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ALBANY, NEW YORK

May 23, 1995

11:05 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT KUHL: The
3 Senate will come to order. Members please find
4 their chairs, the staff their seats. Ask
5 everybody in the chamber to please rise and join
6 me in saying the Pledge of Allegiance.

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

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

11 (A moment of silence was
12 observed.)

13 Reading of the Journal.

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

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

23 Presentation of petitions.

1 Messages from the Assembly.
2 Messages from the Governor.
3 Reports of standing committees.
4 Reports of select committees.
5 Communications and reports from
6 state officers.
7 Motions and resolutions.
8 The Chair recognizes Senator
9 Farley.

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

13 On behalf of Senator Cook, Mr.
14 President, on page 4, I offer the following
15 amendments to Calendar Number 23, Senate Print
16 762, and I ask that that bill retain its place
17 on the Third Reading Calendar.

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

23 Senator Paterson, why do you

1 rise?

2 SENATOR PATERSON: Mr. President,
3 we have a, on the calendar, Resolution Number
4 1326 honoring Myron Holtz who has stepped down
5 from the Division of Housing.

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

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

17 The Chair recognizes Senator
18 Rath.

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

1 Thank you.

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

5 Senator Sears.

6 SENATOR SEARS: Calendar Number
7 894, would you star that bill, please.

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

11 Senator Hoblock.

12 SENATOR HOBLOCK: Mr. President,
13 on the Resolution Calendar, Resolution 1322
14 commemorating Armed Forces Day and Resolution
15 1323 commemorating Memorial Day, I would like to
16 open that up to co-sponsorship, both
17 resolutions.

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

21 (There was no response.)

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

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

3 The Chair recognizes Senator
4 Bruno.

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

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

13 Senator Bruno.

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

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

20 (Response of "Aye".)

21 Opposed, nay.

22 (There was no response.)

23 The Resolution Calendar is

1 adopted.

2 Senator Bruno.

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

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

9 THE SECRETARY: On page 10,
10 Calendar 299, by Senator Padavan, Senate Print
11 3380-A, an act to amend the State Finance Law,
12 the General Municipal Law, the Personal Property
13 Law, the Public Authorities Law and the
14 Administrative Code of the city of New York, in
15 relation to authorizing agreements.

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

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 37.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 338, by Senator Farley, Senate Print 1275-A, an
5 act to amend the Education Law, in relation to
6 residence with parent for determining tuition
7 assistance awards.

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

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 39.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 339, by Senator Padavan, Senate Print 3089-A, an
20 act to amend the Education Law, in relation to
21 the exclusion of illegal aliens.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside.

1 THE SECRETARY: Calendar Number
2 409, by Senator Levy, Senate Print 4034, an act
3 to amend the Transportation Law, in relation to
4 projects funded under the Airport Preservation
5 Program.

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 39.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 591, by Senator Skelos, Senate Print 394, an act
18 to amend the Vehicle and Traffic Law, in
19 relation to increasing the period of time during
20 which a driver's license is suspended for repeat
21 DWI offenses.

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

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 39.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 606, by Senator Leibell, Senate Print 3681-A, an
12 act to amend the Private Housing Finance Law, in
13 relation to the definition of a limited profit
14 mutual company.

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

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

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

1 SENATOR PATERSON: For the day.

2 SENATOR BRUNO: Lay it aside

3 temporarily.

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

6 THE SECRETARY: Calendar Number
7 615, by Senator Farley, Senate Print 2675-A, an
8 act to amend the Retirement and Social Security
9 Law, in relation to negotiation of retirement
10 benefits.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 39.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 643, by Senator Levy, Senate Print 4337, an act
23 to amend the Transportation Law, in relation to

1 the creation of regional citizens advisory
2 councils.

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

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 41.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 700, by Senator Stafford, Senate Print 1261-B,
15 an act to amend the Insurance Law and the
16 General Obligations Law, in relation to limiting
17 liability for property owners.

18 SENATOR PATERSON: Lay it aside,
19 please.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside.

22 THE SECRETARY: Calendar Number
23 721, by Senator Skelos, Senate Print 413, an act

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

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 41.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 722, by Senator Saland, Senate Print 2039, an
17 act to amend the Public Health Law and the
18 Executive Law, in relation -

19 SENATOR PATERSON: Lay it aside.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside.

22 THE SECRETARY: Calendar Number
23 777, by Senator Lack, Senate Print 4789, an act

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

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 825, by Senator Volker, Senate Print 4262, an
16 act to amend the Criminal Procedure Law, the
17 Penal Law and the Civil Practice Law and Rules,
18 in relation to assault against a child.

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

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 44.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 830, by Senator Volker, Senate Print 4588, an
9 act to amend the Penal Law, in relation to
10 issuance of licenses to have and carry pistols.

11 SENATOR PATERSON: Lay it aside.

12 ACTING PRESIDENT KUHL: Lay the
13 bill aside.

14 THE SECRETARY: Calendar Number
15 844, by Senator DeFrancisco, Senate Print 673,
16 an act to amend the Vehicle and Traffic Law, in
17 relation to speeding while being pursued by a
18 police officer.

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

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 44.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 879, by Senator Levy, Senate Print 976-A, an act
8 in relation to directing the State Fire
9 Administrator to study the Hazardous Materials
10 Emergency Response Training Program.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 44.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 884, by Senator Padavan, Senate Print 3091, an
23 act to amend the Executive Law, in relation to

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

4 SENATOR PATERSON: Lay it aside.

5 ACTING PRESIDENT KUHL: Lay the
6 bill aside.

7 THE SECRETARY: Calendar Number
8 896, by Member of the Assembly Brodsky, Assembly
9 Print 6220, an act to amend the Environmental
10 Conservation Law, in relation to the length of
11 scup.

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

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 44.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 905, by Senator Present, Senate Print 993, an

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

4 SENATOR PATERSON: Lay it aside.

5 ACTING PRESIDENT KUHL: Lay the
6 bill aside.

7 THE SECRETARY: Calendar Number
8 907, by Member of the Assembly Kaufman, Assembly
9 Print 1811-B, an act to amend the Arts and
10 Cultural Affairs Law, in relation to contracts
11 for theatrical and musical performances.

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

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 44.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 911, by Senator Present, Senate Print 1691, an
2 act authorizing the Commissioner of General
3 Services to transfer and convey certain state
4 lands in the county of Cattaraugus to Holimont,
5 Incorporated.

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 46.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 913, by Senator Farley, Senate Print 1726, an
18 act to amend the Public Officers Law, in
19 relation to the power of the state legislators
20 to administer oaths of office.

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

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 46.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 914, by Senator Bruno, Senate Print 1860, an act
10 to amend the Tax Law, in relation to the
11 inspection of tax returns.

12 SENATOR PATERSON: Lay it aside.

13 ACTING PRESIDENT KUHL: Lay the
14 bill aside.

15 THE SECRETARY: Calendar Number
16 917, by Senator DeFrancisco, Senate Print 2153,
17 an act in relation to authorizing the conveyance
18 of certain real property to the state of New
19 York adjacent to the Hutchings Psychiatric
20 Center to Syracuse University.

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

23 THE SECRETARY: Section 3. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 46.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 918, by Senator Farley, Senate Print 2305, an
10 act to amend the Tax Law, in relation to the
11 requirement to file a personal income tax
12 return.

13 SENATOR PATERSON: Lay it aside.

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside.

16 THE SECRETARY: Calendar Number
17 928, by Senator Stafford, Senate Print 3312, an
18 act to amend the Tax Law, in relation to
19 authorizing the county of Washington to allocate
20 certain proceeds from the tax on mortgages.

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

23 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 46.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 931, by Senator Lack, Senate Print 3552, an act
10 to amend the Tax Law, in relation to mortgage
11 recording taxes on credit line mortgages.

12 ACTING PRESIDENT KUHL: There's a
13 local fiscal impact note at the desk. The
14 Secretary will read the last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 46.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 936, by Senator Goodman, Senate Print 4002, an
2 act to amend the Public Buildings Law, in
3 relation to deleting the value limitation on
4 contracts authorized to be let to meet
5 construction emergencies.

6 SENATOR PATERSON: Lay it aside.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside.

9 THE SECRETARY: Calendar Number
10 941, by Senator Padavan, Senate Print 4745, an
11 act to amend Chapter 172 of the Laws of 1992,
12 amending the Tax Law, relating to releasing the
13 Cooperative Housing Corporation from transferee
14 liability.

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

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 46.

23 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 960, by Senator Maltese, Senate Print 489, an
4 act to amend the Vehicle and Traffic Law, in
5 relation to providing for distinctive license
6 plates for members of the Catholic War Veterans.

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

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 46.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 961, by Senator Skelos, Senate Print 1965, an
19 act to amend the Vehicle and Traffic Law, in
20 relation to distinctive license plates for gold
21 star mothers.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 46.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 964, by Senator Hoblock, Senate Print 3407, an
11 act to amend the Military Law, in relation to
12 providing legal authority for obtaining
13 background checks on individuals.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 46.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 965, by Senator LaValle, Senate Print 3508, an
3 act to amend the Vehicle and Traffic Law, in
4 relation to distinctive plates for widows or
5 widowers of former prisoners of war.

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 46.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 966, by Senator Bruno, Senate Print 3654-B, an
18 act to amend the Vehicle and Traffic Law, in
19 relation to authorizing issuance of distinctive
20 license plates to "legion of merit" recipients
21 of the United States Armed Forces.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 46.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 971, by Senator Cook, Senate Print 286, an act
11 to amend the Agriculture and Markets Law, in
12 relation to examination of horses for equine
13 infectious anemia.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 46.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 Senator Johnson, that completes
2 the non-controversial calendar.

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

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

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

14 ACTING PRESIDENT KUHL:
15 Explanation.

16 SENATOR JOHNSON: Lay it aside
17 temporarily.

18 ACTING PRESIDENT KUHL: Lay the
19 bill aside temporarily.

20 The Secretary will continue to
21 call the controversial calendar.

22 THE SECRETARY: Calendar Number
23 700, by -

1 ACTING PRESIDENT KUHL: Senator
2 Johnson.

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

5 ACTING PRESIDENT KUHL: 914 -
6 Calendar Number 914?

7 SENATOR JOHNSON: Yes.

8 ACTING PRESIDENT KUHL: Okay.
9 Calendar Number 914 is laid aside for the day.
10 The Secretary will continue to
11 call the controversial calendar.

12 THE SECRETARY: Calendar Number
13 700, by Senator Stafford, Senate Print 1261-B,
14 an act to amend the Insurance Law and the
15 General Obligations Law, in relation to limiting
16 liability for property owners.

17 SENATOR PATERSON: Explanation.

18 SENATOR JOHNSON: Lay it aside
19 temporarily.

20 ACTING PRESIDENT KUHL: Lay the
21 bill aside temporarily.

22 THE SECRETARY: Calendar Number
23 722, by Senator Saland, Senate Print 2039, an

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

5 SENATOR PATERSON: Explanation.

6 SENATOR JOHNSON: Lay it aside
7 temporarily.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside temporarily.

10 THE SECRETARY: Calendar Number
11 830, by Senator Volker, Senate Print 4588, an
12 act to amend the Penal Law, in relation to
13 issuance of licenses to have and carry pistols.

14 SENATOR PATERSON: Explanation.

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

19 SENATOR VOLKER: Mr. President,
20 this -

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

1 a lot of noise in the back of the chamber.

2 Could we please quiet it down?

3 Thank you.

4 Senator Volker for an

5 explanation.

6 SENATOR VOLKER: Mr. President,

7 this is a bill that's passed this house on a

8 number of occasions and sponsored in the

9 Assembly by Assemblyman Bragman.

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

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

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

6 ACTING PRESIDENT KUHL: Senator
7 Paterson.

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

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

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

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

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

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

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

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

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

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

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

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

23 SENATOR JOHNSON: Can I interrupt

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

3 ACTING PRESIDENT KUHL: Senator
4 Hannon.

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

9 ACTING PRESIDENT KUHL: There
10 will be an immediate meeting of the Health
11 Committee in the Majority Conference Room, Room
12 332; immediate meeting of the Health Committee.

13 Thank you for your indulgence,
14 Senator Volker.

15 Senator Volker.

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

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

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

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

3 ACTING PRESIDENT KUHL: Senator
4 Paterson.

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

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

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

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

21 ACTING PRESIDENT KUHL: The Chair
22 recognizes Senator Leichter.

23 SENATOR LEICHTER: Yes, Mr.

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

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

1 been caused with firearms.

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

23 I don't know what it is about

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

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

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

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

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

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

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

1 ACTING PRESIDENT KUHL: The Chair
2 recognizes Senator Waldon.

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

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

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

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

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

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

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

1 doing something wrong.

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

7 Thank you very much, Mr.
8 President.

9 ACTING PRESIDENT KUHL: The Chair
10 recognizes Senator Gold.

11 SENATOR GOLD: Thank you, Mr.
12 President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 I vote no.

1 ACTING PRESIDENT KUHL: The Chair
2 recognizes Senator Marchi.

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

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

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

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

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

20 ACTING PRESIDENT KUHL: The Chair
21 recognizes Senator Volker.

22 SENATOR VOLKER: Go ahead.

23 ACTING PRESIDENT KUHL: Senator

1 Volker yields to Senator Hoffmann.

2 Senator Hoffmann.

3 SENATOR HOFFMANN: Thank you, Mr.
4 President.

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

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

1 applied to obtain a pistol permit.

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

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

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

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

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

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

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

23 I would urge all of my colleagues

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

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

12 Thank you.

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

16 SENATOR HOFFMANN: Yes, Senator
17 Waldon.

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

20 ACTING PRESIDENT KUHL: The
21 Senator yields.

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

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

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

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

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

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

15 SENATOR WALDON: Thank you, Mr.
16 President.

17 Thank you, Senator.

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

20 Senator Montgomery, to explain
21 your vote.

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

1 ACTING PRESIDENT KUHL: Speak on
2 the bill?

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

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

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

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

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

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

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

16 SENATOR MONTGOMERY: Okay. Thank
17 you for that clarification.

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

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

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

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

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

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

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

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

8 SENATOR MONTGOMERY: All right.
9 Thank you, Senator.

10 Mr. President, just briefly on
11 the bill.

12 ACTING PRESIDENT KUHL: Senator
13 Montgomery on the bill.

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

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

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

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

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

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

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

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

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

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

2 SENATOR DOLLINGER: Mr.

3 President.

4 ACTING PRESIDENT KUHL: Senator

5 Dollinger.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT KUHL: Senator
22 Waldon to explain his vote.

23 SENATOR WALDON: Thank you very

1 much, Mr. President.

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

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

1 that's sufficient.

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

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

1 been right.

2 I vote in the negative on this.

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

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

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 The Chair recognizes Senator
15 Johnson.

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

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

1 Secretary to read.

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

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

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

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

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

18 SENATOR HOBLOCK: Thank you, Mr.
19 President.

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

23 Don is extremely qualified and

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

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

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

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

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

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

23 Senator Farley, on the

1 nomination.

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

6 SENATOR HOBLOCK: Yes.

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

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

19 (Response of "Aye.")

20 Opposed nay.

21 (There was no response.)

22 The nominee is confirmed.

23 We're very happy to be joined by

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

6 (Applause)

7 Secretary will continue to read.

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

12 ACTING PRESIDENT KUHL: Senator
13 Stafford.

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

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

22 SENATOR SEARS: Thank you, Mr.
23 President.

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

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

13 SENATOR SEWARD: Mr. President.

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

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

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

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

11 (Response of "Aye.")

12 Opposed nay.

13 (There was no response.)

14 The sheriff's appointment is
15 confirmed.

16 Chair recognizes Senator Skelos.

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

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

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

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

4 SENATOR PATERSON: Explanation.

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

8 SENATOR PADAVAN: Thank you, Mr.
9 President.

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

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

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

17 ACTING PRESIDENT KUHL: Chair
18 recognizes Senator Leichter.

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

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

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

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

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

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

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

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

12 SENATOR LEICHTER: Senator, that
13 4300 figure is -- am I correct in understanding
14 that that is a guess or surmise on your part?

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

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

7 But, Senator, whether it's 2,000,
8 3,000 or 4,000, the fact remains we have illegal
9 immigrants in our City and State University,
10 violating the laws of this country and, as we at
11 this point in time in the Legislature, grapple
12 with some very serious economic problems as they
13 relate to education, both elementary and second
14 ary and higher education, fighting to hold onto
15 tuition assistance programs, SEEK programs, HEOP
16 programs, which benefit not only citizens but
17 legal immigrants, people in this country
18 lawfully, trying to hold onto those resources
19 and those programs, it seems to me that it's
20 terribly wrong to reward people who have come
21 to this country illegally by giving them a
22 subsidized education. In addition, by the way,
23 many of these illegal immigrants have applied

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

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

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

11 SENATOR PADAVAN: Yes.

12 ACTING PRESIDENT KUHL: The
13 Senator continues to yield.

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

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

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

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

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

16 SENATOR LEICHTER: Mr. President,
17 again -

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

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

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

3 SENATOR PADAVAN: Yes.

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

6 SENATOR PADAVAN: Yes.

7 SENATOR LEICHTER: And you've
8 been told -

9 SENATOR PADAVAN: I've been told
10 that -

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

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

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

20 ACTING PRESIDENT KUHL: Senator
21 Leichter, on the bill.

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

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

14 The problem I have with this
15 bill, Senator, is really two-fold. First of
16 all, I think that you create an administrative
17 nightmare that is far worse than any problem
18 that we have and, while you gave a figure of
19 4300 and so on, which is -- in itself is very
20 small when -- when we have over what? -- the
21 total enrollment in our public educational
22 institutions is well over 200,000, maybe more
23 than that, but I suspect that far fewer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 SENATOR PADAVAN: Mr. President.

10 ACTING PRESIDENT KUHL: Chair
11 recognizes Senator Paterson.

12 SENATOR PADAVAN: Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 SENATOR LEICHTER: Mr. President.

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

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

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

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

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

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

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

1 ACTING PRESIDENT KUHL: Chair
2 recognizes Senator Paterson.

3 SENATOR PATERSON: Thank you, Mr.
4 President.

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

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

9 SENATOR PADAVAN: Yes.

10 ACTING PRESIDENT KUHL: Senator
11 yields.

12 SENATOR PATERSON: What I would
13 like you to tell me, Senator, is after the
14 application is filled out and say we put this
15 third category on, resident, non-resident,
16 immigrant or legally permanent resident, we have
17 13 categories of legal permanent residents and
18 31 different types.

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

23 SENATOR PADAVAN: I'm not sure.

1 Just take the last part of the question.

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

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

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

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

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

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

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

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

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

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

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

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

8 SENATOR PATERSON: Mr.
9 President.

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

14 ACTING PRESIDENT KUHL: Senator
15 Paterson.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 SENATOR PATERSON: If Senator
17 Padavan would continue to yield.

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

20 SENATOR PADAVAN: Yes.

21 ACTING PRESIDENT KUHL: Senator
22 continues to yield.

23 SENATOR PATERSON: Senator

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

10 SENATOR PADAVAN: Yes.

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

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

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

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

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

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

23 SENATOR COOK: Mr. President, if

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

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

8 Senator Stavisky, why do you
9 rise?

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

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

15 SENATOR STAVISKY: Thank you.

16 ACTING PRESIDENT KUHL: Chair
17 recognizes Senator Waldon.

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

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

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

1 SENATOR PADAVAN: Yes.

2 ACTING PRESIDENT KUHL: Senator
3 yields.

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

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

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

1 So as an example, the one I gave
2 Senator Paterson, if they were here on a student
3 visa, they would put that information down on
4 that line and that would be the end of it.
5 However, if information was not provided or
6 there was some problem with regard to it, the
7 bill specifically tells you in paragraph 3, page
8 2, the process that the admissions officer would
9 follow in terms of reporting such a situation to
10 certain individuals, including the United States
11 Immigration and Naturalization Service.

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

14 SENATOR PADAVAN: Yes.

15 SENATOR WALDON: If the Senator
16 would continue to yield.

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

19 SENATOR PADAVAN: Yes.

20 ACTING PRESIDENT KUHL: The
21 Senator continues to yield.

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

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

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

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

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

16 SENATOR PADAVAN: Yes.

17 ACTING PRESIDENT KUHL: Senator
18 continues to yield.

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

22 SENATOR PADAVAN: I thought I
23 answered.

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

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

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

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

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

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

11 Mr. President, if I may on the
12 bill.

13 ACTING PRESIDENT KUHL: Senator
14 Waldon, on the bill.

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

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

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

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

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

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

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

7 SENATOR PADAVAN: Will Senator
8 Waldon yield to a question?

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

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

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

17 SENATOR PADAVAN: Do you know who
18 Barbara Jordan is?

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

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

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

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

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

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

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

10 Thank you very much, Mr.
11 President.

12 ACTING PRESIDENT KUHL: The Chair
13 recognizes Senator Stavisky.

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

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

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

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

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

23 Educational institutions are in

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

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

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

23 If we're looking to catch people

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

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

23 We have had cases where, under

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

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

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

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

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

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

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

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

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

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

20 ACTING PRESIDENT KUHL: Chair
21 recognizes Senator Espada.

22 SENATOR ESPADA: Thank you, Mr.
23 President.

1 Will Senator Padavan yield to a
2 question.

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

5 SENATOR PADAVAN: Yes.

6 ACTING PRESIDENT KUHL: Senator
7 yields.

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

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

14 SENATOR PADAVAN: Pardon?

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

18 SENATOR PADAVAN: Xeno...

19 SENATOR ESPADA: Xenophobia, yes.

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

23 SENATOR ESPADA: I don't know if

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

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

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

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

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

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

23 SENATOR ESPADA: Absolutely. I

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

15 SENATOR PADAVAN: Now I
16 understand your question.

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

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

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

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

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

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

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

8 SENATOR ESPADA: Answer the
9 question, sir.

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

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

19 ACTING PRESIDENT KUHL: Yes,
20 Senator Padavan yields.

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

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

3 SENATOR PADAVAN: Yes.

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

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

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

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

9 Have you any concerns about that?

10 SENATOR PADAVAN: Is that a
11 question?

12 SENATOR ESPADA: Have you any
13 concerns?

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

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

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

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

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

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

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

19 SENATOR ESPADA: I'm correct.

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

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

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

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

21 SENATOR PADAVAN: To legal
22 immigrants?

23 SENATOR ESPADA: Yes.

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

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

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

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

20 SENATOR ESPADA: Yes.

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

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

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

13 Mr. President, on the bill.

14 ACTING PRESIDENT KUHL: Senator
15 Espada, on the bill.

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

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

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

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

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

6 Thank you.

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

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

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

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

21 SENATOR HOFFMANN: Aye.

22 ACTING PRESIDENT KUHL: Senator
23 Hoffmann recorded in the affirmative.

1 Senator Montgomery, how do you
2 vote?

3 SENATOR MONTGOMERY: No.

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

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

10 Senator Dollinger is next on the
11 list.

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

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

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

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

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

23 So starting with that preference,

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

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

13 SENATOR PADAVAN: That a
14 question?

15 SENATOR DOLLINGER: Decoupling
16 those.

17 SENATOR PADAVAN: No.

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

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

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

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

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

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

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

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

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

23 SENATOR DOLLINGER: Also, again

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

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

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

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

19 SENATOR PADAVAN: Yeah.

20 ACTING PRESIDENT KUHL: Senator
21 yields.

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

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

3 SENATOR PADAVAN: Well, Senator,
4 the -

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

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

15 SENATOR DOLLINGER: How do you
16 feel about it?

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

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

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

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

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

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

18 SENATOR DOLLINGER: Right, I
19 understand that.

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

23 SENATOR PADAVAN: What is what?

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

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

16 SENATOR DOLLINGER: But my
17 only -

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

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

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

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

19 SENATOR DOLLINGER: On the bill,
20 Mr. President.

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

1 enforce those laws.

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

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

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

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

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

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

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

8 ACTING PRESIDENT KUHL: The Chair
9 recognizes Senator Mendez.

10 SENATOR MENDEZ: Thank you, Mr.
11 President.

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

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

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

23 Do you know -- first, do you know

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

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

8 SENATOR MENDEZ: Well, the -- an
9 organization in Washington and Dr. Lobos from
10 Rice University, they have canvassed the
11 districts about immigrants and they came out and
12 stated that we have every year in the United
13 States, in the entire country, 1.1 million of
14 immigrants. Out of those 1.1 million, Senator
15 Padavan, there are 700 million that are, in
16 fact, legal. Then we have anywhere from 100- to
17 150,000 immigrants who are here because of
18 political persecution or what have you, and the
19 fact is that the remaining 300,000 individuals
20 we could -- they could be 300,000 illegal aliens
21 in the entire United States.

22 SENATOR PADAVAN: Senator, those
23 are annual figures.

1 SENATOR MENDEZ: Yes.

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

4 SENATOR MENDEZ: How many?

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

13 SENATOR MENDEZ: Correct.

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

17 SENATOR MENDEZ: Senator Padavan,
18 we are agreeing that every year there are
19 300,000 illegal aliens in the entire United
20 States, in California coming in.

21 SENATOR PADAVAN: Certainly
22 several -

23 SENATOR MENDEZ: I don't know how

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

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

13 SENATOR MENDEZ: Senator -

14 SENATOR PADAVAN: Let me answer
15 your question.

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

18 SENATOR PADAVAN: But it's all
19 here.

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

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

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

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

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

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

14 SENATOR MENDEZ: You mentioned
15 earlier -- excuse me.

16 SENATOR PADAVAN: Savings?

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

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

22 SENATOR MENDEZ: Yeah.

23 SENATOR PADAVAN: Where they said

1 there were 2,000.

2 SENATOR MENDEZ: Correct, yes.

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

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

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

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

7 SENATOR MENDEZ: Well, but I want
8 to share with you the fact that illegal and
9 legal aliens, which is immigrants, they do pay
10 in taxes 42 point -- I'm sorry, let me back
11 track, get my glasses. Legal and undocumented
12 immigrants combined, the two groups receive
13 \$42.9 billion in services such as education and
14 public assistance. However, they pay approxi
15 mately \$70.3 billion a year, which if your
16 primary motivation that you think that is your
17 primary motivation was to save the state the \$28
18 million so that the mayor would be better off
19 with \$28 million because the expenses that all
20 legal and illegal immigrants do incur in New
21 York State and for the federal government, the
22 \$42.9 million and they pay taxes in the area of
23 70.3 billion, we're ahead of the game, wouldn't

1 you say so?

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

5 SENATOR MENDEZ: Yes.

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

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

15 SENATOR MENDEZ: I'll appreciate
16 it.

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

1 SENATOR MENDEZ: Thank you,
2 Senator Padavan.

3 Mr. President, I am going -

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

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

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

18 SENATOR MALTESE: Aye.

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

21 SENATOR MAZIARZ: Aye.

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

1 Secretary will withdraw the roll call.

2 Thank you, Senator Mendez, for
3 the interruption.

4 SENATOR MENDEZ: Thank you.

5 ACTING PRESIDENT KUHL: Senator
6 Mendez, on the bill.

7 SENATOR MENDEZ: Mr. President, I
8 am going to vote against this bill, as stated
9 earlier, if the primary motive for -- for
10 passing this bill is that the city of New York
11 will be saving \$28 million by forcing our public
12 higher education institutions to behave as if
13 they were working for the Immigration and
14 Naturalization federal department. If that is
15 the primary motivation, because statistics
16 clearly show that illegal as well as legal
17 immigrants combined never only utilize \$42.9
18 billion in services such as education and -
19 and -- education and public assistance.
20 However, that same group of individuals, legal
21 immigrants as well as illegal immigrants
22 combined, these two groups do pay to the country
23 \$70.3 billion, so that the argument in terms of

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

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

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

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

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

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

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

3 Thank you, Mr. President.

4 SENATOR MARCHI: Mr. President.

5 ACTING PRESIDENT KUHL: The Chair
6 recognizes Senator Marchi.

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

10 SENATOR MARCHI: 12:28?

11 ACTING PRESIDENT KUHL: 12:28.

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

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

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

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

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

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

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

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

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

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

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

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

1 sponsoring this bill.

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

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

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

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

1 wide open and then abdicating any
2 responsibility.

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

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

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

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

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

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

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

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

16 SENATOR GOODMAN: Mr. President.

17 ACTING PRESIDENT KUHL: Senator
18 Goodman.

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

23 ACTING PRESIDENT KUHL: There

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

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

8 ACTING PRESIDENT KUHL: Secretary
9 will read the last section.

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

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

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

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

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

1 slowly.

2 THE SECRETARY: Senator Abate.

3 SENATOR ABATE: No.

4 THE SECRETARY: Senator Babbush.

5 (There was no response.)

6 Senator Bruno.

7 (Affirmative indication.)

8 THE SECRETARY: Senator Connor.

9 (Negative indication.)

10 THE SECRETARY: Senator Cook.

11 (There was no response.)

12 Senator DeFrancisco.

13 SENATOR DeFRANCISCO: Yes.

14 THE SECRETARY: Senator DiCarlo.

15 SENATOR DiCARLO: Aye.

16 THE SECRETARY: Senator

17 Dollinger.

18 (There was no response.)

19 Senator Espada.

20 SENATOR LEICHTER: Mr. President.

21 ACTING PRESIDENT KUHL: Senator

22 Espada.

23 Yes. Senator Leichter, why do

1 you rise?

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

4 SENATOR PATERSON: I hear it.

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

9 Senator Espada to explain his
10 vote.

11 SENATOR ESPADA: Thank you, Mr.
12 President.

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

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

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

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

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

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

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

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

15 Secretary continue to call the
16 roll slowly.

17 THE SECRETARY: Senator Farley.

18 SENATOR FARLEY: Aye.

19 THE SECRETARY: Senator Galiber
20 excused.

21 Senator Gold.

22 SENATOR GOLD: Mr. President.

23 ACTING PRESIDENT KUHL: Senator

1 Gold to explain his vote.

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

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

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

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

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

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

17 Secretary will continue to call
18 the roll.

19 THE SECRETARY: Senator
20 Gonzalez.

21 SENATOR GONZALEZ: No.

22 THE SECRETARY: Senator Goodman.

23 SENATOR GOODMAN: Mr. President,

1 to explain my vote.

2 ACTING PRESIDENT KUHL: Senator
3 Goodman to explain his vote.

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

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

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

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

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

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

15 I vote aye.

16 ACTING PRESIDENT KUHL: Senator
17 Goodman recorded in the affirmative.

18 Secretary will continue to call
19 the roll slowly.

20 THE SECRETARY: Senator Hannon.

21 (There was no response.)

22 THE SECRETARY: Senator Hoblock.

23 SENATOR HOBLOCK: Yes.

1 THE SECRETARY: Senator Hoffmann
2 voting in the affirmative earlier today.
3 Senator Holland.
4 SENATOR HOLLAND: Yes.
5 THE SECRETARY: Senator Johnson.
6 (There was no response.)
7 Senator Jones.
8 SENATOR JONES: Aye.
9 THE SECRETARY: Senator Kruger.
10 (There was no response.)
11 Senator Kuhl.
12 SENATOR KUHL: Aye.
13 THE SECRETARY: Senator Lack.
14 SENATOR LACK: Aye.
15 THE SECRETARY: Senator Larkin.
16 SENATOR LARKIN: Aye.
17 THE SECRETARY: Senator LaValle.
18 SENATOR LAVALLE: Mr. President.
19 ACTING PRESIDENT KUHL: Senator
20 LaValle to explain his vote.
21 SENATOR LAVALLE: Mr. President,
22 first, I'd like to compliment Senator Padavan
23 for the thorough job that he did in explaining

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

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

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

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

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

5 Senator Stafford, why do you
6 rise?

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

9 SENATOR SKELOS: No objection.

10 SENATOR STAFFORD: No objection.

11 ACTING PRESIDENT KUHL: Senator
12 Stafford. Call his name.

13 THE SECRETARY: Senator
14 Stafford.

15 SENATOR STAFFORD: Aye.

16 ACTING PRESIDENT KUHL: Senator
17 Stafford in the affirmative.

18 Continue to call the roll
19 slowly.

20 THE SECRETARY: Senator Leibell.

21 SENATOR LEIBELL: Aye.

22 THE SECRETARY: Senator
23 Leichter.

1 SENATOR LEICHTER: Yes. Mr.
2 President.

3 ACTING PRESIDENT KUHL: Senator
4 Leichter to explain his vote.

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

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

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

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

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

1 taking our jobs, whoever "they" are.

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

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

8 Secretary will continue to call
9 the roll.

10 THE SECRETARY: Senator Levy.

11 SENATOR LEVY: Aye.

12 THE SECRETARY: Senator Libous.

13 SENATOR LIBOUS: Aye.

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

16 Senator Marcellino.

17 SENATOR MARCELLINO: Aye.

18 THE SECRETARY: Senator Marchi.

19 SENATOR MARCHI: Aye.

20 THE SECRETARY: Senator

21 Markowitz.

22 (There was no response.)

23 Senator Maziarz voting in the

1 affirmative earlier today.

2 Senator Mendez.

3 SENATOR MENDEZ: No.

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

7 Senator Nanula.

8 SENATOR NANULA: Aye.

9 THE SECRETARY: Senator
10 Nozzolio.

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

13 ACTING PRESIDENT KUHL: Senator
14 Nozzolio to explain his vote.

15 SENATOR NOZZOLIO: Thank you, Mr.
16 President.

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

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

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

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

20 Secretary will continue to call
21 the roll slowly.

22 THE SECRETARY: Senator Onorato.

23 (There was no response.)

1 Senator Oppenheimer.

2 ACTING PRESIDENT KUHL: Senator
3 Oppenheimer to explain her vote.

4 SENATOR OPPENHEIMER: I'll be
5 voting no.

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

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

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

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

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

14 The roll call will continue.

15 THE SECRETARY: Senator Padavan.

16 ACTING PRESIDENT KUHL: Senator
17 Padavan to explain his vote.

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

1 moment of response is in order.

2 Senator Leichter, you and I
3 discussed this bill before you asked me what the
4 source was in terms of the magnitude of the
5 problem. Now, either you don't believe me or
6 you don't believe CUNY. But I told you that in
7 1989, when the illegal immigration problem was a
8 fraction of what it is today, they reported
9 2,000 illegal immigrants in the system as
10 residents.

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

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

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

6 I vote aye.

7 SENATOR MARKOWITZ: Mr.
8 President.

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

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

13 THE SECRETARY: Senator
14 Markowitz.

15 SENATOR MARKOWITZ: Voting in the
16 negative.

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

20 Secretary will continue to call
21 the roll slowly.

22 THE SECRETARY: Senator
23 Paterson.

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

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

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

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

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

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

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

17 ACTING PRESIDENT KUHL: Senator
18 Paterson in the negative.

19 Senator Skelos.

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

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

1 SENATOR SMITH: No.

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

4 Secretary will continue to call
5 the roll slowly.

6 THE SECRETARY: Senator Present.

7 SENATOR PRESENT: Yes.

8 THE SECRETARY: Senator Rath.

9 SENATOR RATH: Yes.

10 THE SECRETARY: Senator Saland.

11 SENATOR SALAND: Aye.

12 THE SECRETARY: Senator

13 Santiago.

14 SENATOR SANTIAGO: No.

15 THE SECRETARY: Senator Sears.

16 SENATOR SEARS: Aye.

17 THE SECRETARY: Senator Seward.

18 SENATOR SEWARD: Yes.

19 THE SECRETARY: Senator Skelos.

20 SENATOR SKELOS: Yes.

21 THE SECRETARY: Senator Solomon

22 excused.

23 Senator Spano.

1 SENATOR SPANO: Aye.
2 THE SECRETARY: Senator
3 Stachowski.
4 SENATOR STACHOWSKI: (No audible
5 response).
6 THE SECRETARY: Senator Stafford
7 voting in the affirmative earlier today.
8 Senator Stavisky.
9 SENATOR STAVISKY: No.
10 THE SECRETARY: Senator Trunzo.
11 SENATOR TRUNZO: Yes.
12 THE SECRETARY: Senator Tully.
13 SENATOR TULLY: Aye.
14 THE SECRETARY: Senator Velella.
15 SENATOR VELELLA: Yes.
16 THE SECRETARY: Senator Volker.
17 SENATOR VOLKER: Yes.
18 THE SECRETARY: Senator Waldon.
19 (Negative indication.)
20 THE SECRETARY: Senator Wright
21 excused.
22 ACTING PRESIDENT KUHL: Secretary
23 will call the absentees.

1 THE SECRETARY: Senator Babbush.

2 (There was no response.)

3 SENATOR BABBUSH: No.

4 THE SECRETARY: Senator Cook.

5 SENATOR COOK: Yes.

6 THE SECRETARY: Senator

7 Dollinger.

8 SENATOR DOLLINGER: Explain my

9 vote, Mr. President.

10 ACTING PRESIDENT KUHL: Senator

11 Dollinger to explain his vote.

12 SENATOR DOLLINGER: I agree with

13 Senator Padavan we are both a country of

14 immigrants and we are a country of laws, and I

15 believe that we have the power to restrict the

16 benefits of post-secondary education only to

17 legal immigrants and citizens of this country.

18 If that's all that this bill did, I would vote

19 yes.

20 I'm going to vote no, because I

21 think it doesn't have the due process protection

22 built into it and, number two, what it

23 unfortunately does is, it may make members of

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

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

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

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

3 Secretary will continue to call
4 the absentees.

5 THE SECRETARY: Senator Hannon.

6 ACTING PRESIDENT KUHL: Senator
7 Hannon to explain his vote.

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

20 Thank you. I vote in the
21 affirmative.

22 ACTING PRESIDENT KUHL: Senator
23 Hannon in the affirmative.

1 Secretary will continue to call
2 the absentees.

3 THE SECRETARY: Senator Johnson.

4 SENATOR JOHNSON: Aye.

5 THE SECRETARY: Senator Kruger.

6 (There was no response.)

7 Senator Onorato.

8 (There was no response.)

9 ACTING PRESIDENT KUHL: Announce
10 the results.

11 THE SECRETARY: Ayes 39, nays
12 17.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 The Chair recognizes Senator
16 Skelos.

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

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

23 THE SECRETARY: On page 42,

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

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 58.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 Senator Skelos.

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

23 ACTING PRESIDENT KUHL: The

1 Secretary will read Calendar Number 722.

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

8 SENATOR LEICHTER: Mr. President.

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

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

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

19 SENATOR TULLY: Aye.

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

22 Senator Nozzolio, how do you
23 vote?

1 SENATOR NOZZOLIO: Aye.

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

4 Senator Larkin, how do you vote?

5 SENATOR LARKIN: Aye.

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

8 Senator Seward, how do you vote?

9 SENATOR SEWARD: Aye.

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

14 SENATOR PATERSON: Explanation.

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

18 SENATOR SALAND: Thank you, Mr.
19 President.

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

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

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

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

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

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

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

14 In addition, the federal
15 government has required by reason of legislation
16 that it enacted back in 1990 that by September
17 30 of 1994, all states have on their books
18 legislation that would permit testing of
19 defendants in HIV -- I'm sorry -- of defendants
20 in sex offense cases and failure to comply would
21 result in a loss of Edward Byrne Memorial state
22 and local law enforcement funds to the tune of
23 ten percent of your available funding. Last

1 year the state of New York lost, I believe,
2 \$2.25 million because of the failure to comply.
3 This year we will lose \$2.8 million.

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

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

12 ACTING PRESIDENT KUHL: Senator
13 Paterson.

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

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

18 SENATOR SALAND: Yes, Mr.
19 President.

20 ACTING PRESIDENT KUHL: The
21 Senator yields.

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

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

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

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

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

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

7 SENATOR PATERSON: If Senator
8 Saland -

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

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

14 SENATOR SALAND: Yes.

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

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

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

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

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

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

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

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

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

18 ACTING PRESIDENT KUHL: Senator
19 Paterson.

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

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

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

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

9 SENATOR SALAND: Certainly, Mr.
10 President.

11 ACTING PRESIDENT KUHL: The
12 Senator yields.

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

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

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

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

13 ACTING PRESIDENT KUHL: Senator
14 Paterson.

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

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

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

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

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

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

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

10 SENATOR SALAND: Yes, Mr.
11 President.

12 ACTING PRESIDENT KUHL: The
13 Senator continues to yield.

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

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

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

6 ACTING PRESIDENT KUHL: Senator
7 Paterson.

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

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

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

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

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

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

4 ACTING PRESIDENT KUHL: Senator
5 Paterson.

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

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

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

23 ACTING PRESIDENT KUHL: Senator

1 Paterson.

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

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

6 SENATOR SALAND: Yes, Mr.
7 President.

8 ACTING PRESIDENT KUHL: The
9 Senator yields.

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

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

20 SENATOR PATERSON: Mr. President.

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

23 SENATOR PATERSON: Would Senator

1 Saland yield for a question?

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

4 SENATOR SALAND: Yes, Mr.
5 President.

6 ACTING PRESIDENT KUHL: The
7 Senator continues to yield.

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

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

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

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

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

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

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

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

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

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

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

1 be conducted?

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

17 ACTING PRESIDENT KUHL: Senator
18 Paterson.

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

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

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

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

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

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

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

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

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

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

7 ACTING PRESIDENT KUHL: The Chair
8 recognizes Senator Abate.

9 SENATOR SALAND: Mr. President.

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

12 SENATOR SALAND: Mr. President,
13 Senator Paterson, in his comments referred to
14 mandating testing. There is absolutely -

15 ACTING PRESIDENT KUHL: Senator
16 Saland, there are two other members who have
17 asked to be recognized. You will have an
18 opportunity to refer back to Senator Paterson's
19 comments in a moment. If you would like to go
20 on the list, I'll put you third.

21 Thank you.

22 SENATOR SALAND: Thank you, Mr.
23 President.

1 ACTING PRESIDENT KUHL: Senator
2 Abate.

3 SENATOR ABATE: Yes. Would
4 Senator Saland yield to a question?

5 ACTING PRESIDENT KUHL: You're
6 going to get an opportunity sooner than you
7 thought, Senator Saland.

8 SENATOR ABATE: A question or
9 two.

10 ACTING PRESIDENT KUHL: Will you
11 yield? The Senator yields.

12 SENATOR ABATE: Yes. Senator
13 Saland, I applaud you. You certainly are a
14 crime victim advocate. I consider myself as a
15 crime victim advocate. We have a long history
16 of supporting crime victims, and I want to
17 address two of the issues that you say are
18 compelling reasons to support this legislation.

19 The first was the preservation of
20 federal funding, and I want you to acknowledge
21 that the Governor has a budget bill and it is
22 number 1318 which calls for the mandatory test
23 ing of sex offenders after conviction, and I

1 believe the Governor has received some wise
2 counsel because he believes the passage of that
3 legislation, which is only the testing of
4 offenders post-conviction, would preserve these
5 federal fundings. Do you agree with the
6 Governor's analysis?

7 SENATOR SALAND: Do I think that
8 merely testing on conviction will preserve?
9 Yes, I do.

10 SENATOR ABATE: Yes. So the
11 Governor is wise in his -- in his suggestion
12 that this legislation would be appropriate, and
13 wouldn't you also say that is a wise decision
14 because then it avoids the constitutional
15 arguments that it's an unwarranted intrusion
16 upon people who are accused of crimes? These
17 are not people who are convicted of crimes at
18 the indictment stage or post-arraignment stage.
19 This avoids all those constitutional issues.

20 So in that sense -

21 SENATOR SALAND: If we lived in
22 fear of avoiding constitutional issues, much of
23 the legislation that we enact would never be

1 enacted. Now, the Schmerber case going back to,
2 what, the '60s -

3 SENATOR ABATE: The '60s.

4 SENATOR SALAND: -- basically
5 said where you're dealing with DWI, you could
6 reasonably within the Fourth Amendment take
7 blood from somebody prior to conviction. Now, I
8 don't think where there's a substantial state
9 interest as occurs here that you're going to
10 find the kinds of constitutional problems that
11 people allege will occur.

12 I'm not questioning the wisdom of
13 the Governor. We're having a difference of
14 opinion. I think that my approach is a better
15 approach. I think it avoids using the tool as a
16 -- of a refusal to take the test as a means of
17 a plea bargain. It eliminates it.

18 I can understand Senator
19 Paterson's position as he states it. I guess he
20 would not even support a bill such as the
21 Governor's, would just rely merely on conviction
22 for fear that somehow or other the testing is
23 inaccurate.

1 However, there is no mandatory
2 testing. There is nobody who's required to make
3 application to the court. It's purely a call of
4 the individual who is given the option to
5 determine whether he or she wants to make a
6 request to find out whether his or her assailant
7 is, in fact, HIV-positive. It's no mandate.

8 SENATOR ABATE: Senator Saland,
9 would you yield to another question?

10 ACTING PRESIDENT KUHL: Senator
11 Saland, do you yield?

12 SENATOR SALAND: Yes.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

15 SENATOR ABATE: Thank you for
16 being so gracious.

17 I would still like to talk about
18 the financial issues you raised, why it's so
19 compelling to pass this legislation so federal
20 funding does come into New York State.

21 If we were really serious,
22 though, about this federal funding, we would be
23 looking at the Governor's bill. There will be a

1 greater likelihood of a two-house passage. It
2 seems to me by placing the mandatory testing
3 pre-conviction, we are actually jeopardizing
4 this funding because we know all too well this
5 will be a one-house bill. It will go nowhere
6 and we will lose federal dollars.

7 SENATOR SALAND: Are you familiar
8 with this report?

9 SENATOR ABATE: Yes.

10 SENATOR SALAND: You were on this
11 task force.

12 SENATOR ABATE: Yes, I was.

13 SENATOR SALAND: There is no
14 minority opinion, there's no dissenting opinion,
15 there's nothing in here that says that there
16 was.

17 SENATOR ABATE: Yes. Well, we
18 had large discussions around that time and that
19 report was released in 1988.

20 SENATOR SALAND: 1990.

21 SENATOR ABATE: Was it 1990?

22 SENATOR SALAND: April of 1990.

23 SENATOR ABATE: I was on a number

1 of the committees that discussed that. None of
2 the victims' community at that point could reach
3 a consensus on this issue. In fact, the Victims
4 Services Agency last year, which is the largest
5 agency that provides services to victims in this
6 state, was opposed to this legislation, and they
7 were opposed not because they weren't concerned
8 obviously for victims, the devastation that
9 particularly rape and sexual assault places on
10 individuals.

11 There was a recognition there was
12 a need for victims to have accurate information
13 so they could deal with their health and safety
14 and go on with their lives. The concern was by
15 Victims Services last year and also the concerns
16 raised by the Association of the Bar of the
17 state of New York is that there would be false,
18 untimely, inaccurate information given to
19 victims, and the fear was that victims would
20 rely on this information and, certainly,
21 Senator, you would recognize there is a
22 possibility that inaccurate information through
23 the testing of these defendants would give a

1 false assurance to victims.

2 SENATOR SALAND: I would beg to
3 differ with you. I think that is nothing but a
4 straw man. I think it's absolute poppycock. If
5 you read the bill, the bill has a mechanism that
6 says whoever makes the application has to, in
7 effect, be pre-screened by someone, a profes
8 sional, someone who deals in this type of
9 therapy, who is going to apprise them of all of
10 these things that are being raised as objections
11 to the bill. It's all there. It's all laid
12 out. It's right there. They're going to do it
13 in a professional fashion. It's not going to be
14 anecdotal. It's going to be done as you would
15 want it to be done.

16 Now, maybe it's a turf thing.
17 Maybe somehow or other people are concerned that
18 their turf is being trod upon. The reality is
19 any reasonable reading of this bill would say
20 that the very things that you're raising, these
21 issues will come into the mix, and once that
22 person has done that, he or she does not have to
23 go any further. They don't -- they must be

1 counseled before they can even make the
2 application. That's one of the elements that
3 they have to allege.

4 SENATOR ABATE: I can -- Senator,
5 would you respond to another question?

6 SENATOR SALAND: Certainly.

7 SENATOR ABATE: I can see a
8 scenario that the victim makes an application
9 for testing and the -- and that victim is
10 counseled, being told that any -- you have to be
11 tested yourself in order to get accurate
12 information. The defendant is then tested and
13 the defendant is found to be negative, but it's
14 a false -- it's a false test because six months
15 later, if that defendant was tested again, that
16 defendant would be tested positive for the AIDS
17 virus, and let's say the victim then, herself or
18 himself -- most likely herself -- gets tested
19 and she tests negative, and then the case ends.
20 The defendant takes a plea. Somehow it's a
21 quick plea bargain; there's no trial. It's all
22 wrapped around in 45 days and she leaves the
23 system, and she then says "I tested negative.

1 The defendant tested negative. I'll walk away.
2 I don't need to be tested again", and because
3 there's a confirmation by that defendant's test
4 that, "Oh, I probably -- I'm not at risk" -- and
5 my concern is that we're giving not reliable
6 information to the victim where I would like to
7 see this money -- and we don't have a lot of
8 money -- to go into counseling of the victim,
9 multiple testing of the victim, more rape crisis
10 centers, supportive centers for that victim, for
11 that survivor. What we're doing is misplacing
12 limited dollars for numbers of tests, and we
13 have to test the defendant many times to ensure
14 accurate information be given to the victim.
15 That's my concern.

16 I'm sure you share those concerns
17 but, on balance, you would rather give that
18 information to the victim. Is that an accurate
19 appraisal of -

20 SENATOR SALAND: I'm not quite
21 sure of your characterization, but suffice it
22 for me to say that the very issue that you
23 raised, your concern about a quick disposition

1 which, as you know -- I believe you're a former
2 prosecutor -- in a sexual assault or rape case
3 is highly unlikely, but even assuming the
4 scenario that you gave me that such a thing does
5 occur, again, the application process, the
6 petitioner, the victim, the survivor, that
7 person is going to have to, in order to make
8 application, to have spoken with a physician, a
9 health -- a health official, some qualified
10 person. They're going to be apprised. They're
11 going to be apprised of the need for multiple
12 testing. They're going to be apprised of some
13 of the problems or all of the problems
14 associated with testing.

15 This is purely a victim's call.
16 Whether you want to call the person a victim or
17 survivor, it's up to them. If that's what they
18 want, that's what they should have the right to
19 have. Nobody is requiring them to do it.
20 Nobody is saying that you must. They just -
21 what we are saying and what the federal
22 government is saying and what 40-some-odd other
23 states are saying is people should have that

1 option.

2 SENATOR ABATE: On the bill.

3 ACTING PRESIDENT KUHL: Senator
4 Abate on the bill.

5 SENATOR ABATE: I take an unusual
6 position in this case. I would support legisla
7 tion that required mandatory testing post
8 conviction because, on balance, although I
9 believe it still would be faulty information
10 given to victims, that would be a way, a
11 reasonable way, for the state to ensure those
12 federal dollars.

13 I think once someone is convicted
14 of a sex offense, their due process rights have
15 been afforded. There's -- a right to a fair
16 trial has been afforded. At that point, I don't
17 believe it's an unreasonable intrusion in terms
18 of that testing, but I would go back to the
19 Association of the Bar of the city of New York
20 which characterizes this legislation in terms of
21 pre-conviction as poorly conceived, potentially
22 unconstitutional and medically inappropriate, and
23 my concern is, again, around the constitutional

1 issues, the fact that the victim will be given
2 inaccurate and false information in many cases,
3 that the money could be better spent to directly
4 help victims ensure more extensive counseling,
5 not just within the criminal justice system for
6 long hours and long years past that criminal
7 justice system.

8 I'm also fearful that this
9 legislation will add to discrimination against
10 victims. We're talking about this information
11 to remain in a confidential setting. We all
12 know that during the course of a trial it lends
13 itself to sensationalism. Once the public
14 learns, whether through a leak or a newspaper
15 report that the defendant is HIV-positive, the
16 victim then will be stigmatized even though he
17 or she may not, in fact, be infected with the
18 disease.

19 So I'm fearful although with good
20 intentions you're trying to help the victim, in
21 the long run, this legislation will hurt the
22 victim. I think there's a better way of
23 protecting the victim, and I would not be able

1 to support this legislation as it stands in its
2 current form.

3 ACTING PRESIDENT KUHL: The Chair
4 recognizes Senator Leichter.

5 SENATOR LEICHTER: Mr. President,
6 thank you.

7 If Senator Saland would be good
8 enough to yield.

9 ACTING PRESIDENT KUHL: Senator
10 Saland, do you yield?

11 SENATOR SALAND: Senator
12 Leichter, yes, of course.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

15 SENATOR LEICHTER: I think all of
16 us share your desire to be helpful to victims.
17 The problem I have with this bill is I just
18 don't see what this bill does that, in any
19 respects or ways, helps a victim. I really
20 don't.

21 Let me try to go through it and
22 maybe you can give me an answer. Somebody has
23 the misfortune or the tragedy -- it's more than

1 a misfortune -- tragedy to have been raped,
2 sexually assaulted in the way that it could lead
3 to the transmission of the HIV virus.

4 Now, I can't understand and maybe
5 that you can explain to me, how testing the
6 alleged assailant -- and forgetting for a moment
7 the due process issues and some of the very
8 valid questions that were raised by Senators
9 Paterson and Abate, but what does it tell you
10 that the alleged assailant is HIV-positive?

11 SENATOR SALAND: What you're
12 doing, Senator Leichter, is permitting a victim
13 or a survivor, whichever term you prefer, to
14 basically have some ability to gather
15 information that he or she may think, and may
16 very well be important to his or her well-being,
17 and let me just quote to you a statement from a
18 survivor, a woman who had been the victim of a
19 rape, "having been forcibly violated once by
20 your attacker, you now have to submit to testing
21 and the dreadful waiting that accompanies it.
22 On the other hand, your attacker, if caught, is
23 protected from this indignity. You see in the

1 minds of AIDS professionals in New York State
2 every AIDS sufferer is a victim, including
3 rapists, and forcing rapists to submit to
4 testing is an example of pitting victim against
5 victim."

6 Well, in order -- we all sustain
7 our traumas. Thank goodness I never had to
8 sustain this type of trauma. I know you
9 sustained traumas, as bad as they have been, you
10 have never had to endure this type of a trauma.
11 The idea of a victim seeking the ability to
12 somehow or other restore their life, to somehow
13 or other be placed back in the position that's
14 as close to the position that he or she was in
15 prior to that trauma is something that may well
16 be hard, if not impossible, for some people to
17 identify with, and I don't put that at your
18 feet.

19 The reality is, as I said
20 earlier, this is something that is purely
21 optional. This is something that a victim,
22 after they have had professional assistance
23 which is required as part of the petition

1 problem -- process, may or may not choose to do,
2 but as was pointed out both in this report which
3 I alluded to earlier, and by others, that while
4 the testing process is a less than perfect
5 process, the results emanating from the process
6 are less than perfect. There is some reason to
7 believe that testing as soon as possible may, in
8 fact, result in a more accurate indication of
9 the HIV status of an attacker.

10 SENATOR LEICHTER: Senator, with
11 all due respect to you and the statement you
12 read from the victim, I don't think it's
13 responsive or really makes sense.

14 We now have a victim. We want to
15 help that victim. You and I and everybody
16 agrees. We want to help the victim. Now, if
17 there was some -- and let's assume that the test
18 is -- is fairly accurate -- and I don't accept
19 the argument that, you know, the test is faulty
20 -- it may be faulty at some time, but I think
21 that it is viewed as generally a good indication
22 of whether somebody is HIV-positive or not, but
23 the fact that the alleged assailant is

1 HIV-positive, what does that allow you to do or
2 what does it enable you to do to help the
3 victim? That's really what we're dealing with,
4 as far as the victim here talks about, you know,
5 the indignity and the terrible things she went
6 through, absolutely right, and if that assailant
7 is guilty, you and I hope that he's going to be
8 sent to jail for a long, long, long time, and
9 that obviously should happen; but right now, as
10 I understand this legislation, you're trying to
11 help the victim, and if there was some way -- in
12 other words, if we knew that there was an
13 antidote to the HIV virus, we would all say,
14 "Oh, by God, let's test him right away because
15 he tests positive", you begin giving the victim
16 this sort of medication. Unfortunately, we're
17 not at that point. We may never be.

18 So now the -- the alleged
19 assailant who tests positive, there's nothing
20 you can do. You just got -- in fact, if
21 anything, I think it's worse for the victim
22 because now she not only underwent this terrible
23 experience, now she's got to wait and sit until

1 such time as you can test her and find out did
2 she, as a consequence of this act, become HIV
3 virus? It just makes that whole period for her
4 worse, and there's absolutely nothing that you
5 can do.

6 If the victim -- I'm sorry. If
7 the alleged assailant tests negative, you've got
8 to test her anyhow. I mean, a doctor would be
9 negligent if he said not to -- not to test her,
10 so what do you gain -- what do you gain by
11 testing the alleged assailant?

12 SENATOR SALAND: I'm finding the
13 question rather difficult to comprehend inasmuch
14 as the logical conclusion from the question is
15 we ought to walk away from any and all people
16 who are HIV-infected because there's absolutely
17 nothing that can be done for them. That seems
18 to be implicit in your question.

19 What you could do for this person
20 is perhaps they may elect to try AZT therapy,
21 they might elect to get into some kind of -
22 some type of supportive counseling that would be
23 of assistance to them. The options -- there's

1 no silver bullet out there that's going to make
2 it all better, we all know that, but the options
3 should not be denied a person in his or her
4 quest to deal with their trauma.

5 SENATOR LEICHTER: Senator
6 Saland, if you would be good enough to continue
7 -- I'm sorry. Maybe I didn't express myself
8 clearly, but you totally missed my question.

9 Let me give you the example.
10 There's a rape. Under your bill, you test the
11 alleged assailant because he has been indicted.
12 He tests positive at that point -- and let's say
13 this happens within a week after the alleged
14 act. At that point, you can't give the victim
15 AZT because the victim has to be tested. The
16 very fact that her assailant was HIV virus
17 doesn't mean that the virus was transmitted, and
18 I believe in most of these instances, it
19 probably would not be transmitted, so you've got
20 to wait. You've got to wait until you test the
21 victim, and in any instance -- and that's my
22 point -- you've got to test the victim. Testing
23 the assailant -

1 SENATOR SALAND: That's a given.
2 That's a given in this bill.

3 SENATOR LEICHTER: I understand
4 it's a given, Senator. Of course, it's a given,
5 and that's the whole point, because you've got
6 to test the victim. You can't take any medical
7 action until after you tested the victim. What
8 do you gain by testing the alleged assailant?
9 Tell me one thing that you gain.

10 SENATOR SALAND: Senator, if you
11 want to intellectualize it, if you want to make
12 this into an intellectual exercise, you put
13 yourself in the posture of the victim. You put
14 yourself in the posture of the victim. The
15 victim has a right to know, and that's what this
16 is all about.

17 If that victim chooses, because
18 they feel that the odds are infinitesimal that
19 they will test positive to disregard the option
20 available to them to have his other her
21 assailant tested, they may do that. They may
22 take your logic and accept it as a given.

23 SENATOR LEICHTER: Mr. President,

1 if my good friend continues to yield -

2 ACTING PRESIDENT KUHL: Senator
3 Saland, do you continue to yield? The Senator
4 continues to yield.

5 SENATOR LEICHTER: I appreciate
6 the sharpness of your argumentative tool, but it
7 -- I'm not trying to intellectualize it. I'm
8 trying to do something for the victim as you
9 are, and I'm trying to deal with a real
10 situation as I, frankly, don't understand you
11 are doing, because if the purpose is to help the
12 victim -- and you and I and everybody agrees you
13 got to test the victim. You can't do anything
14 until you test the victim. If the only reason
15 to test the assailant -- or the alleged
16 assailant -- is as a punitive matter -- because
17 it doesn't do you any good. It doesn't help the
18 victim. If it would help the victim, by God, we
19 ought to do it, Senator, but since you don't
20 advance by one day, by one minute, the medical
21 treatment of the victim if, indeed, she became
22 HIV-positive as a consequence of this attack -
23 no fair giving him the answer.

1 SENATOR SALAND: I didn't hear
2 your last comments, but I assume you concluded
3 with a question.

4 Let me just suggest to you,
5 Senator, that you might wish to use that
6 argument upon the people in your fair city, and
7 I know of one instance that was reported
8 involving a young woman at Columbia University,
9 another that was reported in some legal
10 periodical -- not the New York Law Journal, some
11 Manhattan something or other -- where a
12 defendant was requested to take a test and
13 refused. You may want to prevail upon those
14 traumatized victims that that's not important.
15 You may want to tell them that, you know, "It
16 just doesn't matter. Just take care of
17 yourself. Be good, God bless, and I hope you're
18 okay." Those victims requested -- requested
19 that the defendant undergo HIV testing. The
20 defendant's response in those two cases that I'm
21 familiar with -- and I'm told again anecdotally
22 that there are more -- was that I will do that
23 if you will give me a better plea bargain.

1 I think a victim deserves
2 something a little better than that, forgetting
3 the fact that the federal government is going to
4 take money away from us if we don't do it,
5 forgetting the fact that right now people can go
6 into federal court, if you happen to have a
7 federal court close to you and get this very
8 same relief by making application under the
9 federal act. If you're in New York, you can do
10 that. If you're in Poughkeepsie, you've got to
11 travel down to New York. If you're in Herkimer,
12 I guess you got to travel to Syracuse.

13 The fed's have said you're going
14 to lose money and we're creating a mechanism
15 where there's anything pending in state and
16 federal court for someone who's been the subject
17 of one of these sexual offenses to make
18 application for testing.

19 SENATOR LEICHTER: Mr. President,
20 on the bill.

21 ACTING PRESIDENT KUHL: Senator
22 Leichter on the bill.

23 SENATOR LEICHTER: Thank you very

1 much, Senator Saland.

2 Anybody who was listening to our
3 debate, and I hope they were, I think it's
4 pretty clear now what Senator Saland bases his
5 bill and it's not that in any respect this will
6 provide medical treatment or medical health or
7 actual assistance to the crime victim. I think
8 his argument is that the crime victim, terribly
9 distraught, decides that, in some respects, it
10 would be of assistance to her to know whether
11 her alleged assailant was HIV virus -- I mean
12 HIV -- had the HIV virus, was HIV-positive.

13 There are other things that the
14 alleged victim may very well wish to do to her
15 alleged assailant that, while we have all of the
16 sympathy in the world for her, if there is no
17 public policy rationale for doing it, we would
18 have to say to her, "As much as we want to be
19 helpful to you, this really will not be of help
20 to you, it will not be of help to society. What
21 really needs to be done, unfortunately, in this
22 situation is to wait until such time as you can
23 be tested and the test will give a reasonable or

1 will give an accurate reading", which is not
2 until some days after the alleged attack on
3 her. So you've got to wait for that, and you
4 can't treat her just based on the fact that her
5 alleged assailant tested HIV-positive.

6 So what are you achieving? I
7 don't -- I don't understand the congressional
8 act except that we're responding to the fear, to
9 the anger that people have with people who
10 commit crimes which is understandable and the
11 particular fear when AIDS is involved, but it's
12 an -- but the -- to propose an irrational
13 response doesn't do anything, doesn't help
14 anybody.

15 The answer obviously is to see
16 that the victim gets the proper medical
17 treatment, and I'm sure you want that and I want
18 that, and that requires testing the victim.
19 That's the only way that you would know what to
20 do, and testing the assailant does absolutely
21 nothing.

22 Now, if Congress says you've got
23 to do it, but they say you've got to do it

1 post-conviction -- the Governor has given us a
2 bill to do it post-conviction -- again, I don't
3 think that makes much sense, but I would
4 certainly vote for it rather than lose \$2.8
5 million, but to vote for a bill like yours which
6 -- to satisfy the congressional requirements
7 and has a strong possibility of constitutional
8 infirmity, and doesn't do anything for the
9 victim, and doesn't do anything for public
10 policy -- Why? Except to respond to a fear, to
11 respond to a misunderstanding about the HIV
12 virus and the disease, to mislead people? What
13 are we accomplishing?

14 I really submit to you -- and I
15 know that it comes from the best of intentions,
16 and your record and concern for victim rights is
17 one that really we all admire and can take you
18 as a role model, but I think -- I think in this
19 instance, you're misplaced because you're really
20 not helping -- excuse me -- because you're
21 really not helping the victim whatsoever.

22 I think if you examine the bill
23 -- and it's not intellectualizing it, it's

1 looking at the actual situation of helping the
2 victim -- this bill doesn't do that.

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT KUHL: Announce
12 the results when tabulated.

13 THE SECRETARY: Those recorded in
14 the negative on Calendar Number 722 are Senators
15 Abate, Connor, Gold, Leichter, Markowitz,
16 Nanula, Paterson and Smith. Ayes 50, nays 8.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT KUHL: Senator
21 Gold.

22 Senator Espada.

23 SENATOR ESPADA: Thank you, Mr.

1 President.

2 If the time is right, I would
3 like to ask for unanimous consent to be recorded
4 in the negative -

5 ACTING PRESIDENT KUHL: No time
6 better than now, Senator Espada.

7 SENATOR ESPADA: Thank you.

8 -- on Calendars Number 830 and
9 721, please.

10 ACTING PRESIDENT KUHL: Without
11 objection, Senator Espada will be recorded in
12 the negative on Calendar Number 830 and 721.

13 Senator DeFrancisco.

14 SENATOR DeFRANCISCO: May I have
15 unanimous consent to be recorded in the negative
16 on 879 and 907, please.

17 ACTING PRESIDENT KUHL: Without
18 objection. Hearing no objection, Senator
19 DeFrancisco will be recorded in the negative on
20 897.

21 SENATOR DeFRANCISCO: 879.

22 ACTING PRESIDENT KUHL: 879 and
23 907.

1 Senator Marcellino.

2 SENATOR MARCELLINO: Mr.

3 President, may we resume the regular order of
4 the calendar.

5 ACTING PRESIDENT KUHL: The
6 Secretary will continue to call the
7 controversial calendar in regular order.

8 Before we do that, Senator
9 Montgomery I know has been looking to register a
10 vote.

11 SENATOR MONTGOMERY: Thank you.

12 Mr. President, I would like to be
13 recorded in the negative on Calendar 721 and
14 960.

15 ACTING PRESIDENT KUHL: Without
16 objection. Hearing no objection, Senator
17 Montgomery will be recorded in the negative on
18 Calendar Number 721 and 960.

19 Now, the Secretary will continue
20 to call the controversial calendar regular
21 order.

22 THE SECRETARY: On page 40,
23 Calendar Number 884, by Senator Padavan, Senate

1 Print 3091, an act to amend the Executive Law,
2 in relation to cooperation between police
3 agencies and the United States Immigration and
4 Naturalization Service.

5 SENATOR PATERSON: Explanation.

6 SENATOR MARCELLINO: Lay it aside
7 temporarily.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside temporarily.

10 THE SECRETARY: Calendar Number
11 918, by Senator Farley, Senate Print 2305, an
12 act to amend the Tax Law, in relation to the
13 requirement to file a personal income tax
14 return.

15 SENATOR PATERSON: Explanation.

16 ACTING PRESIDENT KUHL: Senator
17 Gold, why do you rise?

18 SENATOR GOLD: Maybe he would
19 like me to explain it if Senator -

20 ACTING PRESIDENT KUHL: Senator
21 Farley, an explanation has been asked for by
22 Senator Paterson on Calendar Number 918.

23 SENATOR FARLEY: I would be happy

1 to give that explanation.

2 Senator Paterson, this bill is a
3 senior citizen bill, to be very frank with you,
4 and for low income residents. It reduces
5 administrative costs in the Department of
6 Taxation and Finance and it repeals the existing
7 statutory threshold which requires that the
8 filing of a New York State income tax by persons
9 with incomes over \$4,000, whether they have any
10 tax due or not.

11 This bill enables the
12 commissioner to instead establish the threshold
13 for the legislation -- for the regulation. The
14 current \$4,000 threshold has been in state
15 statute since 1987. In contrast, the federal
16 income tax threshold are \$6250 for individuals
17 under 65 and as high as \$12,750 for married
18 senior citizens.

19 So, consequently, many married -
20 many persons, particularly senior citizens, are
21 forced to file state returns even though they
22 owe no state taxes and are not required to file
23 federal returns.

1 Tax preparers -- I could name
2 them, but they do volunteer work for senior
3 citizens, which I'll spare you from, have
4 pointed out this hardship and confusion
5 particularly for older citizens. Again, this
6 would enable the Commissioner of Taxation and
7 Finance to establish filing levels which best
8 coincide with the changing -- changing federal
9 limits. That's why I did not put it in statute
10 to figure and with any special considerations in
11 New York, okay?

12 The state Department of Taxation
13 and Finance says it will have no impact on the
14 budget or anything. As a matter of fact, it
15 will save us some money because they don't have
16 to process them.

17 ACTING PRESIDENT KUHL: The
18 Secretary will read the last -- Senator
19 Dollinger.

20 SENATOR DOLLINGER: Mr.
21 President, I'm the one who laid this bill aside
22 and I asked a couple of questions of Senator
23 Farley before this, and I understand his

1 intention is to give the commissioner the
2 ability to link the state filing requirements
3 with the federal filing requirements and do it
4 on an annual basis. I was concerned that we
5 were giving away the power to establish the
6 floor in which this occurred which is
7 traditionally a legislative function.

8 SENATOR FARLEY: That's kind of a
9 moving target.

10 SENATOR DOLLINGER: Well, I'm
11 satisfied that if the commissioner's goal is to
12 bring us in unison with the IRS, that's probably
13 best done on a regulatory basis.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 58.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

1 THE SECRETARY: Calendar Number
2 936, by Senator Goodman, Senate Print 4002, an
3 act to amend the Public Buildings Law, in
4 relation to deleting the value limitation on
5 contracts authorized to be let to meet
6 construction emergencies.

7 SENATOR MARCELLINO: Mr.
8 President, could we lay that aside temporarily?

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside temporarily.

11 Senator Marcellino, that
12 completes the controversial calendar. We do
13 have some housekeeping.

14 SENATOR MARCELLINO: Can we take
15 the housekeeping?

16 ACTING PRESIDENT KUHL: The Chair
17 recognizes Senator Farley.

18 SENATOR FARLEY: Thank you, Mr.
19 President.

20 On behalf of Senator Levy, he
21 wishes to amend his bill on page 8, Calendar
22 225, Senate Print 975-A, and he wants it to
23 retain its Third Reading Calendar position.

1 ACTING PRESIDENT KUHL: The
2 amendments to Calendar Number 225 are received
3 and accepted. The bill will retain its place on
4 the Third Reading Calendar.

5 SENATOR FARLEY: On behalf of my
6 colleague to the left, Senator DeFrancisco, I
7 wish to call up his bill, Print Number 3649,
8 which was recalled from the Assembly which is
9 now at the desk. The Secretary will read the
10 title.

11 ACTING PRESIDENT KUHL: The
12 Secretary will read the title.

13 THE SECRETARY: 789, by Senator
14 DeFrancisco, Senate Print 3649, an act
15 authorizing the town of Camillus to discontinue
16 use as park land certain lands heretofore
17 acquired as park and other purposes.

18 SENATOR FARLEY: Mr. President, I
19 now move to reconsider the vote by which this
20 bill was passed.

21 ACTING PRESIDENT KUHL: The
22 motion is to reconsider the vote by which the
23 bill passed the house. The Secretary will call

1 the roll on reconsideration.

2 (The Secretary called the roll on
3 reconsideration.)

4 THE SECRETARY: Ayes 58.

5 ACTING PRESIDENT KUHL: Senator
6 Farley.

7 SENATOR FARLEY: The bill is now
8 at the Third Reading Calendar, and I offer the
9 following amendments.

10 ACTING PRESIDENT KUHL: The
11 amendments are received and adopted.

12 Senator Farley.

13 SENATOR FARLEY: Again, on behalf
14 of Senator Levy, I wish to remove the sponsor's
15 star from Calendar Number 77.

16 ACTING PRESIDENT KUHL: The
17 sponsor's star on Calendar Number 77 is removed.

18 The Chair recognizes Senator
19 Leibell.

20 SENATOR LEIBELL: Mr. President,
21 Calendar Number 606, could we lay that aside for
22 the day, please?

23 ACTING PRESIDENT KUHL: Calendar

1 Number 606 is laid aside for the day at the
2 request of the sponsor for the second time.

3 Senator Marcellino.

4 SENATOR MARCELLINO: May we stand
5 at ease for one minute?

6 ACTING PRESIDENT KUHL: The
7 Senate will stand at ease for one moment.

8 (Whereupon, the Senate stood at
9 ease.)

10 ACTING PRESIDENT KUHL: The
11 Senate will come to order.

12 SENATOR MARCELLINO: Mr.
13 President, is there any housekeeping at the
14 desk?

15 ACTING PRESIDENT KUHL: All taken
16 care of, Senator Marcellino.

17 SENATOR MARCELLINO: Mr.
18 President, there being no further business, I
19 move we adjourn until Wednesday, May 24th at
20 10:00 a.m.

21 ACTING PRESIDENT KUHL: Without
22 objection, the Senate stands adjourned until
23 tomorrow, Wednesday, May 24th at 10:00 a.m.

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Note the time change, 10:00 a.m.
(Whereupon, at 3:50 p.m., the
Senate adjourned.)