ALBANY, NEW YORK

January 27, 1997

3:04 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. I ask the members to find their chairs, staff to find their places.

I would ask all of you to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 26th. The Senate met pursuant to adjournment. The Journal of Saturday, January 25th was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Norman Levy, on page 4, I offer the following amendments to Calendar Number 18, Senate Print 203, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: On behalf of Senator Maziarz, on page 4, Mr. President, I offer the following amendments to Calendar Number 41, Senate Print Number 406, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted, and

Calendar Number 41 will maintain its place on the Third Reading Calendar.

Any other motions? Resolutions?

Chair recognizes Senator Cook -

SENATOR BRUNO: Excuse me, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Can we ask for an immediate meeting of the Local Government Committee in Room 332?

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

SENATOR BRUNO: Thank you.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, could I ask that Senate Resolution Number 65, which has already been passed, be read at this time?

ACTING PRESIDENT KUHL:

Without objection, Secretary will read Senate Resolution Number 65 in its entirety.

THE SECRETARY: By Senator Cook, Legislative Resolution Number 65, commending the New York State Police, Troop C Barracks, and the Delaware-Chenango-Madison Otsego Board of Cooperative Educational Services and its 16 component school districts for their initiative in developing the School Violence and Crisis Response Program.

Whereas, it is the sense of this Legislative Body that those who give positive definition to the profile and disposition of the communities of the state of New York, do so profoundly strengthen our shared commitment to the exercise of freedom; and

Whereas, it is of the utmost importance for school districts to develop plans to deal with children who act in a violent or dangerous manner because violence is increasing in schools all across New York State; and

Whereas, attendant to such

concern and fully in accord with its longstanding traditions, it is the intent of this Legislative Body to commend the New York State Police, Troop C Barracks, and the Delaware-Chenango-Madison-Otsego BOCES and its 16 component school districts for their joint initiative in organizing a ten-member, Violent Action and Crisis Response Team and in subsequently developing the School Violence and Crisis Response Program; and

Whereas, State Police officers are now more active partners in individual districts' safe schools, acting as educator/role models, positively altering student perception of the police; and

Whereas, the School Violence and Crisis Action Program has today trained nearly 400 school bus drivers in 16 school districts in terms of responding to violence and crisis situations and assisted school districts in updating and refining their emergency management plans to effectively respond to crisis situations; and

Whereas, approximately 2,000 to 3,000 additional staff members of

districts within the Delaware-Chenango Madison-Otsego BOCES are currently being trained and the program has been available to school districts in other areas of the state; and

Whereas, through their long and sustained commitment to excellence in promoting safety in our public schools, State Police Inspector Joseph Loszynski; Inspector Timothy Howard; Major Arthur Hawker; Sergeant Mike Lynch; Investigator Larry Brown; Deedrick Bertholf, Assistant Superintendent for Management Services, Delaware-Chenango Madison-Otsego BOCES; Richard Shaw, Health and Safety Coordinator, and other representatives of the BOCES have so demonstrably advanced that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience; now, therefore, be it

Resolved, that this Legislative Body pause in its deliberations and most joyously commend both Troop C representatives instrumental to this collaboration: State Police inspector

Joseph Loszynski, Inspector Timothy Howard, Major Arthur Hawker, Sergeant Mike Lynch, and Investigator Larry Brown and the Delaware Chenango-Madison-Otsego BOCES representatives, Deedrick Bertholf, Assistant Superintendent for Management Services, and Richard Shaw, Health and Safety Coordinator, for their initiative in developing the School Violence and Crisis Response Program, fully confident that such procedure mirrors our shared commitment to preserve, to enhance, and yet effect that patrimony of freedom which is our American heritage; and be it further

Resolved, that copies of this resolution, suitably engrossed, be transmitted to State Police Superintendent James W. McMahon; Inspector Joseph Loszynski; Inspector Timothy Howard; Major Arthur Hawker; Sergeant Mike Lynch; Investigator Larry Brown; Timothy Thomas, President of the Delaware-Chenango-Madison-Otsego, BOCES board; Alan D. Pole, District Superintendent; Deedrick Bertholf, Assistant Superintendent for Management Services; and Richard Shaw,

Health and Safety Coordinator.

ACTING PRESIDENT KUHL: Senator Cook, did you wish to speak to the resolution?

SENATOR COOK: Yes, Mr. President.

ACTING PRESIDENT KUHL: Without objection, Senator Cook.

SENATOR COOK: Mr. President, all of us have been concerned through the past several years over increasing incidents of violence that occur in the schools and the need for school personnel to be able to respond appropriately to acts of violence and potential acts of violence that may occur.

It was particularly -- I was particularly pleased, therefore, that Troop C, New York State Police, took the initiative, along with the BOCES personnel who've been named, to develop a proactive program for helping school personnel to intervene in these kinds of situations; a training program which, as you have heard, has involved the school bus drivers which is involving more and more of the personnel of

the school districts within that BOCES area and in what I think is an exemplary program of State Police expanding to the community their role which is to prevent things from happening, rather than simply responding and having to take action after some unfortunate incident has already occurred.

So, I'm pleased, I think Superintendent McMahon is here today, along with the officers who have been named and I think the BOCES representatives, as well, and I would ask that you greet them and welcome them to the chamber and thank them for this exemplary performance which they have given in behalf of the children of the state.

ACTING PRESIDENT KUHL: Senator Seward, did you wish to speak to the resolution?

SENATOR SEWARD: Yes.

ACTING PRESIDENT KUHL: Without objection, Senator Seward.

SENATOR SEWARD: Thank you, Mr. President. I just want to rise and say how pleased and proud I was to sponsor this resolution, along with Senator Cook's lead

and Senator Libous and of course over in the Assembly, it was sponsored by Assemblymen Crouch and Magee who are here in the chamber, as well, today.

I just rise to take my hat off to the New York State Police and the Troop C Barracks in particular, as well as the Delaware-Chenango-Madison-Otsego BOCES and all of the component school districts included in that BOCES area, many of which are in my Senate District.

We are all concerned about having safe schools; and there's no question that the development of the School Violence and Crisis Response Program has contributed greatly to creating safe schools in our part of New York State. So, that's certainly one advantage.

A side advantage is, of course, with the state police involvement in the schools acting as educator/role models, it has the benefit of altering the students' perception of the police as men and women who are there to help in a difficult situation, men and women who are there to lend a helping

hand.

So, there very much many positive aspects of this program, and I salute the New York State Police, the BOCES personnel, and the staff and faculty of all of the component school districts who have joined together to make this an outstanding and successful program.

ACTING PRESIDENT KUHL: Senator Libous, did you wish to speak to the resolution?

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Without objection.

SENATOR LIBOUS: I, too, would like to voice my praise for the State Police and, of course, for the Delaware Chenango-Madison-Otsego BOCES for instigating this program, under the leadership, of course, of Superintendent McMahon and Inspector Loszynski and Inspector Howard and now Major Hawker.

These programs are a perfect example of how our State Police work together

with educators in moving forward to stop the very negative trend of school violence.

All too often, we get asked by our constituents and sometimes even by our peers as to what kinds of offensive programs are we putting forward in the program, what kinds of prevention are we doing. This is a model example of the kinds of things that when school administrators, BOCES officials and our dedicated men and women, in this particular case, in Troop C get together, we can see some very, very positive results.

So like Senator Cook, Senator Seward and, of course, Assemblymen Crouch and Magee, I too, want to salute not only the officers that are here, but particularly the men and women of Troop C for the fine and outstanding work that they continue to do for our region.

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

(There was no response.)

This resolution was previously adopted and given the prerogative of the

chair, I would like to take the opportunity, on behalf of Senator Bruno, Senator Cook, Senator Seward, Senator Libous, the two Assemblymen in the back of the chamber, certainly Senator Paterson, to welcome Superintendent McMahon to the chamber with the other members of the State Police and certainly the educational officials who are doing such a terrific job. We applaud you, we congratulate you. Keep up the good work, and thank you for joining us today.

(Applause)

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we, at this time, take up the non controversial calendar?

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

THE SECRETARY: Calendar Number 11, by Senator Rath, Senate Print 251, an act to repeal -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Print 270, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 13, by Senator Rath, Senate Print 289, an act to amend the Criminal Procedure Law, in relation to prohibiting issuance of an order of recognizance.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The

bill is passed.

THE SECRETARY: Calendar Number 15, by Senator Stafford, Senate Print 119, an act to amend the Vehicle and Traffic Law, in relation to the operation of school buses.

ACTING PRESIDENT KUHL: Secretary will read the last section - Senator Dollinger.

SENATOR DOLLINGER: To explain my vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Chair recognizes Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President. I just want to thank Senator

Stafford's staff for getting me an answer to a question I had when we debated this bill, or a comparable bill, several years ago and the question was whether the continuous operation of the headlights on a school bus would affect the ability to perceive the emergency lights which go on at the time the bus stops to pick up passengers or stops at a railroad track.

I was concerned because from the rear the taillights that would be on when the bus is operated with its lights on might somehow affect the oncoming drivers' perceptions of whether the emergency lights were on. I've been informed by staff that that is not the case and that currently, when they are in operation with children in them, the lights are required to be on in any event.

So I appreciate Senator Stafford's staff providing me with an answer and clarifying it, and I'll be voting in the affirmative.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 26, by Senator Skelos, Senate Print 311, an act to amend the General Obligations Law, in relation to exoneration of certain crime victims.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 53, nays 1. Senator Connor recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 28, by Senator Stafford, Senate Print

382, an act to amend the Real Property Law, in relation to authorizing a voluntary administrator.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 39, by Senator Volker, Senate Print 386, an act to amend the Civil Rights Law, in relation to access to personnel files.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the reading of the non-controversial calendar; what's your pleasure?

SENATOR SKELOS: Mr. President, if we could take up the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar, commencing with Calendar Number 11, by Senator Rath, Senate Print 251.

THE SECRETARY: Calendar Number 11, by Senator Rath, Senate Print 251, an act to repeal paragraph (f) of subdivision 1 of Section 70.30 of the Penal Law.

ACTING PRESIDENT KUHL: Senator Rath, an explanation of Calendar Number 11, Senate Print 251, has been requested by the Acting Minority Leader, Senator Stachowski.

SENATOR RATH: Senator Stachowski, this bill, as you know, passed

last year and the bill changes the maximum term of consecutive sentences for the most egregious juvenile offenders. What it's going to do is raise to a maximum the term of 15 years if both felonies are Class A felonies. It would force juvenile offenders to serve longer sentences in the most aggravated of cases.

ACTING PRESIDENT KUHL: Senator Stachowski yields to Senator Montgomery.

SENATOR MONTGOMERY: Yes. I would just like to ask the sponsor, Senator Rath, if she would yield for a question or clarification.

ACTING PRESIDENT KUHL: Senator Rath, do you yield for a question?

SENATOR RATH: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: Senator Rath, what -- could you give me some idea of the impact of this on youngsters, say, currently who would under the current system, be sentenced? What difference would this

make for them?

SENATOR RATH: What it will do is it will provide for a longer sentence. Before, in the most egregious cases, the ten-year cap was the maximum; and when there are two Class A felonies, they now -- it can go to 15 years instead of ten years.

I think the feeling before had been that these were young people and we did not want to unduly put on a very heavy load of a sentence; but, in many cases, these young people are committing very heinous crimes and so what it's doing, it's putting a little bit more on by way of a sentence for them.

ACTING PRESIDENT KUHL: Senator Montgomery?

SENATOR MONTGOMERY: Yes. So -- if the Senator would continue to yield.

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

SENATOR RATH: Surely.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: Does this

mean that for a youngster who has committed a felony under this section, instead of having a maximum of ten years, that would just simply be raised to a maximum of 15 years?

SENATOR RATH: It could be. Excuse me, just one moment, let me check with counsel.

It removes the cap, the ten-year cap, so that consecutive sentences can be run.

SENATOR MONTGOMERY: And are these youngsters -- now, under this law, under the law now, are these youngsters in DOCS or are they in the juvenile justice system?

SENATOR RATH: Again, I'll check with counsel.

SENATOR MONTGOMERY: Are they part of Corrections now? Do they -- are they sentenced to Corrections immediately?

SENATOR RATH: Yes, they are.

SENATOR MONTGOMERY: Or do those youngsters go into DFY facilities?

SENATOR RATH: No, it's in the Corrections system.

SENATOR MONTGOMERY: This is in Corrections now?

SENATOR RATH: Yes.

SENATOR MONTGOMERY: And what are the ages? I'm sorry?

SENATOR RATH: This will deal with young people below the age of 16.

SENATOR MONTGOMERY: Who are over the age of 16.

SENATOR RATH: Under the age of 16.

SENATOR RATH: So they would be going to DOCS or to DFY?

SENATOR RATH: No, they would be going to the Criminal Justice System. They are committing Class A felonies, we're talking about.

SENATOR MONTGOMERY: Okay. All right. Mr. President -- thank you, Senator Rath, for the clarification.

Mr. President, briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: We're

dealing with juvenile offenders; and understandably, we want to -- want them to be sentenced based on the severity of the crime committed. But, we also in the state of New York have a history of using whatever capacity we have within DOCS, but especially within DFY juvenile facilities, to attempt to rehabilitate these young people, especially since they are so young and that there is some possibility and there have been some successes in being able to deal with turning them around so that we don't have to essentially end up with a "lifer" as it relates to the Criminal Justice System.

So, my concern is that what Senator Rath has done is just to simply extend their time, without, at the same time, proposing ways and means of dealing with those young people so that there's more success in rehabilitating them in their lives.

I think this is the wrong way to go. I feel the same way about this legislation as I do about the bill that was presented to us last week by one of our

colleagues who was looking to do similarly with adults in the system. So, I'm going to be voting against this legislation for those reasons, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Chair recognizes Senator Gold.

SENATOR GOLD: Thank you very much. Would Senator Rath yield to a question?

ACTING PRESIDENT KUHL: Senator Rath, do you yield?

SENATOR RATH: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, I voted for this last year, and my inclination is to do the same again, but I want to ask one question. This talks of felonies defined in Article 130 of the Penal Law committed against a person under 18 years of age. What is the present sentence for somebody convicted under those sections? Is it mandatory jail?

SENATOR RATH: I think that depends on the crime, Senator Gold.

SENATOR GOLD: Because, Senator, if I may, the question that I have is that I've never had a problem with a statute that gives mandatory jail at the time of a conviction when you know that the person's got mandatory jail; but would this be the first situation where we're giving mandatory jail to someone whose sentence may, in fact, not be mandatory jail?

SENATOR RATH: Senator, it merely removes the cap, the ten-year cap.

SENATOR GOLD: Pardon me?

SENATOR RATH: This bill merely removes the ten-year cap in running consecutive sentences.

ACTING PRESIDENT KUHL: Senator Gold, did you have another question?

SENATOR GOLD: No, that's all.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, if Senator Rath would yield.

ACTING PRESIDENT KUHL: Senator Rath do you yield to Senator Leichter?

SENATOR RATH: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, I understood you to say on the floor and the first paragraph of your memo says that this applies only to Class A felonies, is that correct?

SENATOR RATH: I misspoke. If I may, Senator, there was a memo at one time that said that and that was a mistake, I misspoke. It is other felonies, not Class A.

SENATOR LEICHTER: So it applies, also, to Class B felonies?

SENATOR RATH: Yes.

SENATOR LEICHTER: Does it also apply to Class C felonies, do you know?

SENATOR RATH: Yes, but not Class A; is that correct, Counsel? I had some misinformation, and I'm sorry, I had a memo that was incorrect. Thank you for catching it.

SENATOR LEICHTER: Well, based on your answer, if you would be good enough to yield, I'm still confused. Could you

tell us what class felonies it does apply to and what class it does not apply to?

SENATOR RATH: Everything except Class A felonies; and I misspoke because, as I said, it was a rather convoluted statement that I was looking at on my documents here and it's everything but Class A felonies.

SENATOR LEICHTER: Okay. And if I understood correctly, Senator Rath, again, if you would be good enough to yield, in your answer to Senator Gold, this does not impose mandatory sentences, all it does is lift -

SENATOR RATH: The cap.

SENATOR LEICHTER: -- what is presently the cap on the maximum sentence?

SENATOR RATH: Yes, the ten-year cap, the cap at ten years.

SENATOR LEICHTER: Right, so that under your bill, if it should become law, a judge would be free, where he feels it appropriate and correct, to impose a sentence that might still be in accord with the present law, ten years or so?

SENATOR RATH: Right.

SENATOR LEICHTER: Thank you.

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 11 are Senators Mendez, Montgomery, Sampson and Seabrook. Ayes 52, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Print 270, an act to amend the Penal Law, in relation to the crime of false personation.

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

SENATOR PATERSON: Mr. President, I can wait until the conclusion of this bill.

ACTING PRESIDENT KUHL: Fine. Senator Leichter?

SENATOR LEICHTER: If Senator Volker would yield, please.

SENATOR VOLKER: Why, certainly.

SENATOR LEICHTER: Senator, I don't know if you care first to give an explanation of the bill and then maybe I'll ask you a couple questions.

SENATOR VOLKER: Sure. This is a bill that was suggested by the Metropolitan Police Conference and resulted out of several real cases, as the saying goes. What it is, is it covers an area of the law that is not presently covered.

There is an area of law called criminal impersonation. If you impersonate another person, you are subject to a Class A misdemeanor; but if you merely misdirect and give incorrect information -- and what the bill says, basically, is that a person is guilty of false personation when he knowingly misrepresents his actual name, date of birth or address to a police officer, peace officer with intent to prevent such police officer from performing an official function.

This happens quite a bit unfortunately in investigations involving criminal conduct, and people deliberately give false information -- sometimes are charged, in fact, with a crime -- and it's later found that they're not the person that they've alleged themselves to be, and it was found because there were people who were charged then with impersonation, but since they weren't impersonating a real character, that charge had to be thrown out. And in some cases, by the way, all the records had to be redone, and so forth, because they found out the person they thought that

individual to be was not the same person.

So to prevent that and to avoid that kind of conduct, this legislation was suggesting and that's why it's called criminal personation; and you have to not only make the false -- give the false information, but use it with the intent, clearly, to mislead the police officer, peace officer that's involved in the investigation.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Volker would yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, I believe I voted for this bill last year -

SENATOR VOLKER: Yes, you did.

SENATOR LEICHTER: -- but with an uneasy stomach.

SENATOR VOLKER: Well, We'll

try to make it easy this year.

SENATOR LEICHTER: And the nice thing about so many of your bills is they come up for years and years.

SENATOR VOLKER: But there are fewer of them.

SENATOR LEICHTER: You can always rethink your position, next year maybe I'll have a different position, a year after that, but I am troubled about it, Senator, and I wanted to ask you, if a police officer stops me in pursuit of his duties and he asks me, "Did you commit a crime," I have a right to be silent, right?

SENATOR VOLKER: Exactly.

SENATOR LEICHTER: If he says, under your bill, "Where do you live," and you remain silent, can you do that?

SENATOR VOLKER: Yes, I suppose you can. I don't see any reason why you can't, as long as you don't -- this bill relates to the fact that you deliberately mislead a police officer. You read the information there, and you have to do it with intent to prevent such police officer from

performing an official function.

Senator, I know what you're getting at and you know as well as I know that these cases are very, very carefully looked at. In fact, the reason that this bill is here is because a number of criminal impersonation cases were thrown out because they do look at them so carefully, and the fact that the person didn't actually use it specifically and didn't try directly to impersonate another person but just used a fictitious name, allowed him or her to totally mislead an investigation and to set up a situation where the local municipality, in fact, was forced into some pretty heavy costs and so forth in a case that should have been much more straightforward.

I don't see this, frankly, Senator, as a huge -- to me as a huge problem. I think -- I know what you're getting at and we have debated this in the committee several times. By the way, Senator, I'm going to hopefully be able to avoid your stomach problems for next year.

SENATOR LEICHTER: You have a

Maalox?

SENATOR VOLKER: No, no, no, because next year I hope this bill will not be around. We were on the verge last year, I think, of coming to maybe an accommodation with the Assembly last year, and I'm hoping this year it's one of the bills we'll be able to get disposed of because I think it is a bill that represents something I think should be finished up, but I just wanted to mention that.

Go ahead.

SENATOR LEICHTER: Senator Volker, if you would continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: One of the things I find so engaging about you, Senator, is you're a great optimist -

SENATOR VOLKER: Oh, absolutely.

SENATOR LEICHTER: -- and every year -- sometimes it's wait until next year.

SENATOR VOLKER: But Senator, every year, I do get rid of a few of them, you have to admit that.

SENATOR LEICHTER: And you certainly got rid of one great big one, I'm sorry to say.

SENATOR VOLKER: No, that's true.

SENATOR LEICHTER: So, I say both jokingly and also with admiration, because I know you believe in what you do and you do it very sincerely and you do it very well. But, I want to make sure that we're not, first of all, that we're not treading on any Fifth Amendment rights.

Secondly, I'm trying to understand, really, what do we gain if I'm stopped and a police officer says, "Leichter" -- well, he doesn't know my name, he says, "Okay, you, where do you live," and I give him the wrong address with the intent - because I don't want him to know where I live and, under your bill, that's a misdemeanor. But you're telling me if he says to me, "Where do you live," and I say, "It's none

of your business," I'm invoking my Fifth Amendment right, I can do that.

SENATOR VOLKER: That's right.

SENATOR LEICHTER: So -

SENATOR VOLKER: I mean, the mere fact, I suspect, that you give your address -- again, you would have to prove then that you're deliberately trying to prevent that officer from performing an official function. I think it would be stretching pretty hard, just because you might give an incorrect address, to contend that.

By the way, you understand that most of these people are being arrested, anyway. The vast majority of these people are being arrested anyway on another charge and they are just misleading and that's where this issue even comes in.

SENATOR LEICHTER: Well, Senator, if you would continue to yield.

SENATOR VOLKER: Yes.

SENATOR LEICHTER: It certainly seems to me if they're being arrested anyhow, there are all sorts of ways

that the police have for finding out their correct address and their background through fingerprints and so on, it's not infallible. And I appreciate it's an easier system for the police, no question about it, if people have got to answer every question, if they didn't have the Fifth Amendment right, you know it would be even easier if they could use the rack, if they could use a thumb screw, and so on, no question about it. You would get some pretty good answers. But, I just wonder how important this really is for the police when I weigh it against what is a wonderful thing. And we're one of the few countries that has this where you've got a right to tell a police officer, "I'm not going to answer."

SENATOR VOLKER: That's right.

SENATOR LEICHTER: It's a wonderful right.

SENATOR VOLKER: I agree, that's right, as long as you do that, and you have the right to do that, Senator, and no one is saying that you don't have the right to do it. Nobody's going to put you to the

rack to make you say that you're Franz Leichter and where you live, and -

SENATOR LEICHTER: That's the next bill.

SENATOR VOLKER: But, the point is, that's not what's happening here Senator. What's happening here is somebody is -- it's not the police officer, it's society that is being deliberately misled here and society is paying the price for many of these people. Some of these people end up in jail for a couple of weeks before you ever find out exactly who they are; and that's the point, I think, of this bill. The point of this bill is to plug a loophole between criminal impersonation; and I don't know, Senator, whether you voted for criminal impersonation or not, I think maybe I did, that was quite awhile ago, but if you voted for criminal impersonation, I'm not exactly sure why, frankly, you shouldn't vote for this criminal personation bill.

SENATOR LEICHTER: Mr. President, just answering Senator Volker, I think there's a big difference if I go out

and criminally impersonate a police officer or impersonate another law enforcement official, and so on, than if I give -- if I give a wrong name. I'm trying to understand, really, what the great compelling need here is. You say, well, there's expense for the municipality. Okay, you give a wrong address, the police officer goes to 112 Broadway and there's no such address or this person doesn't live there and they've got to check records, granted, that's a certain expense, but I'm trying to weigh that against that wonderful constitutional right which you acknowledge that you have a right to remain silent, that you don't have to incriminate yourself.

Under our system, you're not forced to cooperate with the police. That makes it harder for the police, it means some people who have committed crimes are probably going to escape and they're going to go free, but it means that most citizens cannot be infringed upon or impinged on the basic right of citizenry and of not being harassed or being subject to official inquiries that they

don't want to respond to.

SENATOR VOLKER: Senator, I think you keep persisting in talking about First and Fifth Amendment rights and about being silent. No one is objecting to that. And, Senator, I understand what you're pushing to, but Senator, I also kind of object to the attitude that you're saying it's all right for somebody to lie to a public official and to a law enforcement officer because basically that's what you're saying.

When we are dealing with societal problems, Senator, you can argue that the biggest problem maybe we have in society today lies in the inability of people to communicate logically and directly. No one is saying that a police officer has the right to force a person to do things that they are not -- that they can legally not do, but we are saying that if they give information that deliberately misleads a law enforcement officer in the performance of his or her duty and does it in a way in which - in effect, that they lie, that that should

have some sort of penalty to it. This is a misdemeanor, it's not a felony, but it should have some sort of penalty to it because we should not encourage people to merely lie to people who are acting in the performance of their duties, and I think that's what this bill is all about and I think it's a fairly simple, straightforward bill and it just - it seems to me that the argument on Fifth Amendment rights is a different argument al together.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: On the bill.

Senator Volker, if you say the biggest problem we have is arguing and communicating logically and directly with people, if you make that a crime, we'd all - all of us here would be in jail. I don't know what that has to do with this bill. This bill -- let me ask you another question. Senator, has this bill been requested by

any -

ACTING PRESIDENT KUHL: Senator Leichter, are you asking now Senator Volker to yield to a question?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: I know you said that the Metropolitan Police Council requested this bill. Any District Attorneys have urged -

SENATOR VOLKER: In all honesty, I am not aware. I think this bill has been around for some time. I think a number of law enforcement organizations have requested it. I'm not aware. I don't think this bill is the end of the world, I think it just plugs a loophole in the law that showed up here some years ago. I really don't think that this bill is going to create any havoc in the streets or anything of that nature.

What I was trying to point out

to you, though, it just -- it seems to me that the fact that people can't communicate truthfully in our society does create a huge problem for all of us and I think what this bill tries to deal with is misleading investigators and things of that nature which, by the way, may, in fact, have the effect of harming other citizens who the police are trying to investigate and find out who committed crimes and things of that nature, that's the real problem.

SENATOR LEICHTER: Mr. President, on the bill, and I thank my good friend Dale Volker.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: Senator, I think we ought to be clear on some things. One is, while maybe one of the great problems we have in this society is the inability of people to be truthful, I mean, this doesn't deal with a great societal problem, so we ought to be clear on that.

Secondly, this bill doesn't deal with or the effect of this bill is not

to induce people to lie, what it does is it says if you misrepresent, in some instances, where you live or your date of birth or your name and so on to a police officer, you've committed a crime. So there's no inducement if we don't pass it that suddenly everybody is going to start lying to police officers.

Thirdly, I don't think there's a great problem in this particular area. I haven't received any notification from any law enforcement bodies, other than the Metropolitan Police Council, that they need this.

Fourthly -- and I think this is really what I think is important. By the way, I don't think it's a great, significant bill, I don't think it's going to affect the police very much if it passes or doesn't pass, but I don't think it's a great abridgement of civil liberties if it does pass.

But I think we're going along a path here which I just think it's wrong. We ought to be concerned about preserving basic American rights and values, and one of

them is -- and it's a wonderful thing and we're almost the only country in the world that has done this and we have done it for over 200 years, you've got a right to remain silent, you've got a right not to cooperate with the police. That's a wonderful right, even maybe to lie to the police. "Did you commit the crime?" "No, I didn't commit the crime." "Weren't you at a certain place?" "No, I wasn't there," or "I'm not going to answer." Does that, in some respects, make it harder for the police? Yes. But does it mean that crimes are going to go unsolved where otherwise they would be? Yes. But we do it because there's such a value in this right that we give American citizens for people here in this country to have that basic right. And while I can't say definitely that this is an infringement of Fifth Amendment rights, it certainly borders on it. It's a path that we shouldn't go down. It's not necessary.

We ought to be as concerned with the rights of all the people of this state of New York to enjoy those rights that

are set forth in the most wonderful document that any government has ever adopted and that's the Bill of Rights and we shouldn't even come close to trying to infringe or impinge on this, and I urge you to vote against the bill.

ACTING PRESIDENT KUHL: Senator Abate, did you wish to be recognized?

SENATOR ABATE: Yes, please.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

SENATOR ABATE: Would the chamber please excuse my raspy voice. Would Senator Volker yield?

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR VOLKER: I hope I didn't give it to you from last week.

SENATOR ABATE: I don't know. It was the lasagna, I think. But, last year, I did vote for this bill -

SENATOR VOLKER: Yes.

SENATOR ABATE: But, I made a recommendation which I would like to make again. I asked why is the language of the bill so broad which states "to prevent such police officer or peace officer from performing an official function." I suggested last year that that language, "performing an official function," should be substituted with the language, "making a lawful arrest," since, in fact, the conduct we're trying -- we're seeking to curb and punish is the very conduct that's related to arrest-related behavior and it seems that some of the objections that people might have might be eliminated. Have you given consideration to that substitute language, or will you in the future?

SENATOR VOLKER: I certainly will, but I think the reason -- and I would have to check with my counsel on this, but I think the reason we didn't change it was that most of the cases involving are not -- are not initially arrest cases, they're investigation cases, although -- he just was

pointing out to me that most of them are a part of the investigations and if we had to do it pursuant to making a lawful arrest, you would then also have to prove independently the issue of the arrest itself as part of this crime. In other words, this crime would then become another -- would give another bite of the apple to the person that's involved. So, that's the problem.

We'll certainly look at that, but these are investigatory kinds of things. I think, you know, in all honesty, I don't think it is a huge deal, except that I don't think that people really realize, I guess, maybe because I came from a law enforcement background, yes, I'm used to having people mislead us in investigations and it happened all the time; and I have people that say, "I just don't want to tell you anything," and I say, "I'm sorry, I think you should, but if you don't want to, it's up to you."

The problem is, though, that some people went a lot farther than that and some people deliberately misled you and

attempted to send you down the wrong path so that you would not just waste time but maybe miss somebody that killed somebody or robbed somebody or whatever. And under criminal impersonation -- and by the way, years ago, people were convicted of criminal impersonation in cases probably involving something similar to this because the law wasn't as specific, but I think rightfully, a judge said, "Wait a minute. That really isn't criminal impersonation," and threw it out and that was correct. What we're trying to do now is get back to the way it was before but in the right way, which is by making it more specific.

We'll certainly look at that, but I think the reason we didn't -- and I do remember you making that suggestion. I think the reason we didn't was because this is normally an investigatory kind of thing and that's why the official function thing was used, but it's certainly something we'll look at.

SENATOR ABATE: But the language could be amended to include

investigative as well as arrest.

SENATOR VOLKER: Good point. We'll take a look at that. Thank you.

SENATOR ABATE: Okay. Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would wonder if Senator Volker would just yield for a quick question.

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR MONTGOMERY: Senator, I tried to -- I know I voted yes on this legislation last time, I believe, but I try to keep in close and frequent contact with the police officers in my district, especially around youth, juvenile issues in relationship to the criminal justice system, and one of the things that they tell me is that they often go to make an arrest or they have a contact of some sort with a juvenile

and those young people frequently give them the wrong information and they are then taken to the precinct and they remain there until the police are able to find out their real names and whatever have you. And I'm just wondering if, in those cases where the local police officers are coming in contact with young people in that fashion and those young people give them false information, does this mean, then, that they now have -- the police have the option of charging them based on this law? In other words, they have now a crime as opposed to it just being a making life difficult for the police, which is what they say it does.

SENATOR VOLKER: I would be interested to know, police officers, unless they have some sort of evidence to charge the young people; of course the problem is, is that they can't be charged. If they're under age, they couldn't be charged with this, anyway, it would be just be a juvenile offense because there is nothing in the law now that would apply this directly to juveniles, they would be subject to family

court because it would be simply a misdemeanor. And, as you know, in New York City, you can probably go to family court about 100 times before anything ever happens, which is one of the things that is being talked about this year.

But, I suppose if -- remember, if there's a deliberate attempt to mislead, yes. Now if they use, for instance, a real person in that attempt, they could be charged with criminal impersonation. I find it hard to believe, unless there's something -- some real investigation going on -- by the way, law enforcement officers generally don't bring people back to the station unless there is some pretty serious reason and, as a general rule, unless they think that they're people that are involved in a crime or people who are witnesses to a crime or something like that.

One of the things that young people are great at is telling stories about, "Oh, I had nothing to do with it," and I had a number of them tell me that. "Look, I found this gun laying on the street and I

had absolutely nothing to do with it." And then, of course, later on you found out maybe they were one of the people who was there when the guy got shot or whatever; and a lot of times police officers tend to sense that, or worse than that, the young people will tell you that maybe one of their compadres already has told the police officers this guy did it.

But, yes, there is a possibility, if they're of age, that they could be charged with misleading the police officer, in effect, a criminal personation, but as I say, the specific language here says that they knowingly misrepresent with intent to prevent such police officer from performing an official function. I think it's fairly clear what's intended. The mere fact that they even give false information probably wouldn't qualify, that you would have to still prove that they deliberately did it to mislead them in performing an investigation.

SENATOR MONTGOMERY: Okay. Thank you, Senator Volker. Just very briefly

on this bill, Mr. President, I did vote, as I said before, for this legislation. I'm going to vote no this time and after, one, talking to police officers and recognizing the fact that this is something that police do encounter fairly frequently and they have told me that it is a nuisance but it is a fact that they deal with and they figured out ways to get information from particularly young people when they encounter them in the streets, and they themselves have come up with alternatives in relationship to addressing the issue of identification and other areas as it relates to making their jobs easier, while, at the same time, protecting the rights and trying to keep young people from acquiring more and more charges against them, especially of this sort as it relates to the law.

So, I'm going to oppose it because I do think there is a possibility of a particular group of young people being entrapped by this and I certainly would not want to be voting in the affirmative when recognizing that that is certainly going to

be the case.

Now, and I can say to you in no uncertain terms, Senator Volker, no matter how we imagine ourselves as being part of a totally equal and unbiased system as it relates to criminal justice and every other area, it is not that way; and so there are young people who are frequently, regularly hauled into the police precinct for less than giving the wrong name.

So, I must always be vigilant and cognizant of that and so I will vote no on this legislation because I think it is a danger, there is a danger in that happening in my -- for young people in my district.

ACTING PRESIDENT KUHL: The Chair recognizes the distinguished Senator from Staten Island, Senator Marchi.

SENATOR MARCHI: Somewhat on the subject and somewhat parenthetically, the requirement that there be scienter, knowledge, knowing, also goes to the question of obstructing, obstruction of justice, by impeding the investigative pursuit of the commission of wrongdoing.

So, I respect some of the arguments that were raised here, but it seems to me to at least appear on the surface that we're dealing with obstruction of justice when this -- when we condemn a bill of this nature.

Reference was made earlier also about the Fifth Amendment and that it might be construed in some way as to supporting the notion that we can't be compelled to confess -- to testify against ourselves.

Let's remember this: The Fifth Amendment went into the Constitution in reaction to the long Parliament of 1640, it was the last year when they finally abolished the Star Chamber proceedings in England, and that was the long Parliament, 1640, that separated it.

Nevertheless, that memory was still lively with the founders of our republic and it went -- again, might I also cite the fact, the right to remain silent, whether it has served us well or not, before we emulate -- before we cast it in almost a

messianic mold, Justice Brandeis, Justice Oliver Wendell Holmes, were firmly in opposition to the Fifth Amendment to say that I will refuse to answer because if I did answer correctly, it might tend to incriminate me. And that's since long gone, it's been long gone in England, and England -- certainly I don't think that we are any freer to express our points of view than the English are, and they have no Fifth Amendment, they abolished it a long time ago when they -- as a result of the action of the long Parliament of 1640.

So, sporting the record that we have in terms of organized crime and lawlessness generally throughout the country, I believe that we ought to be also seriously reconsidering a position where no provable advantage in superiority to other comparable systems of law which respect freedom of expression have been found wanting. So, I think that, although there are some problems, I have the same problem with "an official function," because when you go from a casual conversation or an official function, I share

somewhat the feeling that was expressed by Senator Abate, but still it is with scienter, with knowledge, knowing misrepresentation, and this to me represents a hazard that we don't need when we're trying to bring someone to terms on the question of justice and there has been wrongdoing committed.

So I would encourage a yes vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 12 are Senators Leichter, Montgomery and Seabrook. Ayes 53, nays 3.

ACTING PRESIDENT KUHL: The

bill is passed.

Senator Paterson.

SENATOR PATERSON: Mr. President, with unanimous consent and in honor of Charles I, who I believe was the King of England during the Parliament of 1640, I would like to be recorded in the negative on Calendar Number 26.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Paterson will be recorded in the negative on Calendar Number 26.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, if we could return to reports of standing committees, I believe there is a report of the Local Government Committee at the desk.

ACTING PRESIDENT KUHL: We'll return to the order of standing committees. The Secretary will read the report of the Local Government Committee.

THE SECRETARY: Senator Rath, from the Committee on Local Government, reports the following bills: Senate Print

192, by Senator Tully, an act to authorize the county of Nassau, town of North Hempsted;

293, by Senator Seward, an act to amend the Real Property Tax Law, in relation to business investment exemptions;

330, by Senator Volker, an act to amend the General Municipal Law and the County Law;

459, by Senator Larkin, an act to amend the General Municipal Law, the State Finance Law and the Municipal Home Rule Law;

461, by Senator Larkin, an act to amend the Real Property Tax Law, in relation to school districts;

477, by Senator DeFrancisco, an act to amend the Real Property Tax Law, in relation to authorizing;

527, by Senator Present, an act to amend the General Municipal Law, in relation to authorizing the designation;

528, by Senator Present, an act to amend the General Municipal Law, in relation to municipal contingency;

And 532, by Senator Present, an act to the amend General Municipal Law, in

relation to giving municipalities the power.

All bills ordered directly for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

There is no housekeeping at the desk, Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until tomorrow, Tuesday, January 28th, at 11 a.m. sharp.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, the Senate will stand adjourned until tomorrow, January 28th, note the time change, 11 a.m. Until 11 a.m. tomorrow, the Senate stands adjourned.

(Whereupon, at 4:06 p.m., the Senate adjourned.)