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ALBANY, NEW YORK

January 27, 1997

3:04 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. I ask the members
4 to find their chairs, staff to find their
5 places.

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

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

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

13 (A moment of silence was
14 observed.)

15 Reading of the Journal.

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

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

24 Presentation of petitions.

25 Messages from the Assembly.

1 Messages from the Governor.
2 Reports of standing committees
3 Reports of select committees.
4 Communications and reports
5 from state officers.

6 Motions and resolutions.
7 Senator Farley.

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

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

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

24 ACTING PRESIDENT KUHL:
25 Amendments are received and adopted, and

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

3 Any other motions?
4 Resolutions?

5 Chair recognizes Senator
6 Cook -

7 SENATOR BRUNO: Excuse me,
8 Mr. President.

9 ACTING PRESIDENT KUHL:
10 Senator Bruno.

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

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

18 SENATOR BRUNO: Thank you.

19 ACTING PRESIDENT KUHL:
20 Senator Cook.

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

25 ACTING PRESIDENT KUHL:

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

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

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

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

25 Whereas, attendant to such

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

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

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

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

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

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

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

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

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

1 Health and Safety Coordinator.

2 ACTING PRESIDENT KUHL:

3 Senator Cook, did you wish to speak to the
4 resolution?

5 SENATOR COOK: Yes, Mr.
6 President.

7 ACTING PRESIDENT KUHL:

8 Without objection, Senator Cook.

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

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

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

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

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

19 SENATOR SEWARD: Yes.

20 ACTING PRESIDENT KUHL:
21 Without objection, Senator Seward.

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

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

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

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

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

1 hand.

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

9 ACTING PRESIDENT KUHL:

10 Senator Libous, did you wish to speak to the
11 resolution?

12 SENATOR LIBOUS: Thank you,
13 Mr. President.

14 ACTING PRESIDENT KUHL:

15 Without objection.

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

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

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

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

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

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

23 (There was no response.)

24 This resolution was previously
25 adopted and given the prerogative of the

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

12 (Applause)

13 Senator Bruno, that brings us
14 to the calendar.

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

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

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

24 SENATOR PATERSON: Lay it
25 aside.

1 ACTING PRESIDENT KUHL: Lay
2 the bill aside.

3 THE SECRETARY: Calendar
4 Number 12, by Senator Volker, Senate Print
5 270, an act to amend the Penal Law, in
6 relation to the crime of false personation.

7 SENATOR PATERSON: Lay it
8 aside.

9 ACTING PRESIDENT KUHL: Lay
10 the bill aside.

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

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

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

20 ACTING PRESIDENT KUHL: Call
21 the roll.

22 (The Secretary called the
23 roll.)

24 THE SECRETARY: Ayes 54.

25 ACTING PRESIDENT KUHL: The

1 bill is passed.

2 THE SECRETARY: Calendar
3 Number 15, by Senator Stafford, Senate Print
4 119, an act to amend the Vehicle and Traffic
5 Law, in relation to the operation of school
6 buses.

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

10 SENATOR DOLLINGER: To explain
11 my vote.

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

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

17 ACTING PRESIDENT KUHL: Call
18 the roll.

19 (The Secretary called the
20 roll.)

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

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

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

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

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

24 ACTING PRESIDENT KUHL:
25 Announce the results.

1 THE SECRETARY: Ayes 54.

2 ACTING PRESIDENT KUHL: The

3 bill is passed.

4 THE SECRETARY: Calendar

5 Number 26, by Senator Skelos, Senate Print

6 311, an act to amend the General Obligations

7 Law, in relation to exoneration of certain

8 crime victims.

9 ACTING PRESIDENT KUHL:

10 Secretary will read the last section.

11 THE SECRETARY: Section 2.

12 This act shall take effect on the first day

13 of November.

14 ACTING PRESIDENT KUHL: Call

15 the roll.

16 (The Secretary called the

17 roll.)

18 ACTING PRESIDENT KUHL:

19 Announce the results when tabulated.

20 THE SECRETARY: Ayes 53, nays

21 1. Senator Connor recorded in the negative.

22 ACTING PRESIDENT KUHL: The

23 bill is passed.

24 THE SECRETARY: Calendar

25 Number 28, by Senator Stafford, Senate Print

1 382, an act to amend the Real Property Law,
2 in relation to authorizing a voluntary
3 administrator.

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

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

8 ACTING PRESIDENT KUHL: Call
9 the roll.

10 (The Secretary called the
11 roll.)

12 THE SECRETARY: Ayes 54.

13 ACTING PRESIDENT KUHL: The
14 bill is passed.

15 THE SECRETARY: Calendar
16 Number 39, by Senator Volker, Senate Print
17 386, an act to amend the Civil Rights Law, in
18 relation to access to personnel files.

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

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

23 ACTING PRESIDENT KUHL: Call
24 the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Ayes 54.

3 ACTING PRESIDENT KUHL: The
4 bill is passed.

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

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

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

15 THE SECRETARY: Calendar
16 Number 11, by Senator Rath, Senate Print 251,
17 an act to repeal paragraph (f) of subdivision
18 1 of Section 70.30 of the Penal Law.

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

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

1 last year and the bill changes the maximum
2 term of consecutive sentences for the most
3 egregious juvenile offenders. What it's
4 going to do is raise to a maximum the term of
5 15 years if both felonies are Class A
6 felonies. It would force juvenile offenders
7 to serve longer sentences in the most
8 aggravated of cases.

9 ACTING PRESIDENT KUHL:
10 Senator Stachowski yields to Senator
11 Montgomery.

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

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

18 SENATOR RATH: Sure.

19 ACTING PRESIDENT KUHL:
20 Senator yields.

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

1 make for them?

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

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

16 ACTING PRESIDENT KUHL:
17 Senator Montgomery?

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

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

22 SENATOR RATH: Surely.

23 ACTING PRESIDENT KUHL: The
24 Senator continues to yield.

25 SENATOR MONTGOMERY: Does this

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

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

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

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

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

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

21 SENATOR RATH: Yes, they are.

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

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

1 SENATOR MONTGOMERY: This is
2 in Corrections now?

3 SENATOR RATH: Yes.

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

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

8 SENATOR MONTGOMERY: Who are
9 over the age of 16.

10 SENATOR RATH: Under the age
11 of 16.

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

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

18 SENATOR MONTGOMERY: Okay.

19 All right. Mr. President -- thank you,
20 Senator Rath, for the clarification.

21 Mr. President, briefly on the
22 bill.

23 ACTING PRESIDENT KUHL:

24 Senator Montgomery, on the bill.

25 SENATOR MONTGOMERY: We're

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

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

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

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

5 ACTING PRESIDENT KUHL: Chair
6 recognizes Senator Gold.

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

10 ACTING PRESIDENT KUHL:
11 Senator Rath, do you yield?

12 SENATOR RATH: Yes.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

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

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

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

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

12 SENATOR GOLD: Pardon me?

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

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

18 SENATOR GOLD: No, that's all.

19 ACTING PRESIDENT KUHL:
20 Senator Leichter.

21 SENATOR LEICHTER: Yes, if
22 Senator Rath would yield.

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

1 SENATOR RATH: Sure.

2 ACTING PRESIDENT KUHL:

3 Senator yields.

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

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

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

15 SENATOR RATH: Yes.

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

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

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

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

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

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

15 SENATOR RATH: The cap.

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

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

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

1 SENATOR RATH: Right.

2 SENATOR LEICHTER: Thank you.

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

6 (There was no response.)

7 Hearing none, the Secretary
8 will read the last section.

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

12 ACTING PRESIDENT KUHL: Call
13 the roll.

14 (The Secretary called the
15 roll.)

16 Announce the results when
17 tabulated.

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

22 ACTING PRESIDENT KUHL: The
23 bill is passed.

24 Secretary will continue to
25 call the controversial calendar.

1 THE SECRETARY: Calendar
2 Number 12, by Senator Volker, Senate Print
3 270, an act to amend the Penal Law, in
4 relation to the crime of false personation.

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

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

10 ACTING PRESIDENT KUHL: Fine.
11 Senator Leichter?

12 SENATOR LEICHTER: If Senator
13 Volker would yield, please.

14 SENATOR VOLKER: Why,
15 certainly.

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

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

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

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

1 individual to be was not the same person.

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

10 ACTING PRESIDENT KUHL:

11 Senator Leichter.

12 SENATOR LEICHTER: If Senator
13 Volker would yield.

14 SENATOR VOLKER: Sure.

15 ACTING PRESIDENT KUHL:

16 Senator Volker, do you yield?

17 SENATOR VOLKER: Yes.

18 ACTING PRESIDENT KUHL: The
19 Senator yields.

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

22 SENATOR VOLKER: Yes, you did.

23 SENATOR LEICHTER: -- but with
24 an uneasy stomach.

25 SENATOR VOLKER: Well, We'll

1 try to make it easy this year.

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

5 SENATOR VOLKER: But there are
6 fewer of them.

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

15 SENATOR VOLKER: Exactly.

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

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

1 performing an official function.

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

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

25 SENATOR LEICHTER: You have a

1 Maalox?

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

12 Go ahead.

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

15 SENATOR VOLKER: Sure.

16 ACTING PRESIDENT KUHL:
17 Senator yields.

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

21 SENATOR VOLKER: Oh,
22 absolutely.

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

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

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

7 SENATOR VOLKER: No, that's
8 true.

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

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

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

3 SENATOR VOLKER: That's right.

4 SENATOR LEICHTER: So -

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

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

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

22 SENATOR VOLKER: Yes.

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

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

18 SENATOR VOLKER: That's right.

19 SENATOR LEICHTER: It's a
20 wonderful right.

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

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

3 SENATOR LEICHTER: That's the
4 next bill.

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

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

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

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

1 don't want to respond to.

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

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

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

12 SENATOR LEICHTER: Mr.
13 President.

14 ACTING PRESIDENT KUHL:
15 Senator Leichter.

16 SENATOR LEICHTER: On the
17 bill.

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

1 any -

2 ACTING PRESIDENT KUHL:

3 Senator Leichter, are you asking now Senator
4 Volker to yield to a question?

5 SENATOR LEICHTER: Yes.

6 ACTING PRESIDENT KUHL:

7 Senator Volker, do you yield?

8 SENATOR VOLKER: Yes.

9 ACTING PRESIDENT KUHL:

10 Senator yields.

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

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

25 What I was trying to point out

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

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

15 ACTING PRESIDENT KUHL:
16 Senator Leichter, on the bill.

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

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

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

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

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

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

1 them is -- and it's a wonderful thing and
2 we're almost the only country in the world
3 that has done this and we have done it for
4 over 200 years, you've got a right to remain
5 silent, you've got a right not to cooperate
6 with the police. That's a wonderful right,
7 even maybe to lie to the police. "Did you
8 commit the crime?" "No, I didn't commit the
9 crime." "Weren't you at a certain place?"

10 "No, I wasn't there," or "I'm not going to
11 answer." Does that, in some respects, make
12 it harder for the police? Yes. But does it
13 mean that crimes are going to go unsolved
14 where otherwise they would be? Yes. But we
15 do it because there's such a value in this
16 right that we give American citizens for
17 people here in this country to have that
18 basic right. And while I can't say
19 definitely that this is an infringement of
20 Fifth Amendment rights, it certainly borders
21 on it. It's a path that we shouldn't go
22 down. It's not necessary.

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

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

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

9 SENATOR ABATE: Yes, please.

10 ACTING PRESIDENT KUHL: Chair
11 recognizes Senator Abate.

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

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

18 SENATOR VOLKER: Yes.

19 ACTING PRESIDENT KUHL:
20 Senator yields.

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

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

1 SENATOR VOLKER: Yes.

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

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

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

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

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

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

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

24 SENATOR ABATE: But the
25 language could be amended to include

1 investigative as well as arrest.

2 SENATOR VOLKER: Good point.

3 We'll take a look at that. Thank you.

4 SENATOR ABATE: Okay. Thank
5 you.

6 ACTING PRESIDENT KUHL:
7 Senator Montgomery.

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

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

13 SENATOR VOLKER: Sure.

14 ACTING PRESIDENT KUHL:
15 Senator yields.

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

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

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

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

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

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

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

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

24 SENATOR MONTGOMERY: Okay.

25 Thank you, Senator Volker. Just very briefly

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

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

1 be the case.

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

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

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

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

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

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

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

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

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

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

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

8 So I would encourage a yes
9 vote.

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

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

15 ACTING PRESIDENT KUHL: Call
16 the roll.

17 (The Secretary called the
18 roll.)

19 ACTING PRESIDENT KUHL:
20 Announce the results when tabulated.

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

25 ACTING PRESIDENT KUHL: The

1 bill is passed.

2 Senator Paterson.

3 SENATOR PATERSON: Mr.

4 President, with unanimous consent and in
5 honor of Charles I, who I believe was the
6 King of England during the Parliament of
7 1640, I would like to be recorded in the
8 negative on Calendar Number 26.

9 ACTING PRESIDENT KUHL:

10 Without objection, hearing no objection,
11 Senator Paterson will be recorded in the
12 negative on Calendar Number 26.

13 Senator Skelos.

14 SENATOR SKELOS: Mr.

15 President, at this time, if we could return
16 to reports of standing committees, I believe
17 there is a report of the Local Government
18 Committee at the desk.

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

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

1 192, by Senator Tully, an act to authorize
2 the county of Nassau, town of North Hempsted;
3 293, by Senator Seward, an act
4 to amend the Real Property Tax Law, in
5 relation to business investment exemptions;
6 330, by Senator Volker, an act
7 to amend the General Municipal Law and the
8 County Law;
9 459, by Senator Larkin, an act
10 to amend the General Municipal Law, the State
11 Finance Law and the Municipal Home Rule Law;
12 461, by Senator Larkin, an act
13 to amend the Real Property Tax Law, in
14 relation to school districts;
15 477, by Senator DeFrancisco,
16 an act to amend the Real Property Tax Law, in
17 relation to authorizing;
18 527, by Senator Present, an
19 act to amend the General Municipal Law, in
20 relation to authorizing the designation;
21 528, by Senator Present, an
22 act to amend the General Municipal Law, in
23 relation to municipal contingency;
24 And 532, by Senator Present,
25 an act to the amend General Municipal Law, in

1 relation to giving municipalities the power.

2 All bills ordered directly for
3 third reading.

4 ACTING PRESIDENT KUHL:
5 Senator Skelos.

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

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

12 There is no housekeeping at
13 the desk, Senator Skelos.

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

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

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