ALBANY, NEW YORK

May 14, 1996

3:05 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their places, the staff to find their places. I'd ask all of you to rise, including those people in the gallery, and join with me in saying the Pledge of Allegiance, and please remain standing for the invocation.

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

We're very pleased to have the Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing to deliver the invocation.

Reverend Young.

REVEREND PETER YOUNG: Let us pray. May we pray for the officers and for the sheriffs and for correction officers too who are remembered in special ceremonies on this most important day of honor. These dedicated public servants are deserving of our prayers so they may compassionately monitor the behavior of those that are hungry, those that are homeless,

those who are denied dignity and those who have no hope, that this legislative body will improve the condition of both the custodians and those who are in custody, that their condition and our compassionate efforts will remove the causes of their suffering. We ask You this now and forever more. Amen.

ACTING PRESIDENT KUHL: Thank you.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 13th. The Senate met pursuant to adjournment. The Journal of Sunday, May 12th, was read and approved. Upon motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Cook, would you please remove the sponsor's star from Calendar 412.

ACTING PRESIDENT KUHL: At the request of the sponsor, Calendar Number 412 is unstarred.

SENATOR FARLEY: On behalf of Senator Goodman, on page 18, I offer the following amendments to Calendar 493, Senate Print 3040, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 493 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

I believe I have a resolution at the desk. May I have that resolution read in its entirety, after which I would like to make a few brief comments.

ACTING PRESIDENT KUHL: There is a privileged resolution.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, I'd suggest that before we read that privileged resolution, that on behalf of Senator Marchi, I would be able to call an immediate meeting of the Finance Committee in Room 332.

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

Thank you for the announcement, Senator DeFrancisco.

There is a privileged resolution,

Senator Tully, at the desk.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Please read the privileged resolution.

ACTING PRESIDENT KUHL: I'll ask the Secretary to read the privileged resolution in its entirety.

THE SECRETARY: By Senator Tully, Legislative Resolution commending the 1996 Senior Class of Henry Viscardi School of Albertson, New York, upon the occasion of their visit to the New York State Legislature on Tuesday, May 14th, 1996.

WHEREAS, it is the sense of this legislative body that the character and quality of life in this great Empire State is abundantly enriched by organizations which selflessly serve to promote the health and welfare of the citizenry.

This legislative body is justly proud to commend the 1996 Senior Class of Henry Viscardi School, Albertson, New York upon the occasion of their visit to the New York State

Legislature on Tuesday, May 14th, 1996.

The Henry Viscardi School is a New York State chartered, tuition-free school educating more than 220 children between the ages of 3 to 21 and with severe orthopedic disabilities, over two-thirds of the school's graduates go on to higher education, which is more than three times the national average of 20 percent.

The Henry Viscardi School provides a full range of educational, remedial, therapeutic, social and recreational services provided through preschool, kindergarten, elementary and secondary school programs and extended-year summer programs.

The National Center for Disabilities Services founded by Henry Viscardi had its humble beginnings in 1952 operating out of a garage in West Hempstead and now occupies a 14-acre wooded campus in Albertson, New York serving over 4,000 adults and children annually.

The Center is a non-profit agency dedicated to empowering people with disabilities

to be active, independent and self-sufficient participants in our society. It accomplishes its missions through education, training, research, leadership and example.

The Center is internationally known and hosts visitors from around the world who come to learn about its successes in preparing individuals for meaningful careers. Its visitors have included the Emperor and Empress of Japan.

The Center received one of the highest honors last September 14th, 1995 when it received the United States Department of Labor Exemplary Public Interest Contribution Award. This award is based on nationwide competition and is presented annually to organizations who exhibit unparalleled leadership in assisting disadvantaged Americans into competitive employment.

The Center's work is conducted through the Henry Viscardi School, the Career and Employment Institute which evaluates, trains and counsels adults with disabilities and the

Research and Training Institute which conducts research on the education, employment and career development of persons with disabilities.

The members of the 1996 Senior Class of the Henry Viscardi School include Daniel Abroff, Stephen Anderson, Tara Baird, Jeffrey Betts, Jennifer Bryan, Ben Chan, Rachael Eriksen, Keith Gaynor, Michael Macaluso, Michael Muller, Wesley Nepomuceno, Jon Paul Povoromo, Dorsey Ross, Jason Sawyer, Tyree Simpson, Kelly Smith and Meredith Stanley; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to express its appreciation to Henry Viscardi School for meeting the special needs of hundreds of children in New York State and to extend a warm welcome to the faculty and students on their visit to Albany; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the students and faculty of Henry Viscardi School, Willets Road, Albertson, New York.

ACTING PRESIDENT KUHL: Senator Tully, on the resolution.

SENATOR TULLY: Thank you, Mr. President.

Today we have the honor of hosting Dr. Andrew Rothstein and the Senior Class of the Henry Viscardi School as our guests in the chamber. The Henry Viscardi School in Albertson, New York specializes in educating students with severe physical disabilities from throughout the New York Metropolitan region.

This year, the senior class decided to come to Albany to witness the New York State Senate in action. These students whose special brand of strength and determin ation has enabled them to overcome their disabilities and instead focus on their abilities and talents, are among the most gifted students that I have ever met.

This year's class has 17 graduating seniors, all of whom have made post-graduate plans. Some have made plans to go to college and some have made plans for a

transition into vocational training programs. Whatever their intention, knowing these young adults in the school from which they come, I'm sure that each will be an important and productive member of society.

Mr. President, I hope all of my colleagues will join me in welcoming the Senior Class of the Henry Viscardi School to Albany.

ACTING PRESIDENT KUHL: Senator Marcellino on the resolution.

SENATOR MARCELLINO: Yes, Mr. President. I rise to speak on behalf of the Henry Viscardi School. At Senator Tully's request, I was given a tour, amongst others, of this very fine institution, and I had a chance to meet Mr. Viscardi himself, who is well and we wish him well and many, many more years of active services of our communities.

The Viscardi school is a gem. It's one of those institutions that makes Long Island one of the finest places in our state to live and raise a family, and it's a pleasure to rise in support of this resolution, and I thank

Senator Tully for bringing it to the attention of this chamber.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution?

Senator Hannon on the resolution.

SENATOR HANNON: Yes. I just wanted to join with Senator Tully, join with the seniors today. Congratulations on your achievements. Best wishes to the future. As Senator Marcellino said, you are a part of a school that does us all proud, and we're delighted you took the time to come and join us here and make us aware of what a fine institution you have in Long Island.

Thank you.

ACTING PRESIDENT KUHL: Senator Smith, on the resolution.

SENATOR SMITH: Thank you, Mr. President.

I too would like to join with my colleagues in welcoming the Henry Viscardi School to Albany. Last year I had the pleasure

of meeting one of the students, Dean Maiorano, who then became my scholarship awardee for 1995 who has gone on to college.

Dean is doing a wonderful job, and I expect the same from each and every one of you because you are capable of doing whatever it is you want to do, and it's because of the Henry Viscardi School that you will be able to go on and have a productive life, and we thank them for all that they do.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the resolution?

(There was no response.)

This resolution was previously adopted in the chamber on April 30th, but on behalf of Senator Tully and all the Senators, Senator Bruno, we welcome the 1996 Senior Class from Henry Viscardi School of Albertson, New York here in the chamber today. Hope you enjoy your day and thank you for sharing a little bit of your life with us. Thank you.

(Applause)

Senator DeFrancisco.

SENATOR DeFRANCISCO: I believe there's a privileged resolution at the desk by Senator Spano, and I'd move that the title be read and move for its adoption.

ACTING PRESIDENT KUHL: Senator DeFrancisco, there is a privileged resolution at the desk.

I'll ask the Secretary to read the title.

THE SECRETARY: By Senator Spano, Legislative Resolution welcoming Eastchester Police Officer Richard Morrissey to the state Capitol and expressing sincerest sorrow upon the death of his heroic comrade, Police Officer Michael Frey of Yonkers, New York.

ACTING PRESIDENT KUHL: Senator Spano, on the resolution.

SENATOR SPANO: Thank you, Mr. President.

My colleagues, on March 21st, we all remember too vividly the headlines across New York State when a police officer was killed in Westchester County, and it was that day that

it was Eastchester Town Police Officer Rich Morrissey and his fellow officer, Michael Frey, who responded to what they thought was initially just a routine police call about a man acting suspiciously in a neighborhood.

Moments after Officers Frey and Morrissey arrived, a sniper opened fire from a second floor window of his house in Eastchester. Officer Frey was shot and killed in that incident, and Officer Morrissey was shot from that gunfire and has since been recovered, and the gunman, of course, then killed himself some 14 hours after ambushing these police officers.

I'm pleased that Officer Morrissey is with us today in the chamber. I can say that with him, with his wife Mary, with his beautiful daughter Margaret, Officer Morrissey, you are a living symbol of every police officer who every day puts a badge and a gun and uniform on and is just not sure what kind of day they're going to have, and that there are people in this community and communities all across this state and nation

where trouble and danger just lurk even from what is the most seemingly routine of calls that they may be responding to.

So it's my pleasure, Mr. President, my colleagues, to offer this resolution on this day where we memorialize the ultimate sacrifice that police officers have made in this state of New York and to say that we join with the Attorney General today who presented Officer Morrissey with the Law and Order Award, along with seven other police officers in this state, and I'll ask all of you to please join me in recognizing a person who's a real hero, Officer Richard Morrissey, his wife Mary and their daughter Margaret.

Thank you, Mr. President.

(Applause)

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the resolution?

(There was no response.)

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, at this time may we adopt the Resolution Calendar.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator DeFrancisco, there are a couple of substitutions at the desk we could take up at this time, if you desire.

SENATOR DeFRANCISCO: Please make the substitutions.

ACTING PRESIDENT KUHL: The Secretary will read the substitutions.

THE SECRETARY: On page 55, Senator Maltese moves to discharge from the Committee on Rules, Assembly Bill Number 5501-B and substitute it for the identical Senate Bill 3082.

On page 55, Senator Maltese moves to discharge from the Committee on Rules, Assembly Bill 5502-B and substitute it for the identical Senate Bill 6994.

ACTING PRESIDENT KUHL: The substitutions are ordered.

SENATOR DeFRANCISCO: Mr. President, at this time would you read the non-controversial calendar.

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

THE SECRETARY: On page 13, Calendar Number 333, by -

SENATOR GOLD: Lay it aside, please.

THE SECRETARY: -- Senator Volker, Senate Print 6041, an act to amend the

Criminal Procedure Law, in relation to the authority of police officers to investigate criminal activity.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 631, by Senator Levy, Senate Print 6592-A, an act to amend the Vehicle and Traffic Law, in relation to authorizing and directing the Department of Motor Vehicles to develop and implement a demonstration project.

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

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator Hoblock, Senate Print 6736, an

act to amend the Transportation Law, in relation to regulation of motor buses.

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

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

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 651, by Senator Holland, Senate Print 5789-A, an act to amend the General Municipal Law, in relation to indexing the interest rate on judgments.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 671, by Senator Holland, Senate Print 201, an act to amend the Vehicle and Traffic Law, in relation to optional equipment for omnibuses.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 686, by Senator Maziarz, Senate Print 6893, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 692, by Senator Libous, Senate Print 4472, an act to amend the Penal Law, in relation to increasing the penalties for repeat convictions of assault.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 728, by Member of the Assembly Vitaliano, Assembly Print 9530, an act to amend the Retirement and Social Security Law, in relation to retirement allowance option.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 743, by Senator Maltese, Senate Print 490, an act to amend the Public Authorities Law, in relation to providing for free passage for active duty military personnel.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 745, by Senator LaValle, Senate Print 3508, an act to amend the Vehicle and Traffic Law, in relation to distinctive plates for widows or widowers.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 754, by Senator Kuhl, Senate Print 1716, an act to amend the General Business Law, in relation to automobile auctioneers.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 755, by Senator Farley, Senate Print 6129, an act to repeal Section 392-a of the General Business Law, relating to the manufacture and sale of used or secondhand hats.

ACTING PRESIDENT KUHL: The Secretary will lay the bill aside.

THE SECRETARY: Calendar Number 756, by Senator Nozzolio, Senate Print 6589, an act to amend the General Business Law, in relation to unlawfully installing or maintaining a video recording device.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 760, by Senator Seward, Senate Print 6140-A, an act to amend the Public Services Law, in relation to property transfers requiring commission approval.

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

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

ACTING PRESIDENT KUHL: Call the roll.

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 761, by Senator Seward, Senate Print 6143, an act to amend the Public Services Law, in relation to cellular telephone services.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 768, by Senator Velella, Senate Print 6961, an

act to amend the Public Authorities Law, in relation to directing the Metropolitan Transportation Authority to direct.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 776, by Senator Saland, Senate Print 1434-B, an act authorizing the Commissioner of General Services to sell certain land to the city of Beacon.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: There is a home rule message at the desk, but the bill is laid aside for the day.

THE SECRETARY: Calendar Number

779, by Senator Goodman, Senate Print 6305, an act to amend the Tax Law, in relation to utilizing machine-sensible technologies to receive, record and maintain tax.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 780, by Senator Goodman, Senate Print 6369, an act to amend the Tax Law, in relation to authorizing the filing of state tax warrants.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 782, by Senator Seward, Senate Print 6538-A, an act to amend the Tax Law, in relation to the collection by public utility of the tax imposed by Section 189 thereof.

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

SENATOR DeFRANCISCO: Lay that bill aside for the day.

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

THE SECRETARY: Calendar Number 794, by Senator LaValle, Senate Print 7231, an act to amend the Education Law, in relation to requiring higher education report cards.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 795, by Senator Larkin, Senate Print 7018, an act to repeal Section 2327 of the Insurance Law, in relation to establishment of rates for product liability insurance.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 796, by Senator Alesi, Senate Print 7270, an act to amend the Insurance Law, in relation to satellite offices.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 903, by Senator Nozzolio, Senate Print 7092, an act to amend the Real Property Law, in relation to rules and regulations of mobile homes.

SENATOR NOZZOLIO: Lay it aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day at the request of the sponsor.

Senator DeFrancisco, that completes the non-controversial reading.

SENATOR DeFRANCISCO: May we please have the reading of the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary -- Senator Hoffmann, why do you rise?

SENATOR HOFFMANN: Yesterday I

was out of the chamber, Mr. President, when a vote was taken on Calendar Number 1215. I would request that the record reflect that had I been in the chamber, I would have voted in the negative.

Thank you.

ACTING PRESIDENT KUHL: Without objection, and hearing no objection, the record will reflect that had Senator Hoffmann been in the chamber yesterday when Calendar Number 1215 was called up for a vote, that she would have voted in the negative.

The Secretary will now read the controversial calendar beginning with Calendar Number 333, by Senator Volker.

THE SECRETARY: On page 13, Calendar Number 333, by Senator Volker, Senate Print 6041, an act to amend the Criminal Procedure Law, in relation to the authority of police officers to investigate criminal activity.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT KUHL: Senator

Volker, multiple explanations have been asked for on Calendar Number 333.

SENATOR VOLKER: Mr. President, this bill is known as the Police and Public Protection Act of 1996. You know, as we were out this afternoon at the police memorial service, I was thinking about some of the people who I have known over the years who have said exactly what I think was said at that memorial service, and that is that legislators and judges have a lot of time to contemplate the law and its ramifications and the individual -- and the actions of law enforcement officers who are on the scene of some incident when the law enforcement officer, in many cases, has only a matter of minutes or sometimes even seconds to make a split second decision that may cost him his life and also may determine whether, in many cases, evidence that he may be seeking or trying to determine is either allowed in or excluded, but let me say having said that, that as legislators -- and I don't have to tell anybody here -- it's our duty to make decisions based on

rational, legal terms and try to protect not only the law enforcement officers but also the people who those law enforcement officers are dealing with.

This bill, the Police and Public Protection Act of 1996, is a bill that was sent to us as a program bill from the Governor back in February, lest there be anybody that says that it's been thrust upon us in the middle of the night or something of that nature and no one's had a chance to contemplate it. It was reported out of our committee some time ago, and as I assured my colleagues on the committee, there would be ample time to review the bill and to study it and make some determinations.

We're now in May, and I think it's time to do that, and interestingly enough, some of the things that were discussed in the committee, we have hashed over and we have researched ourselves. For instance, probably the main argument in our committee over this bill related to Section 4 of the bill that some of the members of the committee felt in a sense

was abrogating the authority of the Court of Appeals as regards to the Fourth Amendment of the Constitution, exclusion of evidence, and as I discussed since then with some of the members of the committee, we have researched that ourselves and we have come up with even more cases relating to this matter, and what this is is the issue of good faith in exclusion of evidence, suppression of evidence. I think some of you may have heard it on a national level where there's been a great deal of discussion about the exclusionary rule.

What we found was that there were a number of Court of Appeals cases that dealt with this very issue, in other words, our own Court of Appeals, that stated that it is the Legislature's prerogative to make decisions on issues where the -- rather than the judiciary could make decisions where the intent of the Constitution is clear.

So that everybody understands, the article of the Constitution that is involved here that is discussed is exactly -- it is

identical to the federal constitutional language, and there has been several cases that have indicated that the Court of Appeals -- of late that have indicated that the Court of Appeals has decided that in certain cases that the state Constitution, despite the fact that its language is identical to the federal Constitution, should be interpreted, shall we say more conservatively or liberally, depending on your position.

What we found is that there are several Court of Appeals cases, one as late as 1985 that basically said that there were some attempts by constitutional conventions to abro gate the provision -- this constitutional pro vision and, in effect, say that the state con stitutional provisions should be determined to be more restrictive than the federal Constitu tion, and those constitutional challenges as part of a constitutional convention were turned down and that the Court of Appeals in several decisions said it's really up to the Legislature to make decisions in this area where the clear

meaning of the Constitution has been stated.

Let me just start out -- and I will -- because there is a great deal of material involved here and just let me go through it. There are three main sections to this bill, and I know that many of you have gone over this, and rather than go on for too long, I've tried to break it down into those three sections.

Section 2 of the bill, which is the opening section, relates to encounters between police and suspected criminals or suspects on the street, and in all other states and in the federal courts, encounters between police and suspected criminals are analyzed by the courts on a three-tier system, "to approach and ask questions, take such other appropriate actions that are not inconsistent with constitutional limitations. The police are not required to justify their actions on the basis of facts indicating criminal conduct."

In New York, the Court of Appeals recently has established a four-tier system.

"Police officers must have a founded suspicion that criminality is afoot before they ask more pointed questions of an individual." It's been difficult to determine exactly what that means.

This bill would say that such questions when a police officer -- when a police officer makes these questions, he must have an objective, credible reason not necessarily indicative of criminality. In effect, the bill gives police officers the common law right of inquiry that they have in virtually every state in the Union. This is not New York embarking off on its own. This is basically giving New York police officers, law enforcement people basically the same rights, the same authority as police officers in every state in the Union.

Section 3 of the bill which - Subdivision (3), this section would codify in statute a decision handed down ironically recently by the Court of Appeals on May 2nd, 1996 in People versus Mimms. This bill in the Court of Appeals requires that a court hearing on a suppression motion must make findings on

the record that a defendant had a legitimate explanation -- expectation of privacy in the place or item that was searched, identify the object of the defendant's expectation of privacy and determine whether the circumstance would lead society to regard defendant's expectation as reasonable. What that is is a test that is being used virtually all over the country, probably is -- maybe even a stricter test is being used in some parts of the country to determine the legality of searches.

Finally, Section 4 -- which has -- some have termed the most controversial - this section directs that the courts follow prior decisions of the Court of Appeals which interpreted Section 12 of Article I of the New York Constitution. The language of Article I, Section 12, is exactly the same as the language in the Fourth Amendment of the U.S. Constitution.

In People versus Richters Jewelers decided in 1943 and more recently, People versus Johnson in 1985, Court of Appeals

traced the history of that language in Article I, Section 12, and Judge Titone in his decision said "Exclusion of evidence is not a command of the New York State Constitution, Article I, Section 12. Rather, it is a judicially declared rule of evidence which the Legislature is free to abrogate."

This bill implements the statement of Judge Titone -- or implements the statement of Judge Titone and directs the courts to follow the Fourth Amendment of the U.S. Constitution in determining a suppression motion.

There's a reason why I wanted to read this into the record also because I want to make it clear that there is no attempt here to somehow be flippant with the rights of anybody. There's no attempt here to go way beyond the normal bounds of constitutional limits or an attempt to say that the Court of Appeals shouldn't have any authority to deal with sup pression issues, and it shouldn't have authority to deal with "stop and frisk" and things of that

nature. There is a reasonable basis behind this bill, and the reasonable basis is that what is needed is a reasonable approach, not only to confrontations on the street but also to suppression of evidence because the times demand it. The nation as a whole is in a -- is in sync with this kind of legislation. I think what it does is, it's designed not only to protect the individuals in society, individuals who may, in fact, be engaged in criminal conduct, but obviously it's designed also to protect the public and the law enforcement people who have to enforce the statutes of this state.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

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

Would the chairman of our Codes Committee, the learned gentleman from Niagara Falls, Niagara-Buffalo area, yield to a question or two?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: Senator

Volker, do you yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR VOLKER: I don't know how learned I am, but I'll yield.

SENATOR WALDON: What was that? I'm sorry, Senator.

ACTING PRESIDENT KUHL: The Senator yields, Senator.

SENATOR VOLKER: I said I didn't know how learned I was, but I'll certainly yield.

SENATOR WALDON: Well, I'll assure you, Senator, I worked with you now for a number of years and your reputation precedes you. You are very learned.

Something you said in your opening remarks, before I begin the line of questioning that I have, if I may, I would like to bring to your attention because sometimes we say things that we don't mean in the passion of discussions and debate on this floor. You said,

and I quote, "Section 2 of the bill denies - deals with encounters between police and suspected criminals", but the bill doesn't say anything about the persons who may be stopped under this bill are, in fact, suspected criminals. If I read it correctly, it does not say that at all. Was that a faux pas?

SENATOR VOLKER: I don't think it's a faux pas. I think that when a law enforcement officer stops someone on the street, there is always the possibility that that person's conduct could lead to some sort of criminal conduct. I think what you are saying to me is -- and we're not accusing anybody necessarily of a crime. What we're saying is we're trying to give law enforcement officers a reasonable ability to deal with the possibility or the probability, in some cases, that someone may have maybe then or maybe at some immediate time participated in some conduct that could be considered to be unlawful. It doesn't necessarily mean that that person at that immediate time is committing a crime, but as you

and I are very well aware, the general law of this country has said that we give within reasonable bounds the ability of law enforcement people to make reasonable discussions with people who may -- who may be in that kind of situation.

SENATOR WALDON: If I may continue, Mr. President.

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

(Senator Volker nods head.)

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: But the bill says, if I am correct, Senator Volker, that the bill would allow police to approach a person based upon an objective, credible reason, not necessarily indicative of criminality, and so I just don't understand your statement, and that was your statement was written down just as you said it, what the bill prescribes because the bill does not say that the person has to evidence any outward manifestation of

criminality.

SENATOR VOLKER: That's right.

SENATOR WALDON: Can you rectify the statement of the bill and your -

SENATOR VOLKER: No. I think what I'm saying is that they don't necessarily have to evince outward manifestations of criminality, but that does not mean -- I think you know why I'm saying this because obviously what the law enforcement officer is attempting to do is to obtain some sort of information or to discuss with that person something that has caught the eye of the law enforcement officer. That is right. It may have nothing to do with criminality. On the other hand, it may also, and it may have to do, in fact, with the public safety of some kind. I suppose you could say that that is also the charge of a police officer and I would accept that, but I think that what we are trying to do here is create a situation where a law enforcement officer is not put in a position where he or she is absolutely unable to question someone for fear that anything that is

discussed or obtained or whatever could not be used in any criminal case.

SENATOR WALDON: Would the gentleman continue to yield?

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

(Senator Volker nods head.)

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I had thought about asking questions along the line that I'm going to jump to, Senator Volker, much later in our dialogue, but because of what just transpired, I would like to go to a different area right away, and that is this: Are you aware of the National Institute of Justice?

SENATOR VOLKER: Certainly.

SENATOR WALDON: Are you aware of a statistical report -- or a report which contains certain statistics regarding arrests and the ability of officers in police departments across this country to make arrests that occurred or which was published in 1983?

SENATOR VOLKER: No, I don't think I really am aware of it.

SENATOR WALDON: If I may then, let me just read this to you -

SENATOR VOLKER: Certainly.

SENATOR WALDON: -- so that not only you but I and our colleagues will be edified.

The statistical phenomenon is reported by a 1983 National Institute of Justice study that examined policing in seven jurisdictions around the United States. In each of these jurisdictions, a small percentage of police officers between 8 and 19 percent accounted for 50 percent of the arrests resulting in conviction.

In Manhattan, for example, approximately eight percent of the police officers were responsible for 50 percent of the arrests resulting in conviction. The study further concluded that the superior performance of the high conviction officers was related to more rigorous procedures and techniques for

obtaining evidence and locating witnesses, techniques and procedures that could be implemented more widely with better training, and let me just cut to the chase to another page. This is a quote again, "To set the record straight and to demythologize the war on crime, one must take a hard look at some numbers. First and foremost, one must recognize that of all adult felony crimes that are committed in this country, FBI data show that only about 20 percent result in arrest. This arrest rate for all reported adult felonies has been consistent over the last three decades, the last 30 years. Moreover, of the 20 percent of felony crimes that do result in arrest, the Justice Department figures for 1988 reveal that in New York County, more than 4 of 10, 44 percent of the adult felony arrests were either dismissed by the courts or subject to a decision not to prosecute by district attorneys." Then it furthers states -- oh, here it is -- "The Bureau of Justice Statistics data show that in 1988, only two percent of felony arrests in Manhattan were

declined for prosecution as a result of due process violation problems."

Now that I've given you this information -- and I will have my office give you a full copy of this report, Senator. I'm sorry I couldn't do that before we got here, though I would wish to share everything with you, simply because I just got it myself, and so I apologize for that. However, recognizing if this information from the bureau and from Washington is accurate, that the need to do what we're doing with this Police and Public Protection Act may, in fact, not exist, and I'm going to ask you the question because 8 to 19 percent of the police are really doing the job, and what we need to do is to elevate the capability of all of the police officers to function in that manner so that 80 percent of those crimes reported will now perhaps result in arrests, and we don't have to be too truly - really concerned about this exclusionary piece that we're going to deal with today because capable police officers would make the necessary

arrests. Do you find it possible to agree with anything that I've said in here?

SENATOR VOLKER: Well, first of all, I -

SENATOR WALDON: I love to listen to the smile on your face. You don't know; it makes my day.

SENATOR VOLKER: I would agree with virtually everything you say on most occasions. Let me just say this, Senator, and you as a former law enforcement officer, as I am, know full well that there is a good reason why a small percentage of police officers make a good many of the arrests because they are in a position to do that. Most police officers - most police arrests are not made by happenstance. They're made by police officers who are in a position -- for instance, many of the sweeps that are made in the city of New York are done by a small percentage of police officers who are involved in squads that make those arrests on the street. Certainly training is a help, but one of the problems has been -

and let me say about that study -- it was a very interesting study. Of course, it was made a long time ago. It was made, what, 13 years ago, and the law since then in this state I think unfortunately has taken a turn away from what was the fact in 1983, and what we're trying to do in this statute is get a law back to where, in effect, I think many would say we were better off in 1983, and that is in a situation where suppression is not as easy as it is in this state, where law enforcement people won't feel that they are in a position where they can't question virtually anybody on the street without totally objective evidence of criminality and in -- where they'll be able to feel much more comfortable that they can do something which is reasonable.

When I was a police officer, one of the biggest complaints -- and that was many years ago -- one of the biggest complaints was, of many police officers, that they had to understand too many technical things, and the reason they said that was that there were many

court cases that were throwing out arrests that were made by these law enforcement officers on what they called technicalities. In some cases, by the way, let me say, they were valid technicalities. In other cases, I think they were questionable, but what I used to tell many of the law -- and I went to law school while I was a police officer -- I would tell them, Look, you do what's reasonable. You do what's reasonable under the circumstances, which is the best way to deal with these kind of things. The problem that many of us see who have been in the street and who have represented people as well as, in effect, prosecuted them is that a police officer, such as in the Torres case where he found the gun and the drugs, a police officer did what was reasonable under the circumstances and a judge said, Well, maybe it wasn't exactly reasonable because the fellow really probably wasn't in danger even though this guy had a gun because he didn't have ready access to it. It was a case that this fellow had in his possession, things of that nature.

Senator, I think what we're trying to deal with in this bill -- and you can give me all the statistics you want and I understand that -- it may say that certain police officers maybe are doing and arresting and making more arrests. That doesn't mean other police officers are not capable. It may also mean that in our society, we need to do more things of this nature that give our police officers the tools and the ability to deal with the criminal element so that instead of only arresting and only convicting a small percentage of those that commit these felonies, we're able to do it on a much better basis and we're able to make convictions stick.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Will the Senator continue to yield?

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

(Senator Volker nods head.)

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

Senator, you're not saying that there should be a lesser standard in regard to the encounters on the street or there should be a lesser standard in regard to training. Historically, the police of this nation have always aspired to be the best. We call New York City's "the finest", and we're not saying that in your response that the standards should be less than or we should not properly train our officers or they should not always aspire to the very highest professional standard in their capacity as police officers. You're not saying that, are you?

SENATOR VOLKER: I'm absolutely not saying that. I'm saying we have the best trained and in most cases, the best equipped law enforcement officers in the United States of America in the state. I am saying that we not only should continue that training but should

make it even better, and I am not saying that we should lower any standards, but I am saying that the standards that we set should not be so overly technical and so ambiguous that a reasonable law enforcement officer couldn't possibly understand them and, in effect, that standard should be so strict as to be beyond any state -- in certain cases, any state in the Union. That doesn't really make sense, not just for police officers, but for the people of New York State who these police officers are protecting.

SENATOR WALDON: Would the gentleman continue to yield, Mr. President?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator Volker, it is my understanding that everything we do, even in this great chamber, everything that is done in this nation emanates from a sole source. In the inception of this nation, we wrote a great document, the Constitution, and

that Constitution is the fundamental governing document for this nation, and really all of the standards that we set, all of the standards we aspire to really somehow are connected to that original document, which is the bedrock of the United States, and early on in this nation's history, there was a case, Marbury versus Madison. I'm sure you recall that from your days in law school. Can you tell us what that case stands for?

SENATOR WALDON: Well, I think the rights of -- okay. Is this going to -

SENATOR WALDON: Is Senator Leichter going to pitch in for you on this?

SENATOR VOLKER: I think to boil it down, what you're talking about is the right of the states to make determinations -- and the right of the federal government, but also the right of states to make determinations by themselves but, of course, that stat... that case also, as you well know, did uphold the right of the federal Constitution to oversee things and, as you said and I happen to agree

with you, that the bedrock is the Constitution of the United States, but it's absolutely true that we have the right as an individual state to make certain decisions but in keeping with the federal Constitution, and I think that's what - I think that's what you're getting to, and I agree with that. I don't think there's anything in this bill that changes that.

SENATOR WALDON: If I may, Mr. President.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I was really listening intently for separation of powers, but being that it did not emanate, I will put it on the ether myself, and under the doctrine of separation of powers, are there not limitations on each branch of government and if you recall that such is the case, which branch of government is specifically mandated to interpret

and apply the law?

SENATOR VOLKER: Senator, the branch of government that is mandated to interpret is -- in this state is the courts, obviously, but let me tell you something, Senator. I happen to agree with that. Remember when I read my statement in the beginning about the -- this bill and its relationship to the law of this state, I read you various Court of Appeals decisions and various decisions by the courts of this state that are reflected in this bill, and the reason I did that was that I happen to agree -- and I probably was being a little facetious in not -- I knew exactly what you were talking about, the separation of powers, but what we have done here is not, as I think has been alleged by some people, to totally abrogate the Court of Appeals. There's no way we can do that. We are a separate institution, but what we have done here, what the Governor's bill does and what the bill that I sponsor here does is to attempt to deal with some decisions of the Court of Appeals that have

made changes that this Legislature I think has the right to make decisions on and that there are Court of Appeals cases, the highest court in this land and in this state and the Supreme Court of the United States has said that we have the right to make both under the federal and the state Constitutions. So that separation of powers or not, we are in a position where these decisions can be made here logically, legally, and I think rightfully to protect not only law enforcement officers but obviously, more importantly, to protect the people of this state.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, when you spoke earlier about the Courts of Appeals cases, you mentioned, I believe Torres and

perhaps Holmes. I'm not sure. There were four -- three or four cases you mentioned. I have here a whole slew of "bad cop" cases, but I don't think we're talking about "bad cop" cases or really the three cases in terms of search and seizure that you mentioned.

I think the issue that we're really trying to address today, at least from my perspective, is the separation of powers, is whether or not one branch of government will dictate the rhythm of other branches of government.

Recently as I read in the press, the Governor criticized Judge Duckman. He removed District Attorney Robert Johnson, and he's done some other things in regard to the Executive Branch, in my opinion, intruding into the work of other areas of government, specifically precluded by the separation of powers mandate, and I was just wondering if you have an opinion in regard to that. Could -- and I respectfully will accept whatever your answer is. I'm not here to put you on the spot other

than for us to discourse, but could the Governor's recent actions regarding Judge Duckman, regarding D.A. Johnson be characterized as intimidation, as violative of the separation of powers? That's the real question.

SENATOR VOLKER: Let me just say, I think we may be getting a little bit far afield from the bill, but let me say this: I think what the Governor was saying in the Duckman, as well as the Johnson case was that - was not the issue of whether they had the power or the authority. That's clear. The issue of the separation of powers is very clear. The reason I mentioned the cases and the jurisdiction when we started was to show that we are not abrogating the authority of the Court of Appeals to make decisions but as a Legislature, we have not only the authority but the right to set policy and to make decisions based on the Constitution of this state and the Governor, by the way, has a responsibility as the chief executive officer to express himself where he believes that not the judges are making bad

decisions necessarily, but whether they're not necessarily following the law or following their oath as an elected or appointed official.

I think the thing that bothered the Governor in the Johnson case was not the question of whether the district attorney in that case decided whether the death penalty or the life without parole or whatever should be - was the statement by the district attorney that he didn't believe that he should ever have the death penalty or should ever use it, and the question that the Governor I think expressed was the issue of whether that person was violating, in effect, the law, that is was not following the law, and I think in the Duckman case -- and as you know, ultimately he referred it to the Commission on Judicial Conduct -- I think he was concerned that the Commission on Judicial Conduct might not follow through with its responsibilities, and I think that's where I think the Governor interjected.

It seems to me -- and I am very, very reluctant as a legislator, as I know

Senator Lack is as chairman of Judiciary, to get involved in these kind of issues, except for one thing. As I told a friend of mine from the City who is with the New York City Bar, unfortunately for us, we are the ones who are elected by the people of the state of New York -- fortunately, not unfortunately, but it is our responsibility if someone we believe is not following their responsibilities, not necessarily whether they're right or wrong in their decisions, but if they're not following their responsibilities, it seems as if it's our responsibility to try to make sure that those individuals do follow the responsibilities.

In this bill, I think what we are doing is attempting to speak out as -- for the people of the state of New York that we think that some decisions may not have been appropri ate and that under our power as a Legislature, that we can make these decisions and should make these decisions. We're not abrogating the power of the Court of Appeals. We are directing the law in a way that I think is in the best

interests of the people of this state, and I think we have not only the right to do it, but I think we have the responsibility.

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

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, I think I heard a message to the Court of Appeals in what you just said. I don't know if that's appropriate behavior by those of us who sit in this legislative chamber, but let me share a quote with you that I think speaks to the essence of Al Waldon's perception of the court. This is a quote from the great Justice Felix Frankfurter, and it says his words.

"The Supreme Court's authority to possess neither the purse nor the sword ultimately rests on sustained public confidence in its moral sanction. Such feeling must be

nourished by the court's complete detachment in fact and appearance from political entanglements and by abstention from injecting itself into the clash of political forces and political settlements."

If I may, Senator Volker, if I extend that credo, the statement by Justice Frankfurter to our Court of Appeals, could we not characterize the Governor's action and, in fact, our action if this one-house bill were to become the law of the state of New York as violating what Justice Frankfurter said in these very significant words?

SENATOR VOLKER: Senator, first of all, let me maybe start out just by answering the question directly. I have immense respect, obviously, for Justice Cardozo. I happen to agree entirely -

SENATOR WALDON: Justice Frankfurter.

SENATOR VOLKER: Or Justice Frankfurter. Cardozo is another one. I know. I'm aware. I happen to agree with that

assessment. I do not believe that's what we are doing here in any way, shape, form or manner. However, let me follow up by saying that "political" is an interesting word. I don't think the Governor was challenging the right of judges to make decisions or the kind of decisions they made. What the Governor was challenging was -- in one case with a district attorney and in another case with a judge was the issue of the propriety of how those decisions were arrived at and whether the person -- the individual followed the procedures that were mandated under the law and correctly applied those procedures.

I do not believe -- and by the way, you'd best be careful of the one-house bill nature of this. It's very possible, I think, that a facsimile of this bill may still have a chance in the Assembly. I don't -- I'm not convinced this is necessarily a one-house bill because I think that the impetus of this proposal is much stronger than I think maybe both of us realize, but I do believe that this

bill is not by any means a challenge to the Court of Appeals but maybe a challenge to us all to look at the state of the law in this state and make decisions not based on some sort of technical interpretation of the world out there but on the real world of protections, not just for police officers obviously, but for the individuals involved, but looking at what the Court of Appeals itself has said about itself and about the Legislature, not overriding or overruling the direction of the Court of Appeals except where it may have moved in a direction that is in violation or in abrogation of what the clear meaning of the Legislature was.

We passed a statute here last year -- I think it was last year. I'm pretty sure it was last year, Senator -- that changed the -- changed -- in effect, changed the court decision on drug possession, and the reason was that it was the interpretation of this Legislature and the Governor that a court decision was not in keeping with what -- the clear meaning of a legislative statute, which

was passed in this Legislature years back in both houses and signed by the then governor, that a decision by the Court of Appeals was not in keeping with the clear meaning of that statute and we rewrote the statute, in effect, and said, Here's what the meaning is, and the Governor -- I believe you voted for that bill as I did. The Governor signed that bill and, to my knowledge, the Court of Appeals has made no attempt to challenge that interpretation because upon our passing a second statute that basically said, Here's what we meant in the first place and your interpretation of it was not what the clear meaning of the statute was, I think we have every right to do that, and I think the Court of Appeals has acknowledged our right to do that. So I don't think we're doing anything that abrogates the Court of Appeals' authority.

SENATOR WALDON: Mr. President, would the gentleman continue to yield?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, thank you very much for your -- okay. Can we go now?

SENATOR VOLKER: Go ahead. I'm sorry.

SENATOR WALDON: Was that Ryan?

SENATOR VOLKER: Ryan. You have a much better memory than I do. People versus Ryan.

SENATOR WALDON: Senator, I just wanted to cover a couple of points in the bill, some of which we've discussed outside of the chamber, and I've recently obtained some information, but one I was not able to obtain information on. Do you know of any definition for "bad faith"? I did not find one.

SENATOR VOLKER: "Bad faith", I think -

SENATOR WALDON: As depicted in the bill.

SENATOR VOLKER: No. I don't think the bad faith -- by the way, the "bad

faith" word is used, I believe by the Supreme Court and is in federal statutes. I don't think there is any actual definition. I think it's another one of those words of art or phrases of art that have been used in the law and that have not been specifically identified. My counsel says the totality of the circumstances determines good and bad faith, and I don't have a specific definition, yes.

SENATOR WALDON: Senator, the proposed bill speaks to an officer in a public place, and I since looked up because we had a conversation about could someone come into your home, and under 240 of the CPL, the lobby and stairwell of New York City Housing Authority projects are considered public places; therefore, it seems to me that the police could go into the lobby, and in the projects -- I lived in one -- there are apartments on the first floor right off of the lobby. You step into the lobby, there's an apartment right here in some of them, an apartment right there to your right. So those are public places and

under this bill, the police could then make an intrusion into the person's home as I understand it.

SENATOR VOLKER: No, Senator.

SENATOR WALDON: If I may continue, Mr. President.

SENATOR VOLKER: If I might follow up on that. I disagree, and the reason is because the issue of the dwelling is -- is a very clearly defined piece of the law. The fact that you could enter into -- and that's true, and I think that's by statute that we declared lobbies of buildings -- of public buildings or apartment buildings to be public places, and specifically we did that, I believe because of potential problems involving intoxicated persons and disorderly persons, and so forth, if my recollection is correct -- dating way back years ago, if my recollection is correct, but that would have no meaning, as far as the actual dwelling places because there is no place that I'm aware of any place in the law that would say a dwelling, whether it's adjacent to a foyer or

whatever it is, could ever be declared to be a public place. Dwellings are specifically excluded from the public place provisions, and in that statute, by the way -- and I vaguely remember passing it many years ago -- we were pretty specific as to what would be considered a public place for that very reason, so that no one could interpret that statute to mean you could walk into somebody's house, arrest them for public intoxication or disorderly conduct or whatever based on the fact that their own dwelling was a public place.

SENATOR WALDON: Mr. President, may I continue? Would the gentleman continue to -

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

(Senator Volker nods head.)

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Volker.

Senator, I wish I had your

confidence that some zealous police officer - over-zealous police officer might not -- if not properly trained, as I suggested moments ago, ten, fifteen moments ago in our dialogue, that the bottom line is this should not be the 1996 Police and Public Protection Act that we're dealing with. We should be dealing with the 1996 Police Training Act to bring everyone up to the standard where their behavior would be such that even those who are in the squad would have to be a little anxious because the guys in the street would be making as many arrests as they were, those who are assigned to just fundament ally make arrests. I think that would be of great assistance to us.

I don't think that there will be no exceptions to the interpretation that the lobby is not a place that will allow them to invade someone's dwelling even though the law may be very clear about that, but what I really want to do now is ask a couple of questions, if I may, which I'm sure you know the answers to, but I want to set -- I want to accomplish

something here, if you will permit me to follow this train of thought.

How many people are in New York State's prisons?

SENATOR VOLKER: Excuse me. In New York State prison?

SENATOR WALDON: Yes.

SENATOR VOLKER: About 70,000, a little bit under 70,000, in the state itself, prisons, just about 69-, about 70-.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator Volker, how many are in our local jails?

SENATOR VOLKER: Oh, I am really not sure. I believe almost as many, if I'm not -

SENATOR WALDON: Would 90,000

sound like -

SENATOR VOLKER: You mean in the local jails? I would think it's at least -

SENATOR WALDON: It is about 90,000, Senator.

SENATOR VOLKER: George tells me it's 89,786. He just counted them.

SENATOR WALDON: You know, George knows -

SENATOR VOLKER: Right. I think it's somewhere between 70- and 90-.

SENATOR WALDON: -- about numbers and things. He really knows.

SENATOR VOLKER: Absolutely.

SENATOR WALDON: Can you tell us, if you know, Senator Volker, the racial makeup of New York State's prison population?

SENATOR VOLKER: I believe the - the last that I saw -- and I -- my recollection is it was about 60 percent. I think my last recollection, it was somewhere around 60 percent to 65 percent minority, if I'm not mistaken. Maybe even a little bit higher. You're talking

about New York State as a state?

SENATOR WALDON: The state's prison population.

SENATOR VOLKER: I think it was -- it seems to me it was 60-. I'm not sure. I really haven't looked at it lately.

SENATOR WALDON: I'm not absolutely sure myself, Senator, but I think that blacks occupy 12 percent of the state's population, Hispanics, 11 percent, 11.3 percent, and blacks are 50 to 55 percent of the state's prison population and the Latino community has 33 percent of that number which would put us somewhere around 88 percent -- 85 to 88 percent. That may or may not be accurate, but if I may, Mr. President -- if I may continue.

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Are you aware of

the recent report by Mr. Schectman from CJS in regard to racial disparities?

SENATOR VOLKER: If you mean the report -- one of the reports that was put out recently that was one of the few reports that we have seen that indicates any kind of racial disparity -- and that was in the paper. It was distributed to a whole bunch of people back in October, and the media characterized it as a secret report even though it was distributed to about 350 or 360 people and did show some indication of possible racial disparity -- and by the way, that's the first one that DCJS has done. DCJS didn't do it. The person who did it did show some variables in racial disparity, but I have to tell you, we checked it out and since you bring it up, there were some real questions about the criteria that was used in that report, but it was a report that was authorized initially by the Cuomo administration and did show some potential disparity, but as is usual in those cases and being from the death penalty era, I can tell you that fluctuations of reports

are pretty easy in this area, but it was a legitimate report that showed some disparity, not a lot, but some disparity in the criminal justice area.

SENATOR WALDON: Mr. President, may I continue?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator Volker, if I ever go to a ball, I want to take you because you really know how to dance. I want you to know that.

What effect, Senator, do you think this Police and Public -- let me rephrase that. Are you able to predict the impact, if implemented into law, the Police and Public Protection Act of 1996 will have on the prison population of New York State?

SENATOR VOLKER: On the prison population, you know, Senator, I would be very

honest with you, and I'm not trying to be coy by any means. I don't think this bill will have any -- certainly any immediate appreciable effect just as -- by the way, the statute that we passed last year, sentencing statute has very little immediate effect because the main effect of that statute comes in about three years down the line. If this -- remember, someone arrested today, particularly in New York City, would take a year to two or maybe two years before the actual impact on the prison system of the state of New York is immediately forthcoming.

I personally think that what will happen here is that assuming that this statute is enacted into law, I think that we will see some people who now may be able to evade even prosecution but more so conviction. Some people will probably go to jail. We would hope that what it would mean is that some criminal conduct will also be deterred which seems to be something, by the way, that many people forget about, and that is that when you are able to get swifter and more certain punishment and when you

are able to deal with criminal activity in a more forthright manner, that it does tend to discourage criminal activity in some cases and that, although we may get more people put in jail as an overall amount, we may well, in fact, see fewer people entering into the criminal justice system.

One of the interesting things as you know that's happening, Senator, is we're getting in many cases as many parole violators now as we are new inmates into our system and - because of the drop in the number of arrests over the last few years and the drop in convictions, but I would be the first to say to you that hopefully better law enforcement will, although it may mean some additional people in our prison system, hopefully it will mean a better respect for the law and will help some of the public in deterring crime and meaning less crime in our streets.

SENATOR WALDON: Thank you very much, Senator.

Mr. President, if I may now, on

the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: Mr. President, my colleagues, I think what we're doing here today with this proposal is an attempt to circumvent the basic fabric and undergirding of this nation, our Constitution and its guarantees.

I think that this article that I'm going to read from momentarily which has words of the great Senator from Delaware, Joe Biden, are very poignant in regard to the attempt to usurp the powers of the court. This is an end run around the court and an end run around the process which amends the Constitution of not only the United States but this state.

In regard to interfering and intruding into the judiciary, Senator Biden said and I quote, "All judges, including conservatives rail against government when it violates the Constitution. Many judges, Republicans and Democratic, sometimes decide

cases in favor of criminal defendants. This includes judges recommended by Dole." He was talking about the federal Judiciary. "For example, Dole recommended Deanell" -- I want to pronounce this name correctly -- "Reece Tacha", T-a-c-h-a -- "to former President Ronald Reagan for the 10th Circuit. In 1994, Tacha wrote an opinion suppressing "crack" cocaine discovered during a traffic stop after the officer initially and incorrectly thought the defendant's motor vehicle registration was invalid." The Senator then says, "This does not mean that Tacha is soft on crime."

My opposition to this bill does not mean that Al Waldon is soft on crime. Those in the Democratic Conference and those in the Republican Conference who will vote against this bill does not mean that we are soft on crime. Senator Biden continues by saying, "It is a judge's job to keep the government from violating a citizen's constitutional rights even when this means giving a criminal a new trial."

My colleagues, we are first and

foremost a nation of laws. Our political system was founded upon a body of fundamental laws, the Constitution. That Constitution was set up and sets us apart from the despotic regimes of Europe over 200 years ago. It was unique. It ensured that the people were not ruled through fiat and capriciousness. The guarantees of the Constitution are still what set us apart from the modern dictatorship, from authoritarian regimes, from totalitarianism and from so-called banana republics. Why do so many people want to come here to America? Because our system is still, 220 years later, the beacon to which all nations aspire.

The police in this nation cannot -- cannot, must not, legally act arbitrarily. They are a disciplined, dedicated group of professionals, proud of their professionalism and their service to the public as was I when I served as a police officer. I protest this undermining of the most fundamental document in the history of this nation, our Constitution. I protest this canard that the police have their

hands tied under current law and court precedent and that justice is not prevailing in our courts but, most of all, I protest that we are here today practicing obfuscation 101. We are saying, Watch my hands. Hear my shibboleths. Read my lips but don't ask us, this Legislature, this Governor, where's the budget? Steve "Bantu" Biko said the most -- and I quote, "The most potent weapon in the hands of the oppressor is the mind of the oppressed", and so I refuse to surrender my mind even to people as clever as those here. I refuse to surrender the will and the needs of the 300,000 in the 10th Senatorial District. I refuse to believe that political expediency is the right way, that wrong because some one person wants to make it so is now right. I refuse to surrender the lives and spirit and futures of countless black and Hispanic young men.

The Police and Public Protection Act of 1996 will not protect the public. It will explode our prison population, drain our resources, make all of us more fearful and

insecure by reducing the constitutional protection and protections which have made this nation so great. When you couple this act with the Governor's desire to build 8,800 prison cells, the only growth phase of his budget, when you couple this with Schectman's report, the possibility of prison yards, as dreams deferred of blacks and Hispanics become abundantly real and abundantly more possible, I yield not my mind. I do not fail to protest. I have confidence in the moral sanction of the court.

I thank you, my colleagues.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

SENATOR ABATE: Thank you. Would Senator Volker yield to one question?

ACTING PRESIDENT KUHL: Senator Volker yield to Senator Abate?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: Senator, if I can preface my question. I enjoyed your rendition

of a number of Court of Appeals cases. I know that you are now going to have the ability if you ever leave this Legislature to teach Criminal Procedure Law or jurisprudence, but I did enjoy your knowledge of criminal law and procedure.

My first question, Senator Volker, if the reason behind the exclusionary rule, whether it be the state exclusionary rule or the federal, is to strike a balance between the ability of law enforcement to carry out its function and balancing that right with the obli gation to protect the public from unreasonable intrusions, unreasonable searches and seizures, clearly the intent of this legislation is your concern to correct this balance, but don't you think as a result of this legislation there will be more unwarranted intrusions?

SENATOR VOLKER: If I did think that, I wouldn't be sponsoring this legislation, Senator. Let me just say, remember what I stated before and that is that, by doing this bill, we are, in effect, getting New York law

back in sync with the rest of the country.

In other words, what we are saying here is that we are -- that the New York statute has gone -- or the New York -- the cases that this statute aims at were cases that put the New York situation at a higher standard than not only the federal Constitution but by far the rest of the country. Now, unless the assumption is that the rest of the country is completely unfair and that the Constitution of the United States doesn't adequately protect individuals, then I think you would have to assume that we have gone beyond what the rest of the country believes is proper conduct.

What we're saying in this bill is not that we're going to allow improper conduct but that we are going to allow reasonable conduct, and reasonable, it seems to me, is something that we have to deal with. No one is saying that illegally obtained evidence, where there is a showing of lack of reasonableness - the Court of Appeals clearly can throw those cases out, this legislation or not depending on

the situation, as they can under the federal Constitution, by the way.

I think what we should really all understand here is that there is no absolute bar for making reasonable determinations. What we are saying here in this statute, that we think that certain decisions in certain cases may have gone too far and that we are making sure that our Constitution is upheld as well as the federal Constitution at the same time that the people of this state are protected and that the law enforcement people who enforce the law are protected.

SENATOR ABATE: Would Senator Volker yield to another question?

SENATOR VOLKER: Sure.

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

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

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: My concern is that you use the language "reasonable," and yet

there is no definition in the legislation to define what is "bad faith". Bad faith in whose eyes? If the officer feels subjectively they've acted not in bad faith, what does that mean?

SENATOR VOLKER: Well, first of all -

SENATOR ABATE: How do you define "bad faith" in this legislation?

SENATOR VOLKER: How would you define "good faith"? I mean, the point is good faith is the reverse of bad faith, and that's not a determination to be made necessarily by a police officer. In the long haul, that's going to be made by a court.

We ask a law enforcement officer to act reasonably. If his or her mistake is considered to be one that was deliberately done and not done in a proper manner, certainly that would be -- I think would be considered bad faith. In fact, I suppose if we define bad faith in the statute that means as long as the person didn't deliberately mean to harass -- or put some language in -- I think that would be a

better argument, frankly, that we were intruding on the separation of powers.

Remember, if we were to very strictly define what "bad faith" meant -- and that might be difficult to do since no one has tried to do that, but, if we did, we would be restricting and tying the very hands of the court that we're talking about giving authority to deal with it.

SENATOR ABATE: Because of the vagueness of the language and in terms of how one will interpret bad faith, it will give very little guidance to the police department as to what their appropriate actions should be.

How can the police department now, given this what I call vagueness, know what is appropriate and allowable and what is not? Basically, it can only be decided by the individual officer acting on what they may or may not perceive to be reasonable at the time.

So I'm concerned about what guidance are we giving to the police department with a bad faith exception?

SENATOR VOLKER: Senator, I think the guidance we're giving them is to -- the judge is going to have to look at the totality of the evidence, and what we're saying here is that we have a -- and, by the way, this is not something -- the bad faith interpretation is not something that we pulled or was pulled whole cloth and just used here. It is being used on the federal level also, as you know. It was quoted in the Supreme Court of the United States.

SENATOR ABATE: Well, no, that was more restrictive than the Supreme Court because the Supreme Court talks about a good faith exception that applies to search warrant cases. It seems to me that we're going beyond even the federal standards in this legislation.

SENATOR VOLKER: No, I don't think we are, Senator. I think we are pretty well right with the federal standard with this legislation. I think if you look at the totality of what's being done nationwide and in the federal courts as well as the -- well, in

Congress, I don't think we're going beyond here. In fact, probably we're not going as far as some states have done and as far as some parts of the federal courts have moved.

I think that it is pretty clear what the meaning of this statute is, and a court will interpret it based not necessarily on what the law enforcement officer thought but based on the totality of the circumstances and whether that evidence should be allowed in or not.

SENATOR ABATE: Will the Senator yield to another question?

SENATOR VOLKER: Sure.

SENATOR ABATE: Why then did you chose the language of "bad faith" when the federal Supreme Court has used the words of "good faith" exception? Obviously, there is a difference in terminology. If you are trying to make our state interpretation consistent with the federal interpretation, why do you use different terminology?

SENATOR VOLKER: I think that the good faith/bad faith determination, I think, is

the federal terminology and is the state terminology. Maybe you juxtapose it, but I think the issue of what constitutes good faith and what constitutes bad faith is an issue that has to be determined. To a law enforcement officer, whether you say you must exercise good faith or you shouldn't exercise bad faith, I don't see where that's going to make any difference in the long run, and I think the direction of the court in interpreting the statute is clear under either case.

SENATOR ABATE: Will the Senator yield to another question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: It is my understanding that the Court of Appeals will not be in a position to suppress evidence unless after a hearing it is found that bad faith was committed on the part of the police officer.

Who carries the burden? Does the defendant who has little knowledge of what's in the mind of the police officer have to prove that that officer acted unreasonably in bad faith? I mean isn't this an impossible burden due to over -

ACTING PRESIDENT KUHL: Senator Abate, excuse the interruption just a minute.

Senator Holland, why do you rise?

SENATOR HOLLAND: Could we have the last section read so a member can vote on this bill, please.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR NANULA: No.

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

The roll call is withdrawn.

Thank you, Senator Volker and Senator Abate, for allowing the interruption.

Senator Abate.

SENATOR ABATE: Who carries -- to rephrase it, who carries the burden of proof and how can the defendant possibly prove what's in the mind of that officer?

SENATOR VOLKER: I don't think it's the mind of the officer. I think it's the totality of the evidence. If you look at these kinds of cases and if you look at the interpretations, there are far more than the issue of what is in the mind of the law enforcement officer. The Torres case, for instance, there was a mountain of circumstantial evidence brought in on the very issue of the evidence that was obtained which is the normal -- is the normal case, and I would think that that would be the case under any circumstances and that the -- what would have to happen is

that the prosecution would bear the burden of proving that there was no bad faith by the law enforcement officers. Because, remember, there has already been a determination that -- well, presumably a determination that this evidence is illegal; because if it's not directly illegal evidence, then it has to be directly entered. So once that is done, then the prosecution has to move and show that there is no bad faith.

SENATOR ABATE: That was helpful, Senator. So it is your understanding of this legislation, since this is your legislation, that the burden of proof would be on the prosecution to come forward to show that the stop was made in good faith?

SENATOR VOLKER: Yes, I think so.

SENATOR ABATE: The reason that I'm concerned about -- of this whether it's coming forward by the prosecution and the burden shifting to the defendant, I read this legislation that there has to be no indication of criminality. The officer can stop someone, just so it's not in bad faith, for any reason or

no reason at all. So it's very broad what the authority of the officer is in terms of stopping, and that is my concern. How do we accomplish the dual mission of balancing law enforcement efforts and protecting citizens at-large?

SENATOR VOLKER: First of all, let's -- there are two pieces. You have moved, then, from the issue of illegally excludes evidence to the issue of stopping.

The bill would allow question when the police officer has objective, credible reason not necessarily indicative of criminality. So I think we are, in a sense, dealing with two different pieces of the bill.

The issue of exclusion of evidence, although it obviously could hinge on, in certain cases, the stopping, that is a bit of a different issue, and depending on what the police officer finds in his questioning would then determine how he would move on, and there still could be an illegal seizing of evidence despite the fact that maybe the police officer

under the rules was able to stop that person, but there would still be an issue as to whether the evidence was either seized or obtained legally.

For instance, the issue, as I think in some of these cases is, when you find that someone may have committed some criminal conduct and you go to his house and you enter his house, the question is, "Did he actually agree to allow you to do that?" He wasn't under arrest. You can't just walk into someone's house. He can say, "The guy let me in," but if the guy says, "Well, I didn't really let him in," anything found in that house couldn't be used as evidence under this bill or under the statute as it is right now.

SENATOR ABATE: Except I read the language -- and please correct me -- that the Court can not get involved in suppressing this evidence if two conditions have to be apparent; one, that the officer acted in bad faith and, secondly -- I read not and/or -- "and not in whole or in part for the purpose of protecting

the safety or an act of another person."

Anyone who is a law enforcement officer in uniform or conceivably in undercover work, their whole function is to protect the public. So even if they act in bad faith and it's consistent with their law enforcement functions, it seems as though the prosecutor has met their burden, because it talks about bad faith and not in whole or in part.

SENATOR VOLKER: No, I think that it's pretty clear what the clear meaning is, and I still think you have to look at the totality of the incident to make a determination whether the evidence would be included, and I don't think that this language is unreasonable.

I think it basically is what generally is not only the law or has been previously considered to be the law of New York but also has been considered to be the law of the land, and I don't think, really, we're reaching much farther than what is generally considered to be the law now in most jurisdictions.

SENATOR ABATE: I disagree, Senator.

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

Are you asking the Senator a question?

SENATOR ABATE: Yes, please.

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

Senator continues to yield.

SENATOR ABATE: Senator, I don't understand. If, in fact, the legislation was going to address and the burden was going to be to look at the totality of the circumstances, I would think there would be some language in this legislation that explicitly talks about the totality. It doesn't talk in that respect, and please correct me. What I read is, "was committed in bad faith and not in whole or in part for the purposes of protecting the safety of an act or another person." It does not talk about totality of the circumstances.

I guess, please explain to me how

this burden could ever be met, because in every instance there could be an allegation made that a law enforcement officer is on the street to protect the public.

SENATOR VOLKER: Senator, I think that you and I both know that we do not have to -- that a court will interpret this based on - when you say, "bad faith," they will clearly interpret it based on the circumstances and not the subjective mind of a law enforcement officer. That's not the way it works, Senator.

I realize when you are looking at this, you are thinking in those terms. That's not the way it works in reality. In reality, the courts have and will continue to have a right to look at the totality of the circumstances and make determinations. We don't have to tell them that in the statute, because the fact that we have stated in here what the circumstances must be, I think, gives the court the ability to make a determination and moves the prosecution, by the way, to move forward to show that there was not bad faith.

And keep in mind here, Senator, you've got to put these two sections together and realize that what you're saying here is that you already had a determination in one way or another of illegally seized evidence, and then that would trip off the issue of whether there was bad faith and the issue of the law enforcement officer's own situation under the circumstances.

SENATOR ABATE: Senator Volker, would you yield.

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

Senator continues to yield.

SENATOR ABATE: On the one hand, we do not trust the Court of Appeals to interpret the Constitution and on the other hand we are writing language so broad that talks about -- language, as I stated, in line 15 and 16, and we're trusting the Court of Appeals to interpret the intent of the Legislature. So as far as I'm concerned, it seems very ironic. On the one hand, we can't trust them to protect

us. On the other hand, we think they can do everything right in interpreting the intent of our laws.

But let me get back to -

SENATOR VOLKER: Senator, I don't agree with that, by the way, and let me say that we can't exclude the Fourth Amendment of the Constitution here. I think, Senator, you are isolating this piece as if it somehow sits out there by itself. The Fourth Amendment to the Constitution is still there. The issue of illegal search and seizure is clearly still there. We are moving -

SENATOR ABATE: Under the federal Constitution.

SENATOR VOLKER: Under federal. That's what I'm saying, under the federal Constitution, and we are not abrogating that, clearly and were we to try to do that, we would be subject to a constitutional challenge, which I don't think that this statute would allow that, and I don't think we're giving an enormous amount of latitude to the Court of the Appeals.

They have taken that latitude anyways, and I guess I don't exactly see where the problem is except in terms of the fact that you are looking at it, I think, in terms of what the Court of Appeals, in several cases, has already said, while in other cases, they have said some other things.

What we're trying to do is make it much more clear as to what the clear meaning of the Constitution is and the clear meaning of Court of Appeals cases are so that there is no confusion.

SENATOR ABATE: Senator Volker, would you yield to my last question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: Senator, you agree that the responsibility of the Legislature is to write laws; and, recently, when we overturned the Court of Appeals case in the Ryan case, we did that because the Court of Appeals misinterpreted or we felt that the Court of

Appeals misinterpreted a law that was passed, and there was a need to clarify that law.

SENATOR VOLKER: Right.

SENATOR ABATE: So I think we're in agreement that our responsibilities are to write the laws. I don't understand where in statutory authority the Legislature has the authority to interpret the Constitution. Isn't that the sole responsibility of the courts to interpret the law and interpret the Constitution? It is not within the realm of the Legislature.

SENATOR VOLKER: Let me just read you Justice Titone in the Johnson case, "Exclusion of evidence is not a command of the New York State Constitution, Article I, Section 12. Rather, it is a judicially declared rule of evidence which the Legislature is free to abrogate."

That was Justice Titone in the concurring decision in People -- for the Johnson case back in 1985, and the reason -- there are other cases, but I use this because it

specifically is in point here; and that is, that it is the -- the Legislature has the authority. And the Court of Appeals, by the way, on more than one occasion -- this is only one of the occasions. In fact, the Governor -- in the memo the Governor cites another case rather than this Johnson case, and we -- Richter Jewelers case, which is a much earlier case, and a history has been developed here.

We are not, in reality, abrogating the Court of Appeals. We are directing the Court of Appeals, in effect, using their own cases and saying, "Look! This is the plain meaning of the Constitution." We can't abrogate the federal or the state Constitution. We don't intend to. We just want to make sure that wherever possible that the interpretations fit in with what this Legislature has passed and what the people of this state intended to do when we passed this legislation and to make sure, I think, that the people of this state are properly protected.

I think we have the authority to

do it, and I think we are doing something which clearly is within our power.

SENATOR ABATE: Thank you, Senator. On the bill.

ACTING PRESIDENT KUHL: Senator Abate, on the bill.

SENATOR ABATE: Not to be dramatic, but this is heartfelt. Both, I think, my knowledge of the criminal justice system, my work on the streets, that this could be one of the darkest moments in legislative history if we pass this legislation today.

We are all concerned with crime, and we all wince when we hear of reports when a guilty person and a criminal takes advantage of the Constitution and takes advantage of the criminal justice system, when we hear reports that someone is set free because of the Fourth Amendment. But regardless of these few cases and these few occasions where criminals take advantage of the Constitution, I have not heard today any rationale based on full cases that have been articulated to make such a radical

change in our constitutional protections.

Certainly, we can't argue -- and I believe law enforcement today is more than willing and able and fully prepared to follow the Fourth Amendment, and we can't argue the police are so handicapped that they can't make arrests. We can't argue that not enough people are getting convicted. We can't argue that most cases are suppressed after a suppression motion. We know that's not the case.

If you've ever done defense, it's an extraordinary situation when a motion to suppress is granted. It's certainly an exception. It's a minutiae of the totality of cases that are heard on motion to suppress issues.

And, certainly, we can't argue in law enforcement in our criminal justice system, we are not doing a splendid job of first arresting, convicting and imprisoning huge numbers of people.

What we're doing today is forgetting what the origin of the exclusionary

rule was. It's not to protect criminals. It's to protect innocent people, and we always think about the exclusionary rule within the context of the criminal justice system. But what we should be thinking about is all those innocent people that walk down their streets, live and work in their communities every day, and should they be subjected to unwarranted intrusions because the officer has a hunch based on, let's say, good faith, based on a reason that he can articulate or can't articulate?

Should individual innocent people be subjected to these unwarranted intrusions? And that is what will happen. The exclusionary rule will hurt innocent people throughout the state. We never hear about the officers stopping innocent people. They act on a hunch and no one gets arrested because the innocent person didn't have drugs, didn't have guns, wasn't involved in criminal activity. There are thousands of cases like that where we can't give a voice. We can't measure that harm.

So I submit what we're doing

today is not helping the few criminals that get off. We're hurting the huge numbers of people who are innocent and need to be protected in terms of their privacy rights.

I believe this legislation would be a virtual abolition of the state exclusionary rule, I believe, as it's written, in terms of the bad faith exception and in addition, the proof has to show that the officer was not involved in legitimate law enforcement duties. If an officer has a uniform, they are out there doing legitimate work, conceivably. How will the defendant ever be able show that there was bad faith?

In essence, what we're doing, we're saying now to the Court of Appeals, "Do not get involved in protecting the rights of citizens. It's no longer your job." And that's what this legislation is doing.

I think it's a frontal attract on the doctrine of separation of powers. It is a frontal attack on the independence of the judiciary, and we in the Legislature, by passing

this, are treading on the authority of the Court of Appeals to interpret the laws of the state. We can have an active and legitimate role in this area. Let's not overstep our bounds. We can say the Court should interpret the rules and, if we object to the way they interpret the Constitution, we can amend the Constitution to make it clearer. That is what our role in the Legislature is, for legitimate purposes to amend the Constitution, not to intervene and to take away the authority of the courts.

And we should ask ourselves who is in the best position to protect the citizens of New York State? Is it people in Washington, or should we ignore 20 years of jurisprudence and say that the judges we elect and appoint do not understand our traditions, do not understand the law of New York State? I mean, repeatedly, we as Republicans and Democrats talk about state rights, the ability of the states to be able to fashion their own laws to protect their citizens. Why in this instance are we saying we are not able to protect ourselves and must rely

on federal guidelines?

I believe the outcome of this legislation if it's passed will invite more unwarranted intrusions. It's so broadly drafted, law enforcement officers can stop people for no reason or any reason at all. There does not have to be any indication of criminality and, moreover, it will not give guidance to the police department so they can be trained and that there is an actual accurate description of what is allowable under the law.

So if you talk to police commissioners over the last 20 years -- and there's some documentation -- they wanted the courts -- they wanted clear guidance as to how they should train their officers.

So let me just end and when I started that this is a -- I think, a grim day because I believe the Constitution is not just an inconvenience. It's not just a piece of paper. It's not something we can hold up as true on one day and discard on another, that it is a precious document that should be cherished

and that it should not be tampered with, and it should withstand the whims and changing views of the populace.

And so when I heard today that the times demand it, that is exactly the reason why we should not tamper with the Constitution. Yesterday may demand something differently, today something else, and tomorrow a different result, and that's why we have a Constitution that we do not change it willy-nilly at whim, and there is a process available to the Legislature if we want to clarify or change that Constitution.

We should not destroy the doctrine of separation of powers and the independence of the judiciary. This is a very dangerous path we're embarking upon. I hope all of you will give it a second thought. We all care about law enforcement. We all care about stopping crime on the street, but there must be a balance, a reasonable balance between law enforcement and the protection of innocent - and let me underscore, innocent people that walk

and live on our streets.

So I hope many of you who might have been predisposed to vote for this legislation will consider voting against it. Take another look. Again this is a dangerous course, and it needs to be stopped.

Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger.

But before that, Senator Holland.

SENATOR HOLLAND: Could we read the last section and let Senator Santiago vote, please.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

Senator Santiago, how do you vote?

SENATOR SANTIAGO: In the negative.

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

The roll call is withdrawn. We're back on debate.

Chair recognizes Senator Dollinger for the floor.

SENATOR DOLLINGER: Will Senator Volker yield for a couple of questions?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a couple of questions from Senator Dollinger?

Senator yields.

SENATOR DOLLINGER: Senator, I appreciate the courtesy that you gave to the members of the Codes Committee in delaying this debate. As you may know, I sent a memo to your office, and we've reviewed, and I think your counsel has reviewed.

What I would like to do is focus, if I could, with a series of questions about just one portion of the bill to try to highlight

one of the points Senator Abate made, which is how the drafting of this bill is just going to punt to the courts all kinds of critical determinations that are not really specified in the bill.

So with that in mind, through you, Mr. President, can I turn your attention to line 12 in the bill which talks about criminal law enforcement duties. It says that when engaged in criminal law enforcement duties - this deals with the section that gives officers the right to stop people and ask questions. Does it mean that -- does this section mean that it only applies if they are involved in criminal law enforcement duties? What happens if they are enforcing traffic laws and they want to stop someone and ask them a question but they are only giving out traffic tickets? Are they permitted to then ask the questions and follow the course of conduct described in the bill?

SENATOR VOLKER: I don't think that the issues that are involved in this bill have generally come up on traffic stops, but I

think what you'll find that if you follow the Vehicle and Traffic Law you will find there are criminal offenses within the Vehicle and Traffic Law. So when a police officer is involved in enforcing the Vehicle and Traffic Law, he is also involved in the -- engaged in criminal law enforcement. So I think the answer to that is it would be included, although these kinds of issues generally don't come up unless there's something more than just traffic involved. But I think the answer is you will find clearly that criminal law is involved in traffic enforcement also.

SENATOR DOLLINGER: But, again through you, Mr. President.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: All of the issues in this portion of the statute, as you know, will be litigated to death in the courts

of this state because sooner or later some police officer is going to stop someone, ask him a series of questions, arrest him. They'll find out he or she has drugs on them or some other contraband and, lo and behold, the question will be the validity of the stop and the validity of the questioning, all of which hinge on the specific, very narrowly construed language in this statute; isn't that correct?

SENATOR VOLKER: Yes, it is, but I can't imagine -- and, of course, I suppose you could have a judge that would say, "Well, there's criminal penalties in the Vehicle and Traffic Law and any time that you are involved with the automobile in traffic that the criminal law could be involved, but we don't think that it's specific enough." Sure, you could, but I think, in general, that would be considered to be unreasonable.

And it seems to me when you get too specific that's when you get into problems, and I think I could make the reverse argument to what you are making that I think it is specific

enough. In fact, you might have a problem if we talked about the V&T law with just the V&T Law and whether these issues should involve just the V&T Law.

So I think that this statute does apply to what you are talking about but only in a very narrow manner, so I think the issue of V&T stops is very clear. That's already in the law. The issue of the criminal law would occur afterwards.

SENATOR DOLLINGER: Again, through you, Mr. President.

What happens if the person under this statute refuses to answer the question? What's the consequence to the individual?

SENATOR VOLKER: The answer, I think, to that would depend on the circumstances. If the law enforcement officer stops somebody and can find nothing wrong, if the person doesn't want to answer, there's very little that police officer can do. If the person -- if the law enforcement officer directs him to do something and he absolutely refuses, I

suppose he could -- in the Vehicle and Traffic Law, he could bring some violation against him if he was blocking traffic or something of that nature.

But, generally speaking, the truth is, Senator, if without -- if there is no violation, there is no criminal conduct, and it did happen to me at times. When I asked somebody some questions and they wouldn't tell me, if I didn't find anything wrong, I just let him go.

SENATOR DOLLINGER: Well, then I guess my question is, what does this statute add, then, to the laws of this state?

SENATOR VOLKER: Well, what it adds, Senator, is if there is some sort of criminal conduct, then you have -- I mean, Senator, I think the thing is you are looking at it from the law student side. I am looking at it from what really happens out in the street, and that's what this statute is about, and I think that is the trouble. The trouble is that we must look at it not from the standpoint of

what lawyers think in the courtroom but what really happens on the street.

What this statute involves is the issue of somebody stopping a person, and there is a standard for what is involved in that stop, and we don't have a judge standing there, of course, looking over his shoulder and saying, This is what you should do or you should do that right here. So we have to set standards. What this bill attempts to do is set standards.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: I guess my question is, what standard is set when it says, "when he has an objective, credible reason not necessarily indicative of criminality"?

SENATOR VOLKER: Right.

SENATOR DOLLINGER: What does

that mean?

SENATOR VOLKER: That means it's an objective, credible reason not necessarily indicative of criminality. I think that's pretty clear. If there's a reason -- and, by the way, if he can't show that, then it's probably going to be thrown out.

SENATOR DOLLINGER: But I guess my question is, if he believes that there's criminal conduct, he clearly has a right to ask questions. He has a right to apprehend. Now we have laws that define when he can apprehend for misdemeanors, when for felonies.

But my question is, "an objective, credible reason which is not necessarily indicative of criminality," could that be the presence of an African-American in a predominantly white neighborhood?

SENATOR VOLKER: I think the answer to that is that, if that were to be determined to be, the answer would be no. There isn't a court in this state that would say that kind of a stop would be legal.

SENATOR DOLLINGER: All right. But if he has an objective, credible reason but it doesn't relate to anything criminal but it relates to something else, what is that something else that would promote, would trigger the application of this statute?

It's obviously not a crime. He has done nothing wrong. There is no evidence he's done anything wrong. But for some reason this bill would give the police the ability to say to somebody, "I know you have done nothing wrong but I have a clearly objective reason to ask you a series of questions," to which, I would assume, the individual would say, "What have I done wrong, officer?" The officer would say, "Nothing, but you've still got to answer my questions."

I guess my question is, when would he do that?

SENATOR VOLKER: What you just said is not correct, by the way. Let me just say that no one is saying that anybody necessarily is allowed to ask a series of

questions unless there's some reason for it. You are saying, what is that reason? I don't know what that reason would be and that's one of the reasons we have this in the law.

And by the way, we are, in effect -- remember, the statute is already there. No one is saying, even the Court of Appeals has not said that a person can't be confronted and questioned. The issue is what the standards are.

For instance, you mentioned a traffic stop. The issue of whether you can stop a car is pretty clear. Obviously, you can stop a car if a person violates a V&T statute or there is an indication that that person may have violated the V&T, or even if not. You can just stop a car to check that vehicle out for various reasons, for plates and things of that reason. The right to do that for a law enforcement officer is clear, and the questions about the person's driving are clear. Then comes the indication, though, that if there's something potentially, for one reason or another, is a

person lying on the other side of the car who is drunk, for instance, just as a example, and then the issue is, is that person all right, is that person sick, things of that nature.

SENATOR DOLLINGER: Right, but again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, just let me interrupt for one minute because there have been several inquiries from members. Debate on this issue started at 3:38, so we're about 18 minutes away from the two-hour time limit, and Senator Leichter has indicated a desire to speak also. I just bring that to your attention.

Senator Volker, do you yield to another question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Under the circumstances that you've just described, those would all involve indications of criminality, drunkenness, public intoxication, driving while

intoxicated, violations of the Vehicle and Traffic Law. This statute envisions some other objective, credible reason for which an officer can stop someone, ask him a series of questions and then, it seems to me, Senator, the critical issue then is, what happens if the individual says, "Go to hell?" What happens?

SENATOR VOLKER: If there is no criminality and if there is no indication that there is anything improper, illegal, or in violation of any statute, I presume that law enforcement officer would have to let that person go.

SENATOR DOLLINGER: Well, then, how does this change current law?

SENATOR VOLKER: When it changes current law is in the issue -- how it really changes current law is when you find somebody who has actually either done something or has some sort of evidence or something that there's some reason for obviously arresting him, and the criteria is set out, by the way, already now. It was set out in the Court of Appeals case.

The Constitution is still there. The Fourth Amendment, all that sort of stuff, is still there. All we are doing here, in fact, is setting a specific standard by which that person or the law enforcement person would make some judgment.

What you are saying to me, Senator, is -- let me tell you something. If you don't trust law enforcement officers, then no standard is going to be used. This doesn't, by the way, substantially change what has been the law in this state for some years, except that some very technical Court of Appeals cases have added some additional problems to the ability of law enforcement people to challenge people.

Now, Senator, if you don't trust law enforcement officers, then nothing we will do here is going to be acceptable. My attitude is -- have there been some illegal searches over the years? When I was a police officer, I saw some. They were thrown out, by the way, then just as they could be thrown out under this

bill.

Should law enforcement officers be properly trained? Of course, they should. Is this legislation -- are we opening up the Pandora's box? We're not changing the Constitution.

What you're saying to me is, your trust for law enforcement officers is such that you are afraid that this is going to be abused. Senator, that's not really the issue. The issue is we have a standard here, and we are setting up a standard which I think is reasonable. You don't agree. I understand that.

But, Senator, I don't think this is lacking in definity, as you may think. I like to think that I'm a decent lawyer. I think I know what this statute says, what this provision says, and I think that it's something, I think, that not only can stand up -- stand the test of the court, but I think it can stand the test of reasonableness.

SENATOR DOLLINGER: Just so you know, Senator, it's not law enforcement I don't

trust. It's the government that I don't trust. It's the government that makes -- I think law enforcement does what government tells it to do. It's the notion of government taking away people's civil liberties that makes me so distrustful.

On the bill, Mr. President.

This debate is not new in New York. As Senator Volker probably knows, there was a lively debate in 1938 when the constitutional amendment that we talk about today was passed. I think it might be appropriate just to read the sort of blunt language of that amendment.

It says -- this is Article I, Section 12, of the Constitution. It is identical to the Fourth Amendment of the United States Constitution. It starts off with a very interesting phrase. It says, "The right of the people to be secure in their persons, their houses, their papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon

probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

As Senator Volker, I believe, knows, in 1938, when that amendment was passed, there was a proposal in the Constitutional Convention to create an exclusionary clause, and there was a very wonderful debate which -- I've got the constitutional records here. I would just like to read, I guess, the section that perhaps agrees with my position today.

This is from a man named Osborn, who had grown up in Germany. He talked about how those who favor the exclusionary rule were oftentimes accused of being soft on crime. He follows with this commentary.

He says, "Then the person who opposes me asks, 'Who are the people who would be protected by these proposals?' and answers himself in these words, 'Call the roll. Al Capone, Lucky Luciano, Waxy Gordon, Dutch Schultz, Toosie Herbert, and all the others.' I

resent any distinguished prosecutor or any other person saying or implying that I have any interest in Al Capone, Toosie Herbert, or their brothers in crime. I resent having my picture attached to this rogue's gallery because I happen to differ with the distinguished prosecutors. My family has lived long and honorably in the State of New York. Through my late father, I have been intimately connected with the problem of crime prevention and crime elimination. The imputation that because I favor this proposal I am participating in a plot to slip through a joker that will protect the criminal is as false as it is unwarranted. If every person who dares to disagree with the prosecutor is to be consigned to the criminal classes, then free speech and free thought are dead in this state. This cruel and deceptive contention is the strongest argument advanced yet for the inclusion of a forceful search and seizure provision in our Constitution to protect the honest, respectable, law-abiding citizens from unscrupulous and overzealous officials who,

wrapping themselves in the cloak of infallibility, look upon every man as guilty until proven innocent. But there is the more fundamental aspect of this question. We want no racketeers or mobsters or gangsters in this country, but neither do we want to open the door one millionth of an inch to racketeers of intolerance, hatred, and political oppression such as control Germany today, and I know no better way to open that door than to sanctify their methods by our agreement. Some day, of course, the fundamentally great German people will rise and banish the metaled and uniformed gunmen who are their present leaders and make William of Hohenzollern and his Junkers look like honest, just, and upright gentlemen. But the choice for us is clear between traditional American methods and the methods of Nazi tyranny. There can be no autocratic shortcuts for democracy. There is no hope for democracy save more democracy; and when a democracy finds it necessary to resort, however discretely, to the favored instruments of the GPU and the

Gestapo, it risks dangers far worse than the greatest criminal wave that this country has ever known. Such dangers seem remote as we sit here today. I hope they are, but they exist, and we should never forget now, as always, eternal vigilance is the price of liberty."

It's a wonderful debate. It's a wonderful commentary. It seems to me that what we've done in this legislation is we came up with a nice little epigram. Described it "The Police Protection Act." Of course, everybody believes in police protection. Those who are going to oppose this bill were against protecting the police. I can read the television commercials. I know what all the printed material is going to say, "That Rick Dollinger, he voted against the police."

He didn't vote against the police. He voted because he believes that this bill is wrong-headed; that the power that Senator Volker wants to give to people to stop and ask is a power in this bill that defies definition. If it's a crime, you can stop, you

can ask, you can search. You can do it under reasonable suspicion. You can do it under probable cause to believe that there's a crime. Police have great latitude.

What this statute says is, even though you have no evidence of criminality - there is none -- you can nonetheless have a police officer who might not even be wearing a uniform, who might look just like me, stand up to someone and say, "I got a couple questions for you, guy. If you don't answer, I'm going to take you down to the station." It sounds like a time long ago that we buried that kind of governmental abuse, not the police abusing it, but government abusing its prerogatives.

And it seems to me, further, that the notion that Senator Abate talked about, the question of good and bad faith shifts to the person who is accused the obligation to prove that government has acted inappropriately. It seems to me that in order to justify evidence, in order to take evidence into our courts, the exclusionary rule adopted by the United States

Supreme Court 70 years ago has stood the test of time.

And it seems to me, although I would be the first to perhaps disagree with my colleagues, Senator, who say that we don't have the constitutional right to do this, I think we do have the constitutional right to do it. We can say to any Court in this state, "We have looked at your remedy applied to your constitutional harm, and we've decided that we want to enact a different remedy." I think we could pass this and perhaps make it constitutional.

But more importantly, it seems to me, it sends the wrong message about the role of government in our society. It seems to me we turn the criminal justice system on its head. It seems to me we send a message that the precious liberties, the precious rights that were so deeply fought for in this country will be lost.

I will close with Justice Brandeis. We're all quoting judges these days,

let me just quote him. "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipotent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for law. It invites every man to become a law unto himself. It invites anarchy. To declare that in the administration of the criminal law the end justified the means, to declare that the government may commit crimes to secure the conviction of a private criminal would bring terrible retribution. Against that pernicious doctrine, this court should resolutely set its face."

Reluctantly, Mr. Chairman and Mr. President, I will be voting in the negative.

ACTING PRESIDENT KUHL: Senator

Leichter on the bill.

SENATOR LEICHTER: Thank you, Mr. President.

I think all of us accept that our first duty and obligation is to protect the public safety, and I think all of us appreciate the concerns that exist in this society about the high level of violence, the high level of crime, although fortunately in this state, in my city and throughout the nation, crime has been declining, probably for demographic reasons but it has been declining.

But, nevertheless, we want to continue to see that where we can strengthen law enforcement, we will do this, and I don't think there's any difference here among us on this. I think the one thing that if you really are concerned about law enforcement that you ought to hold sacred is that you will not politicize it; that will you will not make it such a partisan issue that you don't really care about law enforcement; what you care about are votes.

I must say that as I read this

bill it was either drafted with blatant politics in mind or sheer ignorance. This is, without question, the worst drafted bill that I can remember seeing in many a year, and I can not believe with all the disagreements I have with the second floor that anybody on the second floor could have drafted this. And I've been thinking here, "Who could have drafted this?"

Now, I know Dale Volker didn't draft it because I've worked with him. We differ, but his workmanship, his quality, is fine, and I came up with only one name, only one person that could have drafted this. I think this bill was drafted by Bill Powers, the Republican State Chairman, because no way can you otherwise explain what is a bill that really makes so little sense, that has so many loopholes, that's clearly unconstitutional.

And I want to say to you, Senator Volker, I have the world of respect for you because you stood up very manfully. You defended this bill. You did it as skillfully as could be done, and I didn't see any colleague

from your side of the aisle get up and give you any help for good reason.

And, Senator, I want to make it very clear. In no way am I in any way denigrating your good work, and if we ask you questions and try to show up what we see are inconsistencies in the bills and flaws, it's not in any way criticism of you.

With that in mind, I just want to ask you just a couple of questions on one aspect of the bill.

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker yields.

SENATOR LEICHTER: Thank you, Senator. This is Section 4, which starts on page 9 and which deals with the circumstances under which a court can suppress evidence.

And as I read it, and tell me if I'm correct, the suppression of evidence may not occur under two specific circumstances, right,

or unless two specific circumstances are met?

SENATOR VOLKER: Right.

SENATOR LEICHTER: One of them relates to Section 12 of Article I of the Constitution, and I think Senator Abate asked you about that, and I think raised some very significant questions. I want to ask you about the second part.

Now, the two are distinct, because the wording is not "and" but "or", so under either one of these.

Now, under the second one, it seems to say that any statute of this state that we enact on or after the effective date of this particular bill, if it becomes law, that any - where we say that you can not suppress or, rather, on the other hand, it's really the other thing; that unless we say suppression can occur, the Court may not suppress the evidence. Right?

SENATOR VOLKER: Yes. I think that's correct. But, of course, it would still be governed by the Fourth Amendment to the

Constitution and so that we would be limited in what we could do, but that's correct, yes.

And remember that we're talking about "or" and we are still governed by number 1, the first paragraph of the Constitution. So, yes, that's true, and this is "or," but we're still going to be governed.

SENATOR LEICHTER: Senator, I'm glad you at least concede at least to this extent that we will be governed by the Constitution. But this bill is an effort, is it not, to tell the courts how to interpret the Fourth Amendment and to, in fact, change the way the courts have been interpreting the Fourth Amendment and how the courts have been suppressing evidence?

SENATOR VOLKER: No, I don't think it's an attempt to interpret the Fourth Amendment. I think it's an attempt to clarify the way in which the courts have actually dealt with Section 12 of Article I of the Constitution. As you, I'm sure, were listening, I related to you the People versus Johnson case

and other cases where the Court of Appeals specifically said that the Legislature has the right to determine how this evidence can be admitted; that it is a judicially declared rule of evidence that the Legislature is free to abrogate. I think that's what we're referring to in 2 also, and we're following that with this provision.

SENATOR LEICHTER: Well, Senator, you know, you have given us a lot of, "Well, what we really meant" or how it should be interpreted, but as you read this language, on the face of it, it says that this Legislature by statute can tell the Court that you shall only permit the suppression of evidence under circumstances that we permit. Isn't that what the language states?

SENATOR VOLKER: Well, we are taking what the courts have already said. We are not -- once again, let me say we are not abrogating either the Constitution, the Fourth Amendment of the Constitution, obviously, or the section of the Constitution which is identical

in the state Constitution. We are saying that the Legislature has the right -- where a court goes even farther in interpretations, has the right to make decisions in this area, and there is a Court of Appeals case, as I said, that specifically says that that's correct.

SENATOR LEICHTER: Well, Mr. President, on the bill, and my thanks -

ACTING PRESIDENT KUHL: Senator Leichter on the bill.

SENATOR LEICHTER: And my thanks to my colleague.

I must say that, certainly, listening to the questions of Senator Waldon and Abate and Senator Dollinger and hearing the answers, it seems clear to me that either this bill in certain respects says absolutely nothing or that it's a very blatant attempt to interfere with the judiciary and to change the Constitution by statute. I think this is an effort to overrule the Court's interpretation of the Fourth Amendment and of Article I, Section 12 of the state Constitution -- or Section 12 of

Article I of the state Constitution.

And let me just say that I know that the Governor and Senator Volker have pulled out one or two cases where, on the face of it without all the facts being made clear, it may seem that the Court suppressed evidence which allowed somebody who appeared to be guilty to go free, and I'm sure that any court under any document at some times will make mistakes.

But there's nothing worse that we could do than to take what is the greatest document in the history of this world for the governing of a society's affairs and to change the shining jewel of that document, the Bill of Rights -- and that is true whether we speak of the U.S. Constitution or we speak of the state Constitution, and nobody here has shown a problem. If there was a problem, then maybe you'd amend the Constitution.

Because nobody has said or shown or can reasonably claim that in some ways we're endangered as a society or that the level of crime relates to the fact that the suppression

of evidence is making it impossible for law enforcement officials to do their jobs and protect the public. The fact is there is a minuscule number of cases that are thrown out on suppression of evidence, and in those minuscule cases you can only find minuscule numbers where you could possibly disagree with the Court.

But what is important are constitutional protections. We ought to embrace this Constitution. We ought to worship it. We ought to uphold it. We ought to defend it. We ought to protect it and not to undermine it as this bill seeks to do.

Senator Volker, at one time, I think when you were answering questions by either Senator Waldon or Senator Abate, I think you stated that we, we the Legislature, have the right to interfere when the Court isn't doing its job. I don't know what that means. I don't think we do. The separation of power doesn't permit that. The Court may be wrong and, if it's wrong when it involves an interpretation of a statute, we can change that statute. But when

it involves the Constitution -- and you may disagree and I may disagree -- we can certainly change the composition of the court, and that's a legitimate way to change public policy, but we can't by statute overrule constitutional interpretations, and that's what you seek to do and that involves something even more serious, something that is more dangerous than maybe some criminals getting off, and that is that you are tampering with the basic protections of people in our society.

I remember at some period of time after I came to this country, I heard somebody say, and I thought it was the most wonderful statement, that the laws of this country and our law enforcement and judicial system would rather let 100 guilty people go than to convict one innocent person. Yes. That means that we probably under our laws let people go that in a less democratic or liberty-oriented system would be held guilty, and in that way -- maybe it's true. People say there was less crime in Nazi Germany than there is now in Germany.

But the fact is that by doing this, we're protecting basic rights of people to be free. You who claim always -- you, the Republicans, that you are concerned about the interference of government in the affairs of people, yet here you want to take away one of the most sacred rights. Unlawful search and seizure is banned.

So let me just say, as a political document, I can understand it. As Senator Farley said -- those are immortal words, Senator, which we keep on quoting -- "We're not voting on bills; we're voting on issues." If you want to vote on issues, the political issue, you've got it and you can use this.

But let me just tell you. The lovers of liberty, the protectors of democracy, the protectors of the public, are the ones who will vote against this bill.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

SENATOR LEICHTER: Slow roll call.

ACTING PRESIDENT KUHL: The Secretary will call the roll slowly. Ring the bells.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Senator Connor.

(Negative indication.)

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

(There was no response.)

Senator DiCarlo.

(There was no response.)

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just briefly to explain my vote.

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: I was very simple, Mr. President. This isn't a vote against my lack of faith in law enforcement. This is my lack of faith in the government and my belief that the powers of the majority expressed in government can not -- can not and never should take away the precious rights that the people of this state put into Article I, Section 12 of the state Constitution. We shouldn't do it. It's the wrong thing to do.

No.

ACTING PRESIDENT KUHL: Senator Dollinger in the negative.

Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: In the negative.

THE SECRETARY: Senator Gonzalez, excused. Senator Goodman.

(There was no response.)

Senator Hannon.

(There was no response.)

Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson, excused.

Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Nay.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

(There was no response.)

Senator Leichter.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter to explain his vote.

SENATOR LEICHTER: I'm sorry, I have forgotten to do something. Since everybody has been quoting judges and they are great constitutional judges, I'm going to quote a judge who may not be -- certainly known here but may not be known throughout the nation, but he

deserves to be quoted, and it's Judge Simons of the Court of Appeals, a Republican judge from upstate New York, and he states in a decision writing for the Court of Appeals where - upholds the suppression of evidence, upholds Section 12 of Article I, and he says -- first, I'm sorry, before I read Judge Simons, just reading from a decision of the Court of Appeals -- I'm sorry from the U.S. Supreme Court which says, a, quote, "'good faith' ", unquote, "exception on the other hand will tend to put a premium on police ignorance of the law." Unquote.

Just very briefly from Judge Simons. He says, "The exclusionary rule's purpose is completely frustrated. A premium is placed on the illegal police action, and a positive incentive is provided to others to engage in civil, less lawless acts in the future." A good Republican judge on the Court of Appeals.

Thank you, Mr. President.

I vote in the negative.

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

Continue the slow roll call.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

(There was no response.)

Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

Senator Markowitz, would you please take your seat.

SENATOR MONTGOMERY: Thank you, Mr. President.

I look at this legislation, and it's particularly threatening to certain of my constituents as I interpret what I read here, especially the part that says that a police officer -

ACTING PRESIDENT KUHL: Senator Montgomery, excuse me just a minute.

It's extremely noisy in here.

SENATOR MONTGOMERY: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Thank you.

Senator Montgomery.

SENATOR MONTGOMERY: A police officer may approach a person in a public place located within the geographic area of such officer's employment when he has an objective,

credible reason not necessarily indicative of criminality, and to the full extent permissible under the Constitution may ask such questions and take such other actions as the officer deems appropriate.

So there was a young man in my district just a week ago who was harassed by the police as he was walking down one of the tree lined streets in my district that is part of the historically landmarked area. This youngster was walking from high school and was fixing the buckle on his belt, was stopped by the police and essentially frisked and harassed by the police for no apparent reason.

This law seems to put in statute the right of that police officer to do that kind of stopping and harassing of young African American males, in particular, even more than they do already. So I think this is a particularly ominous piece of legislation, and I would hope that all of my colleagues would vote against it as I am because we can not create this kind of police state atmosphere in the

communities within our districts in the state.

So, Mr. President, I'm voting no.

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

Continue the slow roll.

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

Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago recorded in the negative earlier today.

Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

(There was no response.)

Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford excused.

Senator Stavisky excused.

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.
SENATOR TULLY: Aye.
THE SECRETARY: Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Waldon. Volker, I'm sorry.
Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
SENATOR WALDON: No.
THE SECRETARY: Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: Secretary will call the absentees.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: No.
THE SECRETARY: Senator DiCarlo.
SENATOR DiCARLO: Aye.
THE SECRETARY: Senator Goodman.
(There was no response.)
Senator Hannon.

SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: No.
SENATOR PATERSON: Mr. President.
ACTING PRESIDENT KUHL: Senator Paterson.
SENATOR PATERSON: Mr. President, it's taking a long time to count these votes, don't you think?
ACTING PRESIDENT KUHL: You know, I've been trying to educate the clerk on counting, and we were trying to do it on fingers and hands, and we ran out once. Right now we're still trying to calculate. We still got a

couple of members to call. We'll be with you in just a minute, Senator Paterson. I may have to take my shoes off to get to my toes, and there's a serious objection up here at the desk about me removing my shoes. But we'll be just a minute.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Well, because there's an unfairness. I mean if Senator Tully was up there, and he's used to counting higher on a golf course than you are, you know, he wouldn't need so many toes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 36, nays 18.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar, the nine remaining

bills.

THE SECRETARY: Calendar Number 636, by Senator Hoblock, Senate Print 6736, an act to amend the Transportation Law, in relation to regulation of motor buses.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill's passed.

SENATOR GOLD: Hold on.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. No, Mr. President. Mr. President, I just want to ask the sponsor a quick question of explanation.

ACTING PRESIDENT KUHL: Withdraw the roll call. We're now -- or we can -- motion

is to reconsider the vote by which the bill passed the house. Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: Bill is before the house. The Chair recognizes Senator Gold. Senator Hoblock, will you respond to a question?

SENATOR HOBLOCK: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Yeah, Senator. I know it's late but, very briefly, could you just tell us why we are making this exemption, and I understand that there are other places that have made the exemption but why are we making the exemption? If these regulations went in for safety reasons, then why, if we do your bill which I believe is going to conform to what other people have done, why are we doing it if

the original regulations were for the safety of people?

SENATOR HOBLOCK: Well, the current exemption applies to operation in a city or unincorporated village. We're adding a county or the jurisdictional area of a transportation authority because what we've been told now is that these motor buses go to a line at the end of the city and, you know, their area may be across the county line but they can't go. What this does is, it gives the transportation authority more flexibility with their bus routes now.

SENATOR GOLD: Mr. President, will the Senator yield to one more question?

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

SENATOR HOBLOCK: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, I understand what you're saying in terms of if there are places -- and I believe the city of

New York is one -- where the regulations do not apply.

SENATOR HOBLOCK: Right.

SENATOR GOLD: But the question I had, and I know there are other Senators on both sides that have it, and it's just a question to explain. We could conform everybody by making the city of New York and others abide by the standards and that would be a conforming factor.

In conforming it the way you're doing it, we are apparently taking out some protection. Now, the answer that would make me feel comfortable is that maybe the protections aren't needed because they've done it another way, et cetera, et cetera, but if it's just conforming it, why do we want to conform it if we're taking away some protections to riders?

SENATOR HOBLOCK: Well, the question is whether or not you are taking away protection. What's happened is that, due to federal cutbacks, many of these authorities had to cut routes. They just did it here locally in

the tri-county area. Here in the Capital District crossing county lines is like less than half across the city of New York and larger cities in this state, and in order to become a little bit more efficient and to economize, this is what management would like. This is what the drivers would like so they could be a little bit more flexible in operating within that area.

Now, keep in mind it's within a county or the jurisdictional area of the authority.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 651, by Senator Holland, Senate Print 5789A, an

act to amend the General Municipal Law, in relation to indexing the interest rate on judgments.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Holland for an explanation.

SENATOR HOLLAND: The Senator knows that the General Municipal Law says that now interest can be no more -- shall not exceed 9 percentum on judgments against municipalities. This bill says that it will be the prime interest rate but no more than 9 percent.

In the past, up until 1982, the interest rate was 3 percent when the prime interest rate was running at 13 percent or 20 percent. So this Legislature raised it to 9 percent or not to exceed 9 percent. Therefore, the judges are setting it always at 9 percent and, if we say the prime interest rate, the taxpayers of the individual municipalities will save some money.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, yes, if Senator Holland would yield, please.

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

SENATOR LEICHTER: Senator, just to explore the technical language of your bill, you refer to the "Federal Reserve prime lending rate". What is the "Federal Reserve prime lending rate?" I know what the prime rate is but I don't think I know what the Federal Reserve prime lending rate is.

SENATOR HOLLAND: I can not tell you exactly, but the -- I can't tell you.

SENATOR LEICHTER: Well, may I respectfully suggest that you lay the bill aside until tomorrow, take a look. I think there's a prime rate. I do not believe -- I may be wrong, but I don't believe there's such a thing as a "Federal Reserve prime lending rate". I'll ask

the distinguished chairman of the Banking Committee if he knows any such technical gauge or guide of a rate of interest.

ACTING PRESIDENT KUHL: Senator Leichter, you have the floor. Senator Farley, under the rule of the house, currently cannot yield to a question because he hasn't spoken on the bill, and I'm a little bit reluctant to bend the rules for the sake of this.

Are you asking Senator Holland to lay the bill aside, Senator Leichter?

SENATOR LEICHTER: I'm just suggesting that we get, since Senator Holland didn't seem to have an answer to it -

SENATOR HOLLAND: I am told that the Federal Reserve sets their own rate and that is what the bill is referring to.

SENATOR LEICHTER: Mr. President, if Senator Holland will continue to yield.

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

SENATOR LEICHTER: The Federal

Reserve has numerous rates. It has the discount rate; it has the overnight lending rate, and so on. I don't believe that there is anything such as the Federal Reserve prime rate. If there is anybody in the house that says, yes, there is this and this, I'll certainly accept it, but my belief or my -

SENATOR HOLLAND: I know what you want. You want the other 9 percent changed also but I will -- I will lay it aside until tomorrow at your suggestion.

ACTING PRESIDENT KUHL: Bill is laid aside at the request of the sponsor.

SENATOR LEICHTER: I will appreciate it.

ACTING PRESIDENT KUHL: Bill is laid aside at the request of the sponsor.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 671, by Senator Holland, Senate Print 201, an act to amend the Vehicle and Traffic Law, in relation to optional equipment.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Explanation has been asked for, Senator Holland.

SENATOR HOLLAND: This was suggested by a senior citizens group in Hillburn, New York, where they have buses that pick them up and bring them to the Senior Citizens Center. Because the senior citizens are not as agile, do not hear as well, may not see as well, their suggestion was -- and I agree with their suggestion -- that localities should have the option of having -- of putting the same red light system on the senior citizen buses that are on school buses so that drivers would stop behind the senior citizens' buses, and that's what the bill does.

ACTING PRESIDENT KUHL: Senator Dollinger? Senator Stachowski? Senator Leichter?

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator

Dollinger.

SENATOR DOLLINGER: Would Senator Holland yield to a question?

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: In this bill, is there any distinctive marking on this bus to know -- to trigger the responsibility to stop as you approach it? With a school bus, they're big, they're yellow, they're easily identifiable. I know that in my -- in my home town we have a bus that transports senior citizens that, frankly, looks like just about any other kind of van, and it might be very difficult to distinguish them visually as you approach. You see flashing red lights on a gray pick-up truck or a gray van, you wouldn't necessarily conclude that that's a school bus or the equivalent of a school bus, and it triggers your obligation to stop and not pass it in the

oncoming direction.

SENATOR HOLLAND: Same type of light system, Senator, that's on the school buses.

SENATOR DOLLINGER: Right, but is there any provision in the bill that would require different markings on the bus so you'd be able to recognize what the bus was? The advantage of a school bus is, I think almost everywhere in this state they're painted yellow, they say "school" on it.

I'm just concerned that a driver approaching would -- would not, I think, as many drivers do, he sees the yellow school bus, he sees the light flashing and he immediately concludes he's got to stop. You see the light flashing but don't see a yellow school bus, would you come to the same conclusion?

SENATOR HOLLAND: That's what the bill says, Senator, have the same flashing red lights as a school bus, and I hope and believe that everyone in the state understands that you must stop behind those red lights.

SENATOR DOLLINGER: O.K. Again just for perhaps if this goes to conference or if this comes to the Senate again, I would just think it would be a stronger bill if there were some identifiable markings on the bus so that the whole driving public who is so used to stopping when they're big and yellow when the lights go on, would be able to make the same conclusion.

Otherwise, you may have a hollow safety protection for the elderly because the voter or the driver just doesn't recognize the fact that this is the equivalent of a school bus for purposes of stopping.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR HOLLAND: Let me just finish that if I could, Mr. President.

The bill says that the regulations shall be set up by the Commissioner. Hopefully, that will cover your concern.

ACTING PRESIDENT KUHL: Senator

Stachowski.

SENATOR STACHOWSKI: I don't know if I want to ask a question.

I just want to maybe clarify that this problem here is, and it's among the transportation people also, is that all these buses that different cities, different towns, use to transport seniors are all different. They're painted different. They look different and when suddenly red lights start flashing on them, I don't think that that alone is going to have a driver awareness that, as Senator Dollinger pointed out, the big yellow bus with "school" on it and the arm that comes down and then the red lights go on, that people are acutely aware that that's a school bus and they're prepared that they might have to stop behind it, where this -- this will be a different -- different kind of bus any place. If you're a visitor in the town and all of a sudden red lights go on a bus that's completely foreign to you, and I don't know as it always - is it mini-buses that they use to do seniors,

large buses? Would even senior vans fall under this? And then you'd have to wonder if the van in front of you is going to start flashing red lights.

I think the problem here is the concern that there's no uniformity in the vehicle used to transport seniors. I don't think there's an argument on this side that we don't want to provide the same protection or the people that are asking the question, whether that protection should be provided for seniors that are being transported, but isn't there a danger if we have multi-colored, multi dimensional vehicles with flashing red lights and what's going to happen to all the people that are driving and either one realizes that it's going to happen, the other one is from out of town and he probably piles into the car in front of him because he's not ready for that kind of bus to suddenly flash red lights?

I think there's a little bit of a problem here and that's just what we're trying to get at, and that's the only question we had

is how do we get around this and the fact that the Department is going to come up with the rules, I don't know that that alleviates that problem.

ACTING PRESIDENT KUHL: Senator Holland, would you like to address the issue and close debate?

SENATOR HOLLAND: Well, again, the Commissioner -- the bill says the regulation is prescribed by the Commissioner. The Commissioner hopefully would solve those problems that you're looking at, and again I certainly believe and hope that everyone in this state and for that fact, other states know that when you come up upon the rear part of a bus with red lights flashing that you stop.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of September.

SENATOR LEICHTER: Well, just very briefly, I just want to say to Senator Holland, as I read this bill, this bill would apply to any bus that could transport somebody 60 years of age. Doesn't say exclusively, so any bus -- I'm over 60 years. I get on any bus. That bus going to have to have flashing red lights? Because if you'll see at the beginning of the section, it says, any omnibus having seat capacity more than *** and used exclusively and then it says to trans... exclusively, and then it lists various people, but then you go on to say *** "and" after the listing of the people so the "exclusive" as I read it no longer applies to the change that you're making, so it would seem to be that any bus in the state of New York since it could take somebody who is 60 years of age or older, will have to have flashing red lights.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of

September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 56, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 686, by Senator Maziarz, Senate Print 6893, an act to amend the Highway Law, in relation to designating a portion of the state highway system the Senator Ralph Quattrociocchi Memorial highway.

ACTING PRESIDENT KUHL: Senator Maziarz, on the bill.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, this legislation

designates State Route 531 Extension which runs in the western portion of Monroe County as the Ralph Quattrociocchi Memorial Highway.

Mr. President, shortly after my election to this great institution, I sat down with Senator Ralph Quattrociocchi who had several years ago represented the west side of Monroe County, and Ralph Quattrociocchi provided me in probably the three or four hours that we were together, a great education, an education not only about western Monroe County, Monroe County in general, but also about this institution, and the last thing that Ralph Quattrociocchi said to me was that he not only loved his years of service here, but he loved the New York State Senate as an institution. He loved the individuals that he served with.

I was very fortunate about a month before Ralph unexpectedly passed away to have run into him unexpectedly. Ironically enough, it was at a volunteer fire company function. Ralph Q, as he was more affection ately known on the west side of Monroe County,

was still out there, still attending the volunteer fire company functions and the church functions and the things that he did so well when he represented western Monroe in this great institution; and he told me then, we had an occasion, as I said, unexpectedly to sit down and to talk for about an hour. He reiterated all those things that he told me about this great house of the Legislature, and he mentioned several names, names on both sides of the aisle, names like George Onorato and Bill Stachowski that he worked with, that worked with him, and I know after speaking to Ralph's wife after he passed away, the great love that he had for this institution, and I think it's only fitting that one project that Senator Quattrociocchi worked on almost his entire career in this house was the extension of Route 531 on the west side of Monroe County, and that road extension has opened up almost all of western Monroe and hopefully will in the future go further west and open up more commerce and business and provide more jobs to people in western Monroe County and

provide firms like Kodak and Xerox and Bausch & Lomb areas for expansion on the west side.

I know that, when I asked Senator Quattrociocchi the last time I spoke to him, when I asked him what he considered to be his greatest accomplishment during his tenure in the New York State Legislature, he mentioned the extension of Route 531 and he said to me, he said, "In fact, I will tell you that the greatest accomplishment that I had in all my years of public service, both in the county legislature and in the state legislature was the extension of 531" because the extension of 531 provided -- opened up western Monroe County to commerce, development and jobs, and that's what Ralph Quattrociocchi was all about.

I know that Senator Quattrociocchi or Ralph Q, as he was more affectionately known, had a reputation on the west side of Monroe County for attending each and every event regardless of how small or how large that event would be and as I know some of the people who served with him in this body know

full well, that we're certainly going to miss him. The people of Monroe County are going to miss him, and I know that I as a -- as a new legislator here am certainly going to miss the counsel and advice that he provided to me, and I think it's only a fitting tribute, Mr. President, that we adopt this bill today, and I would also invite all of my colleagues in the Legislature to sign onto this bill as co-sponsors for a very worthy tribute to a very worthy colleague here.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

I appreciate Senator Maziarz' warm words about Ralph Quattrociocchi. I knew Ralph for a long time, and I shared a ballot with him on three separate occasions; but I just rise because I -- I can't let this moment go without talking about perhaps what, in my judgment, might have been the ultimate tribute

to Ralph Quattrociocchi.

I don't believe, and I went back through my records, I believe Ralph Quattro ciocchi passed one bill in this house and I, for one, can't believe that in the eight years he spent here, he only had one good idea, and I'm disappointed, I guess, that we have a system that somehow says all the ideas, all the names on bills are on the Republican side and, for some reason, even a bill like this doesn't in its first distribution get the people who shared many a meal with him on this side of the aisle -- I mean George Onorato, Bill Stachowski, Fred Ohrenstein -- who shared many a meal with him, and I guess I share Senator Maziarz' tribute to Ralph, and he certainly deserves to have this highway named after him, but perhaps the most fitting tribute we could give Ralph Quattrociocchi is to forever put away the notion that somehow -- and I believe this is equally appropriate in the Assembly -- that the notion that somehow all the bills have to have Majority names on them, don't get circulated among the

Minority, is the wrong idea.

I know Senator Velella has talked to me a number of times that this is extremely prevalent in the Assembly. I don't condone it; in fact, I condemn it. It makes silly sense over there; it makes no more sense over here, and my regret is that, frankly, the names of those who shared many a meal with him over here are on not on this bill in the first instance.

I don't fault the sponsor. I think, unfortunately perhaps, sometimes our staffs and sometimes through inadvertence, sometimes because it's the end of the year and we want to get this stuff done, we forget those courtesies, but it would seem to me that we would all be paying tribute to Ralph Quattrociocchi by abandoning that silly notion forever and getting used to the notion that we can all work together and create the legislation that will benefit the people of this state and remember a man who made a contribution not only to New York State but to the people in the town of Greece that I represent, and all of western

New York State, by pushing for Route 531.

ACTING PRESIDENT KUHL: The Chair would just note that, even though the sponsor has indicated he's willing to accept, that this is not something that the desk can do directly. You'll have to file the co-sponsorship form and get the sponsor's signature on it. So the information has to be submitted to Senator Maziarz.

The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed unanimously.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 692, by Senator Libous, Senate Print 4472, an

act to amend the Penal Law, in relation to increasing the penalties for repeat convictions of assault.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 743, by Senator Maltese, Senate Print 490, an act to amend the Public Authorities Law, in relation to providing for free passage for active duty military personnel.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 743 has been asked for by Senator Leichter.

SENATOR MALTESE: Mr. President, as the bill indicates, this would grant free passage over bridges and tunnels operated by the Triborough Bridge and Tunnel Authority to servicemen and servicewomen stationed in New York City. The bridges and tunnels under the jurisdiction of the Authority are the Triboro Bridge, Throgs Neck Bridge, Verrazano Narrows Bridge, Bronx Whitestone Bridge, Cross Bay Veterans Memorial Bridge, Henry Hudson Bridge, Marine Parkway Gil Hodges Memorial Bridge, Brooklyn Battery Tunnel, Queens Midtown Tunnel, and the fare is $3.50.

There are precedents for discounted fares in the Public Authorities Law for the Verrazano Narrows Bridge, the Cross Bay Veterans Memorial Bridge and the Marine Parkway Gil Hodges Bridge. This bill was originally requested by the commander of the Atlantic Fleet, and there are other jurisdictions, other states that provide for free transportation for servicemen, active duty military personnel.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Senator Maltese, I have a memorandum in opposition to a somewhat similar bill by the MTA. I want to ask you if you know of any opposition to this bill.

SENATOR MALTESE: I don't know of any op... Mr. President, I don't know of any opposition. The number that was given to us of active duty personnel, seriously reduced by the way, is approximately 15,000 active duty personnel in the entire city of New York, so I -- I don't think that too many people would be availing themselves. They'd be -- they'd have to be serving in New York City.

SENATOR LEICHTER: Mr. President, on the bill.

I just wish to point out -

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: -- that there was a memorandum in opposition to a similar bill by Senator Marchi which provided for toll-free

passage over the Verrazano Narrows Bridge to vehicles identified as belonging to members of the armed forces or their dependents.

Excuse me, Senator Maltese. If you'd yield just for one more question.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Yes, I know you read off a list of bridges. Is one of those the Verrazano Bridge?

SENATOR MALTESE: Yes, it is.

SENATOR LEICHTER: All right. Mr. President, I assume that the Authority would also be in opposition to this bill, although I must say this was -- I think this memo was -- I can't really tell. It was FAXed to me, and I can't tell what year this was, so it's questionable that the MTA would not -- is not opposing this bill, but, Mr. President -- yeah.

But, Mr. President, the reason

stated in this memo, the reasons that concern me is that we would be subsidizing the federal government. Senator Maltese, I would love to let all our veterans ride free, and I suggest that the federal government, which has a lot more money than we do, provide a means by which those soldiers and sailors and other members of the armed services, men and women who need to go across bridges in the city of New York which is under the jurisdiction of the Triborough Bridge and Tunnel Authority, that it afford them the means to do so without having to pay it out of their own pocket, but I don't think we're in a position to do it, much as I would like to help the veterans. This is not veterans, much as I'd like to help the members of the active armed services, we just don't have the money. We're short of money as it is, Senator. You know the shortfall that the MTA has. You know the decline in service in the Transit Authority in your district and my district and throughout New York.

Now, you're -- you're reducing

the amount available to support transit by many millions of dollars more. In this particular memo, the Transit -- the MTA says that this will cost millions of dollars per year. Maybe their figures are wrong. It's certainly going to have some cost. That cost ought to be borne by the federal government.

As it is, New York State gets, I think, short-changed by the federal government and even more so under the Newt Gingrich Congress. So why should we act like the big shot and say, Here's money that we don't have? I think it's well intentioned but fiscally unwise, Senator.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: I'd like to indicate my support for this legislation. Military personnel especially -- well, we have a situation, even on Staten Island, where there's a split jurisdiction between the Brooklyn side and the Staten Island side. For them to come across it's a $7 hit. Now, a lot of families

just can't afford that.

The mistake they made, and I've impressed them, why didn't you exact this before you came in? In California, in San Francisco, they have that privilege of going back and forth and they exacted that in negotiations when they were coming in. We have considered their presence a boon to the respective communities wherever they are located, and to deny them this, I mean they -- frankly, we're not -- I don't know, maybe we ought to exempt admirals if they have to pay or something, but really, I don't see any justification for -- for doing something that other communities have done voluntarily in an attempt to induce the presence of -- of the military, and they're paying a heavy price. It's -- it's heavy duty and it's costly to the military people. I know sometimes when they've had a massive transfer of a naval base to a southern port, they were relieved because of the cost elements. They were very happy where they were, but the costs are aggravated when they're in a high expense, high

cost area such as our own and where we can facilitate that, this is not -- this is not a heavy exaction. It is something that we would voluntarily and happily have given to them had it been made a condition for their arrival.

So I certainly support Senator Maltese's legislation.

SENATOR LEICHTER: Mr. President. Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Would Senator Marchi yield?

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: Senator Marchi, do you yield?

SENATOR LEICHTER: Senator, I appreciate your goodheartedness, but let me ask you why don't you include allowing them the right to ride free on the subway and the buses? Where's the distinction? Why just the bridges? How about those that have to ride the subway and the buses? Why not say -

SENATOR MARCHI: Well, that's next year's bill, Senator, I'll introduce - it's a heavy hit. I can see it graphically in that area where you're crossing a bridge or something that the tolls are very high. They're much higher than a subway or a bus or anything else, very high, and if you're a young enlisted man with a family, boy, you're really, really suffering.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 743 are Senators Leichter and Paterson. Ayes 55, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Continue to call the controversial calendar.

THE SECRETARY: Calendar Number 755, by Senator Farley, Senate Print 6129, an act to repeal Section 392-a of the General Business Law, relating to the manufacture and sale of used or second-hand hats.

ACTING PRESIDENT KUHL: Senator Farley, the day you've been waiting for.

SENATOR FARLEY: Thank you, Mr. President.

You know, this bill repeals an archaic law, to say the least, that regulates the advertising and sale of used hats.

Under the current law sellers of used hats such as antique stores, used clothing stores, charities such as the Salvation Army, St. Vincent DePaul and Junior League's Next to New store, and those sort of things, they must post a sign that's visible from 30 feet and they almost -- they also must announce that on this sign that used hats or second-hand hats are sold at this store, and every hat must be permanently

labeled as such, and a violation of this is a misdemeanor, and I don't want Bishop Hubbard or anybody else to go to jail because there isn't a sign posted outside the St. Vincent DePaul store, and this law when it was enacted in 1933, the consumers were potentially defrauded because the hats were refelted, and there may have been some lice in them, I don't know, and they were sold as new to unsuspecting customers.

Today, however, fortunately, is not 1930 and many small businesses and charities are at risk because they are unaware of the law. I haven't seen one of those signs in my whole lifetime. Enforcement of this law would lead to higher cost. We don't have a hat police any more, and incidentally I've contacted the Retail Council, the Millinery Information Institute, and neither of them have any objection to repealing this law, and the bill is carried in the Assembly by the Majority Leader, Mr. Bragman, who thinks it's essential that we repeal this law.

Are there any questions?

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Could they be called second-head hats instead of second-hand hats?

SENATOR FARLEY: Whatever you'd like.

SENATOR DOLLINGER: Good. I'll vote in favor.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR MARCHI: Would Senator Farley yield?

ACTING PRESIDENT KUHL: Senator Farley, do you yield to Senator Marchi?

SENATOR MARCHI: Do you have a message of necessity from Bishop Hubbard?

SENATOR FARLEY: I'm sure that Bishop Hubbard would have no objection to this because I'm quite sure the St. Vincent DePaul store has no sign out front.

SENATOR MARCHI: You've convinced me.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 761, by Senator Seward, Senate Print 6143, an act to amend the Public Service Law, in relation to cellular telephone services.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR TULLY: Lay the bill aside.

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

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 794, by Senator LaValle, Senate Print 7231, an act to amend the Education Law, in relation to requiring higher education report cards.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Tully.

SENATOR TULLY: May we please return to reports of standing committees?

ACTING PRESIDENT KUHL: Return to reports of standing committees. There's a report of the Senate Finance Committee at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bill directly for third reading:

Senate Print 7542, by Senator Volker, an act to provide heroism, valor and outstanding performance awards to certain members of the State Police and making an appropriation therefor.

ACTING PRESIDENT KUHL: Without objection, the report of the Senate Finance Committee is received. The bill is reported directly to third reading.

Secretary will read the title.

THE SECRETARY: Calendar Number 1218, by Senator Volker, Senate Print 7542, an act to provide heroism, valor and outstanding performance awards to members of the State Police.

ACTING PRESIDENT KUHL: Senator Tully.

SENATOR TULLY: Yes, Mr. President. Are there messages of necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There is a message of appropriation and necessity at the desk, Senator Tully.

SENATOR TULLY: I move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity and appropriation at the desk relative to Calendar Number 1218. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Tully.

SENATOR TULLY: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is. Like to return to motions and resolutions. Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Marcellino, on page 17, I offer the following amendments to Calendar Number 449, Senate Print 6213, and I ask that bill retain its place.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 449 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: Also on behalf of Senator Marcellino, on page 67, I offer the following amendments to Calendar 1042, Senate Print 7132, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments to Calendar Number 1042 are received and adopted. Bill will retain its place on the Third Reading Calendar.

Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, there was to be a legislative briefing for the Minority after session today. But due to the lateness of the hour, conflicting schedules and the Fourth Amendment to the Constitution, that briefing has been postponed to a date which I'm not certain.

ACTING PRESIDENT KUHL: Thank you, Senator Paterson, for that announcement.

Chair recognizes Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

There being no further business, I move we adjourn until Wednesday, May 15th, at at 11:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow Wednesday, May 15th, at 11:00 a.m.

(Whereupon at 6:30 p.m., the Senate adjourned.)