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ALBANY, NEW YORK

May 14, 1996

3:05 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

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

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

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

15 Reverend Young.

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

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

8 ACTING PRESIDENT KUHL: Thank  
9 you.

10 Reading of the Journal.

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

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

19 Presentation of petitions.

20 Messages from the Assembly.

21 Messages from the Governor.

22 Reports of standing committees.

23 Reports of select committees.

1                   Communications and reports from  
2           state officers.

3                   Motions and resolutions.

4                   The Chair recognizes Senator  
5           Farley.

6                   SENATOR FARLEY: Thank you, Mr.  
7           President.

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

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

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

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

23                   Senator Tully.

1                   SENATOR TULLY: Thank you, Mr.  
2                   President.

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

7                   ACTING PRESIDENT KUHL: There is  
8                   a privileged resolution.

9                   Senator DeFrancisco.

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

15                  ACTING PRESIDENT KUHL: There  
16                  will be an immediate meeting of the Senate  
17                  Finance Committee in the Majority Conference  
18                  Room, Room 332. Immediate meeting of the Senate  
19                  Finance Committee in Room 332, the Majority  
20                  Conference Room.

21                  Thank you for the announcement,  
22                  Senator DeFrancisco.

23                  There is a privileged resolution,

1 Senator Tully, at the desk.

2 Senator DeFrancisco.

3 SENATOR DeFRANCISCO: Please read  
4 the privileged resolution.

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

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

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

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

1 Legislature on Tuesday, May 14th, 1996.

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

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

16 The National Center for  
17 Disabilities Services founded by Henry Viscardi  
18 had its humble beginnings in 1952 operating out  
19 of a garage in West Hempstead and now occupies a  
20 14-acre wooded campus in Albertson, New York  
21 serving over 4,000 adults and children annually.

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

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

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

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

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

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

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

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

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

1                   ACTING PRESIDENT KUHL:  Senator  
2           Tully, on the resolution.

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

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

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

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

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

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

9 ACTING PRESIDENT KUHL: Senator  
10 Marcellino on the resolution.

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

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

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

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

6 Senator Hannon on the resolution.

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

16 Thank you.

17 ACTING PRESIDENT KUHL: Senator  
18 Smith, on the resolution.

19 SENATOR SMITH: Thank you, Mr.  
20 President.

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

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

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

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

13 (There was no response.)

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

22 (Applause)

23 Senator DeFrancisco.

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

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

8                   I'll ask the Secretary to read  
9                   the title.

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

16                  ACTING PRESIDENT KUHL: Senator  
17                  Spano, on the resolution.

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

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

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

6                       Moments after Officers Frey and  
7       Morrissey arrived, a sniper opened fire from a  
8       second floor window of his house in Eastchester.  
9       Officer Frey was shot and killed in that  
10      incident, and Officer Morrissey was shot from  
11      that gunfire and has since been recovered, and  
12      the gunman, of course, then killed himself some  
13      14 hours after ambushing these police officers.

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

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

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

16                      Thank you, Mr. President.

17                      (Applause)

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

20                      (There was no response.)

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

1 (Response of "Aye".)

2 Opposed, nay.

3 (There was no response.)

4 The resolution is adopted.

5 Senator DeFrancisco.

6 SENATOR DeFRANCISCO: Mr.

7 President, at this time may we adopt the

8 Resolution Calendar.

9 ACTING PRESIDENT KUHL: The  
10 question is to adopt the Resolution Calendar.

11 All those in favor signify by saying aye.

12 (Response of "Aye".)

13 Opposed, nay.

14 (There was no response.)

15 The Resolution Calendar is  
16 adopted.

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

20 SENATOR DeFRANCISCO: Please make  
21 the substitutions.

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

1 THE SECRETARY: On page 55,  
2 Senator Maltese moves to discharge from the  
3 Committee on Rules, Assembly Bill Number 5501-B  
4 and substitute it for the identical Senate Bill  
5 3082.

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

10 ACTING PRESIDENT KUHL: The  
11 substitutions are ordered.

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

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

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

20 SENATOR GOLD: Lay it aside,  
21 please.

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

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

4 ACTING PRESIDENT KUHL: Lay the  
5 bill aside.

6 THE SECRETARY: Calendar Number  
7 631, by Senator Levy, Senate Print 6592-A, an  
8 act to amend the Vehicle and Traffic Law, in  
9 relation to authorizing and directing the  
10 Department of Motor Vehicles to develop and  
11 implement a demonstration project.

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

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

16 ACTING PRESIDENT KUHL: Call the  
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 49.

20 ACTING PRESIDENT KUHL: The bill  
21 is passed.

22 THE SECRETARY: Calendar Number  
23 636, by Senator Hoblock, Senate Print 6736, an

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

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

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

7 SENATOR GOLD: Lay it aside.

8 ACTING PRESIDENT KUHL: Lay the  
9 bill aside.

10 THE SECRETARY: Calendar Number  
11 651, by Senator Holland, Senate Print 5789-A, an  
12 act to amend the General Municipal Law, in  
13 relation to indexing the interest rate on  
14 judgments.

15 SENATOR GOLD: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the  
17 bill aside.

18 THE SECRETARY: Calendar Number  
19 671, by Senator Holland, Senate Print 201, an  
20 act to amend the Vehicle and Traffic Law, in  
21 relation to optional equipment for omnibuses.

22 SENATOR PATERSON: Lay it aside.

23 ACTING PRESIDENT KUHL: Lay the

1 bill aside.

2 THE SECRETARY: Calendar Number  
3 686, by Senator Maziarz, Senate Print 6893, an  
4 act to amend the Highway Law, in relation to  
5 designating a portion of the state highway  
6 system.

7 SENATOR PATERSON: Lay it aside.

8 ACTING PRESIDENT KUHL: Lay the  
9 bill aside.

10 THE SECRETARY: Calendar Number  
11 692, by Senator Libous, Senate Print 4472, an  
12 act to amend the Penal Law, in relation to  
13 increasing the penalties for repeat convictions  
14 of assault.

15 SENATOR PATERSON: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the  
17 bill aside.

18 THE SECRETARY: Calendar Number  
19 728, by Member of the Assembly Vitaliano, Assem  
20 bly Print 9530, an act to amend the Retirement  
21 and Social Security Law, in relation to  
22 retirement allowance option.

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the  
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 50.

8 ACTING PRESIDENT KUHL: The bill  
9 is passed.

10 THE SECRETARY: Calendar Number  
11 743, by Senator Maltese, Senate Print 490, an  
12 act to amend the Public Authorities Law, in  
13 relation to providing for free passage for  
14 active duty military personnel.

15 SENATOR PATERSON: Lay it aside.

16 ACTING PRESIDENT KUHL: Lay the  
17 bill aside.

18 THE SECRETARY: Calendar Number  
19 745, by Senator LaValle, Senate Print 3508, an  
20 act to amend the Vehicle and Traffic Law, in  
21 relation to distinctive plates for widows or  
22 widowers.

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the  
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 51.

8 ACTING PRESIDENT KUHL: The bill  
9 is passed.

10 THE SECRETARY: Calendar Number  
11 754, by Senator Kuhl, Senate Print 1716, an act  
12 to amend the General Business Law, in relation  
13 to automobile auctioneers.

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

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

18 ACTING PRESIDENT KUHL: Call the  
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 51.

22 ACTING PRESIDENT KUHL: The bill  
23 is passed.

1 THE SECRETARY: Calendar Number  
2 755, by Senator Farley, Senate Print 6129, an  
3 act to repeal Section 392-a of the General  
4 Business Law, relating to the manufacture and  
5 sale of used or secondhand hats.

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

8 THE SECRETARY: Calendar Number  
9 756, by Senator Nozzolio, Senate Print 6589, an  
10 act to amend the General Business Law, in  
11 relation to unlawfully installing or maintaining  
12 a video recording device.

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

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

18 ACTING PRESIDENT KUHL: Call the  
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 52.

22 ACTING PRESIDENT KUHL: The bill  
23 is passed.

1 THE SECRETARY: Calendar Number  
2 760, by Senator Seward, Senate Print 6140-A, an  
3 act to amend the Public Services Law, in  
4 relation to property transfers requiring  
5 commission approval.

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

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

10 ACTING PRESIDENT KUHL: Call the  
11 roll.

12 THE SECRETARY: Ayes 53.

13 ACTING PRESIDENT KUHL: The bill  
14 is passed.

15 THE SECRETARY: Calendar Number  
16 761, by Senator Seward, Senate Print 6143, an  
17 act to amend the Public Services Law, in  
18 relation to cellular telephone services.

19 SENATOR PATERSON: Lay it aside.

20 ACTING PRESIDENT KUHL: Lay the  
21 bill aside.

22 THE SECRETARY: Calendar Number  
23 768, by Senator Velella, Senate Print 6961, an

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

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

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

8 ACTING PRESIDENT KUHL: Call the  
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 53.

12 ACTING PRESIDENT KUHL: The bill  
13 is passed.

14 THE SECRETARY: Calendar Number  
15 776, by Senator Saland, Senate Print 1434-B, an  
16 act authorizing the Commissioner of General  
17 Services to sell certain land to the city of  
18 Beacon.

19 SENATOR PATERSON: Lay it aside.

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

23 THE SECRETARY: Calendar Number

1 779, by Senator Goodman, Senate Print 6305, an  
2 act to amend the Tax Law, in relation to  
3 utilizing machine-sensible technologies to  
4 receive, record and maintain tax.

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

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

9 ACTING PRESIDENT KUHL: Call the  
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 53.

13 ACTING PRESIDENT KUHL: The bill  
14 is passed.

15 THE SECRETARY: Calendar Number  
16 780, by Senator Goodman, Senate Print 6369, an  
17 act to amend the Tax Law, in relation to  
18 authorizing the filing of state tax warrants.

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

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

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 53.

4 ACTING PRESIDENT KUHL: The bill  
5 is passed.

6 THE SECRETARY: Calendar Number  
7 782, by Senator Seward, Senate Print 6538-A, an  
8 act to amend the Tax Law, in relation to the  
9 collection by public utility of the tax imposed  
10 by Section 189 thereof.

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

13 SENATOR DeFRANCISCO: Lay that  
14 bill aside for the day.

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

17 THE SECRETARY: Calendar Number  
18 794, by Senator LaValle, Senate Print 7231, an  
19 act to amend the Education Law, in relation to  
20 requiring higher education report cards.

21 SENATOR GOLD: Lay it aside.

22 ACTING PRESIDENT KUHL: Lay the  
23 bill aside.

1 THE SECRETARY: Calendar Number  
2 795, by Senator Larkin, Senate Print 7018, an  
3 act to repeal Section 2327 of the Insurance Law,  
4 in relation to establishment of rates for  
5 product liability insurance.

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

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

10 ACTING PRESIDENT KUHL: Call the  
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 53.

14 ACTING PRESIDENT KUHL: The bill  
15 is passed.

16 THE SECRETARY: Calendar Number  
17 796, by Senator Alesi, Senate Print 7270, an act  
18 to amend the Insurance Law, in relation to  
19 satellite offices.

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

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

1                   ACTING PRESIDENT KUHL: Call the  
2 roll.

3                   (The Secretary called the roll.)

4                   THE SECRETARY: Ayes 53.

5                   ACTING PRESIDENT KUHL: The bill  
6 is passed.

7                   THE SECRETARY: Calendar Number  
8 903, by Senator Nozzolio, Senate Print 7092, an  
9 act to amend the Real Property Law, in relation  
10 to rules and regulations of mobile homes.

11                  SENATOR NOZZOLIO: Lay it aside  
12 for the day.

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

16                  Senator DeFrancisco, that  
17 completes the non-controversial reading.

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

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

23                  SENATOR HOFFMANN: Yesterday I

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

6 Thank you.

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

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

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

22 SENATOR VOLKER: Mr. President.

23 ACTING PRESIDENT KUHL: Senator

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

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

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

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

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

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

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

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

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

11 What we found is that there are  
12 several Court of Appeals cases, one as late as  
13 1985 that basically said that there were some  
14 attempts by constitutional conventions to abro  
15 gate the provision -- this constitutional pro  
16 vision and, in effect, say that the state con  
17 stitutional provisions should be determined to  
18 be more restrictive than the federal Constitu  
19 tion, and those constitutional challenges as  
20 part of a constitutional convention were turned  
21 down and that the Court of Appeals in several  
22 decisions said it's really up to the Legislature  
23 to make decisions in this area where the clear

1 meaning of the Constitution has been stated.

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

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

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

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

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

17 Section 3 of the bill which -  
18 Subdivision (3), this section would codify in  
19 statute a decision handed down ironically  
20 recently by the Court of Appeals on May 2nd,  
21 1996 in People versus Mimms. This bill in the  
22 Court of Appeals requires that a court hearing  
23 on a suppression motion must make findings on

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

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

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

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

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

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

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

14 ACTING PRESIDENT KUHL: The Chair  
15 recognizes Senator Waldon.

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

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

22 SENATOR VOLKER: Certainly.

23 ACTING PRESIDENT KUHL: Senator

1 Volker, do you yield?

2 SENATOR VOLKER: Certainly.

3 ACTING PRESIDENT KUHL: The  
4 Senator yields.

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

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

9 ACTING PRESIDENT KUHL: The  
10 Senator yields, Senator.

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

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

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

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

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

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

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

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

11 (Senator Volker nods head.)

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

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

1           criminality.

2                           SENATOR VOLKER:   That's right.

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

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

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

3 SENATOR WALDON: Would the  
4 gentleman continue to yield?

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

7 (Senator Volker nods head.)

8 ACTING PRESIDENT KUHL: The  
9 Senator continues to yield.

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

17 SENATOR VOLKER: Certainly.

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

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

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

5                   SENATOR VOLKER: Certainly.

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

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

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

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

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

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

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

3                    SENATOR VOLKER: Well, first of  
4       all, I -

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

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

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

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

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

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

16                                 SENATOR WALDON: Mr. President.

17                                 ACTING PRESIDENT KUHL: Senator  
18                   Waldon.

19                                 SENATOR WALDON: Will the Senator  
20                   continue to yield?

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

23   (Senator Volker nods head.)

1                   ACTING PRESIDENT KUHL: The  
2                   Senator continues to yield.

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

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

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

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

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

15                    SENATOR VOLKER:  Certainly.

16                    ACTING PRESIDENT KUHL:  The  
17      Senator continues to yield.

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

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

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

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

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

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

9 SENATOR WALDON: If I may, Mr.  
10 President.

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

13 SENATOR VOLKER: Certainly.

14 ACTING PRESIDENT KUHL: The  
15 Senator continues to yield.

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

1 and apply the law?

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

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

14                    SENATOR WALDON: Mr. President,  
15      may I continue?

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

18                    SENATOR VOLKER: Sure.

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

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

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

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

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

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

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

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

4 I think the thing that bothered  
5 the Governor in the Johnson case was not the  
6 question of whether the district attorney in  
7 that case decided whether the death penalty or  
8 the life without parole or whatever should be -  
9 was the statement by the district attorney that  
10 he didn't believe that he should ever have the  
11 death penalty or should ever use it, and the  
12 question that the Governor I think expressed was  
13 the issue of whether that person was violating,  
14 in effect, the law, that is was not following  
15 the law, and I think in the Duckman case -- and  
16 as you know, ultimately he referred it to the  
17 Commission on Judicial Conduct -- I think he was  
18 concerned that the Commission on Judicial  
19 Conduct might not follow through with its  
20 responsibilities, and I think that's where I  
21 think the Governor interjected.

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

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

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

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

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

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

8 SENATOR VOLKER: Certainly.

9 ACTING PRESIDENT KUHL: The  
10 Senator continues to yield.

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

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

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

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

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

19                         SENATOR WALDON:  Justice  
20          Frankfurter.

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

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

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

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

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

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

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

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

23                        SENATOR VOLKER: Sure.

1                   ACTING PRESIDENT KUHL: The  
2                   Senator continues to yield.

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

5                   SENATOR VOLKER: Go ahead. I'm  
6                   sorry.

7                   SENATOR WALDON: Was that Ryan?

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

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

18                  SENATOR VOLKER: "Bad faith", I  
19                  think -

20                  SENATOR WALDON: As depicted in  
21                  the bill.

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

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

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

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

4 SENATOR VOLKER: No, Senator.

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

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

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

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

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

18                    (Senator Volker nods head.)

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

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

23                    Senator, I wish I had your

1 confidence that some zealous police officer -  
2 over-zealous police officer might not -- if not  
3 properly trained, as I suggested moments ago,  
4 ten, fifteen moments ago in our dialogue, that  
5 the bottom line is this should not be the 1996  
6 Police and Public Protection Act that we're  
7 dealing with. We should be dealing with the  
8 1996 Police Training Act to bring everyone up to  
9 the standard where their behavior would be such  
10 that even those who are in the squad would have  
11 to be a little anxious because the guys in the  
12 street would be making as many arrests as they  
13 were, those who are assigned to just fundament  
14 ally make arrests. I think that would be of  
15 great assistance to us.

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

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

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

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

7 SENATOR WALDON: Yes.

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

11 SENATOR WALDON: Mr. President,  
12 may I continue?

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

15 SENATOR VOLKER: Sure.

16 ACTING PRESIDENT KUHL: The  
17 Senator continues to yield.

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

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

23 SENATOR WALDON: Would 90,000

1 sound like -

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

4 SENATOR WALDON: It is about  
5 90,000, Senator.

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

8 SENATOR WALDON: You know, George  
9 knows -

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

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

14 SENATOR VOLKER: Absolutely.

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

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

1 about New York State as a state?

2 SENATOR WALDON: The state's  
3 prison population.

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

7 SENATOR WALDON: I'm not  
8 absolutely sure myself, Senator, but I think  
9 that blacks occupy 12 percent of the state's  
10 population, Hispanics, 11 percent, 11.3 percent,  
11 and blacks are 50 to 55 percent of the state's  
12 prison population and the Latino community has  
13 33 percent of that number which would put us  
14 somewhere around 88 percent -- 85 to 88  
15 percent. That may or may not be accurate, but  
16 if I may, Mr. President -- if I may continue.

17 SENATOR VOLKER: Sure.

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

20 SENATOR VOLKER: Certainly.

21 ACTING PRESIDENT KUHL: The  
22 Senator yields.

23 SENATOR WALDON: Are you aware of

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

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

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

5 SENATOR WALDON: Mr. President,  
6 may I continue?

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

9 SENATOR VOLKER: Sure.

10 ACTING PRESIDENT KUHL: The  
11 Senator continues to yield.

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

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

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

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

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

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

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

21 SENATOR WALDON: Thank you very  
22 much, Senator.

23 Mr. President, if I may now, on

1 the bill.

2 ACTING PRESIDENT KUHL: Senator  
3 Waldon, on the bill.

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

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

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

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

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

23 My colleagues, we are first and

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

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

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

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

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

12 I thank you, my colleagues.

13 ACTING PRESIDENT KUHL: Chair  
14 recognizes Senator Abate.

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

17 ACTING PRESIDENT KUHL: Senator  
18 Volker yield to Senator Abate?

19 SENATOR VOLKER: Yes.

20 ACTING PRESIDENT KUHL: Senator  
21 yields.

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

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

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

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

1 back in sync with the rest of the country.

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

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

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

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

14 SENATOR ABATE: Would Senator  
15 Volker yield to another question?

16 SENATOR VOLKER: Sure.

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

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

20 ACTING PRESIDENT KUHL: Senator  
21 continues to yield.

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

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

5                         SENATOR VOLKER:  Well, first of  
6           all -

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

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

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

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

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

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

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

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

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

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

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

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

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

11 SENATOR ABATE: Will the Senator  
12 yield to another question?

13 SENATOR VOLKER: Sure.

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

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

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

12 SENATOR ABATE: Will the Senator  
13 yield to another question?

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

16 SENATOR VOLKER: Sure.

17 ACTING PRESIDENT KUHL: Senator  
18 yields.

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

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

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

9                   Senator Holland, why do you  
10 rise?

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

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

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

18                   ACTING PRESIDENT KUHL: Call the  
19 roll.

20                   (The Secretary called the roll.)

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

23                   SENATOR NANULA: No.

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

3                   The roll call is withdrawn.

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

6                   Senator Abate.

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

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

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

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

16                         SENATOR VOLKER:  Yes, I think so.

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

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

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

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

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

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

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

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

1 the safety or an act of another person."

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

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

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

1                   SENATOR ABATE: I disagree,  
2           Senator.

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

5                   Are you asking the Senator a  
6           question?

7                   SENATOR ABATE: Yes, please.

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

10                   Senator continues to yield.

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

23                   I guess, please explain to me how

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

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

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

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

10                   SENATOR ABATE: Senator Volker,  
11                   would you yield.

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

14                   Senator continues to yield.

15                   SENATOR ABATE: On the one hand,  
16                   we do not trust the Court of Appeals to  
17                   interpret the Constitution and on the other hand  
18                   we are writing language so broad that talks  
19                   about -- language, as I stated, in line 15 and  
20                   16, and we're trusting the Court of Appeals to  
21                   interpret the intent of the Legislature. So as  
22                   far as I'm concerned, it seems very ironic. On  
23                   the one hand, we can't trust them to protect

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

4 But let me get back to -

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

14 SENATOR ABATE: Under the federal  
15 Constitution.

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

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

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

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

15                      SENATOR VOLKER:  Certainly.

16                      ACTING PRESIDENT KUHL:  Senator  
17      yields.

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

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

3 SENATOR VOLKER: Right.

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

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

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

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

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

23 I think we have the authority to

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

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

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

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

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

1 change in our constitutional protections.

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

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

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

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

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

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

23 So I submit what we're doing

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

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

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

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

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

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

1 on federal guidelines?

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

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

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

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

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

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

1 and live on our streets.

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

7 Thank you.

8 ACTING PRESIDENT KUHL: Chair  
9 recognizes Senator Dollinger.

10 But before that, Senator  
11 Holland.

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

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

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

19 ACTING PRESIDENT KUHL: Call the  
20 roll.

21 (The Secretary called the roll.)

22 Senator Santiago, how do you  
23 vote?

1                   SENATOR SANTIAGO: In the  
2 negative.

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

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

7                   Chair recognizes Senator  
8 Dollinger for the floor.

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

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

14                   Senator yields.

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

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

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

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

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

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

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

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

18 SENATOR VOLKER: Yes.

19 ACTING PRESIDENT KUHL: Senator  
20 yields.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15                      SENATOR VOLKER: Certainly.

16                      ACTING PRESIDENT KUHL: Senator  
17       yields.

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

22                      SENATOR VOLKER: Right.

23                      SENATOR DOLLINGER: What does

1           that mean?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Senator Volker, do you yield to  
16 another question?

17 SENATOR VOLKER: Sure.

18 ACTING PRESIDENT KUHL: Senator  
19 yields.

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

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

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

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

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

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

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

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

1 bill.

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

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

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

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

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

7 On the bill, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ACTING PRESIDENT KUHL: Senator

1           Leichter on the bill.

2                           SENATOR LEICHTER:   Thank you, Mr.  
3           President.

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

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

23                          I must say that as I read this

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

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

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

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

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

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

12 ACTING PRESIDENT KUHL: Senator  
13 Volker, do you yield?

14 SENATOR VOLKER: Sure.

15 ACTING PRESIDENT KUHL: Senator  
16 Volker yields.

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

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

1 or unless two specific circumstances are met?

2 SENATOR VOLKER: Right.

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

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

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

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

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

3 And remember that we're talking  
4 about "or" and we are still governed by number  
5 1, the first paragraph of the Constitution. So,  
6 yes, that's true, and this is "or," but we're  
7 still going to be governed.

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

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

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

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

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

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

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

9 ACTING PRESIDENT KUHL: Senator  
10 Leichter on the bill.

11 SENATOR LEICHTER: And my thanks  
12 to my colleague.

13 I must say that, certainly,  
14 listening to the questions of Senator Waldon and  
15 Abate and Senator Dollinger and hearing the  
16 answers, it seems clear to me that either this  
17 bill in certain respects says absolutely nothing  
18 or that it's a very blatant attempt to interfere  
19 with the judiciary and to change the  
20 Constitution by statute. I think this is an  
21 effort to overrule the Court's interpretation of  
22 the Fourth Amendment and of Article I, Section  
23 12 of the state Constitution -- or Section 12 of

1 Article I of the state Constitution.

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

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

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

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

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

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

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

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

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

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

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

20                 ACTING PRESIDENT KUHL: Read the  
21                 last section.

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

1                   ACTING PRESIDENT KUHL: Call the  
2                   roll.  
3                   (The Secretary called the roll.)  
4                   THE SECRETARY: Ayes 48.  
5                   ACTING PRESIDENT KUHL: Senator  
6                   Montgomery to explain her vote.  
7                   SENATOR LEICHTER: Slow roll  
8                   call.  
9                   ACTING PRESIDENT KUHL: The  
10                  Secretary will call the roll slowly. Ring the  
11                  bells.  
12                  THE SECRETARY: Senator Abate.  
13                  SENATOR ABATE: No.  
14                  THE SECRETARY: Senator Alesi.  
15                  SENATOR ALESI: Yes.  
16                  THE SECRETARY: Senator Babbush.  
17                  (There was no response.)  
18                  Senator Bruno.  
19                  (Affirmative indication.)  
20                  THE SECRETARY: Senator Connor.  
21                  (Negative indication.)  
22                  THE SECRETARY: Senator Cook.  
23                  SENATOR COOK: Yes.

1 THE SECRETARY: Senator  
2 DeFrancisco.

3 (There was no response.)  
4 Senator DiCarlo.

5 (There was no response.)  
6 Senator Dollinger.

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

9 ACTING PRESIDENT KUHL: Senator  
10 Dollinger to explain his vote.

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

21 No.

22 ACTING PRESIDENT KUHL: Senator  
23 Dollinger in the negative.

1 Secretary will continue to call  
2 the roll slowly.

3 THE SECRETARY: Senator Espada.  
4 SENATOR ESPADA: No.

5 THE SECRETARY: Senator Farley.  
6 SENATOR FARLEY: Aye.

7 THE SECRETARY: Senator Gold.  
8 SENATOR GOLD: In the negative.

9 THE SECRETARY: Senator Gonzalez,  
10 excused. Senator Goodman.  
11 (There was no response.)  
12 Senator Hannon.  
13 (There was no response.)  
14 Senator Hoblock.  
15 SENATOR HOBLOCK: Yes.  
16 THE SECRETARY: Senator  
17 Hoffmann.  
18 (There was no response.)  
19 Senator Holland.  
20 SENATOR HOLLAND: Yes.  
21 THE SECRETARY: Senator Johnson,  
22 excused.  
23 Senator Kruger.

1 (There was no response.)  
2 Senator Kuhl.  
3 SENATOR KUHL: Aye.  
4 THE SECRETARY: Senator Lachman.  
5 SENATOR LACHMAN: Nay.  
6 THE SECRETARY: Senator Lack.  
7 SENATOR LACK: Aye.  
8 THE SECRETARY: Senator Larkin.  
9 SENATOR LARKIN: Aye.  
10 THE SECRETARY: Senator LaValle.  
11 SENATOR LAVALLE: Aye.  
12 THE SECRETARY: Senator Leibell.  
13 (There was no response.)  
14 Senator Leichter.  
15 SENATOR LEICHTER: Mr. President.  
16 ACTING PRESIDENT KUHL: Senator  
17 Leichter to explain his vote.  
18 SENATOR LEICHTER: I'm sorry, I  
19 have forgotten to do something. Since everybody  
20 has been quoting judges and they are great  
21 constitutional judges, I'm going to quote a  
22 judge who may not be -- certainly known here but  
23 may not be known throughout the nation, but he

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

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

22                    Thank you, Mr. President.

23                    I vote in the negative.

1                   ACTING PRESIDENT KUHL:  Senator  
2    Leichter will be recorded in the negative.  
3                   Continue the slow roll call.  
4                   THE SECRETARY:  Senator Levy.  
5                   SENATOR LEVY:  Aye.  
6                   THE SECRETARY:  Senator Libous.  
7                   SENATOR LIBOUS:  Aye.  
8                   THE SECRETARY:  Senator Maltese.  
9                   SENATOR MALTESE:  Aye.  
10                  THE SECRETARY:  Senator  
11    Marcellino.  
12                  SENATOR MARCELLINO:  Yes.  
13                  THE SECRETARY:  Senator Marchi.  
14                  SENATOR MARCHI:  Aye.  
15                  THE SECRETARY:  Senator  
16    Markowitz.  
17                  (There was no response.)  
18                  Senator Maziarz.  
19                  SENATOR MAZIARZ:  Aye.  
20                  THE SECRETARY:  Senator Mendez.  
21                  SENATOR MENDEZ:  No.  
22                  THE SECRETARY:  Senator  
23    Montgomery.

1                   ACTING PRESIDENT KUHL:  Senator  
2           Montgomery to explain her vote.

3                   Senator Markowitz, would you  
4           please take your seat.

5                   SENATOR MONTGOMERY:  Thank you,  
6           Mr. President.

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

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

14                   It's extremely noisy in here.

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

17                   ACTING PRESIDENT KUHL:  Thank  
18          you.

19                   Senator Montgomery.

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

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

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

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

1 communities within our districts in the state.

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

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

5 Continue the slow roll.

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

8 Senator Nozzolio.

9 SENATOR NOZZOLIO: Aye.

10 THE SECRETARY: Senator Onorato.

11 SENATOR ONORATO: Aye.

12 THE SECRETARY: Senator

13 Oppenheimer.

14 SENATOR OPPENHEIMER: Aye.

15 THE SECRETARY: Senator Padavan.

16 SENATOR PADAVAN: Yes.

17 THE SECRETARY: Senator Paterson.

18 SENATOR PATERSON: No.

19 THE SECRETARY: Senator Present.

20 SENATOR PRESENT: Yes.

21 THE SECRETARY: Senator Rath.

22 SENATOR RATH: Yes.

23 THE SECRETARY: Senator Saland.

1                   SENATOR SALAND:  Aye.  
2                   THE SECRETARY:  Senator Santiago  
3 recorded in the negative earlier today.  
4                   Senator Seabrook.  
5                   SENATOR SEABROOK:  No.  
6                   THE SECRETARY:  Senator Sears.  
7                   SENATOR SEARS:  Aye.  
8                   THE SECRETARY:  Senator Seward.  
9                   SENATOR SEWARD:  Aye.  
10                  THE SECRETARY:  Senator Skelos.  
11                  (There was no response.)  
12                  Senator Smith.  
13                  SENATOR SMITH:  No.  
14                  THE SECRETARY:  Senator Spano.  
15                  SENATOR SPANO:  No.  
16                  THE SECRETARY:  Senator  
17 Stachowski.  
18                  SENATOR STACHOWSKI:  Yes.  
19                  THE SECRETARY:  Senator Stafford  
20 excused.  
21                  Senator Stavisky excused.  
22                  Senator Trunzo.  
23                  SENATOR TRUNZO:  Yes.

1 THE SECRETARY: Senator Tully.  
2 SENATOR TULLY: Aye.  
3 THE SECRETARY: Senator Velella.  
4 SENATOR VELELLA: Yes.  
5 THE SECRETARY: Senator Waldon.  
6 Volker, I'm sorry.  
7 Senator Volker.  
8 SENATOR VOLKER: Yes.  
9 THE SECRETARY: Senator Waldon.  
10 SENATOR WALDON: No.  
11 THE SECRETARY: Senator Wright.  
12 SENATOR WRIGHT: Aye.  
13 ACTING PRESIDENT KUHL: Secretary  
14 will call the absentees.  
15 THE SECRETARY: Senator Babbush.  
16 (There was no response.)  
17 Senator DeFrancisco.  
18 SENATOR DeFRANCISCO: No.  
19 THE SECRETARY: Senator DiCarlo.  
20 SENATOR DiCARLO: Aye.  
21 THE SECRETARY: Senator Goodman.  
22 (There was no response.)  
23 Senator Hannon.

1 SENATOR HANNON: Yes.

2 THE SECRETARY: Senator

3 Hoffmann.

4 (There was no response.)

5 Senator Kruger.

6 SENATOR KRUGER: No.

7 THE SECRETARY: Senator Leibell.

8 SENATOR LEIBELL: Aye.

9 THE SECRETARY: Senator

10 Markowitz.

11 SENATOR MARKOWITZ: No.

12 SENATOR PATERSON: Mr.

13 President.

14 ACTING PRESIDENT KUHL: Senator

15 Paterson.

16 SENATOR PATERSON: Mr. President,

17 it's taking a long time to count these votes,

18 don't you think?

19 ACTING PRESIDENT KUHL: You know,

20 I've been trying to educate the clerk on

21 counting, and we were trying to do it on fingers

22 and hands, and we ran out once. Right now we're

23 still trying to calculate. We still got a

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

6 SENATOR GOLD: Mr. President.

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

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

14 THE SECRETARY: Senator Skelos.

15 SENATOR SKELOS: Yes.

16 ACTING PRESIDENT KUHL: Announce  
17 the results.

18 THE SECRETARY: Ayes 36, nays  
19 18.

20 ACTING PRESIDENT KUHL: The bill  
21 is passed.

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

1 bills.

2 THE SECRETARY: Calendar Number  
3 636, by Senator Hoblock, Senate Print 6736, an  
4 act to amend the Transportation Law, in relation  
5 to regulation of motor buses.

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

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

10 ACTING PRESIDENT KUHL: Call the  
11 roll.

12 (The Secretary called the roll. )

13 THE SECRETARY: Ayes 57.

14 ACTING PRESIDENT KUHL: The  
15 bill's passed.

16 SENATOR GOLD: Hold on.

17 ACTING PRESIDENT KUHL: Senator  
18 Gold.

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

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

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

4 (The Secretary called the roll on  
5 reconsideration. )

6 THE SECRETARY: Ayes 57.

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

11 SENATOR HOBLOCK: Yes, Mr.  
12 President.

13 ACTING PRESIDENT KUHL: Senator  
14 yields.

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

1 the original regulations were for the safety of  
2 people?

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

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

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

18 SENATOR HOBLOCK: Yes.

19 ACTING PRESIDENT KUHL: Senator  
20 yields.

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

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

3 SENATOR HOBLOCK: Right.

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

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

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

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

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

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

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

16 ACTING PRESIDENT KUHL: Call the  
17 roll.

18 (The Secretary called the roll. )

19 THE SECRETARY: Ayes 57.

20 ACTING PRESIDENT KUHL: The bill  
21 is passed.

22 THE SECRETARY: Calendar Number  
23 651, by Senator Holland, Senate Print 5789A, an

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

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

6 SENATOR LEICHTER: Explanation.

7 ACTING PRESIDENT KUHL: Senator  
8 Holland for an explanation.

9 SENATOR HOLLAND: The Senator  
10 knows that the General Municipal Law says that  
11 now interest can be no more -- shall not exceed  
12 9 percentum on judgments against municipalities.  
13 This bill says that it will be the prime  
14 interest rate but no more than 9 percent.

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

1 SENATOR LEICHTER: Mr. President.

2 ACTING PRESIDENT KUHL: Senator  
3 Leichter.

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

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

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

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

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

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

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

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

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

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

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

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

23 SENATOR LEICHTER: The Federal

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

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

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

14 SENATOR LEICHTER: I will  
15 appreciate it.

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

18 Secretary will continue to call  
19 the controversial calendar.

20 THE SECRETARY: Calendar Number  
21 671, by Senator Holland, Senate Print 201, an  
22 act to amend the Vehicle and Traffic Law, in  
23 relation to optional equipment.

1 SENATOR DOLLINGER: Explanation.

2 ACTING PRESIDENT KUHL:

3 Explanation has been asked for, Senator  
4 Holland.

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

18 ACTING PRESIDENT KUHL: Senator  
19 Dollinger? Senator Stachowski? Senator  
20 Leichter?

21 SENATOR DOLLINGER: Mr.  
22 President.

23 ACTING PRESIDENT KUHL: Senator

1 Dollinger.

2 SENATOR DOLLINGER: Would Senator  
3 Holland yield to a question?

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

6 SENATOR HOLLAND: Yes.

7 ACTING PRESIDENT KUHL: Senator  
8 yields.

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

1 oncoming direction.

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

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

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

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

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

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

15                   ACTING PRESIDENT KUHL: Senator  
16           Stachowski.

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

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

23                   ACTING PRESIDENT KUHL: Senator

1 Stachowski.

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

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

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

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

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

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

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

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

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

19 Secretary will read the last  
20 section.

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

1                   SENATOR LEICHTER: Well, just  
2                   very briefly, I just want to say to Senator  
3                   Holland, as I read this bill, this bill would  
4                   apply to any bus that could transport somebody  
5                   60 years of age. Doesn't say exclusively, so  
6                   any bus -- I'm over 60 years. I get on any bus.  
7                   That bus going to have to have flashing red  
8                   lights? Because if you'll see at the beginning  
9                   of the section, it says, any omnibus having seat  
10                  capacity more than \*\*\* and used exclusively and  
11                  then it says to trans... exclusively, and then  
12                  it lists various people, but then you go on to  
13                  say \*\*\* "and" after the listing of the people so  
14                  the "exclusive" as I read it no longer applies  
15                  to the change that you're making, so it would  
16                  seem to be that any bus in the state of New York  
17                  since it could take somebody who is 60 years of  
18                  age or older, will have to have flashing red  
19                  lights.

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

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

1 September.

2 ACTING PRESIDENT KUHL: Call the  
3 roll.

4 (The Secretary called the roll. )

5 ACTING PRESIDENT KUHL: Announce  
6 the results when tabulated.

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

9 ACTING PRESIDENT KUHL: The bill  
10 is passed.

11 Secretary will continue to call  
12 the controversial calendar.

13 THE SECRETARY: Calendar Number  
14 686, by Senator Maziarz, Senate Print 6893, an  
15 act to amend the Highway Law, in relation to  
16 designating a portion of the state highway  
17 system the Senator Ralph Quattrociocchi Memorial  
18 highway.

19 ACTING PRESIDENT KUHL: Senator  
20 Maziarz, on the bill.

21 SENATOR MAZIARZ: Thank you, Mr.  
22 President.

23 Mr. President, this legislation

1 designates State Route 531 Extension which runs  
2 in the western portion of Monroe County as the  
3 Ralph Quattrociochi Memorial Highway.

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

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

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

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

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

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

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

12 Thank you, Mr. President.

13 ACTING PRESIDENT KUHL: Senator  
14 Dollinger.

15 SENATOR DOLLINGER: On the bill,  
16 Mr. President.

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

1 to Ralph Quattrociochi.

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

1           Minority, is the wrong idea.

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

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

1 New York State, by pushing for Route 531.

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

10 The Secretary will read the last  
11 section.

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

14 ACTING PRESIDENT KUHL: Call the  
15 roll.

16 (The Secretary called the roll. )

17 THE SECRETARY: Ayes 57.

18 ACTING PRESIDENT KUHL: The bill  
19 is passed unanimously.

20 Secretary will continue to call  
21 the controversial calendar.

22 THE SECRETARY: Calendar Number  
23 692, by Senator Libous, Senate Print 4472, an

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

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

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

9 ACTING PRESIDENT KUHL: Call the  
10 roll.

11 (The Secretary called the roll. )

12 THE SECRETARY: Ayes 57.

13 ACTING PRESIDENT KUHL: The bill  
14 is passed.

15 THE SECRETARY: Calendar Number  
16 743, by Senator Maltese, Senate Print 490, an  
17 act to amend the Public Authorities Law, in  
18 relation to providing for free passage for  
19 active duty military personnel.

20 SENATOR LEICHTER: Explanation.

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

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

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

23                   SENATOR LEICHTER: Mr. President.

1                   ACTING PRESIDENT KUHL:  Senator  
2           Leichter.

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

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

16                   SENATOR LEICHTER:  Mr. President,  
17          on the bill.

18                   I just wish to point out -

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

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

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

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

6 ACTING PRESIDENT KUHL: Senator  
7 Maltese, do you yield?

8 SENATOR MALTESE: Yes.

9 ACTING PRESIDENT KUHL: Senator  
10 yields.

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

14 SENATOR MALTESE: Yes, it is.

15 SENATOR LEICHTER: All right.

16 Mr. President, I assume that the Authority would  
17 also be in opposition to this bill, although I  
18 must say this was -- I think this memo was -- I  
19 can't really tell. It was FAXed to me, and I  
20 can't tell what year this was, so it's  
21 questionable that the MTA would not -- is not  
22 opposing this bill, but, Mr. President -- yeah.

23 But, Mr. President, the reason

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

23                                   Now, you're -- you're reducing

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

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

15 ACTING PRESIDENT KUHL: Senator  
16 Marchi.

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

1           just can't afford that.

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

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

6 So I certainly support Senator  
7 Maltese's legislation.

8 SENATOR LEICHTER: Mr.  
9 President. Mr. President.

10 ACTING PRESIDENT KUHL: Senator  
11 Leichter.

12 SENATOR LEICHTER: Would Senator  
13 Marchi yield?

14 SENATOR MARCHI: Yes.

15 ACTING PRESIDENT KUHL: Senator  
16 Marchi, do you yield?

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

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

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

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

14                   ACTING PRESIDENT KUHL: Call the  
15 roll.

16                   (The Secretary called the roll. )

17                   ACTING PRESIDENT KUHL: Announce  
18 the results when tabulated.

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

22                   ACTING PRESIDENT KUHL: The bill  
23 is passed.

1                   Continue to call the  
2                   controversial calendar.

3                   THE SECRETARY:   Calendar Number  
4                   755, by Senator Farley, Senate Print 6129, an  
5                   act to repeal Section 392-a of the General  
6                   Business Law, relating to the manufacture and  
7                   sale of used or second-hand hats.

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

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

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

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

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

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

23 Are there any questions?

1                   ACTING PRESIDENT KUHL:  Senator  
2           Dollinger.

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

6                   SENATOR FARLEY:  Whatever you'd  
7           like.

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

10                  ACTING PRESIDENT KUHL:  Senator  
11           Marchi.

12                  SENATOR MARCHI:  Would Senator  
13           Farley yield?

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

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

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

22                  SENATOR MARCHI:  You've convinced  
23           me.

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

3                   The Secretary will read the last  
4 section.

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

7                   ACTING PRESIDENT KUHL: Call the  
8 roll.

9                   (The Secretary called the roll. )

10                  THE SECRETARY: Ayes 57.

11                  ACTING PRESIDENT KUHL: The bill  
12 is passed.

13                  THE SECRETARY: Calendar Number  
14 761, by Senator Seward, Senate Print 6143, an  
15 act to amend the Public Service Law, in relation  
16 to cellular telephone services.

17                  SENATOR PATERSON: Explanation.

18                  ACTING PRESIDENT KUHL: Lay the  
19 bill aside.

20                  SENATOR TULLY: Lay the bill  
21 aside.

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

1 Secretary will continue to call  
2 the controversial calendar.

3 THE SECRETARY: Calendar Number  
4 794, by Senator LaValle, Senate Print 7231, an  
5 act to amend the Education Law, in relation to  
6 requiring higher education report cards.

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

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

11 ACTING PRESIDENT KUHL: Call the  
12 roll.

13 (The Secretary called the roll. )

14 THE SECRETARY: Ayes 57.

15 ACTING PRESIDENT KUHL: The bill  
16 is passed.

17 Senator Tully.

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

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

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

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

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

13 Secretary will read the title.

14 THE SECRETARY: Calendar Number  
15 1218, by Senator Volker, Senate Print 7542, an  
16 act to provide heroism, valor and outstanding  
17 performance awards to members of the State  
18 Police.

19 ACTING PRESIDENT KUHL: Senator  
20 Tully.

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

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

4                   SENATOR TULLY:  I move we accept  
5                   the message.

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

11                  (Response of "Aye.")

12                  Opposed nay.

13                  (There was no response. )

14                  The message is accepted.

15                  The Secretary will read the last  
16                  section.

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

19                  ACTING PRESIDENT KUHL:  Call the  
20                  roll.

21                  (The Secretary called the roll.)

22                  THE SECRETARY:  Ayes 57.

23                  ACTING PRESIDENT KUHL:  The bill

1 is passed.

2 Senator Tully.

3 SENATOR TULLY: Is there any  
4 housekeeping at the desk?

5 ACTING PRESIDENT KUHL: There is.  
6 Like to return to motions and resolutions.

7 Chair recognizes Senator Farley.

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

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

17 Senator Farley.

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

23 ACTING PRESIDENT KUHL:

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

4 Chair recognizes Senator  
5 Paterson.

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

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

15 Chair recognizes Senator Tully.

16 SENATOR TULLY: Thank you, Mr.  
17 President.

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

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

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