtesy that we deal with the legislation.

SENATOR ESPADA: Absolutely. I

think we would all be naive and absolutely ill-served if we did not take up this issue that there are many people that speak a certain language, Spanish or foreign language, that don't have the prototypical characteristics of a, quote, American, unquote that are very concerned that your legislation and that your material in your legislative package is your version of the 187 bill that became law last November in California, that that would produce conditions that are xenophobic and that the ramifications of that would be borne by people that speak a foreign tongue or that look a certain way, and so that's why I ask you.

SENATOR PADAVAN: Now I understand your question.

SENATOR ESPADA: To please define for me your view of xenophobic people.

SENATOR PADAVAN: Well, I'm going to try to answer your question, Senator. You and I come from the city of New York. A significant percentage, and I'm not going to take a guess, but it's probably far in excess of

a third of young people in our City University are not born in this country. They're foreign born, and so they fit your description. They make a meaningful contribution. They're here in this country legally, or their families are. They're getting an education. They add to the enrichment of our city and state and nation. They train themselves to be gainfully employed and they add, in a brood sense, to the city and the state.

However, there are only so many seats in the City University. There are only so many dollars we can commit, and we're fighting now for these dollars. The notion that we should not preclude illegal immigrants from filling those seats because there are so many others who are there, makes absolutely no sense at all.

I want to underline the word "illegal" as many times as I need to to get the point across to you. Now, every student who fills out an application is judged on a number of criteria -- educational background, where

they live, the residents, non-residents, SAT scores, whatever the case may be, all kinds of things.

Are we stigmatizing people by asking that information on an application for City or State University? I don't think so. Those are the requirements for admission.

SENATOR ESPADA: Answer the question, sir.

SENATOR PADAVAN: So, therefore, I think I've answered your question by saying phobias, other things of that nature are just not applicable to what we're trying to do here.

SENATOR ESPADA: Well, if I may follow through with a couple more questions, Mr. President, to the good Senator from Queens. Mr. President I'm asking it through you. I take that to mean that we could continue.

ACTING PRESIDENT KUHL: Yes, Senator Padavan yields.

SENATOR ESPADA: Yes, Senator Padavan, have you ever been stopped by an INS agent or by the police at any of our airports or

anything of that type? Have you ever enjoyed such an experience?

SENATOR PADAVAN: Yes.

SENATOR ESPADA: And how did you feel, if you don't mind sharing?

SENATOR PADAVAN: Well, I was crossing the Thousand Islands Bridge from New York to Canada, and I was stopped, wanted to look in the trunk of my vehicle. I felt if there was a reason for them to do so in their judgment, part of the process, I found no personal affront to it. They examined my car, asked me to open the trunk.

SENATOR ESPADA: I just should share that it also happened to me on my way back from Puerto Rico to New York's Kennedy Airport, and I didn't have such a pleasant experience. All Puerto Ricans, yours truly included, are automatically American citizens, as you know, by virtue of legislation enacted way back in 1917 or thereabouts. It wasn't a pleasant experience, and I just should share with you for the purposes of clarifying this whole allegation

of -- of stig... the whole issue of stigmatizing people, that I felt very stigmatized, very humiliated, and I am a -- I was born an American citizen, my children are born American citizens and no doubt, under your legislation, many people like myself goin' through the CUNY system would also be subjected to that kind of harass ment.

Have you any concerns about that?

SENATOR PADAVAN: Is that a question?

SENATOR ESPADA: Have you any concerns?

SENATOR PADAVAN: Is that a question? The answer is absolutely no. You would check off the block, U.S. Citizen and, as you pointed out accurately -

SENATOR ESPADA: M-m h-m-m.

SENATOR PADAVAN: -- Puerto Ricans have been citizens since 1917, and that would be the end of it.

SENATOR ESPADA: Let me ask you, though, because I would think it's the end of

it, your passage of legislation would also put me and my family in a situation where, if we were to go to a public hospital or we were to attempt to enroll children in a local school district, it would put us in the same position again of having to answer questions that would -- one would deem embarrassing, intimidating and a source of great harassment.

Well, what I'm saying is, you do have the same philosophy applies to little babies going to school and little babies born into the emergency room of a public hospital, right?

SENATOR PADAVAN: Absolutely not, and we'll hopefully some time before this session ends, we'll deal with other bills, but it's not applicable. What you just said is incorrect.

SENATOR ESPADA: I'm correct.

SENATOR PADAVAN: I would choose to deal with the bill before us but, in general terms, I would say that your statements were not valid.

SENATOR ESPADA: You asked my colleague, Senator Waldon, whether he was familiar with the distinguished Barbara Jordan. You are familiar with the distinguished Newt Gingrich, are you not?

SENATOR PADAVAN: Mr. Gingrich, I only know him by newspapers, reports and other things. And contrary, however, with regard to Barbara Jordan, I have had personal contact with her as recently as November, and we've had a lot of dialogue before and since; so, therefore, if you're trying to draw a contrast on this, I'm far more knowledgeable and personally aware of Barbara Jordan than I am of Newt Gingrich.

SENATOR ESPADA: Well, let's see because, with respect to welfare reform, many of the policies that the Gingrich Congress has passed would deny benefits to legal immigrants. Do you, sir, subscribe to those proposals that would deny benefits to legal immigrants?

SENATOR PADAVAN: To legal immigrants?

SENATOR ESPADA: Yes.

SENATOR PADAVAN: It would depend on the benefit, but those currently provided for in law are not ones that I would think we should take away, certainly health care and elementary school education, which is currently mandated by the federal government, to both legal and illegal immigrants.

However, I think we would have to evaluate each of those proposals as we're now dealing, ourselves, with issues of welfare reform as they relate to the entire welfare population.

SENATOR ESPADA: So I take it your support for legal immigrants and the rights that accrue to them are conditional in nature subject to case-by-case review?

SENATOR PADAVAN: Not case by case, but issue by issue. See, legal immigration, Senator, has a lot of categories.

SENATOR ESPADA: Yes.

SENATOR PADAVAN: People in this country, who someone, I think it was Senator Stavisky come here seeking asylum, they're

granted in some cases an opportunity for a hearing. During the time they arrive at Kennedy Airport and the time they have their hearing, they are here, quote, illegally until a hearing takes place. So that's one category and there are many other categories. So when you use the general term legal immigrant, I think we would have to deal with the various categories in terms of what benefits would be available.

SENATOR ESPADA: Thank you. I wish to thank you, Senator Paterson, for answering the questions.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Espada, on the bill.

SENATOR ESPADA: I think this is appropriately termed in terms of being the prop osition or the bastardized child of Proposition Number 187 type bills. I mean no personal of fense.

I'm very passionate about my opposition to this bill. You see, the sponsor or one of the chief beneficiaries of this

xenophobic bill or law that became law in California was Pete Wilson, and Pete Wilson or Governor Wilson rested much of his case and most of his moral conviction on the fact that there was a case to be made.

What he didn't show at the time was he knew first-hand that there was a case to be made because he had an illegal immigrant that was cleaning his house and looking after his children, and that is the kind of hypocrisy, that is the kind of individual value that could characterize this whole package of legislation that, unfortunately, we will be discussing in these chambers and this proud state, the proudest state in the United States. That we should be subjected to discussing and giving credence to this kind of a bill at this point in time when the immigration service who, throughout the whole of the United States, is resulting in mothers not taking their children into hospitals in California, into the court system saying, Oh, you cannot implement that law, for us to seriously and in this proud

institution give credence to this legislation by even analyzing it is to give the whole notion of xenophobic behavior credence and acceptability and, therefore, I find it morally reprehensible and would certainly vote no.

Thank you.

ACTING PRESIDENT KUHL: Senator DiCarlo, why do you rise?

SENATOR DiCARLO: Mr. President, would you recognize Senator Hoffmann and Senator Montgomery for the purpose of voting?

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR HOFFMANN: Aye.

ACTING PRESIDENT KUHL: Senator Hoffmann recorded in the affirmative.

Senator Montgomery, how do you vote?

SENATOR MONTGOMERY: No.

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

The roll call is withdrawn. Debate will continue. Senator Mendez was next on the list. She's temporarily out of the chamber.

Senator Dollinger is next on the list.

SENATOR DOLLINGER: Mr. President, will Senator Padavan yield to a couple questions?

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

SENATOR DOLLINGER: Let me start by saying, I read the Cities Committee report on illegal immigration. I thought it was an enlightening document, the discussion about the appearance of people at the airport who seek asylum, who leave, take their 18 months while waiting for the numbers, never show up for the

hearing, the conversion from, quote, legal status to illegal status, the cost that INS has and the tremendous difficulty in trying to police the problem. I thought it was really well laid out and really drew attention to an area where we have to take a very close look, and my questions today deal with this bill and how this bill achieves the goal of dealing with the problem of illegal immigration because, as you've heard, I think there are a number of concerns on this side of the table about the concept of illegal immigration.

I am one of those who believe that this country has always held that we have our doors open. What you have to do is we have a series of laws adopted by our Congress that say there are certain requirements you have to meet to get in the door and we change those periodically, and I'm not opposed to the federal government imposing those rules and drawing lines between legal immigration and illegal immigration.

So starting with that preference,

let me ask you a few -- one question about the specifics of the bill. Is there -- your bill links the exclusion from post-secondary education and the requirement that the post secondary institution report to the INS.

Would you consider delinking those, breaking the linkage, in other words simply saying in the bill that if you were an illegal alien, you do not qualify for public education and abolishing the second requirement which turns our public secondary school officials into enforcement arms of the INS?

SENATOR PADAVAN: That a question?

SENATOR DOLLINGER: Decoupling those.

SENATOR PADAVAN: No.

SENATOR DOLLINGER: Could you explain -- through you, Mr. President, could you explain why those have to be linked together?

SENATOR PADAVAN: I think, Senator, it's a responsibility of the state to do what it can, and I share some of your -- some

of your concerns, and I thank you for some of your comments about the report we put out last year, and we have just recently followed up with a second report.

I think it's the responsibility of the individual states, particularly those six regions around the country that are being over whelmed by problems of illegal immigration, and so on, that when they become aware of someone who is fraudulently attempting to enter into our network, whether it's social services or higher education, that they not have a blind eye to them, and not take appropriate action.

These people are breaking the law. They are law-breakers. They should be referred to appropriate authority; and so, therefore, in answer to your question, I would not feel that that would be appropriate.

SENATOR DOLLINGER: The second question, again through you, Mr. President.

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

SENATOR DOLLINGER: Senator, what do you see happening when a student shows up at the institution and is asked a question about their United States citizenship -- either does not reply to the satisfaction of the admissions officer or thereafter discontinues the application process which is, I assume, what would happen, either they wouldn't satisfy the admissions officer or they will discontinue, they'll just leave. What do you anticipate will happen to that college student?

SENATOR PADAVAN: I'm not sure I fully understand the question. If there is a - on any college application, there could be many items which have not been completely filled out, and normal procedure, my experience would be the admissions office would contacte the applicant and say, You've left this out, you've not provided that, or whatever the case may be, and if that information then is not forthcoming, then the application would be rejected. That would be the end of it.

SENATOR DOLLINGER: Also, again

through you, Mr. President, at that point would that constitute reasonable suspicion if the applicant is not a legal alien and, therefore, triggered the reporting requirement under Section 2 or 3 of the bill?

SENATOR PADAVAN: If the application was withdrawn and that information was no longer in possession of the admissions officer, the answer is no, but if it's still there, if it's still thought to be fraudulent, if the information was still of a nature that gave that admissions officer the concern articulated, then it would remain.

SENATOR DOLLINGER: The -- again through you, Mr. President, if Senator Padavan would continue to yield.

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

SENATOR PADAVAN: Yeah.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Do you define in the bill a reasonable suspicion, what

constitutes a reasonable suspicion in the eyes of the admissions officer?

SENATOR PADAVAN: Well, Senator, the -

SENATOR DOLLINGER: Again, and I ask this, Senator, because if this becomes law, some day we'll have to try to provide guidance to a court or to an admissions officer for what constitutes a reasonable suspicion that there is -- that someone is an illegal alien. This really addresses the point that Senator Espada made which is -

SENATOR PADAVAN: Yeah, it's a good question, and I -

SENATOR DOLLINGER: How do you feel about it?

SENATOR PADAVAN: I heard you. I heard you and I say it's a good question. Currently, as you know, and as I've said here many times, admissions officers in SUNY and CUNY have to make a diligent effort to verify whether that applicant is a New York State resident or a resident in another state.

The reason, as you know, obviously relates to a significant difference in tuition. Now, if the admissions office feels that an applicant is claiming New York State residency and has some indication and, if you're going to ask me what that might be, I can't answer you, but I will tell you that if there is an indication that that student is not a New York State resident but attempting to be accepted as such, pay less tuition, then appropriate action is taken.

Now, similarly, the same kind of thought process would have to be utilized by the admissions office if they were, based on the information in front of them -- and that's all they can go by -- of the opinion that this person who is applying is an illegal immigrant.

Now, I cannot put myself in the mind's eye of every administration, every ad missions officer in the State and City Univer sity system, but they would have to obviously be guided by the information on the document, on the application.

SENATOR DOLLINGER: And I think, through you, Mr. President, it's not your intention, as I understand your clear words, that reference to ethnicity or lack of English fluency would be in and of themselves enough to provide reasonable suspicion that this person was not an illegal alien.

SENATOR PADAVAN: Obviously not, because if that was the case in the City University of New York more than a third of the students would fit that description and that is certainly far afield of any intention. We're trying to provide resources for all of our students who are in this country lawfully in this state, attempting to enter into our system, and we have no reason in the world not to want to do that.

SENATOR DOLLINGER: Right, I understand that.

One final question, Mr. President. What is the intended enforcement mechanism in this system?

SENATOR PADAVAN: What is what?

SENATOR DOLLINGER: What is the enforcement mechanism, what is it that will make admissions officers do this or make our CUNY and SUNY system exclude the illegal aliens that you want to exclude? What's the enforcement trigger and how does it work? What's the punishment or fine or -

SENATOR PADAVAN: There is no punishment. There is no fine. If the application is fraudulent, it's rejected and referral is made as I indicated a little while ago. There is only this space on the form that indicates whether you are a resident, non-resident, citizen or non-citizen. It's already there. That's what they use.

SENATOR DOLLINGER: But my only -

SENATOR PADAVAN: Now, if the person indicates non-citizen immigrant status and doesn't provide the appropriate information to verify that, then there's a problem.

SENATOR DOLLINGER: Again, through you, Mr. President. What I was

referring to wasn't the enforcement against the student. What my question was, what's the enforcement against the admissions office to get them to comply. What's to prevent the admission office in our public colleges to say we could enforce this but there's no punishment to us, there's no enforcement mechanism that requires it?

SENATOR PADAVAN: To answer your question, we would have to rely upon the fact, as we do in so many ways, when we require agencies, institutions in this state and city, localities to do things, to do it without - without penalties on them. I think you would probably in this black book on our desk find many, many proposed bills that require things be done but yet no penalty on the administrator or agency if they're not done.

SENATOR DOLLINGER: On the bill, Mr. President.

I'm really torn about this bill, because I believe there is a basis on which this country, having enacted immigration law, can

enforce those laws.

I'm troubled by the reports of the Cities Committee analysis of the immigration law in this country that show INS has grown very lax, that we don't seem to enforce the immigration laws and it seems to me that we as a country can establish rules in which you can become a legal alien. I'm not aware that those rules are tremendously oppressive or exclusionary.

Now, my understanding is that they are generally consistent with the principles established and written on the tablets underneath the Statute of Liberty. What troubles me is that an illegal alien, someone who gains entry to this country without legal authority, can continue to enjoy benefits that those who are both citizens and legal residents and legal citizens currently enjoy.

I believe you can draw a line and exclude illegal aliens. I think Senator Padavan describes correctly that they are breaking the law in continuing to be in this country.

However, I'm equally concerned about the position advocated by Senator Espada, which is that the reasonable suspicion that will attach in this whole process could too often be based on ethnicity, on color, on lack of English fluency, and that may too often be the decisive factor in a report to the INS, and you may have and you certainly open yourself up to the possibility of significant improper complaints, unfounded complaints, and we're vesting our admissions offices with the ability to decide whether the illegal -- whether the immigration laws have been broached or not.

Frankly, this is an extremely difficult bill for me to deal with. I think the due process protection that Senator Paterson talked about is missing. I think there are a couple other things that could be done to explain better the reasonable suspicion, provide due process, provide some kind of enforcement mechanism to really make it work, and I'm not in the bottom line, I guess, convinced that while we should -- we can and perhaps we should

exclude illegal aliens from access to our public colleges, I'm not convinced that we should turn our public colleges into the enforcement arm for the INS.

So, for that reason, this is a close one for me, Mr. President. I guess I've decided I'm going to vote against this.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

I wonder, Mr. President, if Senator Padavan would yield for a question.

ACTING PRESIDENT KUHL: Senator Padavan, do you yield for a question from Senator Mendez? The Senator yields.

SENATOR MENDEZ: Senator Padavan, I am very much concerned with the issue of per ception that gets in the minds of many American citizens, the idea, the image that they get of who is an illegal alien, and I've got some information here that I want to share with you.

Do you know -- first, do you know

how many immigrants are legal and illegal do come into the United States every year?

SENATOR PADAVAN: Yes. We have that information. In New York State, INS gives us an estimate, conservative estimate of 510,000 illegal immigrants in New York State, roughly 80 percent in New York City.

SENATOR MENDEZ: Well, the -- an organization in Washington and Dr. Lobos from Rice University, they have canvassed the districts about immigrants and they came out and stated that we have every year in the United States, in the entire country, 1.1 million of immigrants. Out of those 1.1 million, Senator Padavan, there are 700 million that are, in fact, legal. Then we have anywhere from 100- to 150,000 immigrants who are here because of political persecution or what have you, and the fact is that the remaining 300,000 individuals we could -- they could be 300,000 illegal aliens in the entire United States.

SENATOR PADAVAN: Senator, those are annual figures.

SENATOR MENDEZ: Yes.

SENATOR PADAVAN: California alone has a million and a half illegal immigrants.

SENATOR MENDEZ: How many?

SENATOR PADAVAN: Nevertheless what they are talking about is annually, and they estimate that several hundred thousand illegal immigrants come in every year. They come in a variety of ways. Some come in through smuggling, some overstay, a whole bunch of categories, but we have to deal with what we have now.

SENATOR MENDEZ: Correct.

SENATOR PADAVAN: Well over a half a million, mostly in New York City, out of 7 million people.

SENATOR MENDEZ: Senator Padavan, we are agreeing that every year there are 300,000 illegal aliens in the entire United States, in California coming in.

SENATOR PADAVAN: Certainly several -

SENATOR MENDEZ: I don't know how

many they have in California, but whatever number they have, but the fact remains they have been building up over many years. O.K. So do you know how exactly a -- how many people become -- the ones that come, how many individuals are coming to New York, how many of those apparent illegal aliens, do you know where they are from and how they became illegal aliens?

SENATOR PADAVAN: Senator, I can't give you that information off the top of my head, but in the two reports, one we did last January -

SENATOR MENDEZ: Senator -

SENATOR PADAVAN: Let me answer your question.

SENATOR MENDEZ: No, but I wanted to give it to you.

SENATOR PADAVAN: But it's all here.

SENATOR MENDEZ: We can compare with each other at the appropriate time.

SENATOR PADAVAN: To respond to your earlier point, according to INS, there are

about 200,000 come across the border from Mexico every year. In 1991 there were 300,000 over stayed their visas, and then they go on and on in a number of other categories, so when you talk about just those numbers about illegal immigrants, those are annual numbers and they don't cover the entire -

SENATOR MENDEZ: Correct, correct. But, six out of -- six out of every ten illegal aliens, those six individuals become legal because either the tourist visa expired or business visa expired or the student visa expired. This takes six of every ten illegal aliens, tend to be individuals who are higher in the educational as well as -- as economic situation in the country where they are, in the country, so six out of ten -- and I wanted to mention that because many of them, once their visa is -- once their visa is -- is -- makes - once the visa runs out, they make some time and start working on renewing it, making themselves legal again, but it seems to me that your primary motive is to deprive the illegal aliens

to be educated in our public institutions, and I will agree that illegal aliens is a person who is in the country and is not entitled to be here, should not receive benefits, we all agree. The same sentiment is shared across the aisle on that issue, but the main -- I suppose the predominant factor you say in wanting to implement this bill of yours, is that it, according to your own -- to your own accounting, it might be costing the city of New York many million dollars, is that correct?

SENATOR PADAVAN: I'm sorry. I didn't hear.

SENATOR MENDEZ: You mentioned earlier -- excuse me.

SENATOR PADAVAN: Savings?

SENATOR MENDEZ: You mentioned earlier that there are 2,000 illegal aliens.

SENATOR PADAVAN: No, no. I said in response to the question of Senator Leichter I cited a report from City University in 1989.

SENATOR MENDEZ: Yeah.

SENATOR PADAVAN: Where they said

there were 2,000.

SENATOR MENDEZ: Correct, yes.

SENATOR PADAVAN: That was their number, illegal aliens in City University, and since then that number has significantly increased -- I'll wait until you and Senator Tully discuss whatever you're doing, but since then that number has increased significantly.

SENATOR MENDEZ: Yeah, but after you mentioned those 2,000 illegal aliens that are students in our City University and shouldn't, you also mentioned that the mayor of the city of New York was raising between $28 million that could be saved or he could obtain if your bill, for example, would be implemented. You remember that number?

SENATOR PADAVAN: I didn't say it that way, Senator. I said that, based -- I said that, based on the numbers that we have been provided, the cost in City University alone, using the $7,015 annual subsidy, would be approximately $28 million dealing with this number of illegal immigrants.

I then said, we are right now as we are negotiating a budget, trying very desperately to provide money to the City University which City University board of trustees, educators and the mayor have asked us to provide.

SENATOR MENDEZ: Well, but I want to share with you the fact that illegal and legal aliens, which is immigrants, they do pay in taxes 42 point -- I'm sorry, let me back track, get my glasses. Legal and undocumented immigrants combined, the two groups receive $42.9 billion in services such as education and public assistance. However, they pay approxi mately $70.3 billion a year, which if your primary motivation that you think that is your primary motivation was to save the state the $28 million so that the mayor would be better off with $28 million because the expenses that all legal and illegal immigrants do incur in New York State and for the federal government, the $42.9 million and they pay taxes in the area of 70.3 billion, we're ahead of the game, wouldn't

you say so?

SENATOR PADAVAN: Senator, you're talking about aggregate immigrant contributions and costs.

SENATOR MENDEZ: Yes.

SENATOR PADAVAN: This bill deals with illegal immigrants, not paying any taxes, certainly not paying any state and city income tax.

But, Senator, the answer to your question is right here in this document, in this report dated April of -- last month, and I'm going to see that you get a copy if you didn't get one in the mail already.

SENATOR MENDEZ: I'll appreciate it.

SENATOR PADAVAN: -- which tells you specifically in all categories what the benefits are, and you're right, in the aggregate, millions of dollars and the cost also, which is complete, and this document is based on reliable resources that I think you might benefit from reading.

SENATOR MENDEZ: Thank you, Senator Padavan.

Mr. President, I am going -

ACTING PRESIDENT KUHL: Senator Mendez, may I interrupt for just a moment. Could we have the Secretary read the last section?

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR SKELOS: Mr. President, would you please recognize Senator Maltese and Senator Maziarz.

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

SENATOR MALTESE: Aye.

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

SENATOR MAZIARZ: Aye.

ACTING PRESIDENT KUHL: Both members will be recorded in the affirmative.

Secretary will withdraw the roll call.

Thank you, Senator Mendez, for the interruption.

SENATOR MENDEZ: Thank you.

ACTING PRESIDENT KUHL: Senator Mendez, on the bill.

SENATOR MENDEZ: Mr. President, I am going to vote against this bill, as stated earlier, if the primary motive for -- for passing this bill is that the city of New York will be saving $28 million by forcing our public higher education institutions to behave as if they were working for the Immigration and Naturalization federal department. If that is the primary motivation, because statistics clearly show that illegal as well as legal immigrants combined never only utilize $42.9 billion in services such as education and - and -- education and public assistance. However, that same group of individuals, legal immigrants as well as illegal immigrants combined, these two groups do pay to the country $70.3 billion, so that the argument in terms of

saving money for the city of New York is not a valid one, under the realities this, of the data.

Also I am very much afraid, and I know of some cases in which, Mr. President, Puerto Ricans were swept into a group of Spanish speaking people and were taken directly to -- to Mexico because provisions in the bill do not clarify fully what that suspicion should be all about.

I'm afraid that many American citizens like myself Puerto Rican, of Puerto Rican extraction, and other Hispanics who have become American citizens might be -- their rights would be violated.

Lastly, Mr. President, it could be the case often so that the illegal immigrants that Senator Padavan's bill speak about or address the bill to, are those people, six out of every ten once that, in fact, they have entered the country legally through -- with visas as students, business visas or student business visas or which is the other one -

student, business and -- well, I forgot the other one. It's irrelevant anyhow. It is a group of individuals, a group of individuals that have a higher educational level in their countries, higher economic, higher economic level in their country and they know, they came originally, they stay a few months or what have you. Once they -- the visa was not up to date, then they stayed and they required time to start making the process of making themselves legal again, so I think that the worst of it also is that this bill will, in fact, create a sort of a monolithic picture of who an immigrant is, and in creating such a global picture of a diverse group of people, it will certainly bring forth existing prejudices, so I think that although I believe like each one Senator serves in this chamber, that people who are illegal in the country should not be entitled to receive services.

In this instance, this bill, Mr. -- Mr. President, will not do the job and will result in greater violations of the civil rights

of many individuals who do not determine that to be their future.

Thank you, Mr. President.

SENATOR MARCHI: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

Senator Marchi, for the benefit of the floor, the debate started about at approximately 12:28.

SENATOR MARCHI: 12:28?

ACTING PRESIDENT KUHL: 12:28.

SENATOR MARCHI: Contracts sometimes make not the best law, but when you're looking to a policy that is disgraceful, you seek to use whatever weapons you have that are consistent with the law.

The -- our policy on immigration for the last 10 or 15 years, it doesn't make any difference whether they're Democrats or whether they're Republicans, is a total disgrace -- a total disgrace. They are not applying - they're not applying the power to turn the faucet on and off according to the laws that

Congress passes, and I don't know what's behind it all.

I know that Chavez worked very hard to -- to save some of the exploitation that went on with the fruit pickers, so I don't know. People who sometimes see it that way encourage this very fact of life because they can exploit this labor. It's happened to some of the members of the Chinese community. Disgracefully exploited. They come off from an illegal entry, one -- one was intercepted, but those who are working in some deep dungeon and being paid disgraceful wages and have no access simply because the federal government, having the responsibility, fails to exercise it, I think tells us, the public at least we are to interpret it in this fashion ought to be doing something about it.

Let's dismiss this notion about xenophobia. I speak Italian as fluently as I speak English and maybe my English, you may fault, and you say, Well, maybe your Italian isn't too good. My wife speaks a delightful

exquisite accent like Olga Mendez, and I would cry copious tears if she ever lost them -- that exquisite accent. My children both speak Italian fluently, and we can speak it fluently at home and, whenever I speak to anybody, if they're Spanish or they're Chinese or they're Russian, whatever they are, I encourage them to keep those languages. This is the patrimony of -- tremendous patrimony for the United States of America to have, I think an enhanced means of communicating with the rest of the world.

There is no xenophobia. How much bookkeeping does it involve for the City University to say, where are your naturalization papers or, if they're too involved, or your birth certificate, or whatever other indicia? This isn't a frightful burden. As a matter of fact, Senator Padavan has been addressing this problem vigorously.

In 1989 -- we had an enormous increase since 1989 in immigration, some of it legal and some of it illegal, but even the legal immigration which contains affidavits of

support, we can not enforce that in the state of New York. You may be an illegal alien, needing some supportive contribution. You can not go to the guarantors that are in the laws formulated by Congress.

You know, this question even went to the -- to the Court of Appeals of this state and they said, Oh, forget about that. You have a constitutional mandate to support the needy. Therefore, you have to do it anyway. Forget about Congress. This is the Court of Appeals.

So, Senator Padavan, having only few weapons to use here, and I -- and I refer back now to the student population of the city of New York, this is primary and secondary education, public schools had leveled off to a plateau of about 850,000, where one or -- have one million one now, and the increase is not indigenous.

Is this bad? No, only if we had cooperation by those who formulate immigration policy. If they were doing something right here, Senator Padavan wouldn't even be

sponsoring this bill.

So what do we do? We talk about preserving some perception, and it's done in good faith because I can't disagree with what's been said over here, but at the same time we're now under unconscionable pressures to raise tuition. I don't want to be a party to that. At least I've done something to try to rein that rise and ascension of that tuition and please, federal government, maybe we ought to do more about meeting with our Congressional delegations and our Senatorial -- our two Senators, bringing greater pressure where states are impacted very heavily, because you get these hard facts and it's not always the most cheerful and the most benign legislation that we would like.

Given the genesis of our country and our history, we have prospered as a result of all this and we are, when one has said all these things, those immigrants when they came they didn't have any Blue Cross, think didn't have any insurance, they didn't have Medicaid. If you died, unless you had some neighbors that

were going to save you, they would just dump you into a grave. You would die of starvation.

We don't -- there's a different mind set. The country -- the country has to plan intelligently, and also when people come do it with compassion. I don't know how many of you ever visited Israel where they -- where they welcome immigrants from -- from around the world. These are Jewish immigrants. They have a process of acutely acculturation. They are people who come from, oh, places like Yemen, who have basic facilities they were unaware that existed. They would take them for six months and -- and prepare for greater assimilation into the population. They took Falashas from Ethiopia who were surprised when they saw a spit cooking a chicken, because they had never seen anything so complicated. After six months they were working on the Lava bomber which was then abandoned because it was too expensive, but it was a feasible bomber and doing electrical circuitry after six months training. A positive policy, not this business of opening the doors

wide open and then abdicating any responsibility.

This is the history of the United States government. It's disgraceful in this respect, and we have to take measures to protect ourselves, not -- we have to have some coopera tion. You say primary and secondary, there is a law on compulsory education, and I think the question was asked by someone, well, what about -- what about the non-public schools? People who go to the non-public schools, if there were one -- nine out of ten were illegal and there's only one, that one would have to pay for the tuition for all of them.

This is not a public -- this is not -- no one is going to public for the -- for non-public education. But we're talking about public education, and -- and we know that there is this -- we have a compulsory law, but in higher education, we don't have a compulsory law. Contracts, yes. The happiest law, no.

But we need help, and Senator Padavan is absolutely correct. He takes one -

one element of this and at least tries to protect that, and let's not labor him with putting perceptions that are improper on anything. If -- if an individual wants to vote, they can qualify very easily. There are no complicated measures for establishing -- the bookkeeping is not going to involve millions of dollars to establish a legal presence in the United States.

I mean we're talking to each other. We know what the -- we know what the real world is. What disturbs us all and what disturbs everybody in this chamber, and I agree with you, we ought not to be debating this way and we ought not to have bills like this. But do we have a choice? I say no. And I would hope that -- I would hope that this -- you know, you don't like this or you don't like some other bill, put some bills in that you think would do the job more efficiently, and Frank Padavan and myself would be the first ones to support you.

But we -- I think this is a first step, a very modest first step in higher

educational experience. I would hope that - that if we get into this business seriously also with sister states like Florida, Texas and other states that are more heavily impacted, that we will go to a more enlightened policy, one which demonstrates compassion, and one which enriches the country and enriches the lives of the people that come in.

We appreciate their -- the quality of their life. I don't -- I don't see where there's any splendor in that, and this absence of responsibility that exists down south of us, is a disgrace and I am compelled to vote for this bill, and I do it willingly because I'm a co-sponsor, and I do hope it prevails.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Goodman.

SENATOR GOODMAN: I'd like to announce an immediate meeting of the Committee on Investigations, Taxation and Government Operations in Room 332.

ACTING PRESIDENT KUHL: There

will be an immediate meeting in the Majority Conference Room 332 of the Committee on Investigations.

SENATOR SKELOS: And I believe that the Minority intends to have a slow roll call, so that before the committee starts we can have the members here voting.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, we would like a slow roll call.

ACTING PRESIDENT KUHL: Are there five members in the chamber? Would they stand up, please.

There are five members. Secretary will ring the bell and call the roll

slowly.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Cook.

(There was no response.)

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

(There was no response.)

Senator Espada.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Espada.

Yes. Senator Leichter, why do

you rise?

SENATOR LEICHTER: Mr. President, I don't hear the bells ringing.

SENATOR PATERSON: I hear it.

ACTING PRESIDENT KUHL: Senator, there's an audiology service down at the Concourse. (Laughter) I'm informed the bells are on, Senator Leichter, and they are ringing.

Senator Espada to explain his vote.

SENATOR ESPADA: Thank you, Mr. President.

Like so many of these types of initiatives, the premise -- the assumption is destined to lead to conclusions that, and measures that have really no value, and certainly the purpose of which we take great exception to.

The notion that somehow immigrants, legal, illegal, are a drain on our economy is absolutely something that is not proven by the mounds of paper that Senator Padavan's committees have produced. In fact,

many a study will indicate that legal and illegal immigrants are up and down the whole length of his own district operating retail outlets, transportation services, aiding people in hospitals, producing via an incredible range quotient.

Our institutions, we celebrate them when they participate in Team U.S.A. Soccer. The names of Ranger hockey players that we can't pronounce, and we celebrate them, we celebrate legal and illegal immigrants when we want to toot our own democratic horn but, in fact, at the first sign of economic difficulties we want scapegoats and we find them. We find them and we define them with code language, code language like "they". The "they" syndrome is very present in this legislation and the justification that has been provided for it.

I, just in closing, Mr. President, a Mr. Kim, a grocer in my district, I visited him last year about this time when the first Padavan report came out, and I -- I was distressed because Mr. Kim never closes his

store, and this particular day he was closed and I asked him the following day when I saw him, "Mr. Kim, what happened? Yesterday was the first time in ten years that you've been closed and were you ill, or was someone in your family ill," and he said, "No, Mr. Espada. Yesterday, my first daughter graduated from Harvard University. That's why I closed my store yesterday."

That is America, Mr. President. This version of America is unacceptable, and I vote no.

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

Secretary continue to call the roll slowly.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Galiber excused.

Senator Gold.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator

Gold to explain his vote.

SENATOR GOLD: Mr. President, I voted against using the university system to check people's draft cards. I've voted against the concept that you make a great American by requiring that our universities sing the National Anthem and pledge allegiance at their graduations. I think it would be wonderful if they want to do that, but I don't think we should be mixing apples and oranges.

Having said that, if this bill were being put out to handle a problem, if this bill alone was being put out as part of some overall process, I could say to myself, Well, look, if you're talking about now not using the schools to function and help the Immigration and Naturalization Service, maybe this bill might make some sense.

But I can't close my eyes to reality. This bill isn't put out to solve a problem. It's put out, as so many other bills today, as a slogan bill. You vote for the bill because you got to clamp down on those kind of

people. If you vote against the bill, you're voting against it because you realize that there are certain dangers that happened in other countries, and we can't let it happen here.

So Senator Padavan, I know you pretty well, and I think that you are trying to zero in on a problem because you really see it that way, but unfortunately, once we throw something out there in the public domain, we don't always control what happens with it, so since this bill is not going to become a law, since we're really positioning ourselves as to where we stand in America, I'd like to vote with Senator Espada and vote in the negative.

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

Secretary will continue to call the roll.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Mr. President,

to explain my vote.

ACTING PRESIDENT KUHL: Senator Goodman to explain his vote.

SENATOR GOODMAN: I've listened with some careful attention to this debate, Mr. President, and I think what one can glean from it is that essentially there are two strands which can not be properly intertwined in reaching a conclusion about this matter.

On the one hand, we have the basic generosity of spirit of the American civilization amply discussed across the aisle and quoting the base of the Statue of Liberty quotation of give us your tired, your poor.

On the other, we hear the very cries of students from CUNY begging us to be sure that CUNY is not short-changed. When we consider the added burden which, unfortunately, is placed upon CUNY's facilities by the influx of people who are not legally entitled to CUNY education, we understand our trouble.

In the best of all worlds, wouldn't it be wonderful if we could give every

one an education and even embrace our illegal immigrants and bootstrap them up in the great crucible of American opportunity? But the plain simple fact is, Mr. President, we can not do that. Not only can we not afford to do it, but we can not even properly afford to finance the City University of New York's education amongst those who are deserving of it and in legal status.

So with this type of a tremendous overload predicament, it seems to me that we have little choice but to try to filter out those who do not have proper entitlement and, for that reason, I intend to support this bill.

I vote aye.

ACTING PRESIDENT KUHL: Senator Goodman recorded in the affirmative.

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Hannon.

(There was no response.)

THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.

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

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

(There was no response.)

Senator Jones.

SENATOR JONES: Aye.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Mr. President.

ACTING PRESIDENT KUHL: Senator LaValle to explain his vote.

SENATOR LAVALLE: Mr. President, first, I'd like to compliment Senator Padavan for the thorough job that he did in explaining

and presenting this legislation before this body and really, the debate as on so many bills was quite excellent.

Senator Paterson, in yesterday's debate and today's, you've presented constitu tionality issues before this body in a very scholarly way, but I think this bill is not about due process. This bill is not about xenophobia. This bill is simply trying to get our institutions to really look at public policy in a way that coincides with the fiscal realities that we face in trying, as Senator Goodman said, to use our resources in a way that does not overtax the facilities and the resources that we have.

City University adopted a policy that said any student who comes to the door is a resident student. Therefore, they get a favored status in terms of tuition, and so what Senator Padavan is simply saying is that not everyone legitimately is a resident student, and so I think that in this bill, Senator Padavan has pointed out, both legally, fiscally and correct

public policy is to support the Padavan bill and I vote aye, Mr. President.

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

Senator Stafford, why do you rise?

SENATOR STAFFORD: Mr. President, may I have my name called?

SENATOR SKELOS: No objection.

SENATOR STAFFORD: No objection.

ACTING PRESIDENT KUHL: Senator Stafford. Call his name.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

ACTING PRESIDENT KUHL: Senator Stafford in the affirmative.

Continue to call the roll slowly.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: Yes. Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: I think it's important to emphasize again that there is no credible evidence or proof that there's any great fiscal burden on the public higher education institutions of this state because of people attending who are illegal immigrants. There just is no proof and no proof that the situation has worsened recently and that, therefore, what we need to do is, as Senator Goodman explained, come to some conclusion between two competing theories and strands in our compassion as to -- to bow to our fiscal realism.

I think that's important to understand because what you're doing by this bill is putting a burden on these public institutions. Now, if all that Senator Padavan required was, on the application form, that you got to fill out a box like when you come into

the United States, Are you a citizen. If you put no, Are you in the United States legally, I have no problem with that, and if somebody says "No, I'm not here legally," they should not be admitted.

I see a real problem both administratively and as a burden on people who are here legally, if the university then has to go beyond that, has to collect documents, that I think becomes a real problem. Then it really becomes an enforcement arm of the U.S. Government. It's a burden that ought to be borne by the U. S. Government.

So when I see this sort of a bill while in some respects, as we pointed out, we have no problem in saying that people who are here illegally should not get the benefits that we provide for residents of this state, but when you do it without really showing that there's a great problem, I'm -- I end up with a conclusion that there's a certain amount of scapegoating, it's "they" who are causing the problem. "They" are overburdening our institutions. "They" are

taking our jobs, whoever "they" are.

I think that's unfortunate, and I think that changes in some respect the character and the outlook that makes this country and this state so great. I vote in the negative.

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

Secretary will continue to call the roll.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

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

Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

(There was no response.)

Senator Maziarz voting in the

affirmative earlier today.

Senator Mendez.

SENATOR MENDEZ: No.

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

Senator Nanula.

SENATOR NANULA: Aye.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, may I have permission to explain my vote.

ACTING PRESIDENT KUHL: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues: My father immigrated to this nation from Italy and one of his proudest days, one of the proudest days of his life was the day that he passed his citizenship test and pledged before God and country that he pledges allegiance to the United States of America. That was the proudest day.

This bill correctly addresses a moral question, not as some contend a matter of dollars and cents. We have a moral obligation to ensure that this country welcomes those from other lands who seek freedom and opportunity and, doubly, that moral obligation is to do what it meant to us, for those who are entering this country enter with the knowledge that that entry is based on rules, laws and procedures. And if those rules, laws and procedures are followed, then the fruits of this nation, the opportunities of this nation and state are theirs.

This bill is correct. It's right. And so are those obligations, requiring those obligations to be fulfilled and so, Mr. President, I urge its passage.

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

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Onorato.

(There was no response.)

Senator Oppenheimer.

ACTING PRESIDENT KUHL: Senator Oppenheimer to explain her vote.

SENATOR OPPENHEIMER: I'll be voting no.

There's several things I don't understand about this bill. If we are concerned about supporting illegal aliens with state funds then I, you know, perhaps you could make an argument that we ought not to be spending our TAP money or our HEOP money or EOP money on students who are illegal aliens, but to say that the school should not be taking in these students, if these students perhaps are paying full tuition, I mean why we -- we are not putting the burden where it belongs. We are putting it on our already overburdened higher education system which we have cut back the funding on so substantially, and now we are asking them to -- to do background checks; and on what basis? Because someone looks like he's not an American citizen?

I mean really, it's -- it's

outrageous. If there is some concern at the state level that our state monies ought not to be going to assist in tuition payments, then let the state or let some governmental authority look into this. I don't see that the SUNY or CUNY system can, number one, bear the additional burden nor should they be put in this kind of a position.

I can't remember my other thought. I will be voting no.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be recorded in the negative on Calendar Number 339.

The roll call will continue.

THE SECRETARY: Senator Padavan.

ACTING PRESIDENT KUHL: Senator Padavan to explain his vote.

SENATOR PADAVAN: I chose earlier not to close debate in support of the bill because I thought Senator Marchi had done such a beautiful job of doing so, and I would have only been redundant. However, in the explanations that have -- I've heard here, I do think a

moment of response is in order.

Senator Leichter, you and I discussed this bill before you asked me what the source was in terms of the magnitude of the problem. Now, either you don't believe me or you don't believe CUNY. But I told you that in 1989, when the illegal immigration problem was a fraction of what it is today, they reported 2,000 illegal immigrants in the system as residents.

Now, that's a fact, and I also told you that in the report which you obviously haven't had a chance to read, we have given a number of other source documents with regard to the problem. So it is a real problem. I mean it's not a hypothetical one.

To respond to the other comments about perception, about all kinds of issues, I would simply quote the President when he says, We are indeed a nation of immigrants, but we are also a nation of law, and either we enforce the law or we don't enforce the law. Either we accept people here under our laws or we tell

them they can't be here, and certainly if they're here in violation of our laws, we don't provide them with benefits, services, as the Commission has cited categorically should be available only to those who are here lawfully.

I vote aye.

SENATOR MARKOWITZ: Mr. President.

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

Senator Markowitz. I'll ask the Secretary to call Senator Markowitz' name.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Voting in the negative.

ACTING PRESIDENT KUHL: Yes, Senator Markowitz will be recorded in the negative.

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President, I was listening to the colloquy between Senator Waldon and Senator Padavan and Senator Padavan asked him if he was familiar with Barbara Jordan and he then talked about the President's report that was issued on May 6th, and I didn't hear anywhere in that discussion the desire of the individuals who framed that report that the states would take on the duties of the federal government, particularly in the area of immigration, which really should be a federal process. I thought, and it was good that Senator Padavan is in -- was in touch with the individuals who put that report together, I thought that what the federal government is doing now and he cited the President, is trying to clean up what has really been at times an abysmal Immigration and Naturalization Service, and to correct a lot of the problems that we have in the area of immigration.

I do not feel that we as a state have to go beyond the purview of the federal government to such an extent that we are now

going to ask the Attorney General's office or the Department of Education or the police departments to actually start handling our immigration matters. We don't have any due process in this legislation. It's an unfunded mandate. It comes at a time when we are already stripping our city and state universities of great resources, and it also comes at a time when there is a feeling among those who are afflicted that there is a perception of xenophobia or stigmatization.

I think that, when we talk about perceptions, there have been a number of times when we as a society dismissed other people's perceptions only to find out that they were real, and so when we heard the perception earlier about the gun owners in a sense being discriminated against by clerks or being mistreated when they applied for gun licenses, I accepted it because I understood that that perception might actually exist.

I certainly wish some of those who don't believe it's possible and never heard

of the stigmatization that individuals who, by reason of race or religion or national origin or for any other reason, were separated by a discretionary implementation of a policy, would sometimes understand that that actually exists.

Otherwise I would close, Mr. President, just by saying that in 1982 the Supreme Court issued a decision that denied us the right to stop educating primary and secondary educational students based on the fact that they are not legal immigrants. I think that that basic spirit might actually be extended to secondary education and to higher education if the court interprets this legislation in the same way as it did in 1982 in the case of Tyler v. Dow.

ACTING PRESIDENT KUHL: Senator Paterson in the negative.

Senator Skelos.

SENATOR SKELOS: Yes. Would you please recognize Senator Smith out of order.

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

SENATOR SMITH: No.

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

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Solomon excused.

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: (No audible response).

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

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 SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(Negative indication.)

THE SECRETARY: Senator Wright excused.

ACTING PRESIDENT KUHL: Secretary will call the absentees.

THE SECRETARY: Senator Babbush.

(There was no response.)

SENATOR BABBUSH: No.

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: I agree with Senator Padavan we are both a country of immigrants and we are a country of laws, and I believe that we have the power to restrict the benefits of post-secondary education only to legal immigrants and citizens of this country. If that's all that this bill did, I would vote yes.

I'm going to vote no, because I think it doesn't have the due process protection built into it and, number two, what it unfortunately does is, it may make members of

our post-secondary admissions office into law breakers as well because what it will do is it will put admission officers in the extremely delicate and difficult position of deciding whether there's reasonable suspicion to believe that someone is an illegal alien even though, in my judgment, they will be told that they are a legal alien or a rightful resident of this country.

That reasonable suspicion, I believe, is a dangerous concept. I believe it is subjected to all kinds of different interpretations, and I think it's wrong to make the post-secondary admissions officers in our college institutions into the enforcement arms of the Immigration and Naturalization Service.

If all this bill did was say, you either have to be a citizen or legal resident or legal alien, then you can go to our schools, I would support that bill provided it had due process protection. This bill, I think, unnecessarily goes beyond that, Mr. President, and for that reason, I will be voting no.

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

Secretary will continue to call the absentees.

THE SECRETARY: Senator Hannon.

ACTING PRESIDENT KUHL: Senator Hannon to explain his vote.

SENATOR HANNON: Mr. President, I am going to support this bill, but I would hope that we don't get into too much of overtones in regard to our relationships with people who are coming here from other countries. Obviously if we have people who are breaking the law, that can't be condoned, but if we don't continue to recognize that this state has had a large rich tradition of having people coming as immigrants and becoming part of our society, we're going to be setting the wrong tone. So I think there is a need to avoid that divisiveness.

Thank you. I vote in the affirmative.

ACTING PRESIDENT KUHL: Senator Hannon in the affirmative.

Secretary will continue to call the absentees.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Onorato.

(There was no response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 39, nays 17.

ACTING PRESIDENT KUHL: The bill is passed.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar 905, by Senator Present. I believe the objection has been removed.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 905.

THE SECRETARY: On page 42,

Calendar Number 905, by Senator Present, Senate Print 993, an act to amend the Tax Law, in relation to penalties and interest assessments with respect to sales tax reporting.

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

THE SECRETARY: Section 2. This act shall take effect on the first day of the quarterly period.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 922, by Senator Saland, and with the consent of the Minority prior to entering into the debate, if you could have the last section read for several members voting.

ACTING PRESIDENT KUHL: The

Secretary will read Calendar Number 722.

THE SECRETARY: On page 26, Calendar Number 722, by Senator Saland, Senate Print 2039, an act to amend the Public Health Law and the Executive Law, in relation to court authorization for human immunodeficiency virus related testing for certain sex offenders.

SENATOR LEICHTER: Mr. President.

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

THE SECRETARY: Section 8. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR TULLY: Aye.

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

Senator Nozzolio, how do you vote?

SENATOR NOZZOLIO: Aye.

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

Senator Larkin, how do you vote?

SENATOR LARKIN: Aye.

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

Senator Seward, how do you vote?

SENATOR SEWARD: Aye.

ACTING PRESIDENT KUHL: Senator Seward in the affirmative. The roll call is withdrawn. We're on -- Calendar Number 722 is before the house for debate.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a bill which has been before us in a couple of prior sessions. What it does, Mr. President, is to create a process whereby someone who has been

the victim of a sexual offense would have the ability to make application to a court for an order to have his or her assailant tested for the presence of HIV.

The bill elaborates the mechanism by which that shall be accomplished, establishes what constitutes reasonable cause and basically uses three events for reasonable cause. One is conviction, another is indictment and the third is being held over by a local court for action by a grand jury.

The bill endeavors to ensure the confidentiality of the defendant by making it clear that the information that's obtained is not available in any other civil or criminal proceeding.

It sets up a petition process by which the individual who is making application to the court would have to show that the assail ant had been first afforded the opportunity to submit voluntarily to the testing and goes on to -- to talk in terms of the applicant or the petitioner being advised of the importance of

counseling and, in addition, to the limitations of current information with regard to HIV-related testing.

This bill is a response, on my part, to situations which have been brought to my attention, at least two of which were brought to my attention in media accounts out of the city of New York where a defendant, in an effort to obtain a better plea bargain, used the refusal to take an HIV test as an effort -- in an effort or as a basis for obtaining a better plea bargain, something which I'm sure would not sit well with anybody.

In addition, the federal government has required by reason of legislation that it enacted back in 1990 that by September 30 of 1994, all states have on their books legislation that would permit testing of defendants in HIV -- I'm sorry -- of defendants in sex offense cases and failure to comply would result in a loss of Edward Byrne Memorial state and local law enforcement funds to the tune of ten percent of your available funding. Last

year the state of New York lost, I believe, $2.25 million because of the failure to comply. This year we will lose $2.8 million.

This is a victims' rights bill. It's intended as nothing but a victims' rights bill and certainly should not be immersed or submerged in the controversy that somehow or other always adheres to the issue of AIDS and HIV testing.

Mr. President, I'm available to respond to any questions.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Saland would yield for a question.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Saland, why have you exceeded the federal

standard for dollars that the state would receive by going beyond the conviction to enabling this test to be taking place based on an indictment or the defendant being held over?

SENATOR SALAND: I would beg to differ with you. The recently enacted onmibus criminal -- omnibus crime bill this year, in fact, requires such testing at the federal level where a defendant has been charged with the offense in a state or federal court.

SENATOR PATERSON: But we don't lose any test -- dollars for failing to do it. I'm saying they may be doing it, but we don't lose any money by failing to do it.

SENATOR SALAND: No, I'm distinguishing -- the federal standard as adopted by the fed's in their own omnibus crime bill was for the underlying charge to be sufficient grounds for the testing. The enabling legislation that goes back to 1990 merely requires the testing, and some states have done it on conviction and some states have done it pre-conviction.

My suggestion is pre-conviction, which is entirely consistent with the report of the prior governor, Governor Cuomo's Task Force on Rape and Sexual Assault which issued its report in April of 1990 and recommended pre-conviction testing.

SENATOR PATERSON: If Senator Saland -

SENATOR SALAND: It was not exactly a haven for right wing Republican Neanderthals either.

SENATOR PATERSON: Mr. President, if Senator Saland would yield for a question.

SENATOR SALAND: Yes.

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

SENATOR PATERSON: I think this is an issue of trying to protect victims, and I think that whatever -- whichever way someone classifies themselves politically, I think we're all in favor of doing that, Senator; I'm sure you are, but my question is if the standard was the standard of conviction, wouldn't that

eliminate an issue that you were talking about earlier where the defendant, in a malicious way, uses the test as a bargaining tool in the actual negotiation of a plea?

SENATOR SALAND: Permit me to read to you from the Governor's reports - Governor's task force report, and I'm quoting so I can't claim authorship of the language.

"The question of how and when to test the alleged sex offenders remains *** the task force considered and rejected waiting until an accused is convicted."

It goes on to say, "There are a number of acquittals and dismissals where the defendant may have nevertheless infected the victim" and then continues to say "Furthermore, a prosecutor may be unable to obtain an indictment for reasons unrelated to whether the accused is the true perpetrator."

Now, the statistics, when it comes to sexual offenses, rapes are staggering. The conviction rate is a relatively low rate. You're talking about perhaps out of somewhere in

the area of 5,000 reported rapes where sexual crimes in this state under the most recent statistics, less than half of those resulted in arrest and probably at best -- at best, ten to fifteen percent of those that resulted in arrest resulted in conviction, and that is not to say, as was indicated in this report, that the fact that there was not a conviction doesn't mean that a victim was not infected or had the risk of being infected.

So I, again, believe that wholeheartedly endorses my position that it should be where reasonable cause is established pre-conviction, and we define reasonable cause in this bill as being either indictment or being held over by a local court and obviously upon conviction.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Admonishing that a significant civil liberties issue exists for the purposes of this discussion, I'm going to accept that, Senator Saland, just in the

sense that there is a low conviction rate, you're absolutely right.

Your legislation does address a situation where a number of individuals are in danger, and I would then ask you to yield for another question.

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

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: And I would ask you how many tests do you feel should be conducted?

SENATOR SALAND: I don't think that it's my place nor yours to determine how many tests should be conducted. What is important as is required in this application process is that the victim be apprised of the process, be apprised of the ability to take or require the test to be taken, of the lack of certainty in the testing process, of the need

for counseling. It may well be that there will be numerous tests that will be required.

Testing of the victim certainly is important. No one can deny that. It's critical that the victim be tested, but by the same token when the victim has undergone the anguish, undergone the turmoil, undergone the sheer degradation of being subjected to these types of acts, that victim should have the right to request a court, on a finding of reasonable cause, to have his or her assailant tested to determine if there is the presence of the HIV.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Saland can speak for himself, but I will reserve the right to express how many tests I think would actually have to be conducted, and the reason is because if you only conduct one test, it increases the probability that you're getting an incorrect test. You could possibly have a person who has the HIV virus but does not evidence the symptoms that might be picked up on

a test, so if you don't come back and conduct a second test, Senator Saland, you've given the victim misinformation, so if you think the victim is already in peril and is already in an emotionally charged situation by the fact that they've been put in in unfortunate circumstance, now giving them the results of one test where they might test negative for HIV when they actually have it, falsely assuring the victim that they don't have it, I suggest, would be a very dangerous situation to put the victim in, don't you agree?

SENATOR SALAND: I would call your attention, Senator Paterson, to the last page of the bill, page 5, and there we talk about out-of-pocket loss for purposes of compensation by the crimes -- Crime Victims Board, and there's no limitation in this language on the number of tests that a victim may obtain.

I, for one, would never tell a victim not to take one test or were I asked my opinion, I would certainly counsel that person

to take multiple tests, and there's nothing in this legislation that is intended to convey the impression that they should only have one test. You may choose to create that as a stalking horse but you're really, well, well off base.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: I don't know how I'm off base, Senator, when what I'm telling you is accurate, and I never said that the legislation did not limit the number of tests. I just asked you how many tests did you think should be conducted because I wanted to determine whether or not there was a probability that there would have to be more than one test to establish that the assailant -- we're not talking about the victim -- that the assailant

has HIV, so I don't know how you can tell me that that's off base.

SENATOR SALAND: I'm not quite sure I understand your question. I apologize. Please repeat it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: To repeat the question, Mr. President, I did not say that your bill limited the number of tests. I asked you the question how many tests you thought needed to be conducted, and I asked the question to determine if there would be a -- an increased probability of accuracy by the increased number of tests, and so I'm asking you, don't you think that there would -- if you required that there be a test, wouldn't you also require that there would have to be more than one rather than not speaking to the issue itself which you said was not your place to do, but what I'm saying is if in a situation where there was one testing and the victim is given those results, that could very much confuse the victim. You told me

that's off base. That's absolutely accurate.

SENATOR SALAND: I would suggest to you that you might want to look at paragraph 4 of the bill.

Paragraph 4 of the bill requires that anybody who's making application to the court be apprised of the processes involved in the testing procedure, be apprised of the -- and I call your attention to lines 36, 37 and 38, that the applicant has received counseling by a physician or public health official who understands the limitations and the information to be obtained through HIV-related testing on the proposed subject, current scientific assessment of the risk of transmission of HIV from the exposure he or she has experienced and the need for the applicant to undergo HIV related testing to definitively determine his or her HIV status.

Now, if you mean to tell me that somebody who's going through counseling would not be apprised of the importance of multiple testing, then you know even less than I do,

because that's a given. It's a given under any counseling therapy. You know that as well as I do. Read the bill; you would be apprised of it.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, I did read the bill and I'm not talking about the victim. I'm talking about the assailant. You're talking about counseling.

SENATOR SALAND: You mean to tell me, Mr. Paterson, that a victim is not going to be counseled about the importance, (a) of her testing and about the -- about the fact that even her testing cannot be, in effect, an assur ance to her unless it's done over a multiple period of -- multiple number of tests?

Secondly, she's going to be apprised that one test and merely one test of whomever her assailant may be or his assailant may be will not necessarily be dispositive. I know that. You know that, but that's the victim's call, not mine, not yours.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, would Senator Saland yield for a question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, have you in this discussion heard me say one word about the victim?

SENATOR SALAND: I'm responding to your question. I just responded to your question. I said to you that she's going to be apprised in the course of her counseling for whatever therapy she or he receives that one test of the assailant will not necessarily be dispositive.

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: Would Senator

Saland yield for a question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, in this discussion, have you heard me say one word about the victim in any sense? I haven't said a word about the victim being tested yet.

SENATOR SALAND: I can't recall what you might have said previously.

SENATOR PATERSON: What I'm telling you is you keep telling me about the victim. I haven't mentioned the victim yet.

SENATOR SALAND: I would beg to differ with you. I just said it twice. I'll say it a third time. The victim will be apprised that the one test of his or her assailant will not necessarily be dispositive. Isn't that the answer you're looking for? You're concerned about whether one test of an

assailant or a defendant is going to be adequate for purposes of coming up with a dispositive result? Is that not what you're not driving at; and I'm telling you in response to your question or your innuendo that there will be profession als that will provide that information to the person who has been the victim of the rape or the sodomy or whatever sexual perversion he or she has been subjected to.

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

SENATOR PATERSON: In a word, no. I didn't raise that and I was never talking about that, and that's what I'm trying to tell you right now.

I'm talking not about the informing of the victim. I'm talking about the reliability of the test. That's what I'm talking about, the reliability of the test, and so what I was referring to is how many times the test would be administered. In other words, if you're going to give information -- I would concede to talk about the point that you have

been addressing right now to say that, if you're going to give information, before you even give information, you have to make a determination that the -- that the information is even remotely reliable, and that's why I asked you the question how many times you thought the test should be administered.

In other words, I accept what you're saying. We could take a test that's 20 percent reliable and then go and tell the victim that the test is 20 percent reliable but this is what we came up with, but scientifically that would be dismissed out of hand. It would be absolutely outrageous to use an improper selection of the actual information and then to inform someone and think that you're actually helping them when all you're doing is confusing them.

What I'm saying, Senator Saland, is that we have to first determine to what extent we test to determine whether or not the test is actually accurate. So I ask you again, how many times you would suggest that the test

be conducted?

SENATOR SALAND: I suspect this could go on all day. We're talking not to each other but at each other. I've explained to you and I thought to any reasonable person that there are professionals who will be making those decisions. Were it me, were it a member of my family, I certainly would want as many tests as I could have. That would be what I would do subjectively, but I would do that based upon the advice that I would get from people such as the people who have to be part of this process, the people who you, in your petition, have to allege you have counseled with and received advice from. Their input, their expertise certainly is far more valuable than mine.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Saland for that answer, because that brings me to the point that I'm trying to make, that most professionals in the field are very suspect of the reliability of

this kind of test, because you have a number of situations. You have false-positives that occur in HIV testing. You actually have a situation when the person first contracts the virus where they may actually elude the test by going back and forth from HIV-negative to HIV-positive in a matter of days so that the day you pick the test is giving you a snapshot of the situation that's not actually accurate of the whole, and then you have the obvious circumstance where the person has contracted the HIV virus but it doesn't show up in the test generally for six to eight months, Senator Saland, and so in those partic ular cases, to be specific, the professionals in the field will tell you that the test is absolutely not something that can be based on fact but is really something that relates more to interpretation.

Now, we're going to take the results of that test and inform the victim. The problem we have here now is that you don't know whether or not the assailant actually infected the victim of the crime. The assailant may be

guilty of the crime but whether they actually infected the victim is also a matter for which -- and now I will address that fact -- the victim is tested.

So all I'm saying to you, Senator Saland, is that it is so highly improbable that you can get an accurate enough result at a specific period of time, otherwise I would be inclined to agree with you in these types of situations where we can come up with an accurate test.

All I'm saying to you -- and I'm saying it to you, not at you -- is that, unfortunately, we have started to take the process of HIV testing and thinking that it may be as accurate as say a test for tuberculosis or a test for syphilis where it would actually work, but this situation, it's not only a dangerous disease, Senator, it is so highly improbable that you can even measure it at first that it's so -- for an example, if you were going to try to use AZT as prophylactic, you have to use that immediately, so even before -

even the advice you would have to give the victim is that the victim would have to go on AZT immediately if they were going to use it as a prophylactic, and the reason would be because you can't depend on the test to actually be accurate, so in the interest of health, you would want to use it immediately. At the same time, if you have a person who's treated with AZT who doesn't have the HIV virus, you're going to have significant damage to the immune system of the actual victim.

So I'm not trying to be unusually contentious, Senator, I'm just saying that, in an attempt to address an issue where you have been very sensitive to the victims of crimes, I'm just suggesting to you that it might not always be the best course to mandate this test ing in a situation where medical professionals will tell you that the results have not been, to this point, particularly accurate.

If we get another test that would be more revealing, I think that your bill would have more merit; otherwise, I think the general

issue that you are trying to resolve took a lot of effort and I commend you for it, but I'm just reiterating for the last time that the HIV test is one that is not accurate enough nor is it not indicative enough for us to be using it in this kind of a circumstance.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR SALAND: Mr. President.

ACTING PRESIDENT KUHL: Senator Saland, why do you rise?

SENATOR SALAND: Mr. President, Senator Paterson, in his comments referred to mandating testing. There is absolutely -

ACTING PRESIDENT KUHL: Senator Saland, there are two other members who have asked to be recognized. You will have an opportunity to refer back to Senator Paterson's comments in a moment. If you would like to go on the list, I'll put you third.

Thank you.

SENATOR SALAND: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes. Would Senator Saland yield to a question?

ACTING PRESIDENT KUHL: You're going to get an opportunity sooner than you thought, Senator Saland.

SENATOR ABATE: A question or two.

ACTING PRESIDENT KUHL: Will you yield? The Senator yields.

SENATOR ABATE: Yes. Senator Saland, I applaud you. You certainly are a crime victim advocate. I consider myself as a crime victim advocate. We have a long history of supporting crime victims, and I want to address two of the issues that you say are compelling reasons to support this legislation.

The first was the preservation of federal funding, and I want you to acknowledge that the Governor has a budget bill and it is number 1318 which calls for the mandatory test ing of sex offenders after conviction, and I

believe the Governor has received some wise counsel because he believes the passage of that legislation, which is only the testing of offenders post-conviction, would preserve these federal fundings. Do you agree with the Governor's analysis?

SENATOR SALAND: Do I think that merely testing on conviction will preserve? Yes, I do.

SENATOR ABATE: Yes. So the Governor is wise in his -- in his suggestion that this legislation would be appropriate, and wouldn't you also say that is a wise decision because then it avoids the constitutional arguments that it's an unwarranted intrusion upon people who are accused of crimes? These are not people who are convicted of crimes at the indictment stage or post-arraignment stage. This avoids all those constitutional issues.

So in that sense -

SENATOR SALAND: If we lived in fear of avoiding constitutional issues, much of the legislation that we enact would never be

enacted. Now, the Schmerber case going back to, what, the '60s -

SENATOR ABATE: The '60s.

SENATOR SALAND: -- basically said where you're dealing with DWI, you could reasonably within the Fourth Amendment take blood from somebody prior to conviction. Now, I don't think where there's a substantial state interest as occurs here that you're going to find the kinds of constitutional problems that people allege will occur.

I'm not questioning the wisdom of the Governor. We're having a difference of opinion. I think that my approach is a better approach. I think it avoids using the tool as a -- of a refusal to take the test as a means of a plea bargain. It eliminates it.

I can understand Senator Paterson's position as he states it. I guess he would not even support a bill such as the Governor's, would just rely merely on conviction for fear that somehow or other the testing is inaccurate.

However, there is no mandatory testing. There is nobody who's required to make application to the court. It's purely a call of the individual who is given the option to determine whether he or she wants to make a request to find out whether his or her assailant is, in fact, HIV-positive. It's no mandate.

SENATOR ABATE: Senator Saland, would you yield to another question?

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: Thank you for being so gracious.

I would still like to talk about the financial issues you raised, why it's so compelling to pass this legislation so federal funding does come into New York State.

If we were really serious, though, about this federal funding, we would be looking at the Governor's bill. There will be a

greater likelihood of a two-house passage. It seems to me by placing the mandatory testing pre-conviction, we are actually jeopardizing this funding because we know all too well this will be a one-house bill. It will go nowhere and we will lose federal dollars.

SENATOR SALAND: Are you familiar with this report?

SENATOR ABATE: Yes.

SENATOR SALAND: You were on this task force.

SENATOR ABATE: Yes, I was.

SENATOR SALAND: There is no minority opinion, there's no dissenting opinion, there's nothing in here that says that there was.

SENATOR ABATE: Yes. Well, we had large discussions around that time and that report was released in 1988.

SENATOR SALAND: 1990.

SENATOR ABATE: Was it 1990?

SENATOR SALAND: April of 1990.

SENATOR ABATE: I was on a number

of the committees that discussed that. None of the victims' community at that point could reach a consensus on this issue. In fact, the Victims Services Agency last year, which is the largest agency that provides services to victims in this state, was opposed to this legislation, and they were opposed not because they weren't concerned obviously for victims, the devastation that particularly rape and sexual assault places on individuals.

There was a recognition there was a need for victims to have accurate information so they could deal with their health and safety and go on with their lives. The concern was by Victims Services last year and also the concerns raised by the Association of the Bar of the state of New York is that there would be false, untimely, inaccurate information given to victims, and the fear was that victims would rely on this information and, certainly, Senator, you would recognize there is a possibility that inaccurate information through the testing of these defendants would give a

false assurance to victims.

SENATOR SALAND: I would beg to differ with you. I think that is nothing but a straw man. I think it's absolute poppycock. If you read the bill, the bill has a mechanism that says whoever makes the application has to, in effect, be pre-screened by someone, a profes sional, someone who deals in this type of therapy, who is going to apprise them of all of these things that are being raised as objections to the bill. It's all there. It's all laid out. It's right there. They're going to do it in a professional fashion. It's not going to be anecdotal. It's going to be done as you would want it to be done.

Now, maybe it's a turf thing. Maybe somehow or other people are concerned that their turf is being trod upon. The reality is any reasonable reading of this bill would say that the very things that you're raising, these issues will come into the mix, and once that person has done that, he or she does not have to go any further. They don't -- they must be

counseled before they can even make the application. That's one of the elements that they have to allege.

SENATOR ABATE: I can -- Senator, would you respond to another question?

SENATOR SALAND: Certainly.

SENATOR ABATE: I can see a scenario that the victim makes an application for testing and the -- and that victim is counseled, being told that any -- you have to be tested yourself in order to get accurate information. The defendant is then tested and the defendant is found to be negative, but it's a false -- it's a false test because six months later, if that defendant was tested again, that defendant would be tested positive for the AIDS virus, and let's say the victim then, herself or himself -- most likely herself -- gets tested and she tests negative, and then the case ends. The defendant takes a plea. Somehow it's a quick plea bargain; there's no trial. It's all wrapped around in 45 days and she leaves the system, and she then says "I tested negative.

The defendant tested negative. I'll walk away. I don't need to be tested again", and because there's a confirmation by that defendant's test that, "Oh, I probably -- I'm not at risk" -- and my concern is that we're giving not reliable information to the victim where I would like to see this money -- and we don't have a lot of money -- to go into counseling of the victim, multiple testing of the victim, more rape crisis centers, supportive centers for that victim, for that survivor. What we're doing is misplacing limited dollars for numbers of tests, and we have to test the defendant many times to ensure accurate information be given to the victim. That's my concern.

I'm sure you share those concerns but, on balance, you would rather give that information to the victim. Is that an accurate appraisal of -

SENATOR SALAND: I'm not quite sure of your characterization, but suffice it for me to say that the very issue that you raised, your concern about a quick disposition

which, as you know -- I believe you're a former prosecutor -- in a sexual assault or rape case is highly unlikely, but even assuming the scenario that you gave me that such a thing does occur, again, the application process, the petitioner, the victim, the survivor, that person is going to have to, in order to make application, to have spoken with a physician, a health -- a health official, some qualified person. They're going to be apprised. They're going to be apprised of the need for multiple testing. They're going to be apprised of some of the problems or all of the problems associated with testing.

This is purely a victim's call. Whether you want to call the person a victim or survivor, it's up to them. If that's what they want, that's what they should have the right to have. Nobody is requiring them to do it. Nobody is saying that you must. They just - what we are saying and what the federal government is saying and what 40-some-odd other states are saying is people should have that

option.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: I take an unusual position in this case. I would support legislation that required mandatory testing post conviction because, on balance, although I believe it still would be faulty information given to victims, that would be a way, a reasonable way, for the state to ensure those federal dollars.

I think once someone is convicted of a sex offense, their due process rights have been afforded. There's -- a right to a fair trial has been afforded. At that point, I don't believe it's an unreasonable intrusion in terms of that testing, but I would go back to the Association of the Bar of the city of New York which characterizes this legislation in terms of pre-conviction as poorly conceived, potentially unconstituional and medically inappropriate, and my concern is, again, around the constitutional

issues, the fact that the victim will be given inaccurate and false information in many cases, that the money could be better spent to directly help victims ensure more extensive counseling, not just within the criminal justice system for long hours and long years past that criminal justice system.

I'm also fearful that this legislation will add to discrimination against victims. We're talking about this information to remain in a confidential setting. We all know that during the course of a trial it lends itself to sensationalism. Once the public learns, whether through a leak or a newspaper report that the defendant is HIV-positive, the victim then will be stigmatized even though he or she may not, in fact, be infected with the disease.

So I'm fearful although with good intentions you're trying to help the victim, in the long run, this legislation will hurt the victim. I think there's a better way of protecting the victim, and I would not be able

to support this legislation as it stands in its current form.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Mr. President, thank you.

If Senator Saland would be good enough to yield.

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Senator Leichter, yes, of course.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: I think all of us share your desire to be helpful to victims. The problem I have with this bill is I just don't see what this bill does that, in any respects or ways, helps a victim. I really don't.

Let me try to go through it and maybe you can give me an answer. Somebody has the misfortune or the tragedy -- it's more than

a misfortune -- tragedy to have been raped, sexually assaulted in the way that it could lead to the transmission of the HIV virus.

Now, I can't understand and maybe that you can explain to me, how testing the alleged assailant -- and forgetting for a moment the due process issues and some of the very valid questions that were raised by Senators Paterson and Abate, but what does it tell you that the alleged assailant is HIV-positive?

SENATOR SALAND: What you're doing, Senator Leichter, is permitting a victim or a survivor, whichever term you prefer, to basically have some ability to gather information that he or she may think, and may very well be important to his or her well-being, and let me just quote to you a statement from a survivor, a woman who had been the victim of a rape, "having been forcibly violated once by your attacker, you now have to submit to testing and the dreadful waiting that accompanies it. On the other hand, your attacker, if caught, is protected from this indignity. You see in the

minds of AIDS professionals in New York State every AIDS sufferer is a victim, including rapists, and forcing rapists to submit to testing is an example of pitting victim against victim."

Well, in order -- we all sustain our traumas. Thank goodness I never had to sustain this type of trauma. I know you sustained traumas, as bad as they have been, you have never had to endure this type of a trauma. The idea of a victim seeking the ability to somehow or other restore their life, to somehow or other be placed back in the position that's as close to the position that he or she was in prior to that trauma is something that may well be hard, if not impossible, for some people to identify with, and I don't put that at your feet.

The reality is, as I said earlier, this is something that is purely optional. This is something that a victim, after they have had professional assistance which is required as part of the petition

problem -- process, may or may not choose to do, but as was pointed out both in this report which I alluded to earlier, and by others, that while the testing process is a less than perfect process, the results emanating from the process are less than perfect. There is some reason to believe that testing as soon as possible may, in fact, result in a more accurate indication of the HIV status of an attacker.

SENATOR LEICHTER: Senator, with all due respect to you and the statement you read from the victim, I don't think it's responsive or really makes sense.

We now have a victim. We want to help that victim. You and I and everybody agrees. We want to help the victim. Now, if there was some -- and let's assume that the test is -- is fairly accurate -- and I don't accept the argument that, you know, the test is faulty -- it may be faulty at some time, but I think that it is viewed as generally a good indication of whether somebody is HIV-positive or not, but the fact that the alleged assailant is

HIV-positive, what does that allow you to do or what does it enable you to do to help the victim? That's really what we're dealing with, as far as the victim here talks about, you know, the indignity and the terrible things she went through, absolutely right, and if that assailant is guilty, you and I hope that he's going to be sent to jail for a long, long, long time, and that obviously should happen; but right now, as I understand this legislation, you're trying to help the victim, and if there was some way -- in other words, if we knew that there was an antidote to the HIV virus, we would all say, "Oh, by God, let's test him right away because he tests positive", you begin giving the victim this sort of medication. Unfortunately, we're not at that point. We may never be.

So now the -- the alleged assailant who tests positive, there's nothing you can do. You just got -- in fact, if anything, I think it's worse for the victim because now she not only underwent this terrible experience, now she's got to wait and sit until

such time as you can test her and find out did she, as a consequence of this act, become HIV virus? It just makes that whole period for her worse, and there's absolutely nothing that you can do.

If the victim -- I'm sorry. If the alleged assailant tests negative, you've got to test her anyhow. I mean, a doctor would be negligent if he said not to -- not to test her, so what do you gain -- what do you gain by testing the alleged assailant?

SENATOR SALAND: I'm finding the question rather difficult to comprehend inasmuch as the logical conclusion from the question is we ought to walk away from any and all people who are HIV-infected because there's absolutely nothing that can be done for them. That seems to be implicit in your question.

What you could do for this person is perhaps they may elect to try AZT therapy, they might elect to get into some kind of - some type of supportive counseling that would be of assistance to them. The options -- there's

no silver bullet out there that's going to make it all better, we all know that, but the options should not be denied a person in his or her quest to deal with their trauma.

SENATOR LEICHTER: Senator Saland, if you would be good enough to continue -- I'm sorry. Maybe I didn't express myself clearly, but you totally missed my question.

Let me give you the example. There's a rape. Under your bill, you test the alleged assailant because he has been indicted. He tests positive at that point -- and let's say this happens within a week after the alleged act. At that point, you can't give the victim AZT because the victim has to be tested. The very fact that her assailant was HIV virus doesn't mean that the virus was transmitted, and I believe in most of these instances, it probably would not be transmitted, so you've got to wait. You've got to wait until you test the victim, and in any instance -- and that's my point -- you've got to test the victim. Testing the assailant -

SENATOR SALAND: That's a given. That's a given in this bill.

SENATOR LEICHTER: I understand it's a given, Senator. Of course, it's a given, and that's the whole point, because you've got to test the victim. You can't take any medical action until after you tested the victim. What do you gain by testing the alleged assailant? Tell me one thing that you gain.

SENATOR SALAND: Senator, if you want to intellectualize it, if you want to make this into an intellectual exercise, you put yourself in the posture of the victim. You put yourself in the posture of the victim. The victim has a right to know, and that's what this is all about.

If that victim chooses, because they feel that the odds are infinitesimal that they will test positive to disregard the option available to them to have his other her assailant tested, they may do that. They may take your logic and accept it as a given.

SENATOR LEICHTER: Mr. President,

if my good friend continues to yield -

ACTING PRESIDENT KUHL: Senator Saland, do you continue to yield? The Senator continues to yield.

SENATOR LEICHTER: I appreciate the sharpness of your argumentative tool, but it -- I'm not trying to intellectualize it. I'm trying to do something for the victim as you are, and I'm trying to deal with a real situation as I, frankly, don't understand you are doing, because if the purpose is to help the victim -- and you and I and everybody agrees you got to test the victim. You can't do anything until you test the victim. If the only reason to test the assailant -- or the alleged assailant -- is as a punitive matter -- because it doesn't do you any good. It doesn't help the victim. If it would help the victim, by God, we ought to do it, Senator, but since you don't advance by one day, by one minute, the medical treatment of the victim if, indeed, she became HIV-positive as a consequence of this attack - no fair giving him the answer.

SENATOR SALAND: I didn't hear your last comments, but I assume you concluded with a question.

Let me just suggest to you, Senator, that you might wish to use that argument upon the people in your fair city, and I know of one instance that was reported involving a young woman at Columbia University, another that was reported in some legal periodical -- not the New York Law Journal, some Manhattan something or other -- where a defendant was requested to take a test and refused. You may want to prevail upon those traumatized victims that that's not important. You may want to tell them that, you know, "It just doesn't matter. Just take care of yourself. Be good, God bless, and I hope you're okay." Those victims requested -- requested that the defendant undergo HIV testing. The defendant's response in those two cases that I'm familiar with -- and I'm told again anecdotally that there are more -- was that I will do that if you will give me a better plea bargain.

I think a victim deserves something a little better than that, forgetting the fact that the federal government is going to take money away from us if we don't do it, forgetting the fact that right now people can go into federal court, if you happen to have a federal court close to you and get this very same relief by making application under the federal act. If you're in New York, you can do that. If you're in Poughkeepsie, you've got to travel down to New York. If you're in Herkimer, I guess you got to travel to Syracuse.

The fed's have said you're going to lose money and we're creating a mechanism where there's anything pending in state and federal court for someone who's been the subject of one of these sexual offenses to make application for testing.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: Thank you very

much, Senator Saland.

Anybody who was listening to our debate, and I hope they were, I think it's pretty clear now what Senator Saland bases his bill and it's not that in any respect this will provide medical treatment or medical health or actual assistance to the crime victim. I think his argument is that the crime victim, terribly distraught, decides that, in some respects, it would be of assistance to her to know whether her alleged assailant was HIV virus -- I mean HIV -- had the HIV virus, was HIV-positive.

There are other things that the alleged victim may very well wish to do to her alleged assailant that, while we have all of the sympathy in the world for her, if there is no public policy rationale for doing it, we would have to say to her, "As much as we want to be helpful to you, this really will not be of help to you, it will not be of help to society. What really needs to be done, unfortunately, in this situation is to wait until such time as you can be tested and the test will give a reasonable or

will give an accurate reading", which is not until some days after the alleged attack on her. So you've got to wait for that, and you can't treat her just based on the fact that her alleged assailant tested HIV-positive.

So what are you achieving? I don't -- I don't understand the congressional act except that we're responding to the fear, to the anger that people have with people who commit crimes which is understandable and the particular fear when AIDS is involved, but it's an -- but the -- to propose an irrational response doesn't do anything, doesn't help anybody.

The answer obviously is to see that the victim gets the proper medical treatment, and I'm sure you want that and I want that, and that requires testing the victim. That's the only way that you would know what to do, and testing the assailant does absolutely nothing.

Now, if Congress says you've got to do it, but they say you've got to do it

post-conviction -- the Governor has given us a bill to do it post-conviction -- again, I don't think that makes much sense, but I would certainly vote for it rather than lose $2.8 million, but to vote for a bill like yours which -- to satisfy the congressional requirements and has a strong possibility of constitutional infirmity, and doesn't do anything for the victim, and doesn't do anything for public policy -- Why? Except to respond to a fear, to respond to a misunderstanding about the HIV virus and the disease, to mislead people? What are we accomplishing?

I really submit to you -- and I know that it comes from the best of intentions, and your record and concern for victim rights is one that really we all admire and can take you as a role model, but I think -- I think in this instance, you're misplaced because you're really not helping -- excuse me -- because you're really not helping the victim whatsoever.

I think if you examine the bill -- and it's not intellectualizing it, it's

looking at the actual situation of helping the victim -- this bill doesn't do that.

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

THE SECRETARY: Section 8. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 722 are Senators Abate, Connor, Gold, Leichter, Markowitz, Nanula, Paterson and Smith. Ayes 50, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

Senator Espada.

SENATOR ESPADA: Thank you, Mr.

President.

If the time is right, I would like to ask for unanimous consent to be recorded in the negative -

ACTING PRESIDENT KUHL: No time better than now, Senator Espada.

SENATOR ESPADA: Thank you.

-- on Calendars Number 830 and 721, please.

ACTING PRESIDENT KUHL: Without objection, Senator Espada will be recorded in the negative on Calendar Number 830 and 721.

Senator DeFrancisco.

SENATOR DeFRANCISCO: May I have unanimous consent to be recorded in the negative on 879 and 907, please.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator DeFrancisco will be recorded in the negative on 897.

SENATOR DeFRANCISCO: 879.

ACTING PRESIDENT KUHL: 879 and 907.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, may we resume the regular order of the calendar.

ACTING PRESIDENT KUHL: The Secretary will continue to call the controversial calendar in regular order.

Before we do that, Senator Montgomery I know has been looking to register a vote.

SENATOR MONTGOMERY: Thank you.

Mr. President, I would like to be recorded in the negative on Calendar 721 and 960.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 721 and 960.

Now, the Secretary will continue to call the controversial calendar regular order.

THE SECRETARY: On page 40, Calendar Number 884, by Senator Padavan, Senate

Print 3091, an act to amend the Executive Law, in relation to cooperation between police agencies and the United States Immigration and Naturalization Service.

SENATOR PATERSON: Explanation.

SENATOR MARCELLINO: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 918, by Senator Farley, Senate Print 2305, an act to amend the Tax Law, in relation to the requirement to file a personal income tax return.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: Maybe he would like me to explain it if Senator -

ACTING PRESIDENT KUHL: Senator Farley, an explanation has been asked for by Senator Paterson on Calendar Number 918.

SENATOR FARLEY: I would be happy

to give that explanation.

Senator Paterson, this bill is a senior citizen bill, to be very frank with you, and for low income residents. It reduces administrative costs in the Department of Taxation and Finance and it repeals the existing statutory threshold which requires that the filing of a New York State income tax by persons with incomes over $4,000, whether they have any tax due or not.

This bill enables the commissioner to instead establish the threshold for the legislation -- for the regulation. The current $4,000 threshold has been in state statute since 1987. In contrast, the federal income tax threshold are $6250 for individuals under 65 and as high as $12,750 for married senior citizens.

So, consequently, many married - many persons, particularly senior citizens, are forced to file state returns even though they owe no state taxes and are not required to file federal returns.

Tax preparers -- I could name them, but they do volunteer work for senior citizens, which I'll spare you from, have pointed out this hardship and confusion particularly for older citizens. Again, this would enable the Commissioner of Taxation and Finance to establish filing levels which best coincide with the changing -- changing federal limits. That's why I did not put it in statute to figure and with any special considerations in New York, okay?

The state Department of Taxation and Finance says it will have no impact on the budget or anything. As a matter of fact, it will save us some money because they don't have to process them.

ACTING PRESIDENT KUHL: The Secretary will read the last -- Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'm the one who laid this bill aside and I asked a couple of questions of Senator Farley before this, and I understand his

intention is to give the commissioner the ability to link the state filing requirements with the federal filing requirements and do it on an annual basis. I was concerned that we were giving away the power to establish the floor in which this occurred which is traditionally a legislative function.

SENATOR FARLEY: That's kind of a moving target.

SENATOR DOLLINGER: Well, I'm satisfied that if the commissioner's goal is to bring us in unison with the IRS, that's probably best done on a regulatory basis.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 936, by Senator Goodman, Senate Print 4002, an act to amend the Public Buildings Law, in relation to deleting the value limitation on contracts authorized to be let to meet construction emergencies.

SENATOR MARCELLINO: Mr. President, could we lay that aside temporarily?

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

Senator Marcellino, that completes the controversial calendar. We do have some housekeeping.

SENATOR MARCELLINO: Can we take the housekeeping?

ACTING PRESIDENT KUHL: The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Levy, he wishes to amend his bill on page 8, Calendar 225, Senate Print 975-A, and he wants it to retain its Third Reading Calendar position.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 225 are received and accepted. The bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: On behalf of my colleague to the left, Senator DeFrancisco, I wish to call up his bill, Print Number 3649, which was recalled from the Assembly which is now at the desk. The Secretary will read the title.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: 789, by Senator DeFrancisco, Senate Print 3649, an act authorizing the town of Camillus to discontinue use as park land certain lands heretofore acquired as park and other purposes.

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

ACTING PRESIDENT KUHL: The motion is to reconsider the vote by which the bill passed the house. The Secretary will call

the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: The bill is now at the Third Reading Calendar, and I offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Farley.

SENATOR FARLEY: Again, on behalf of Senator Levy, I wish to remove the sponsor's star from Calendar Number 77.

ACTING PRESIDENT KUHL: The sponsor's star on Calendar Number 77 is removed.

The Chair recognizes Senator Leibell.

SENATOR LEIBELL: Mr. President, Calendar Number 606, could we lay that aside for the day, please?

ACTING PRESIDENT KUHL: Calendar

Number 606 is laid aside for the day at the request of the sponsor for the second time.

Senator Marcellino.

SENATOR MARCELLINO: May we stand at ease for one minute?

ACTING PRESIDENT KUHL: The Senate will stand at ease for one moment.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR MARCELLINO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: All taken care of, Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business, I move we adjourn until Wednesday, May 24th at 10:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, May 24th at 10:00 a.m.

Note the time change, 10:00 a.m.

(Whereupon, at 3:50 p.m., the Senate adjourned.)