

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALBANY, NEW YORK
February 11, 1997
3:00 p.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President
STEPHEN F. SLOAN, Secretary

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

2 ACTING PRESIDENT SPANO: The
3 Senate will come to order. All please rise for
4 the Pledge of Allegiance to the Flag.

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

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

9 (A moment of silence was
10 observed.)

11 Reading of the Journal.

12 THE SECRETARY: In Senate, Monday,
13 February 10th. The Senate met pursuant to
14 adjournment. The Journal of Friday, February
15 7th, was read and approved. On motion, Senate
16 adjourned.

17 ACTING PRESIDENT SPANO: Without
18 objection, the Journal stands approved as read.

19 Presentation of petitions.

20 Messages from the Assembly.

21 Messages from the Governor.

22 Reports of standing committees.

23 Secretary will read.

24 THE SECRETARY: Senator Wright,
25 from the Committee on Alcoholism and Drug Abuse,

1 reports the following bills:

2 Senate Print 45, by Senator Levy,
3 an act to amend the Vehicle and Traffic Law, in
4 relation to requiring school bus and other motor
5 vehicle drivers;

6 338, by Senator Skelos, an act to
7 amend the Vehicle and Traffic Law, in relation
8 to increasing the period of time;

9 1517, by Senator Rath, an act to
10 amend the Vehicle and Traffic Law, in relation
11 to the admissibility of evidence;

12 1659, by Senator Wright, an act
13 to amend the Vehicle and Traffic Law, in
14 relation to creating the crime of aggravated
15 driving while intoxicated;

16 1661, by Senator Wright, an act
17 to amend the Vehicle and Traffic Law, in
18 relation to extending the scope;

19 1878, by Senator Spano, an act to
20 amend the Vehicle and Traffic Law, in relation
21 to the criminal penalties.

22 Senator -

23 ACTING PRESIDENT SPANO: All
24 bills reported directly to third reading.

25 Excuse me.

1 THE SECRETARY: Senator Alesi,
2 from the Committee on Consumer Protection
3 reports the following bills:

4 396, by Senator Volker, an act to
5 amend the General Business Law, in relation to
6 providing proprietary access;

7 689, by Senator Spano, an act to
8 amend the General Business Law and the Executive
9 Law;

10 779, by Senator Cook, an act to
11 amend the General Business Law;

12 1301, by Senator Velella, an act
13 to amend the General Business Law.

14 Senator Padavan, from the
15 Committee on Cities, reports the following bill:

16 899, by Senator Cook, an act to
17 amend the General City Law and others, in
18 relation to appointment of alternative members.

19 Senator Maziarz, from the
20 Committee on Aging, reports the following bills:

21 1548, by Senator Holland, an act
22 to amend the Vehicle and Traffic Law;

23 1693, by Senator Farley, an act
24 to amend the Real Property Tax Law.

25 Senator Rath, from the Committee

1 on Local Government, reports:

2 Senate Print 27, by Senator
3 Volker, an act to amend the General Business Law
4 and others, in relation to requiring domestic
5 steel components;

6 616, by Senator Cook, an act to
7 amend the County Law, in relation to review and
8 approval;

9 1099, by Senator Lack, an act to
10 amend the Real Property Tax Law;

11 1131, by Senator Marcellino, an
12 act to amend the General Municipal Law;

13 1168, by Senator Lack, an act in
14 relation to the real property tax assessed;

15 1728, by Senator Skelos, an act
16 to amend the General Municipal Law, in relation
17 to the notice of claim;

18 2180, by Senator Rath, an act to
19 amend Chapter 708 of the Laws of 1992, amending
20 the General Municipal Law.

21 Senator Levy, from the Committee
22 on Transportation, reports:

23 597, by Senator Levy, an act to
24 amend the Vehicle and Traffic Law;

25 755, by Senator Goodman, an act

1 to amend the Transportation Law, in relation to
2 disclosure;

3 756, by Senator Goodman, an act
4 to amend the Transportation Law, in relation to
5 mandating;

6 757, by Senator Goodman, an act
7 to amend the Transportation Law, in relation to
8 increasing penalties;

9 914, by Senator Levy, an act to
10 amend the Transportation Law, in relation to
11 establishing;

12 916, by Senator Levy, an act to
13 amend the Vehicle and Traffic Law, in relation
14 to establishing;

15 1387, by Senator Velella,
16 reported with amendments, an act to amend the
17 Vehicle and Traffic Law.

18 Senator Saland, from the
19 Committee on Children and Families, reports:

20 307, by Senator Skelos, an act to
21 amend the Family Court Act and the Criminal
22 Procedure Law;

23 2379, by Senator Saland, an act
24 to amend the Criminal Procedure Law and others.

25 Senator Cook, from the Committee

1 on Education, reports:

2 Senate Print 3666, by Senator

3 Cook, an act to amend the Education Law;

4 1475, by Senator Present, an act

5 to adjust certain state aid payments.

6 Senator Marcellino, from the

7 Committee on Environmental Conservation,

8 reports:

9 Senate Print 118, by Senator

10 Stafford, an act to amend the Environmental

11 Conservation Law;

12 150, by Senator Stafford, an act

13 to amend the Environmental Conservation Law;

14 389, by Senator Stafford, an act

15 to amend the Environmental Conservation Law; and

16 1388, by Senator Marcellino, an

17 act to amend the Environmental Conservation

18 Law.

19 All bills ordered directly for

20 third reading.

21 ACTING PRESIDENT SPANO: Without

22 objection.

23 Reports of select committees.

24 Communications and reports from

25 state officers.

1 Motions and resolutions.

2 Senator Farley.

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

5 On behalf of Senator Hannon,
6 would you please place a sponsor's star on
7 Calendar Number 70.

8 ACTING PRESIDENT SPANO: Without
9 objection.

10 Senator Maziarz.

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

13 On behalf of myself, would you
14 please place a sponsor's star on Calendar Number
15 125, Senate Bill Number 931.

16 ACTING PRESIDENT SPANO: So
17 ordered.

18 Senator Skelos.

19 SENATOR SKELOS: Mr. President,
20 there will be an immediate meeting of the Rules
21 Committee in Room 332 of the Capitol.

22 ACTING PRESIDENT SPANO:
23 Immediate meeting of the Rules Committee in Room
24 332 of the Capitol.

25 Senator Skelos.

1 SENATOR SKELOS: Mr. President, I
2 believe there's a privileged resolution at the
3 desk sponsored by Senator Levy. I ask that the
4 title be read and move for its immediate
5 adoption.

6 ACTING PRESIDENT SPANO:
7 Secretary read the title of the resolution.

8 THE SECRETARY: By Senator Levy,
9 Legislative Resolution, memorializing the life
10 of Lawrence Johnson.

11 ACTING PRESIDENT SPANO: Question
12 is on the resolution. All those in favor
13 signify by saying aye.

14 (Response of "Aye.")

15 Opposed nay.

16 (There was no response.)

17 The resolution is adopted.

18 Senator Skelos.

19 SENATOR SKELOS: Mr. President,
20 at this time I move that we adopt the Resolution
21 Calendar in its entirety except for Resolution
22 Number 326.

23 ACTING PRESIDENT SPANO: All
24 those in favor of adopting the Resolution
25 Calendar in the entirety with the exception of

1 326 signify by saying aye.

2 (Response of "Aye.")

3 Opposed nay.

4 (There was no response.)

5 The Resolution Calendar is
6 adopted.

7 SENATOR SKELOS: At this time, I
8 ask that Resolution Number 326, by Senator
9 Waldon, be read in its entirety.

10 ACTING PRESIDENT SPANO:
11 Secretary will read.

12 THE SECRETARY: By Senator Waldon,
13 Legislative Resolution Number 326, commending
14 New York State's first African-American
15 Legislator, Edward A. Johnson, in honor of Black
16 History Month.

17 WHEREAS, the month of February is
18 designated Black History Month; at this time
19 African-Americans reflect on the trials,
20 tribulations and victories of their past. It is
21 a time for African-Americans to appreciate their
22 own, to acknowledge not only the exceptional
23 individuals of their past who are recorded in
24 American history books but to appreciate those
25 whose names are more obscure, yet whose

1 contributions are nonetheless significant; and
2 WHEREAS, Edward A. Johnson, the
3 first African-American elected to the New York
4 State Legislature, is one of those individuals
5 who will be commended during Black History
6 Month; and

7 WHEREAS, Edward Austin Johnson
8 was born a slave in Raleigh, North Carolina, on
9 November 23, 1860. He received his early
10 education from Nancy Walton, a free
11 African-American woman who also taught many in
12 the white aristocracy; and

13 WHEREAS, Edward A. Johnson began
14 his formal education at the Washington High
15 School for Negroes and, upon graduation in 1879,
16 entered Atlanta University; there he began
17 teaching in surrounding rural communities. He
18 remained in the Atlanta area after his
19 graduation, serving first as a teacher, then as
20 a principal in the city's public schools; and

21 WHEREAS, in 1885, Edward A.
22 Johnson returned to Washington High School to
23 serve as principal. In 1890, he published A
24 School History of the Negro Race in America from
25 1619 to 1890 which, although brief and basic,

1 became widely used as text for black schools in
2 North Carolina and Virginia; and

3 WHEREAS Edward A. Johnson became
4 the first law graduate from the newly founded
5 Shaw University and shortly thereafter became
6 the dean of its law department;

7 Edward A. Johnson became
8 interested in politics and he became an
9 assistant to the district attorney in Raleigh
10 and held this post until 1907 when he moved from
11 Raleigh to New York City to practice law;

12 Edward A. Johnson became involved
13 in politics when he arrived in New York. He
14 insisted that African-American candidates be
15 nominated in those districts in which they
16 constituted a majority of the voters. He became
17 a committeeman in the 19th Assembly District in
18 Harlem and was elected to the Assembly as the
19 state's first African-American legislator in
20 1917; and

21 WHEREAS, Edward A. Johnson served
22 one term in the Assembly where he guided three
23 significant bills to law. Two bills amended the
24 Civil Rights Laws of New York State, one
25 prohibiting discrimination in employment or

1 accommodation by publicly funded hospitals, the
2 other guaranteeing all civil privileges in
3 schools, restaurants, hotels and places of
4 amusement. The third established the first free
5 labor employment bureau in the country to help
6 curb discrimination in unemployment; and

7 WHEREAS, it is with sincere and
8 heartfelt esteem that this legislative body
9 celebrate the contributions that African
10 Americans have made to our rich collective
11 heritage and to commend the talented people who
12 directed and guided them;

13 NOW, THEREFORE, BE IT RESOLVED
14 that this legislative body pause in its
15 deliberations to commend New York State's first
16 African-American legislator, Edward a Johnson,
17 in honor of Black History Month; and

18 BE IT FURTHER RESOLVED that a
19 copy of this resolution, suitably engrossed, be
20 transmitted to the black and Puerto Rican
21 Legislative Caucus and the Schomburg Center for
22 Research in Black Culture, Harlem, New York.

23 ACTING PRESIDENT SPANO: Senator
24 Waldon.

25 SENATOR WALDON: Thank you, Mr.

1 President, my colleagues. On the resolution.

2 First. Let me invite each of you
3 to join with me in supporting this resolution.
4 In the spirit of what America is all about, I
5 submitted it for your consideration. When you
6 think that Mr. Johnson's parents were born
7 slaves and that he, too, was born in slavery,
8 that his father's first name, fitting or unfit
9 ting, was Columbus, although we think of what
10 America is all about and who it is claimed
11 discovered America, and how you can have the
12 hope of, no matter your circumstances, no matter
13 how meager they may be, that you can rise to
14 whatever your talents will allow you to reach
15 for and to actually achieve, then Edward A.
16 Johnson, is certainly someone who realized the
17 American dream. When it was impossible for many
18 African-Americans to go to school at all, not
19 only did he attend the secondary schools but he
20 attended college and taught after he had
21 finished law school at a law school and became
22 its dean.

23 We know of Booker T. Washington
24 and his many accomplishments, but many of us in
25 this chamber have never heard of Mr. Johnson,

1 but he was someone who worked with Booker T. in
2 terms of establishing entrepreneurial
3 enterprises amongst and for African-Americans.

4 I must actually thank Jim Watson,
5 on my staff, for having not only the zeal and
6 the inclination and the sensitivity to discover
7 who Edward A. Johnson is and was and what he
8 means to African-Americans, Caribbean-Americans
9 and, in fact, all Americans.

10 He came to this chamber when he
11 was the only voice for people of color. No one
12 had preceded him. No one had been as sensitive
13 to his needs or his people's needs as he was at
14 that time, and so I rise to champion his memory,
15 and to challenge those of us who are from the
16 African-American and Caribbean-American communi-
17 ties serving in Albany now, that we not forget
18 that this man was able to pass laws that dealt
19 with civil rights even in the early 1900s, that
20 this man was able to rail against a system which
21 had denied access prior to his ambition to run
22 for office and to be successful and that, if we
23 believe that America is what America is all
24 about, that each of us can make a contribution,
25 then the contributions we've made to date are

1 far too few and far too little because the
2 system still denies some of us -- some of us who
3 look like Senator Paterson and myself, some of
4 us who look like Senator Montgomery and myself
5 -- has denied us true access to all that this
6 nation is about, but if we decide internally
7 that enough is enough and we will move forward
8 to make sure that there is truly a level playing
9 field and equity, that in the memory and in the
10 posture of Edward A. Johnson, we will achieve
11 great things in the future.

12 I welcome you to support this
13 resolution. This is a time of the year that we
14 celebrate Negro history or African-American
15 history or however you wish to characterize it,
16 bespeaking the contributions made by the people
17 from Africa to this great nation, and surely
18 Edward A. Johnson was a champion in that
19 regard.

20 Thank you very much, Mr.
21 President. Thank you, my colleagues.

22 ACTING PRESIDENT SPANO: Question
23 is on the resolution. All those in favor signify
24 by saying aye.

25 (Response of "Aye.")

1 Opposed nay.

2 (There was no response.)

3 The resolution is adopted.

4 Senator Paterson.

5 SENATOR PATERSON: Mr. President,

6 I believe that Senator Waldon graciously opened

7 the resolution for co-sponsorship at the

8 beginning of his remarks, and I think he'll

9 affirm that he'd like to open it up for all

10 sponsors if they so desire.

11 ACTING PRESIDENT SPANO: Senator

12 Johnson.

13 SENATOR JOHNSON: Mr. President,

14 at this time may we please have the

15 non-controversial reading of the calendar.

16 ACTING PRESIDENT SPANO: Senator

17 Johnson, Senator Paterson asked if, without

18 objection, all members of the Senate be included

19 on the previous resolution.

20 SENATOR JOHNSON: Yes, certainly;

21 that's great, Mr. President.

22 ACTING PRESIDENT SPANO: All

23 members will be included unless you notify the

24 desk, and we will now have the reading of the

25 non-controversial calendar.

1 THE SECRETARY: Calendar Number
2 64, by Senator Present, Senate Print 532, an act
3 to amend the General Municipal Law, in relation
4 to giving municipalities the power.

5 SENATOR PATERSON: Lay that
6 aside.

7 ACTING PRESIDENT SPANO: Lay
8 aside.

9 THE SECRETARY: Calendar Number
10 69, by Senator Skelos, Senate Print Number 336,
11 an act to amend the Public Health Law, the
12 Criminal Procedure Law and the Family Court Act,
13 in relation to the testing of persons.

14 SENATOR PATERSON: Lay aside.

15 ACTING PRESIDENT SPANO: Laid
16 aside.

17 THE SECRETARY: Calendar Number
18 82, by Senator Levy, Senate Print 918, an act to
19 amend the Public Authorities Law, in relation to
20 requiring the Metropolitan Transportation
21 Authority.

22 ACTING PRESIDENT SPANO: Read the
23 last section.

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

1 ACTING PRESIDENT SPANO: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 55.

5 ACTING PRESIDENT SPANO: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 85, by Senator Velella, Senate Print 19, an act
9 to amend the Insurance Law, in relation to
10 increasing the amount of credit life insurance.

11 ACTING PRESIDENT SPANO: Read the
12 last section.

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

15 ACTING PRESIDENT SPANO: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 55.

19 ACTING PRESIDENT SPANO: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 86, by Senator DeFrancisco, Senate Print 114, an
23 act to amend the Insurance Law, in relation to
24 premium or compensation.

25 ACTING PRESIDENT SPANO: Read the

1 last section.

2 SENATOR LEICHTER: Lay aside.

3 ACTING PRESIDENT SPANO: Laid
4 aside.

5 THE SECRETARY: Calendar Number
6 93, by Senator Seward, Senate Print 1182, an act
7 to amend the County Law, in relation to
8 establishing county communications systems.

9 SENATOR PATERSON: Lay aside.

10 ACTING PRESIDENT SPANO: Laid
11 aside.

12 THE SECRETARY: Calendar Number
13 94, by Senator Volker, Senate Print 87-A.

14 SENATOR PATERSON: Lay aside.

15 ACTING PRESIDENT SPANO: Laid
16 aside.

17 THE SECRETARY: Calendar Number
18 105, by Senator Volker, Senate Print 887, an act
19 to amend the Criminal Procedure Law, in relation
20 to fingerprinting persons.

21 ACTING PRESIDENT SPANO: Read the
22 last section.

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

25 ACTING PRESIDENT SPANO: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 55.

4 ACTING PRESIDENT SPANO: The bill
5 is passed.

6 Senator Skelos, that completes
7 the reading of the non-controversial calendar.

8 SENATOR SKELOS: Can we take up
9 the controversial calendar.

10 THE SECRETARY: Calendar Number
11 64, by Senator Present, an act to amend the
12 General Municipal Law, in relation to giving the
13 municipalities the power.

14 ACTING PRESIDENT SPANO: Senator
15 Present.

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

18 The General Municipal Law
19 requires counties to award bids to the lowest
20 bidder under a purchase order or a contract.
21 Under the provisions of this, if a contract
22 comes in for more than five percent above the
23 lowest bidder, but it's state-operated, state
24 provided services and workers, that bid can be
25 awarded to the organization.

1 ACTING PRESIDENT SPANO: Senator
2 Paterson.

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

5 If Senator Present would yield
6 for a brief question.

7 SENATOR PRESENT: Certainly.

8 ACTING PRESIDENT SPANO: Senator
9 Present yields.

10 SENATOR PATERSON: Senator, this
11 legislation, which exists under the General
12 Municipal Law, does it in any way conflict with
13 the set asides provided for women's businesses
14 under the Public Authorities Law?

15 SENATOR PRESENT: None that I
16 know, sir.

17 SENATOR PATERSON: Thank you, Mr.
18 President.

19 ACTING PRESIDENT SPANO: Read the
20 last section.

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

23 ACTING PRESIDENT SPANO: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 55.

2 ACTING PRESIDENT SPANO: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 69, by Senator Skelos, Senate Print 336, an act
6 to amend the Public Health Law, the Criminal
7 Procedure Law and the Family Court Act, in
8 relation to the testing of persons.

9 SENATOR PATERSON: Explanation.

10 ACTING PRESIDENT SPANO:
11 Explanation has been asked for on Calendar 69.
12 Senator Skelos.

13 SENATOR SKELOS: Thank you, Mr.
14 President.

15 This legislation, which was
16 debated last year, allows early detection and
17 early treatment for our law enforcement
18 community when, during the course of their
19 duties, an injury incident relates to possible
20 exposure to a transmissible disease. I'm
21 talking about daily incidents in the life of a
22 cop or correction officer. It could be a
23 scuffle on the street, a brawl in a correction
24 facility or in routine frisking that potentially
25 exposes these officers to deadly transmissible

1 diseases.

2 The purpose of this legislation
3 is to provide a measure of protection to our
4 police, correction and peace officers. It gives
5 them a method of discovering whether they have
6 been exposed to a transmissible disease during
7 the performance of their job without jeopardiz
8 ing the confidentiality of the suspect's medical
9 condition.

10 Treating a possible transmissible
11 disease right away can prevent these diseases
12 from becoming full-blown. It is, therefore,
13 imperative that treatment begin immediately.
14 For example, we know now that a gamma globulin
15 shot administered soon after exposure can stop
16 hepatitis. Science now tells us that early use
17 of AZT can potentially stop HIV, and early
18 injections of antibiotics can cure TB.

19 So basically, what this
20 legislation does, it provides a measure or a
21 peace of mind to police officers, early
22 detection, early treatment and, hopefully, a
23 cure.

24 ACTING PRESIDENT SPANO: Read the
25 last section.

1 SENATOR DOLLINGER: Mr.
2 President.

3 ACTING PRESIDENT SPANO: I'm
4 sorry. Senator Dollinger.

5 SENATOR DOLLINGER: I just have a
6 couple questions that I wanted to make sure I
7 understand this, but I think you and I discussed
8 many aspects of this last year at some length.

9 Just so I understand the
10 structure of the bill, again through you, Mr.
11 President if the sponsor will yield, there are
12 two sections of the Criminal Procedure Law that
13 would be changed here. One says that this is a
14 requirement for testing of transmissible
15 diseases in persons under arrest, and then the
16 second section which actually amends, I believe,
17 the Family Court Act, which provides for those
18 that are in custody.

19 I guess my question is, is there
20 a difference between the procedures in those two
21 bills, or are they identical?

22 SENATOR SKELOS: No.

23 SENATOR DOLLINGER: O.K. So it's
24 the same procedure for either instance. Again
25 through you, Mr. President, turning to the bill

1 that -- the definition of transmittable disease,
2 it suggests that it refers to and you refer to
3 the immunodeficiency virus, HIV, or its
4 derivatives, you talk about hepatitis and its
5 derivatives, tuberculosis and then you say any
6 other serious illness which the court finds the
7 petitioner could have a reasonable expecta
8 tion....

9 Could you tell me what that
10 means? Is it -

11 SENATOR SKELOS: Exactly what you
12 just said. A police officer, or correction
13 officer, if they felt that they were potentially
14 exposed to a transmissible disease -- and we
15 know that presently 25 percent of the prison
16 population test positive for TB; 15 percent of
17 the prison population test positive for the HIV
18 virus; many of them have both -- what would
19 happen is the police officer would make an
20 application to a judge, would have to show
21 probable cause that he -- he or she may have
22 been exposed to a transmissible disease. A
23 judge would then order, if he felt in his
24 discretion that a test was warranted for this
25 potential of having a transmissible disease.

1 SENATOR DOLLINGER: O.K. But my
2 question is, is it a subjective standard or any
3 other infectious disease?

4 SENATOR SKELOS: O.K.

5 SENATOR DOLLINGER: My question,
6 again through you, Mr. President, is it a
7 subjective standard on the part of the officer
8 that he could have a reason -- that the officer
9 could have a reasonable expectation of
10 contracting the disease, or is it an objective
11 standard from medical science that says under
12 these circumstances there was a reasonable
13 opportunity for the disease to be transmitted,
14 and do you understand the difference?

15 SENATOR SKELOS: Basically what
16 it is, Senator Dollinger, is their practical
17 experience in law enforcement. For example,
18 patting down an individual and pricking
19 themselves with a hypodermic needle, if I were a
20 police officer I would want that individual
21 tested immediately.

22 SENATOR DOLLINGER: M-m h-m-m.

23 SENATOR SKELOS: If I am a prison
24 guard and a prisoner bites me, throws urine and
25 feces on me, which occurs at times, if there's a

1 fight and there's blood involved and it gets on
2 me, to me in my experience as a police officer
3 or correction officer, at that point I would
4 feel the need to apply to the judge to have this
5 person tested for a potential disease.

6 SENATOR DOLLINGER: And again
7 through you, Mr. President, I understand that
8 situation. I question whether your language
9 here -- your language suggests that the
10 petitioner -- that the judgment made is whether
11 the petitioner, the person who has been exposed,
12 could have a reasonable expectation. That
13 suggests that the court would be required to use
14 a subjective standard based on the officer's
15 fear of contracting the disease rather than a
16 medical objective standard for determining
17 whether the disease could be communicated under
18 those circumstances.

19 SENATOR SKELOS: Many instances
20 there's not a doctor right on the scene. We
21 want to move this expeditiously because so often
22 with treatment, if it occurs within 24 hours, 48
23 hours, there's a better chance of the treatment
24 being effective with the police officer or the
25 -- or the prison guard. If the judge feels

1 that a hearing would be necessary, then he could
2 bring in a medical doctor to make that -- that
3 -- help him make his determination.

4 SENATOR DOLLINGER: Right, but
5 I'm just -- again through you, Mr. President,
6 I'm just suggesting that the standard you're
7 using is a subjective standard, that is whether
8 the petitioner could have -- could have, might
9 have, could have a reasonable expectation of
10 contracting these illnesses from a subject as a
11 result of the alleged exposure.

12 That suggests to me that it's a
13 subjective standard. The courts would apply a
14 subjective standard and not a medically
15 objective standard about the conditions under
16 which the disease could be transferred, and I'm
17 simply highlighting the difference between an
18 officer coming in and saying, I'm afraid I might
19 have gotten exposed to this disease, and a judge
20 saying, There's medical evidence based on
21 certain facts which would lead to a conclusion
22 that there might have been a transmission.

23 SENATOR SKELOS: It is to some
24 extent subjective. It is something the police
25 officer could discuss. For example, at the

1 press conference we had today, we had a Dr.
2 Belmonte with us, who is a specialist in
3 occupational medicine, a surgeon and a
4 consultant to approximately 20 municipalities
5 dealing with police and correction officers. He
6 averages ten cases a month similar to this. You
7 could consult with him.

8 The bottom line, what we're
9 trying to do with this legislation is get early
10 detection, early treatment and protect the life
11 of this police officer.

12 SENATOR DOLLINGER: O.K. Again
13 through you, Mr. President, I'm not going to
14 focus on the entire bill but just one other
15 thing I want to make sure about. Who pays for
16 the court costs of applying for the court order
17 to conduct the test?

18 SENATOR SKELOS: Same answer as
19 last year, the county.

20 SENATOR DOLLINGER: The county
21 pays for the cost of applying.

22 SENATOR SKELOS: You would make
23 an application, ex parte application, to the
24 court. The court would make that decision on
25 whatever costs there are involved. It would be

1 paid by the -- by that county.

2 SENATOR DOLLINGER: Again through
3 you, Mr. President, I'm a police officer, I want
4 to get the test done. I file the petition in my
5 name, and it's -- the cost is paid for by the
6 county.

7 SENATOR SKELOS: Or the state if
8 you filed the petition with the court.

9 SENATOR DOLLINGER: If I file.
10 O.K. The other question is, with respect to
11 Section 3 in the bill, this is line 42 through
12 45, it says that there is notice to the other
13 side, to the person under arrest, and there's an
14 opportunity -- is there an opportunity to be
15 heard?

16 SENATOR SKELOS: The person will
17 get notice of the decision of the court.

18 SENATOR DOLLINGER: Right, but my
19 question again through you, Mr. President, is
20 whether -- if Senator Skelos will continue to
21 yield is, does he get an opportunity to be
22 heard?

23 SENATOR SKELOS: No, it's an ex
24 parte application and, if the judge in his
25 discretion wants to bring in the person that's

1 been arrested or that's incarcerated to be part
2 of that proceeding, he can. It's in the
3 discretion of the court, but it's an ex parte
4 application. When the court makes its decision,
5 they then will obviously notify both the
6 petitioner and the person who is going to be
7 tested.

8 SENATOR DOLLINGER: O.K. I thank
9 Senator Skelos for enduring another set of
10 questions as last year.

11 Just on the bill, Mr. President.

12 ACTING PRESIDENT SPANO: Senator
13 Dollinger, on the bill.

14 SENATOR DOLLINGER: The reason
15 why I highlighted those two sections of the bill
16 is because I think, to some extent, they're what
17 the bill is all about. What this bill talks
18 about is the fear of transmissible disease and
19 not necessarily the reality of circumstances
20 under which diseases are transmitted.

21 In the definition of
22 "transmissible disease," the way the language
23 reads, it says, If the petitioner could -
24 could, not does, but could have a reasonable
25 expectation -- expectation -- that he might -

1 might have been exposed and that he might have
2 been in contact with someone, then under those
3 circumstances, you are entitled to bring a
4 petition to be tested.

5 It seems to me that that
6 addresses the one issue that we all agree with
7 and that is that people are afraid of the
8 transmission of diseases in these situations.
9 But the mere fear alone is not enough to require
10 testing, and I would strongly suggest that there
11 be a medical standard that the court would apply
12 to the process by which testing occurs.

13 In order to apply a medical
14 standard, it seems to me, Mr. President, what
15 you have to do is, you have to give notice and
16 an opportunity to be heard by the defendant, by
17 the person in custody because the defendant
18 could walk in the courtroom and say, I disagree
19 with the facts alleged in the petition and I
20 want a hearing on the issue of whether or not
21 there is probable cause.

22 I think what this shows is the
23 bill, although it tries to address a very
24 complicated issue, is so hastily drafted and
25 somewhat inartfully drafted that could create

1 problems for our courts in trying to interpret.

2 I also think that this deals with
3 a problem of fear and it is the second best way
4 to determine whether diseases have been
5 transmitted. There is one absolutely clear
6 first way to do it and that is, have the officer
7 pay -- have the cost paid for by the county for
8 the officer to be tested immediately and tested
9 as frequently as possible to determine whether
10 exposure has occurred. That's the easy way to
11 do it. It's not based on fear; it's all based
12 on simple medical science.

13 That is what we should be
14 focusing on, and it seems to me that's the right
15 thing to do. This may be the second best thing
16 to do. I'm not sure this bill even does what
17 the sponsor may or is attempting to do, but the
18 best thing to do, the first thing to do, the
19 thing that simply allays the fears and solves
20 the problem is to simply allow the person to be
21 tested and have the government pay the cost.

22 When that bill comes forward, I
23 will be voting for it. This bill, I will not.

24 SENATOR GOLD: Last section.

25 ACTING PRESIDENT MAZIARZ: Thank

1 you, Mr. President. Would the Deputy Majority
2 Leader yield for a question?

3 SENATOR SKELOS: I will.

4 ACTING PRESIDENT MAZIARZ:
5 Senator Skelos.

6 SENATOR SKELOS: Yes, I will.

7 SENATOR PATERSON: Senator
8 Skelos, understanding as we do these are pretty
9 egregious situations and they place the
10 individuals who are affected into situations
11 that create a lot of fear and anxiety as Senator
12 Dollinger referred, assuming that the -
13 assuming that the defendant tested negative for
14 whatever the disease might be, the HIV virus or
15 tuberculosis, assuming that the defendant tested
16 negative, to what extent would you suggest that
17 it provides relief for the party that is perhaps
18 urged by that not to be tested when the more
19 responsible medical advice might be that they
20 take the test?

21 SENATOR SKELOS: It offers some
22 peace of mind, but certainly the -- I think the
23 consultation and the advice that a doctor such
24 as Dr. Belmonte would give them is that perhaps
25 you should be tested down the road, especially

1 for the HIV virus, but there is an added measure
2 of protection by having that person arrested
3 tested at that time, especially the hepatitis
4 and especially for TB where, if you can start
5 treatment within 28 hours to 48 hours, you can
6 have an cure of the disease.

7 SENATOR PATERSON: Understanding
8 that, I think that's precisely relating to the
9 question that I previously asked. In other
10 words, since that is the best medical advice
11 that we can come up with, the question is not
12 really the merit of the legislation, because the
13 legislation does have merit, but I think the
14 question I'm asking is, for individuals who are
15 already afraid to be tested that there's a kind
16 of avoidant conduct that's been evidenced among
17 people who have these types of problems that
18 doesn't this provide in a sense a false comfort
19 to them since we don't even know what diseases
20 the defendant might have or might have
21 transmitted?

22 SENATOR SKELOS: It offers some
23 sense of security that, if the defendant or the
24 person arrested is tested at that time, we can
25 find out whether, in fact, they are infected

1 with one of these diseases. Is it a hundred
2 percent? The answer is no. But that's some
3 thing that -- that they would be counseled by
4 with their doctor, that perhaps there still is a
5 need to be tested, but at that time there can be
6 some sort of a determination as to whether they
7 have been infected with this transmissible
8 disease.

9 SENATOR PATERSON: If the Senator
10 would yield for another question.

11 ACTING PRESIDENT MAZIARZ:
12 Senator Skelos.

13 SENATOR PATERSON: Then how does
14 the information that we derive from the test
15 affect treatment?

16 SENATOR SKELOS: Well, let's talk
17 about a situation where the person is tested,
18 does not have TB or hepatitis. The police
19 officer then can opt not to get the gamma
20 globulin shots, not to get the other shots that
21 are often very painful because he knows that
22 this person is not infected with at least these
23 two diseases so, by the -- by the -- by the
24 person that's been arrested or in custody, not
25 at least showing these two diseases, you can

1 avoid certain painful and costly tests at that
2 time. So at least it eliminates those
3 potentials.

4 SENATOR PATERSON: Following up
5 on that, Mr. President, if Senator Skelos would
6 yield again.

7 ACTING PRESIDENT MAZIARZ:
8 Senator Skelos, do you continue to yield to
9 Senator Paterson?

10 SENATOR SKELOS: Yes.

11 ACTING PRESIDENT MAZIARZ:
12 Senator Paterson.

13 SENATOR PATERSON: Then I would
14 imagine that the distinction that you're drawing
15 with the HIV virus is that it takes longer to
16 get the test results.

17 SENATOR SKELOS: It may take
18 longer to get the results. It may take longer
19 to manifest themselves.

20 SENATOR PATERSON: Right.

21 SENATOR SKELOS: Yes.

22 SENATOR PATERSON: Well, I
23 certainly understand that, and thank you,
24 Senator Skelos, but I think the point that I am
25 very concerned about is that in these situations

1 that are quite dangerous, and you set them forth
2 quite well in your legislation. In other words,
3 this is not an issue that should be taken
4 lightly, and it's an issue that you've taken a
5 lot of time to research and it's quite
6 commendable, but then somewhere at the end of
7 the legislation, we're stopping short of what
8 would be, in my opinion, the desired effect
9 which would be to be as close to being certain
10 as we possibly can be when the lives of police
11 officers are at stake and, in my opinion, the
12 only way that would be best accomplished is
13 through the testing of the potential victim
14 based on their contact with the defendant, the
15 inmate or whoever the person is.

16 I have one last question on
17 another part of the bill, if the Senator would
18 continue to yield.

19 ACTING PRESIDENT MAZIARZ:
20 Senator Skelos, do you continue to yield?

21 SENATOR SKELOS: Certainly.

22 ACTING PRESIDENT MAZIARZ:
23 Senator Paterson.

24 SENATOR SKELOS: The police
25 officer, the correction officer it would be

1 common practice if they are bitten, if somebody
2 spits on them, if blood is put on them, that
3 they would be tested also. So now what we have
4 is the person arrested being tested and also if
5 this legislation passes, and also the police
6 officer.

7 SENATOR PATERSON: Well, now -

8 ACTING PRESIDENT MAZIARZ:

9 Senator Paterson.

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

12 Senator, if you wouldn't mind
13 yielding. I'm somewhat confused because if
14 we're going to test, if that's the standard
15 practice, then why do we need to test the other
16 party where the information is certainly a lot
17 more faulty?

18 SENATOR SKELOS: Because the
19 disease may not have manifested itself at that
20 immediate time, hours after the incident, with
21 the police officer or the correction officer.

22 SENATOR PATERSON: What I'm
23 suggesting, Senator, is that this disease being
24 present in the inmate does not necessarily mean
25 that it was transferred, and so in a sense we

1 have a situation where both possibilities exist,
2 in other words, where the -- where the police
3 officer or the corrections officer may or may
4 not have the disease or may not -- may or may
5 not have acquired it, symptomatic or not, based
6 on the contact with the -- the inmate and the
7 defendant, and although the information might be
8 important, for instance, if you were saying that
9 this information is important because we need to
10 know based on the contact that this inmate might
11 have with other officers as yet where there
12 hasn't been contact, in other words as a safety
13 precaution, then I wholeheartedly agree with
14 you, but I'm saying to know for the point of
15 whether or not it got transferred to the
16 individual who's making the applications where I
17 don't think the information provides us with
18 what is as close to what we would need in this
19 case which is to have medical accuracy, and so
20 now I'll go on to the next question, if the
21 Senator will yield.

22 ACTING PRESIDENT MAZIARZ:

23 Senator Skelos.

24 SENATOR SKELOS: Yes, Mr.

25 President.

1 ACTING PRESIDENT MAZIARZ:

2 Senator Paterson.

3 SENATOR PATERSON: Senator, just
4 very briefly on the issue of confidentiality. I
5 notice that you have listed the potential of
6 reaching out to the victim, the victim's
7 immediate family, the health care providers, the
8 victim's attorney. I'm just wondering if there
9 isn't a wide range of individuals that would be
10 provided information who might not necessarily
11 need to know the information about the result of
12 these tests.

13 SENATOR SKELOS: We've tried to
14 keep it as tight as possible and, in fact, the
15 person that's been tested, if they opted not to
16 get the information, they won't be told the
17 information.

18 ACTING PRESIDENT MAZIARZ:

19 Senator Waldon.

20 SENATOR WALDON: Thanks very
21 much, Mr. President.

22 Would the gentleman yield to a
23 question or two?

24 ACTING PRESIDENT MAZIARZ:

25 Senator Skelos, would you yield to a question

1 from Senator Waldon?

2 SENATOR SKELOS: Yes.

3 ACTING PRESIDENT MAZIARZ:

4 Senator Waldon.

5 SENATOR WALDON: Thank you, Mr.

6 President. Thank you, Senator Skelos.

7 Just for my personal edification,
8 would you clarify some things. Do you know
9 definitively what is the gestation period for
10 some -- let's just deal with the one that causes
11 the most fear in the universe, for the HIV
12 virus?

13 SENATOR SKELOS: Senator Waldon,
14 what I know definitively is the testimony of
15 Albany Police Officer Steve Reilly, whose wife
16 works in the Senate, who is presently pregnant.
17 He had his blood commingled with a murder
18 suspect's in a car. I know what they're going
19 through right now in their lives because this
20 person would not be tested.

21 I know what Todd Tortia, a police
22 officer from Nassau County, is going through
23 that finally after six months and being treated
24 with AZT as a precautionary measure, actually
25 more than six months, not being able to work for

1 six months, how it affected his family, and
2 finally the person that was incarcerated
3 submitting to a test and being found not to be
4 infected with any transmissible disease so that
5 this treatment that the police officer went
6 through was needless -- actually it was over a
7 year -- and I also know what 28-year-old Albany
8 city police officer Victor Pizzola went through
9 -- oddly enough his wife also works for the
10 Senate and they have a one-year-old daughter -
11 and the person that he was involved with would
12 not submit to a test until a plea bargain
13 arrangement was arranged with the court. Finally
14 he submitted to a test and was not found to be
15 positive for any transmissible diseases. That's
16 what I know that's certain, what these people
17 have gone through with their lives.

18 SENATOR WALDON: Senator -- if I
19 may, Mr. President.

20 ACTING PRESIDENT MAZIARZ:
21 Senator Waldon.

22 SENATOR WALDON: I have great
23 respect for you, I have great respect for what
24 you're attempting to do with the bill, but
25 considering that respect on a personal level I

1 have to -- you are totally non-responsive to my
2 question.

3 I'm asking you to help me and
4 perhaps others in this chamber to understand the
5 fear surrounding the issue of transmissible
6 diseases to law enforcement personnel who are
7 heroes on the line, good samaritans who give
8 their lives all too often and take risks all too
9 often so the rest of us can be safe and secure.
10 This is not a frivolous activity. If you don't
11 know the gestation period for HIV, I would
12 respectfully request that you just say no.

13 SENATOR SKELOS: I know that it's
14 an extended period of time.

15 SENATOR WALDON: Thank you for
16 that. Mr. President, if I may ask another
17 question.

18 ACTING PRESIDENT MAZIARZ:
19 Senator Waldon. Senator Skelos, do you continue
20 to yield?

21 SENATOR SKELOS: Yes.

22 SENATOR WALDON: Thank you,
23 Senator Skelos. Thank you, Mr. President.

24 Then, Senator Skelos, can we
25 create a hypothetical? The hypothetical I wish

1 you to respond to is the following: Someone may,
2 in fact, be infected but the infection has not
3 reached a level where it will present itself
4 even if that person is tested. Can you accept
5 that that's a possibility?

6 SENATOR SKELOS: And, Mr.
7 President, I think, if I may, I think I
8 mentioned that to Senator Paterson that that
9 possibility does exist, but we know with TB and
10 hepatitis, because for some reason you seem to
11 be focused only on HIV. I mean I'm talking
12 about tuberculosis, hepatitis, other type
13 infectious diseases also, so that we're not just
14 focused on the HIV virus, but TB, hepatitis, you
15 detect it and start treatment within 28, 48
16 hours, the potential for curing that disease
17 within the police officer is nearly a hundred
18 percent.

19 SENATOR WALDON: If I may
20 continue, Mr. President. Would the gentleman
21 just continue to yield to a few more questions?

22 ACTING PRESIDENT MAZIARZ:
23 Senator Skelos, would you continue to yield to
24 Senator Waldon?

25 SENATOR SKELOS: Yes.

1 SENATOR WALDON: Senator, my
2 purpose for asking is for a real purpose, and
3 we'll get to it in a minute. If -- another
4 hypothetical. If someone is infected and the
5 gestation period for when that infection will
6 show on a test does not happen, then there's no
7 way even if he or she is tested, that the
8 victim, the officer, will be able to
9 definitively say Aha!, they have something, and
10 I need to go through the process of treatment.
11 Is that what you were saying earlier?

12 SENATOR SKELOS: You can sit here
13 and come up with so many possibilities. We do
14 not live in a perfect world, Senator Waldon, but
15 all I know are the police officers, the peace
16 officers, the correction officers that are
17 supporting this legislation and, as I said to
18 you last year when we went through our dance,
19 our annual dance on this bill, these individuals
20 feel that it's necessary in order to give them
21 an additional way of protecting themselves when
22 this type of incident occurs to them, so I'm
23 going to err on the side of going along with our
24 police officers.

25 SENATOR WALDON: May I continue,

1 Mr. President? Would the gentleman -

2 ACTING PRESIDENT MAZIARZ:

3 Senator Skelos, do you continue to yield?

4 SENATOR SKELOS: Yes, Mr.

5 President.

6 ACTING PRESIDENT MAZIARZ:

7 Senator Waldon.

8 SENATOR WALDON: Senator Skelos,
9 we will pass this bill in this house. What
10 effect will this bill have, and now we're
11 getting down to what I really want to deal with
12 this year, and I must tell you that you're a
13 very great dancing partner. The rhythms have
14 always been good, and we engage each other in a
15 very fine, fine fettle, if I may.

16 There is nothing in this bill as
17 proposed by you which will create a change in
18 the procedures in any of the police departments
19 across the state; is that a correct analysis?

20 SENATOR SKELOS: Doesn't change
21 any procedures.

22 SENATOR WALDON: O.K. Thank you
23 very much.

24 On the bill, Mr. President.

25 ACTING PRESIDENT MAZIARZ:

1 Senator Waldon, on the bill.

2 SENATOR WALDON: I believe I
3 understand the Senator's concern and his concern
4 on behalf of our law enforcement personnel and I
5 am extremely sensitive to the needs of law
6 enforcement personnel across the state, but I
7 think this is flawed.

8 One, for a police officer on the
9 line, the detective or a uniformed officer at
10 the lowest level to get anything done, he has to
11 go through a sergeant, through his lieutenant,
12 through his captain if he's in a bureau, through
13 his bureau chief and nothing is going to happen
14 within 24 to 48 hours which will allow him or
15 her to be tested in a proper fashion to
16 accomplish what Senator Skelos wishes to do.

17 Senator Paterson was on the
18 money. Why should we mess around with all these
19 other activities? Why not cut to the chase? If
20 the officer who, most of them, when they begin
21 their career graduated only from high school,
22 has no medical degree, has no ability to say
23 that I was in the Army, because most people do
24 not go into the Army or the Air Force or the
25 Marines or whatever now, but I have training in

1 a second eight weeks in the service which gives
2 me some expertise in this area which I can then
3 say definitively I know that medically this
4 person might have a disease that I need to
5 protect myself from.

6 What we need to do is cut right
7 to the chase and, if the officer, in his or her
8 opinion, feels I've been exposed then go right
9 into a treatment component until they find out
10 whether or not it's true. It saves money. It
11 saves aggravation. It doesn't violate
12 constitutional guarantees in terms of someone
13 giving up their rights.

14 I think that it is an exercise -
15 an exercise in futility to follow the mandates
16 of this particular proposal, and I would
17 encourage us not to support it.

18 Thank you very much, Mr.
19 President. Thank you very much, Senator
20 Skelos.

21 ACTING PRESIDENT MAZIARZ: Thank
22 you, Senator Waldon.

23 Senator Leichter.

24 SENATOR LEICHTER: Yes. Thank
25 you, Mr. President.

1 Senator Skelos, I just read our
2 debate of last year, and I must say I was pretty
3 persuasive.

4 SENATOR SKELOS: Well, then,
5 maybe you just want to say "ditto".

6 SENATOR LEICHTER: Well, I will
7 say "ditto" to the extent of not asking you any
8 questions because the questions that you were
9 asked by Senators Dollinger and Paterson and
10 Waldon pointed out, I think, some of the
11 difficulty that the rest of us have with this
12 bill, and let me say that all of us want to take
13 action to actually protect police officers.
14 Theirs is a tough job and, if we can give them
15 realistic honest protection, if we could do so
16 within constitutional bounds, we certainly ought
17 to do that and I have no problem with that.

18 The difficulty that we have with
19 this bill is that it doesn't help police
20 officers because, as you admitted last year and
21 I think you admitted this year, irrespective of
22 the test that is given the offender, the
23 subject, as he or she are referred to in your
24 bill, you have to test the police officer. It
25 would be irresponsible not to test that police

1 officer.

2 So if you're in a situation where
3 there's a chance of the passage of a
4 communicable disease, the very first thing you
5 must do is have that officer tested and it's the
6 results of that test which will determine
7 whether treatment is necessary or is not
8 necessary.

9 Now, what you -- what you've done
10 with this bill is, you've cloaked it with all
11 sorts of communicable disease, but really,
12 you're talking about HIV, and I submit to you
13 it's a punitive bill because for HIV it makes
14 absolutely no sense whatsoever to test the
15 person who might have commun... communicated the
16 disease because, as we know, and HIV is
17 extremely complex and so on, the person could
18 test negative and still have transmitted the
19 disease. He could test positive and may not
20 have transmitted the disease and everyone will
21 tell you that you must test the person who
22 thinks he or she were infected.

23 Now, as far as TB and hepatitis,
24 those have been around for a long time and
25 nobody ever brought out a bill of this sort. I

1 don't think it's a problem, but it may be that
2 in the case of TB, maybe in the case of
3 hepatitis, tests would be justified. Keep in
4 mind that you have to have a very compelling
5 standard here, because you're testing people who
6 have not been convicted, so you have certain -
7 they have certain rights, rights against search
8 and seizure, but it may be that if you can
9 really show a great medical advantage or
10 benefit, that the courts will say that that is
11 justifiable.

12 But that's not really what you're
13 trying to do. You're trying to deal with HIV
14 and that's why this bill surfaced at the time
15 that HIV became a problem in our society, and I
16 think that it is punitive. It's punitive saying
17 you're somebody, you've been arrested, you're a
18 subject, we think you might even have HIV; we're
19 going to test you although it does absolutely
20 nothing insofar as telling you whether the
21 arresting officer, whether he pricked his finger
22 or was bitten, or so on, might have been
23 infected with the HIV virus.

24 For that reason, I think the bill
25 is unconstitutional because it serves no purpose

1 and again, I remind you you're dealing with
2 people who are arrested, have not been
3 convicted. If you want to bring in a bill that
4 deals only with hepatitis or TB, it may be that
5 you have a bill that I and others could support
6 and that's constitutional. But your bill is
7 aimed at HIV and for HIV it does absolutely
8 nothing. If anything, it's misleading.

9 That officer who says, Well, I
10 think I might have contacted HIV, and they have
11 tested that subject and he doesn't have it, I'm
12 not going to be tested, he would be -- he would
13 be in danger. He shouldn't in any respect rely
14 on the test, and similarly, if the test shows
15 that the person was arrested was positive, it
16 doesn't mean that he right away goes into
17 treatment. You have to test him.

18 So, Senator Skelos, I think the
19 bill makes an ideological statement. It
20 expresses the disgust that some people have with
21 persons who have -- who are HIV positive, but it
22 does nothing for the law enforcement community.
23 It does nothing to deal with the real medical
24 problem, and I think it's constitutionally
25 defective.

1 ACTING PRESIDENT MAZIARZ: Thank
2 you, Senator Leichter.

3 Senator Abate.

4 SENATOR ABATE: Yes. Would
5 Senator Skelos yield to just a couple questions?

6 ACTING PRESIDENT MAZIARZ:
7 Senator Skelos, would you yield to a couple
8 questions?

9 SENATOR SKELOS: Same as last
10 year?

11 SENATOR ABATE: I'd like to say
12 same as last year but also I want to cover a
13 couple questions that my colleagues raised, but
14 I want to take it one step further.

15 Senator Leichter raised a very
16 good issue. We all understand that particular
17 ly with TB, it's contagious and hepatitis is a
18 very serious disease and the medical knowledge
19 at hand says that, when you test someone for
20 either hepatitis and TB, you have a very good
21 idea whether they have it or not. You don't
22 have to wait for the immunity and the virus to
23 show within the blood stream to see if the test
24 is accurate.

25 If we really were concerned about

1 protecting officers and giving them adequate -

2 SENATOR SKELOS: We really are
3 concerned, Senator, that's your interpretation.
4 We really are concerned.

5 SENATOR ABATE: Well, the reason
6 I'm separating out because it's my understanding
7 that we could pass today easily and pass in the
8 Assembly easily if we separated out HIV testing
9 and had a bill that just talked about hepatitis
10 testing as well as TB.

11 Why not separate out the
12 controversial from the non-controversial so at
13 least immediately we could provide some relief
14 to law enforcement officers and then go back and
15 debate the HIV testing issue?

16 SENATOR SKELOS: Because at least
17 15 percent of the prison population is now HIV
18 positive.

19 SENATOR ABATE: But even a
20 greater percent of the prison population have
21 TB.

22 SENATOR SKELOS: 25 percent.

23 SENATOR ABATE: And hepatitis, so
24 why not create some immediate relief where we're
25 testing these defendants and providing some good

1 relief to law enforcement, and I guess that's my
2 question, why not separate HIV testing out and
3 do two-thirds of the bill today?

4 SENATOR SKELOS: Because I think
5 this is a very important component. If you
6 consider HIV a socially protected disease that's
7 fine. I consider it a disease that can
8 negatively impact our police officers and
9 correction officers just as TB can, just as
10 hepatitis can.

11 SENATOR ABATE: Well, let me
12 rephrase the question. If, in fact, we debate
13 this bill like we did last year and we come back
14 a year later with the same debate, around the
15 advisability and the accuracy of this HIV test,
16 and yet we would, if we could in this short term
17 interim pass something, even though it's two
18 thirds of a loaf, why not do it instead of
19 coming back here next year in the same position
20 we are today? Why not at least pass immediately
21 the testing that could require testing of
22 defendants on TB and -- and hepatitis, even
23 though it's not ideal as far as you're
24 concerned? We would be providing some real
25 peace of mind to law enforcement officers on two

1 thirds of the loaf.

2 SENATOR SKELOS: Senator Abate,
3 it's amazing how things sometimes happen in this
4 Legislature. Bills pass the Assembly that we
5 never think would pass, and I'm hopeful that
6 they'll see the wisdom of this legislation and
7 pass it.

8 SENATOR ABATE: But what I'm
9 suggesting is we still could pass potentially
10 two bills. If everyone began to see it the way
11 you did, we could pass two bills, one dealing
12 with HIV testing, maybe down the road if you're
13 right, but at least today we could reach a
14 consensus and provide testing of defendants
15 around the critical areas where there's
16 agreement.

17 SENATOR SKELOS: Why don't we
18 suggest this to your colleagues in the Assembly
19 majority, that they pass the bill you're
20 suggesting and we, with consent, of course, of
21 the Majority Leader and the Speaker, that we go
22 to joint conference committee, and air out the
23 difference between the two bills and see if we
24 can resolve our differences?

25 SENATOR ABATE: Not being in the

1 leadership, I mean I think there is a
2 difference. Sure, we'll look at that, but I
3 think there is a difference between the testing
4 of HIV in terms of sound health care policy and
5 the testing of TB and hepatitis, but let me go
6 on. When I talk on the bill, we can discuss the
7 differences, but I think we in the Legislature
8 should be about providing immediate relief when
9 we can agree on issues. We should identify
10 those issues and pass legislation instead of
11 putting forth legislation year after year that
12 dies because we can't agree on a hundred percent
13 of the bill.

14 SENATOR SKELOS: Well, first of
15 all, this is the second -

16 SENATOR ABATE: I say let's be
17 practical.

18 SENATOR SKELOS: This is the
19 second year that I brought this bill before the
20 house and it reminds me of other legislation
21 that I've had such as Megan's Law and others
22 that it took sometimes two years for the
23 Assembly to see the wisdom, the wisdom of the
24 legislation that the Senate passed.

25 SENATOR ABATE: Well, this is not

1 about politics or ideology, this is about
2 relying on the medical profession to give us
3 some guidance, but at any rate, let me just go
4 on to the testing of the defendants in this
5 situation. Who will bear the cost, and what
6 will be the cost of this testing? I know I asked
7 that question last year.

8 SENATOR SKELOS: The county.

9 SENATOR ABATE: And the counties
10 -- do we have a price tag on what that will
11 cost the counties?

12 SENATOR SKELOS: No, no, no.

13 SENATOR ABATE: And then
14 procedurally, what will be the increased cost to
15 local corrections because there will be a sub
16 set of people who now could be detained up to 24
17 hours for a hearing, or more than 24 hours if
18 they refuse to get tested.

19 SENATOR SKELOS: I'm looking to
20 our police. I'm not putting the cost factor on
21 a policeman's life. You may want to put a cost
22 factor on a policeman's life or a correction
23 officer's life. I won't do that.

24 SENATOR ABATE: I know probably a
25 lot more about correction officers, and I'm very

1 concerned about their security, but this bill
2 does not provide any more health security than
3 they have now.

4 SENATOR SKELOS: Well, then,
5 you're smarter and brighter than every
6 correction officer, every police officer that's
7 supporting this legislation, and I compliment
8 you on your intelligence, being smarter than all
9 of these.

10 SENATOR ABATE: I don't have a
11 medical degree, but I will talk on the bill.

12 SENATOR SKELOS: You should chat
13 with Dr. Belmonte who comes in contact with
14 these situations almost on a daily basis and
15 says that it's absolutely necessary not only to
16 test the individual who -- the police officer
17 that perhaps has been bitten or spat upon.

18 SENATOR ABATE: I agree with
19 that, every officer must be tested.

20 SENATOR SKELOS: But also the
21 person that does that because, if that person,
22 for example, the test indicates that he or she
23 is HIV positive, with the advances that we've
24 seen now, immediate treatment with AZT, that
25 police officer's life may be saved. That's my

1 bottom line, saving that police officer's life.

2 ACTING PRESIDENT MAZIARZ:

3 Senator Abate.

4 SENATOR ABATE: Yes, could the
5 Senator yield to additional questions?

6 ACTING PRESIDENT MAZIARZ:

7 Senator Skelos, would you yield to additional
8 questions?

9 SENATOR SKELOS: We'll yield to
10 one more additional question.

11 SENATOR ABATE: Well, then, I'll
12 have to ask someone else to yield because I have
13 additional questions.

14 SENATOR SKELOS: Well, if you
15 know the rules of the Senate, it says you're not
16 allowed to ask anyone additional questions.

17 SENATOR ABATE: Let me ask a
18 question and then if I need additional questions
19 I'll understand where you're going.

20 SENATOR SKELOS: Fine.

21 SENATOR ABATE: The question is
22 where in the bill does it provide money and
23 programs to provide testing to the officers
24 themselves and where in the bill does it provide
25 for pre- and post-counseling for the officers

1 who are going through a great deal of trauma who
2 need this kind of relief? What are we doing for
3 the officer, the HIV testing?

4 SENATOR SKELOS: Most counties
5 now, through their own procedures, pay for the
6 testing of the officer if he is -- comes in
7 contact with the type of situation we've been
8 discussing. It provides counseling to these
9 officers presently. All we're doing now is
10 saying, test the person that's been arrested or
11 that's in custody also. That's the additional
12 step that we're taking here.

13 SENATOR ABATE: But there's
14 nothing in this bill that would enhance those
15 services to the officers who need immediately -
16 immediate testing, giving localities the money
17 to do that immediate testing, making sure that
18 medications and drugs are available to the
19 officers and making sure that there's counseling
20 available to those officers? Is this bill silent
21 on those issues?

22 SENATOR SKELOS: The testing will
23 be -- will occur. The results will be found and
24 it will be paid for by the county.

25 SENATOR ABATE: O.K. On the

1 bill. Thank you very much.

2 ACTING PRESIDENT MAZIARZ:

3 Senator Abate, on the bill.

4 SENATOR ABATE: I agree
5 wholeheartedly with the notion that we owe an
6 immense debt of gratitude, and we have to do
7 everything we can to protect our law enforcement
8 officers so, if they have some real needs, so
9 that we can relieve their peace of mind to give
10 them some comfort we should do that and that's
11 why I support a bill which makes a lot of sense
12 because we will be giving good health
13 information to that officer if we mandate the
14 testing of defendants for TB and hepatitis.

15 But what we're doing when we say
16 that we need to test defendants in terms of HIV
17 is what my colleagues have said, the doctors
18 have said, depending on when an individual is
19 tested that person may test negative when, in
20 fact, they do have the HIV virus. We should not
21 ever sanction as a government giving -- give bad
22 information, particularly to our law enforcement
23 officers. They need accurate information so
24 they can make good and sound health decisions to
25 protect themselves. So what we should be

1 talking about is making sure the localities have
2 enough money available to, on the spot, give
3 testing to the officers who need it, to make
4 sure they have counseling available, that there
5 is enough money by the localities to deal with
6 all these other issues, to protect the peace of
7 mind of officers.

8 There's nothing in this bill that
9 does that. The response was, Well, the
10 localities have enough money now and have the
11 resources to do it. I submit the localities do
12 not have the money. There should be enough
13 programs designed where law enforcement officers
14 can meet and get that counseling separate and
15 apart from other programs that provide the
16 counseling to constituents generally.

17 If you talk to law enforcement
18 officers, they want to receive this kind of
19 counseling and testing in a -- in a -- in a very
20 private way. I don't believe that the
21 localities have these resources. We should be
22 talking about that and not giving them bad
23 information.

24 Also, we haven't gotten answers
25 today, and I think it's a major issue. What

1 will the impact of this bill be on the court
2 system, on the correction system? We heard not
3 so long ago from local jail system that they're
4 dealing with enormous overcrowding and the state
5 keeps putting more and more burdens on them in
6 terms of unfunded mandate relief.

7 This bill could, in fact, mean
8 that some people will be in the jail system
9 longer, because they refuse to be tested. The
10 judge has to make a decision. They talk about
11 24 hours and it may be longer than 24 hours.
12 Have we done a cost:benefit analysis to see if
13 this makes sense? We do know in terms of
14 health, it does not produce a sound health
15 policy. Now, let's look at what kind of
16 financial burden are we creating on the
17 locality.

18 I still argue two-thirds of a
19 loaf that we can produce today is better than no
20 loaf. If the law enforcement officers want this
21 in terms of testing with TB and hepatitis, let's
22 give it to them today and continue the debate
23 and bring in medical professionals around the
24 HIV testing. If we don't want to do it, then I
25 suspect that maybe we're only doing this for

1 political or rhetorical reasons. We don't want
2 to help law enforcement officers. I submit
3 let's separate it out, let's do something good
4 today, and let's not wait.

5 ACTING PRESIDENT MAZIARZ:
6 Senator Marcellino.

7 SENATOR MARCELLINO: Yes, Mr.
8 President.

9 Senator Skelos, you're to be
10 congratulated and commended for bringing this
11 piece of legislation to the floor. One of the
12 police officers you mentioned, his spouse is one
13 of my staffers and when that incident occurred,
14 I know the pain that the family felt. I know
15 the pain that they went through for a long
16 period of time, and I know that the person who
17 inflicted the injury on the police officer plea
18 bargained, used it as a ploy to get a lighter
19 sentence. There was no doubt about guilt and he
20 used it as a ploy and held it out and said, I
21 won't let you test me unless you give me a
22 lighter sentence. Ha! Ha! Ha! Go through the
23 pain, have all the agony, the pain that was
24 inflicted upon your family, I don't care. I'm
25 going to try to get a lighter sentence for

1 myself.

2 I think we can eliminate that by
3 this bill. This bill may not be perfect, but I
4 think it goes a long way in taking a firm step
5 in supporting our law enforcement officials.
6 These people are on the line daily, risking
7 their lives in support of everyone in this
8 chamber, and our families and those of all of
9 our constituents. They are to be not only
10 applauded, but aided in any way we can and if we
11 can make their lives easier by providing
12 whatever information a test of an individual
13 would provide them, then we should do it. We
14 should do it. And if they need counseling, they
15 may know that the results of these tests may not
16 be perfect. They know that they should get
17 tested themselves. The police departments will
18 provide and offer the counseling services for
19 their membership. They know that.

20 It's amazing to me how we are
21 willing to pass legislation for hepatitis,
22 polio, tuberculosis, or even the common cold,
23 anything we can imagine, but suddenly when you
24 mention HIV, the flags go up all over the
25 place. Nothing can be done when you mention

1 HIV. We can't test, we can't do anything
2 because HIV is a problem. I don't understand
3 that. We should help these people too. They
4 may not know they're infected. Let them know.

5 We went through this on the baby
6 AIDS bill. Let these people know they're
7 infected. Maybe they can change their life
8 style and today we know there are different
9 medications that will prevent the full-blown
10 appearance of the disease. It seems to me
11 they're getting better and better. Well, maybe
12 the testing will get better and better as we go
13 along, but at least let's do it. Let's get
14 involved. Let's not put a mask in front of our
15 face. Let's not say we can do anything but when
16 it comes it AIDS, we won't talk about it. We
17 won't do anything, and we dance around about
18 costs and all this other nonsense.

19 Ladies and gentlemen, this bill
20 is a good bill. It's time we move it. It's
21 time the other house comes to the table with the
22 legislation. Like Senator Skelos said, let them
23 pass a bill, then we'll urge them to conference
24 it, like we did the registry bill which no one
25 said we could have. We have it.

1 The conference committee system
2 works. Let's do it. We talk, we talk, we talk;
3 meanwhile, there are police officers and law
4 enforcement officials out there risking their
5 lives, and they're put through pain and anxiety
6 unnecessarily that we could possibly alleviate
7 some of it, not all the of it, but some of it
8 with this legislation.

9 I'm going to vote aye. I urge
10 all my colleagues to vote the same.

11 ACTING PRESIDENT MAZIARZ: Read
12 the last section.

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

16 ACTING PRESIDENT MAZIARZ: Call
17 the roll.

18 (The Secretary called the roll.)

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT MAZIARZ:
21 Senator Gold.

22 SENATOR GOLD: Yeah, Mr.
23 President. I -- I didn't have the advantage of
24 hearing a lot of the debate because of the
25 Finance hearings, but one thing I did hear from

1 Senator Skelos which I was impressed with and
2 maybe this is a place for it. I'm going to vote
3 against this because I -- I believe there are
4 some flaws in the legislation as has been
5 explained very well by Senator Abate and Senator
6 Leichter and others, but I would like to see a
7 situation if the Assembly believes they have a
8 bill that does it better, for them to pass it
9 and send it to the conference committee.

10 We've talked about conference
11 committees. We've had, I think, one or two
12 situations with it and maybe we really ought to
13 do more instead of going through the process
14 every year of having bills that come before us
15 year after year as one-house bills.

16 So, Senator Skelos, I took your
17 words very seriously. Perhaps Senator Abate and
18 others can persuade the Assembly to deal with
19 this in a different way and maybe we'll resolve
20 it into a law. I vote in the negative.

21 ACTING PRESIDENT MAZIARZ:

22 Senator Paterson, to explain your vote.

23 SENATOR PATERSON: Mr. President,
24 I was very impressed by the remarks of Senator
25 Abate, as I always am and her offer that perhaps

1 we vote on the issues that had direct
2 consequence such as the contraction of hepatitis
3 and tuberculosis, and felt, as she, that perhaps
4 the issue of HIV was a little bit more complex,
5 but since we're probably relying on the study
6 that the New York State AIDS Institute offered
7 in 1990, which demonstrated that AIDS testing
8 was not reliable within six months, what I'm in
9 formed now is that the PCR test that could be
10 taken by the individual who is charged with
11 possibly inflicting the disease could in the -
12 in its immediacy reveal not only whether or not
13 the person is HIV positive, but would reveal
14 actually whether there's even an infinitesimal
15 chance that the virus may be transferred.

16 Apparently these diseases have
17 been pared down to 300 sets of types of diseases
18 that could theoretically be transferred. If
19 that is the case, then it would mean that
20 treatment with AZT within the first 72 hours
21 could probably prevent the spread of the virus
22 and in some cases there's evidence that it might
23 kill it all.

24 Now, AZT has been effective in
25 the treatment of perhaps killing off the virus

1 to newborns where the treatment is given to the
2 mother in three to seven months of pregnancy.
3 Also there are tests that demonstrate that
4 individuals weave back and forth between HIV
5 positive and HIV negative and that whether or
6 not AZT is actually affecting the process is not
7 known. AZT is an immuno-suppressant drug which
8 treats an immuno-suppressant virus. Simply that
9 means that it exacerbates bringing down the
10 immune system and that was the problem that the
11 officer had that Senator Skelos referred to
12 because if he took AZT for six months he did
13 significant damage to his immune system without
14 knowing the results of that particular test.

15 So I think this is something that
16 merits -- merits more study. I'm certainly
17 willing to discuss it. I don't think this is an
18 annual dance. I think this is a very serious
19 problem in which people differ on their points
20 of view but are united in their desire to try to
21 bring comfort and safety to individuals who are
22 public servants who are trying to protect us.

23 ACTING PRESIDENT MAZIARZ:

24 Announce the results. I'm sorry.

25 Senator Paterson.

1 SENATOR PATERSON: Senator
2 Leichter wanted to know how I voted. I voted
3 no.

4 ACTING PRESIDENT MAZIARZ: We
5 knew that.

6 Senator DeFrancisco to explain
7 his vote.

8 SENATOR DeFRANCISCO: Yes. I'm
9 going to vote in the affirmative. You know,
10 there seems to have been an awful lot of dancing
11 around this issue. I have been here about four
12 years and it's pretty obvious to me that for
13 some reason HIV is a politically protected
14 disease in the eyes of some. It seems to me if
15 you don't know all the answers, as everyone
16 seems to admit, as to treatment, and so forth,
17 you would at least want all the information you
18 could possibly get to analyze the situation and
19 why should we have a different situation with
20 certain diseases and not for one other and
21 whether or not we provide counseling for police
22 officers and provide them money and all these
23 diversions that we heard on the floor today, the
24 fact of the matter is information is important
25 in the treatment of anything, and if we have

1 someone who has committed an act which possibly
2 can transmit a disease no matter what it is, I
3 think it would be important for the medical
4 treatment to know whether or not that person has
5 that disease, and it may very well be that that
6 person may be released on bail, may have his
7 case disposed of and we may never see that
8 person again and we may never get that
9 information.

10 So for that reason, I think it's
11 very important to pass this bill in a bill that
12 really would deal with the same issue no matter
13 what happens -- what the disease happens to be.

14 ACTING PRESIDENT MAZIARZ:
15 Announce the results.

16 THE SECRETARY: Those recorded in
17 the negative on Calendar Number 69 are Senators
18 Abate, Breslin, Connor, Dollinger, Gold,
19 Leichter, Markowitz, Montgomery, Nanula,
20 Paterson, Santiago, Seabrook, Smith and Waldon.
21 Ayes 45, nays 14.

22 ACTING PRESIDENT MAZIARZ: The
23 bill is passed.

24 The Secretary will read.

25 THE SECRETARY: Calendar Number

1 86, by Senator DeFrancisco, Senate Print 114, an
2 act to amend the Insurance Law, in relation to
3 the premium or compensation for giving bail
4 bond.

5 SENATOR PATERSON: Explanation.

6 ACTING PRESIDENT MAZIARZ:

7 Senator DeFrancisco, an explanation of Calendar
8 Number 86 has been requested by Senator
9 Paterson.

10 SENATOR DeFRANCISCO: Presently
11 the law allows for premiums on bail bonds in the
12 amount of 5 percent for the first \$1,000 which
13 means \$50, 4 percent for the next 1,000, which
14 is another \$40, and 3 percent on the amounts in
15 excess of that.

16 The bill would increase the
17 premiums for the first 3,000 to 10 percent of
18 the face value. The next 7,000 would be 4
19 percent, and the next 10,000 would be 6
20 percent.

21 The reason for it is that
22 presently there is reluctance in many
23 jurisdictions, and I know for sure mine, for
24 bail bondsmen to even bother with a \$1,000 bail
25 bond for a premium of \$50 when most of that

1 money gets transmitted to the insurance company
2 who's posting the bond anyway and these bonds in
3 smaller amounts are not being offered and as a
4 result people are staying in jail because
5 there's not this service that is a valuable
6 service provided by bail bondsmen in the lower
7 amounts of bonds, so -- and since 40 states -
8 we have the lowest bail bond premiums in the
9 country, and I think it is unfair to those
10 having an alternative to cash to be given an
11 opportunity to get out of jail while that person
12 is accused and waiting trial, and that's the
13 reason for the bill.

14 ACTING PRESIDENT MAZIARZ: Thank
15 you, Senator DeFrancisco.

16 Read the last section.

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

19 SENATOR LEICHTER: Explanation,
20 please.

21 ACTING PRESIDENT MAZIARZ:
22 Senator Leichter, Senator DeFrancisco just gave
23 a very detailed and excellent explanation.

24 Senator Paterson.

25 SENATOR PATERSON: Mr. President,

1 if Senator DeFrancisco would yield for a
2 question.

3 ACTING PRESIDENT MAZIARZ:
4 Senator DeFrancisco, would you yield for a
5 question?

6 SENATOR DeFRANCISCO: Yes.

7 ACTING PRESIDENT MAZIARZ:
8 Senator Paterson.

9 SENATOR PATERSON: I'm concerned
10 that at the low ends where the poor and the
11 indigent are looking for the opportunity to
12 receive bail, that perhaps raising the
13 percentage might be raising it out of reach, and
14 so I was wondering if you -- have you given any
15 thought to perhaps minimizing the bail on the
16 lower ends and then increasing it at other
17 points because basically the point that you're
18 making -- your legislation is quite good and at
19 this point, particularly with respect to where
20 the insurance companies see this, it is valid.

21 SENATOR DeFRANCISCO: Well, it is
22 a sliding scale. The first 10 -- excuse me.
23 The first 3,000 is 10 percent, then it goes down
24 to 4 percent for the next 7- and it's a sliding
25 scale, but as far as the low end, that's where

1 the problem arises. If a judge sets a bail of
2 \$1,000 cash, \$1,000 bond, I think it's easier
3 under the bill to raise \$100 if you get a bail
4 bond at 1,000 rather than try to find \$1,000 in
5 cash and that's -- I guess the alternative of
6 not having that bond is a cash bail or pretrial
7 release which we do use substantially in
8 Onondaga County through the Probation Department
9 without having to raise any bond. So if there's
10 an indigent who's not a risk, the Probation
11 Department is likely to take that individual in
12 its program.

13 ACTING PRESIDENT MAZIARZ:

14 Senator Paterson.

15 SENATOR PATERSON: Thank you,

16 Senator.

17 ACTING PRESIDENT MAZIARZ: Read
18 the last section.

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

21 ACTING PRESIDENT MAZIARZ: Call
22 the roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 57, nays 2,
25 Senators Abate and Leichter recorded in the

1 negative.

2 ACTING PRESIDENT MAZIARZ: The
3 bill is passed.

4 The Secretary will read.

5 THE SECRETARY: Calendar Number
6 93, by Senator Seward, Senate Print 1182.

7 SENATOR SKELOS: Lay it aside for
8 the day.

9 ACTING PRESIDENT MAZIARZ: The
10 bill is laid aside for the day.

11 THE SECRETARY: Calendar Number
12 94, by Senator Volker, Senate Print 87-A, an act
13 to amend the Penal Law, in relation to criminal
14 possession of marijuana in the third degree.

15 ACTING PRESIDENT MAZIARZ: Read
16 the last section.

17 THE SECRETARY: Section 2. This
18 act shall take effect on the first -

19 ACTING PRESIDENT MAZIARZ: Excuse
20 me. Senator Leichter.

21 SENATOR LEICHTER: I'm just
22 voting negative.

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

1 ACTING PRESIDENT MAZIARZ: Call
2 the roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT MAZIARZ:
5 Senator Waldon, to explain his vote.

6 SENATOR WALDON: Let me apologize
7 to Senator Volker because he and I concurred on
8 this issue and we're going to try to bring some
9 light to our respective positions regarding the
10 use of marijuana and, in fact, what is
11 characterized as the sale of marijuana when
12 young people -- thank you very much, Mr.
13 President. I apologize for that -- giving away
14 to others.

15 It is my belief that we can no
16 longer take a position which allows our young
17 people to think that we're sending them a signal
18 that the use of something, as they characterize
19 it, as mild as marijuana is acceptable
20 behavior.

21 It is my belief that this
22 experimentation with marijuana all too often
23 leads to the use of stronger drugs and certainly
24 those who are looking to create a clientele will
25 give away -- and everyone who has ever read

1 anything about drugs knows this to be true -
2 will give away drugs in order to create a client
3 base, and so if we in the Legislature recognize
4 that these are potential dangers to our young
5 people, we cannot afford to be soft regarding
6 even something that the youth of America claim
7 is as soft a drug as marijuana.

8 So I encourage my colleagues to
9 recognize that even social experimentation with
10 this substance creates a potential danger, not
11 just to those who use it but to those who
12 surround them and all of society, and I would
13 encourage you to join me and others in this
14 chamber who feel that the distribution, as a
15 gift or otherwise, to peers is just as dangerous
16 as someone who's running a business of selling
17 drugs and we should stop it at all costs.

18 So I encourage you to support
19 this and for us to take a step and send a signal
20 that even the use of marijuana is unacceptable
21 behavior to us as a Legislature.

22 I thank you, Mr. President, and I
23 apologize, Senator Volker.

24 ACTING PRESIDENT MAZIARZ:
25 Announce the results.

1 THE SECRETARY: Ayes 58, nays 1,
2 Senator Leichter recorded in the negative.

3 ACTING PRESIDENT MAZIARZ: The
4 bill is passed.

5 Senator Skelos, that completes
6 the controversial reading of the calendar.

7 SENATOR SKELOS: Mr. President,
8 if we could return to reports of standing
9 committees, I believe there's a report of the
10 Rules Committee at the desk.

11 ACTING PRESIDENT MAZIARZ: The
12 Secretary will read.

13 THE SECRETARY: Senator Bruno,
14 from the Committee on Rules, reports the
15 following bill direct to third reading:

16 Senate Print 1663, by Senator
17 Goodman, an act to amend Chapter 912 of the Laws
18 of 1920, relating to allowing and regulating
19 boxing, sparring and wrestling matches.

20 ACTING PRESIDENT MAZIARZ:
21 Senator Skelos.

22 SENATOR SKELOS: I move we accept
23 the report of the Rules Committee.

24 ACTING PRESIDENT MAZIARZ: All in
25 favor of accepting the report of the Rules

1 Committee signify by saying aye.

2 (Response of "Aye".)

3 Opposed, nay.

4 (There was no response.)

5 The report is accepted.

6 Senator Skelos.

7 SENATOR SKELOS: Can we take up
8 the Rules report at this time.

9 ACTING PRESIDENT MAZIARZ: The
10 Secretary will read.

11 THE SECRETARY: Senator Goodman
12 moves to discharge from the Committee on
13 Tourism, Recreation and Sports Development
14 Assembly Bill Number 2718 and substitute it for
15 the identical Third Reading Calendar 127.

16 ACTING PRESIDENT MAZIARZ: The
17 substitution is ordered.

18 The Secretary will read.

19 THE SECRETARY: Calendar Number
20 127, by Member of the Assembly Kaufman, Assembly
21 Print 2718, an act to amend Chapter 912 of the
22 Laws of 1920, relating to allowing and
23 regulating boxing, sparring and wrestling
24 matches.

25 SENATOR LEICHTER: Explanation.

1 ACTING PRESIDENT MAZIARZ:

2 Senator Goodman, an explanation has been
3 requested from Senator Leichter.

4 SENATOR GOODMAN: Mr. President,
5 our action today culminates what I think could
6 fairly be called a crusade of year long length
7 to do away with a sport that I have
8 characterized as nothing more than vicious human
9 cockfighting.

10 "Ultimate fighting", as it is
11 known, is a fight which has just recently been
12 held in Alabama and which had a sign above the
13 ring, I am informed, which said "Anything goes",
14 and that was not an exaggeration, Mr. President,
15 because this form of fighting is not anything
16 with which anyone in this room would normally be
17 familiar. It is not boxing. It is not
18 wrestling. It is neither the show time form of
19 wrestling, nor the Greco-Roman form of
20 wrestling. It is a vicious confrontation of two
21 individuals intent literally upon destroying one
22 another.

23 Anyone who has seen one of these
24 contests -- and I'm not sure how many of you
25 have had occasion to either rent the available

1 VHS tape from your local tape rental stores or
2 whether you've seen them on pay television or,
3 perish the thought, actually attended one, will
4 know there's an audience screaming for blood and
5 that invariably their screams are well gratified
6 by virtually the action that occurs.

7 If you'll half close your eyes
8 and visualize a television screen, I'll tell you
9 what you can see if you watch an "ultimate
10 fight". A typical one would involve two men
11 charging at one another and one will raise his
12 foot in a kick to the throat or the head of his
13 opponent and down the opponent on the mat, who
14 will then leap onto the opponent. They may
15 grapple for a time, and in the particular film
16 to which I refer which I will show you gladly in
17 my office, or at least unhappily in my office
18 since it's quite revolting, there is a
19 deliberate effort to take a fist and to pummel
20 directly the vital parts which are situated
21 between the legs of one contestant. This is
22 done repeatedly and viciously. It is done with
23 no other intent than to visit the worst kind of
24 injury upon the opponent. There is eye
25 gouging. There is head butting. There is every

1 form of attempt by one human being to literally
2 destroy another and the match is invariably
3 concluded with blood and gore all over the mat.

4 Now, the proponents of this type
5 of contest contend that this is really a very
6 innocent form of sport because no one has yet
7 been killed, but let me say that in March of
8 1956, your Senate Investigations Committee held
9 a hearing and called before it medical experts
10 to comment upon the films which we showed them
11 of these contests and they commented that in all
12 probability deaths would occur in the ring and
13 at least very severe injury could result in a
14 significant number of cases. These opinions
15 were being delivered by sophisticated ringside
16 physicians and other neurologists who observed
17 the action and felt that it is absolutely
18 subhuman.

19 Now, Mr. President, as bad as
20 this is for the contestants participating in the
21 contest, in my judgment, it has an even worse
22 effect, and that is the abominable example which
23 it sets for the youngsters of the coming
24 generation upon whom this Legislature votes \$9
25 billion annually to educate and uplift them for

1 a constructive role in society. These
2 youngsters are treated to an exhibition of the
3 worst kind of sportmanship. In fact, they're
4 treated to what is nothing more nor less than a
5 barroom brawl or an alley fight of the lowest
6 conceivable type.

7 They're given the impression that
8 this is something which should be emulated and
9 the result could very well be behavior which
10 will result in injury to youngsters fighting in
11 a school yard or other places where they think
12 that these types of tactics ought to be
13 encouraged and utilized by them.

14 How many times do we see a
15 youngster with a toy gun shooting another
16 youngster? This is not a toy gun situation.
17 This is one in which kicks to various sensitive
18 body parts where the exposed Adam's apple is hit
19 and this can be a killing blow, and I just
20 cannot tell you -- words fail to describe the
21 depth of my feeling as to the undesirability of
22 this type of contest.

23 Mr. President, I'm very proud
24 that the Senate has finally seen fit to come
25 forward and to take action which will provide a

1 surgical strike to remove this cancer from the
2 body politic. We've done this in some
3 successive steps.

4 First, we passed a bill which
5 placed this type of fighting under regulation.
6 There's a misapprehension about that bill. Some
7 thought that it was a bill to permit the
8 fighting. The fighting has always been
9 permitted and the bill ought to regulate it.

10 The next step was that the State
11 Athletic Commission then proceeded to issue a
12 set of very stringent regulations which, when
13 they were about to be applied in Buffalo last
14 week, resulted in the fight promoters removing
15 the fight from Buffalo and bringing an action in
16 federal court for the purpose of seeing that
17 these fights were permitted to continue.

18 The federal district judge ruled
19 that the regulations of the State Athletic
20 Commission were appropriate and that they should
21 be enforced and not drive the fight out of the
22 state, but that's not sufficient because various
23 evasive techniques would undoubtedly be
24 identified by various of the promoters of these
25 contests to keep the sports in New York, which

1 is after all the Empire State where some of the
2 greatest boxing matches occur, and let it be
3 noted I happen to be a fan of good professional
4 boxing, and I would remind you that the Senate
5 Investigations Committee suspended boxing for 60
6 days in this state in an earlier investigation
7 when a fighter was killed in the ring and we
8 reached the conclusion that there was inadequate
9 medical supervision of these contests.

10 But, Mr. President, to wrap this
11 up, let me just say this is the worst kind of
12 conceivable public exhibition. People have
13 said, Well, shouldn't people have the right to
14 do anything they please? Well, should they?
15 Should people have the right to stage knife
16 fights in a ring? Should I have the right to
17 take a needle and insert it into your eyeball in
18 a contest to see whether I can impair your
19 vision?

20 There are certain things which
21 society sets standards for and precludes and
22 says "this is not acceptable behavior." This is
23 surely Exhibit A of that type of stricture which
24 we need to apply in the interest of good
25 government and better civic understand- ing of

1 what constitutes good, clean fighting and a
2 contest that's properly supervised.

3 And so, Mr. President, we've
4 reached the point where we now feel it is
5 imperative that we have a sweeping definitive
6 block to this. The Assembly has passed this
7 bill. The Governor, the Attorney General, the
8 mayor of the city of New York, innumer- able
9 elected officials have rallied to this standard,
10 and frankly, it's due to the outraged public
11 outcry that this whole action is now possible
12 this afternoon.

13 I want to commend the Senate for
14 considering this measure, and I want to urge
15 upon my colleagues immediate and sweeping action
16 to put an end to this scourge forthwith.

17 ACTING PRESIDENT HOLLAND:
18 Senator Stachowski.

19 SENATOR STACHOWSKI: Just, Mr.
20 President, a couple of comments on Senator
21 Goodman's remarks about ultimate fighting.

22 SENATOR GOODMAN: Mr. President,
23 may I be forgiven? Senator, would you yield for
24 one moment? There's a rather vital part of
25 legislative intent that I want to be sure is

1 spread upon the record. It will take 30
2 seconds.

3 SENATOR STACHOWSKI: Actually you
4 had most of the votes, Senator, but if you keep
5 talking you might start losing them.

6 SENATOR GOODMAN: I'll take my
7 chances on that.

8 ACTING PRESIDENT HOLLAND: Do you
9 yield, Senator?

10 Senator Goodman.

11 SENATOR GOODMAN: I do want to
12 say, Senator, that there is one piece of
13 legislative intent which must be placed upon the
14 record very explicitly, and that is, there is no
15 intention to block this form of fighting on
16 television because we do not have the right
17 under the First Amendment to accomplish that
18 effect.

19 Therefore, let it be understood
20 that in the legislative intent of the Governor
21 whose program bill this is, and I as the sponsor
22 in the Senate, and I believe the Assembly would
23 say the same thing, cable television can
24 continue. We have no right to block this under
25 the U.S. Constitution and we don't intend to do

1 that.

2 ACTING PRESIDENT HOLLAND:

3 Senator Stachowski.

4 SENATOR STACHOWSKI: Again, Mr.
5 President, I would like to try to make just a
6 couple of comments on Senator Goodman's
7 remarks. I'm not going to vote against the
8 bill, but I would like to point out that the
9 fight last week was in Niagara Falls and the
10 people of Niagara Falls were very upset at being
11 referred to as Buffalo because it's 25 miles
12 away.

13 Secondly, I don't know which
14 famous fights he's talking about in New York
15 lately. It could be Riddick Bowe or the fight
16 that followed after the last -- you know, after
17 the big -- a lot of fights. So based on
18 security in the city of New York on boxing
19 matches now, I don't know what's worse, ultimate
20 fighting or going to a boxing match in Madison
21 Square Garden.

22 So hopefully they'll clean up
23 that while we're cleaning up ultimate fighting,
24 and then we'll have it back to regular boxing
25 that we enjoyed in New York State and that I

1 know Floyd Patterson wants to bring back to New
2 York State.

3 I vote aye on the bill.

4 ACTING PRESIDENT HOLLAND:
5 Senator Dollinger.

6 SENATOR DOLLINGER: Mr.
7 President, will Senator Goodman yield just to
8 two quick questions?

9 ACTING PRESIDENT HOLLAND:
10 Senator?

11 SENATOR GOODMAN: Yes.

12 ACTING PRESIDENT HOLLAND: The
13 Senator yields.

14 SENATOR DOLLINGER: Senator, you
15 said that the bill provides that it is not meant
16 to impair television, televising these images,
17 is that correct?

18 SENATOR GOODMAN: That's correct.

19 SENATOR DOLLINGER: Would that
20 apply to Pay Per View as well?

21 SENATOR GOODMAN: Yes, it would.

22 SENATOR DOLLINGER: So it's not
23 intended to kick these matches off of Pay Per
24 View.

25 SENATOR GOODMAN: That's my

1 judgment. We don't have that power under the
2 First Amendment, Senator, and therefore that's
3 not its intent.

4 SENATOR DOLLINGER: If I read
5 your bill, your bill is certainly broad enough
6 to include Pay Per View, is it not?

7 SENATOR GOODMAN: We've
8 explicitly stated the legislative intent. So
9 there can be no misunderstanding of the wording
10 of the bill.

11 SENATOR DOLLINGER: But there's
12 nothing in the term of "legislative intent" in
13 this bill that mentions it's not intended to
14 apply to Pay Per View or any other type of
15 televised -- I understand, Senator, you as the
16 sponsor of this legislation and a court looking
17 at the records of the deliberations of this body
18 would conclude that you as the sponsor did not
19 intend to affect Pay Per View but there's
20 nothing in this document that would prevent the
21 prosecution of Time Warner or MSG for putting on
22 Pay Per View an ultimate fighting match because
23 the language is broad enough. It says you
24 advance combative activity when you -- conduct
25 directed toward the creation, establishment or

1 performance toward the aforementioned premises,
2 paraphernalia, equipment, or apparatus, could
3 include television cameras, or towards the
4 solicitation or inducement of persons to attend
5 or participate. If it's participate, then they
6 could be out soliciting people to watch Pay Per
7 View. That's a solicitation to participate in
8 ultimate fighting to pay for it. It's just like
9 buying a ticket. Isn't that correct, Senator?

10 SENATOR GOODMAN: Your
11 interpretation is one which I think is laid to
12 rest by the very explicit statement I just made,
13 Senator.

14 SENATOR DOLLINGER: Okay. I hope
15 that -- again, through you, Mr. President -
16 that a court -- one of the things that we don't
17 do is make debate available to the court so that
18 they can figure out what statutory intent is all
19 about in New York. Maybe we should do that,
20 because I certainly read this as being broad
21 enough to affect Pay Per View here in this
22 state.

23 Let me ask one other question,
24 Senator. Is it your intention -- again through
25 the Chair, is it your intention to ban

1 promotional activities of ultimate fighting in
2 this state even if the fight doesn't occur in
3 New York?

4 SENATOR GOODMAN: Is it my
5 intention to do that? In such fashion as it may
6 not conflict with the First Amendment to the
7 Constitution, that's certainly our intention.
8 I'm not sure that under the free speech it's
9 guaranteed that if there's television
10 advertising, for example, would not be within
11 the ambit of the bill to prevent that.

12 SENATOR DOLLINGER: Again,
13 through you, Mr. President. Suppose there's an
14 ultimate fight in New Jersey. Can they promote
15 it in New York City under this bill?

16 SENATOR GOODMAN: The answer is
17 that if it's a free speech issue that they can,
18 yes.

19 SENATOR DOLLINGER: Okay. So if
20 the fight isn't held here in New York, then they
21 can still do all the promotional activities.

22 SENATOR GOODMAN: I'm not sure
23 why they would want to do that but they could.

24 SENATOR DOLLINGER: Well, they
25 would obviously be soliciting people from New

1 York to go to the fight in New Jersey.

2 SENATOR GOODMAN: That's
3 certainly possible. Free speech guarantees your
4 right to do that, as well as to invite people to
5 a pornography show and a number of others
6 things, which you would never wish to attend,
7 Senator.

8 SENATOR DOLLINGER: Again through
9 you, Mr. President. I, like Senator Stachowski,
10 am not going to vote against this bill. I think
11 what's happened here is that Senator Goodman has
12 given the ultimate punch to ultimate fighting
13 here and knocked them out of New York State,
14 which I agree with.

15 I am concerned, however, because
16 I think the issue is that Pay Per View, the
17 television implications and the question of to
18 what extent you can be a promoter in New York
19 State even though the fight occurs some place
20 else, Senator, you're much more familiar with
21 that. You come from the tri-state region. You
22 know that region. You know the possibility of
23 interstate problems as well. I'm willing to
24 give the final punch to ultimate fighting, but
25 I'm not sure that this -- I think that this bill

1 could use a little further drafting to better
2 define exactly what we're trying to weed out of
3 the process.

4 ACTING PRESIDENT HOLLAND:
5 Senator Leichter.

6 SENATOR LEICHTER: Yes, Mr.
7 President. Thank you.

8 I wanted to ask Senator Goodman a
9 question but before I do, I really want to say,
10 Senator, I commend you for the fight that you've
11 waged without resorting to any kicks to vital
12 parts or anything else to get this bill passed,
13 and I think it's important and I certainly
14 support you on it.

15 I just want to say, Senator, if
16 you would be so good to yield, I was concerned
17 about the questions that Senator Dollinger
18 raised. I see this is the Governor's bill.
19 Maybe it wasn't drafted by you, but I just say
20 it's not a carefully drafted bill because
21 certainly your reading of this bill would seem
22 to imply that any activity in this state related
23 to ultimate fighting, wherever, in Alabama, New
24 Jersey, and so on, could be a criminal act, and
25 I don't think it's a First Amendment issue at

1 all. It may involve interstate commerce, and so
2 on, but quite possibly some prosecutor might
3 proceed under this bill. I just think it could
4 have been more carefully drafted, but let me ask
5 you another question which sort of puzzles me.

6 The bill has a reference to
7 martial arts and the definition of martial arts
8 is in reference to organizations that put on
9 martial arts. I don't understand why that's in
10 the bill at all.

11 SENATOR GOODMAN: What I think
12 you're referring to is the definition which
13 commences on line 6 which says "A combative
14 sport shall mean any professional match or
15 exhibition other than boxing, sparring,
16 wrestling or martial arts," wherein contestants
17 do various things. It is excluding martial arts
18 which, as you know, are Judo, Tae Kwon Do or
19 other martial arts as they are so-called, not
20 boxing, not wrestling, but that special category
21 of Jiu-Jitsu, and the like. So they are
22 excluded from this bill. A Jiu-Jitsu match or a
23 Tae Kwon Do match would not be -

24 SENATOR LEICHTER: I understand
25 that, Senator, but what I'm puzzled at is you go

1 ahead and you define martial arts just as
2 matches or exhibitions sanctioned by a number of
3 organizations. So martial arts, as I understand
4 it, is in schools. There's martial arts
5 exhibits, and so on. It may be done by clubs,
6 and so on.

7 SENATOR GOODMAN: That's the
8 exclusionary clause. They are excluded from the
9 regulatory ambit of the bill.

10 SENATOR LEICHTER: Well, it says
11 that martial arts shall include any professional
12 match and exhibitions.

13 SENATOR GOODMAN: Other than
14 boxing, wrestling or -

15 SENATOR LEICHTER: No. I see
16 that, Senator. I'm referring to line 10 which
17 says "martial arts shall include any
18 professional match, exhibition sanctioned by any
19 of the following exhibitions."

20 SENATOR GOODMAN: And they are,
21 therefore, excluded from the
22 regulatory -

23 SENATOR LEICHTER: I understand.
24 My point is, Senator, that martial arts -- I
25 think some of our schools have martial arts

1 exhibits. Clubs have martial arts exhibits that
2 in no way have any relationship or reference to
3 these particular organizations, and it would
4 seem to me that you're now raising a question
5 whether these martial arts activities can
6 proceed.

7 SENATOR GOODMAN: I think quite
8 the reverse. I think what this does explicitly
9 is to exclude those types of martial arts from
10 the prohibitions contained in the bill.

11 SENATOR LEICHTER: Well -- but
12 isn't it true, Senator, it's only the martial
13 arts that are sanctioned in exhibitions by these
14 organizations? If Junior High School 141 has a
15 martial arts exhibit -

16 SENATOR GOODMAN: It just says it
17 shall include them. It does not say that it
18 shall not include other forms of martial arts.
19 I don't think that's a problem, Senator.

20 SENATOR LEICHTER: Well, it says
21 -- if I may, Senator, it says that others may
22 be included, but you then have to apply to the
23 -- I think to the -- you have to apply to the
24 boxing commission.

25 I mean, I must say, with all due

1 respect, it's important what you've achieved.
2 We certainly have expressed our intent. I just
3 wish that the bill had been drafted maybe a
4 little more carefully and clearer because I
5 think it's going to raise some problems, and I
6 must say that last year as many of the members
7 in this house, I thought I voted for a bill to
8 ban ultimate fighting, and I know that was your
9 intent and I was somewhat embarrassed to read in
10 the paper that we had actually sanctioned it and
11 authorized it. So I -- and while that certainly
12 wasn't your intent and you brought it -- tried
13 to bring it under regulation -- I know the whole
14 sad history, and I don't mean this in any way as
15 any criticism of you because you tried to do
16 everything you possibly could. I'm just saying
17 how we word the bills obviously is very
18 important irrespective of what our intent may
19 be, and I think some of us were embarrassed last
20 year. Now, somebody could say, Well, you should
21 have to read the bill more carefully last year,
22 but it was at the end of the session and I saw
23 Senator Goodman, and I knew your good fight and
24 your intentions and they certainly are clear as
25 regard to this bill, but I just say to you that

1 I think that this bill may come back to create
2 some problems for us. At least it will stop the
3 ultimate fighting that has been planned for this
4 state and in that respect it's good, but I think
5 that we ought to be more careful, frankly, than
6 we are in this bill.

7 SENATOR GOODMAN: If that's a
8 question, let me respond briefly. As it turns
9 out, looking back in retrospect, last year's
10 bill accomplished a very salutary purpose. It
11 placed under the regulatory authority, the
12 absolute authority of the State Athletic
13 Commission, this form of contest. In so doing
14 what it inadvertently did, I grant you, is to
15 say that an individual municipality did not have
16 the right to ban it unilaterally but that would
17 require action by the State Athletic Commission
18 but let's follow what actually happened.

19 The State Athletic Commission
20 promulgated rules that were so strict that they
21 were an indispensable step toward the ultimate
22 result that we've achieved today -- or will
23 achieve, I trust, in a matter of moments, which
24 is the passage of the bill.

25 Now, as far as this is concerned,

1 your concern about the exclusion, I think is
2 explicitly taken care of by simply trying to
3 define what martial arts consists of, and in so
4 doing it speaks of several organizations which
5 have martial arts in their curricula, if you
6 please, and in so doing it does not preclude
7 other definitions from being applied.

8 ACTING PRESIDENT HOLLAND:
9 Senator Dollinger.

10 SENATOR DOLLINGER: Mr.
11 President, would Senator Goodman yield to just
12 one more question, an information question?

13 ACTING PRESIDENT HOLLAND: The
14 Senator yields.

15 SENATOR DOLLINGER: Senator, are
16 the wrestling matches that are televised, those
17 -- I don't know whether they're called
18 professional or whether they're fake or whether
19 they're entertainment -- I know your bill
20 mentions the fact that wrestling matches are not
21 going to be included, but my question is are the
22 wrestling that appear on WWF and all those other
23 -- are they licensed by the state of New York?

24 SENATOR GOODMAN: The answer is
25 that they are and they are, as you said -- what

1 was the adjective you used? I'll call them
2 farcical.

3 SENATOR DOLLINGER: The reason
4 why I asked the question is because they don't
5 appear to have any rules. Do those matches have
6 rules about where you can punch and kick? We're
7 not putting Hulk Hogan out of business, are we?

8 SENATOR GOODMAN: The whole thing
9 is obviously a sham for entertainment purposes
10 and what seems to be happening is not happening
11 at all. It's an illusion, a chimera.

12 SENATOR DOLLINGER: I understand
13 that. I want to make sure that that illusion or
14 that form of entertainment isn't captured by
15 this bill. You don't intend to affect any of
16 that, what we call professional wrestling.

17 SENATOR GOODMAN: Perish the
18 thought.

19 SENATOR DOLLINGER: Perish the
20 thought. Long live Hulk Hogan.

21 ACTING PRESIDENT HOLLAND:
22 Senator Paterson.

23 SENATOR PATERSON: Mr. President,
24 if Senator Goodman would yield. I thought I had
25 the answer to Senator Dollinger's question that

1 the professional wrestling matches, as they're
2 classified by the New York State Athletic
3 Commission, are considered to be exhibitions,
4 whereas the boxing matches are considered to be
5 contests.

6 So, Senator Dollinger, the
7 wrestling matches are more like these sessions.
8 They're exhibitions. We already know the
9 outcome.

10 (Laughter)

11 ACTING PRESIDENT HOLLAND: Does
12 any further Senator wish to speak? Read the
13 last section -- Senator Stachowski.

14 SENATOR STACHOWSKI: Just for a
15 serious note, I can explain to Senator Dollinger
16 having taken part in putting together a
17 wrestling thing last year in Buffalo where they
18 raised a lot of money for charity -- Buffalo,
19 big difference, 25, 26 miles apart, but they get
20 sanctioned by the state commission -- Athletic
21 Commission and the State Athletic Commission
22 actually usually has people there not only to
23 watch the matches but also they count the gate
24 to make sure they're getting their proper share
25 of what they're supposed to get. So it's very

1 regulated right down to the ticket dollars.

2 ACTING PRESIDENT HOLLAND: Read
3 the last -- Senator Hoffmann.

4 SENATOR HOFFMANN: I have been
5 very quiet for awhile here.

6 Mr. President, I have some
7 familiarity with other forms of fisticuffs from
8 two different experiences since my legislative
9 tenure began, and this is an area on which I
10 want to apply a little bit of reasoning before I
11 arrive at a decision. Now I'm just going to
12 muse aloud for a minute on some of the things
13 that I've seen and observed in this chamber and
14 related to these activities.

15 In my first, I believe, term in
16 the Senate I had the distinction of being
17 appointed to a Minority task force on
18 professional wrestling. The late Senator Abe
19 Bernstein was every bit as concerned about
20 professional wrestling at that time as is the
21 good Senator from Manhattan today about the
22 ultimate fighting championship, and I remember
23 several hearings -- well, one hearing that was
24 held -- one hearing that was held in New York
25 City discussing the wrestling exhibitions and

1 there were a number of testimonies that came
2 through that hearing that stick in my mind, none
3 more so than the gentleman who described how it
4 was demeaning to him as an individual to be in
5 these exhibitions and be forced to take a fall
6 or be told by the promoter what the outcome
7 would be and he appealed to Senator Stachowski,
8 Senator Masiello, myself and Senator Montgomery,
9 along with Senator Bernstein at the Minority
10 Task Force on Professional Wrestling for
11 guidance, and we were pleased because as members
12 of the Senate Minority, people don't often ask
13 us for guidance, and we told them that if they
14 were concerned about their safety and about
15 their activity, clearly they could organize and
16 they could do something to defend their own
17 honor and they could create more stature to
18 their sport. I'm not sure that they followed
19 our direction too well.

20 Several of them came up to a
21 couple of us after the hearing was over and
22 asked if we would be willing to help them create
23 a wrestling union and there are days when I've
24 wondered what course that might have taken had I
25 taken them up on that offer, but the wrestlers

1 clearly had it within their power to enter or
2 not enter that particular activity.

3 The other area where I have
4 learned a little bit about the entertainment
5 world of the fight game comes from Canastota,
6 New York which I have proudly represented now
7 going into the 13th year. In Canastota, the
8 town fathers and mothers and many of the
9 business leaders asked me as a newly elected
10 Senator to help complete something that had
11 begun by my pred... begun by my predecessor,
12 Senator Auer, and that was the Boxing Hall of
13 Fame.

14 Now, all of you have noticed as
15 you drive west across the Thruway, or if you
16 drive east, the signs are on both sides of the
17 road, the International Boxing Hall of Fame in
18 Canastota, New York, attracts thousands of
19 people ever year for its induction ceremony.
20 Canastota is the home of the Boxing Hall of Fame
21 because it is the place where two world
22 champions grew up, Carmen Basilio and Billy
23 Backus and they were related. Carmen is Billy's
24 uncle and there are a large number of men in
25 that town who have been involved in boxing both

1 as professionals and amateurs for many years and
2 the town wanted this facility. They wanted a
3 museum to memorialize boxing because they
4 believed that this was an important part of
5 their culture and they also recognized something
6 that we should not overlook here today. It is
7 an important part of tourism activity. There
8 are so many people coming into the Boxing Hall
9 of Fame that hotels are full all the way from
10 Utica to Syracuse when the induction ceremonies
11 take place every year.

12 So I think before we casually
13 dismiss the whole ultimate fighting concept as
14 one that is just blood and guts or is blood
15 thirsty or some of the words that Senator
16 Goodman has used to describe it, we should
17 recognize that there are many people out there
18 who have decided that this is a legitimate form
19 of entertainment and it is a sport that is
20 regulated.

21 Now, while I'm musing aloud here,
22 I must also ask if, in fact, we have an Athletic
23 Commission in this state with commissioners
24 confirmed by this Senate, then why do we need to
25 supersede their power and impose additional

1 regulations?

2 It seems to me we're engaged in a
3 discussion about ending a problem that doesn't
4 exist. The Athletic Commission has already
5 taken care of this. They have impos- ed some
6 restrictions. Their restrictions were upheld by
7 the court over the wishes of the promoters and
8 the promoters chose to go elsewhere.

9 That is not to say, however, that
10 another athletic commission, or this athletic
11 commission, upon further review, might find
12 another arrangement, different types of
13 regulations that would be suitable both to the
14 promoters and to the general public and the
15 ultimate fighting games could take place in New
16 York State once again to the economic benefit of
17 New York State, and I think it's a very
18 important question that some of my colleagues
19 have raised, and I know one in the Assembly
20 raised as well. If it cannot be regulated on
21 Pay Per View, if we have no control over where
22 these events are taking elsewhere, if it's a
23 national issue and they've chosen not to do
24 anything about it in Washington, why do we want
25 to unilaterally exclude ourselves from any of

1 the economic benefits that would come from
2 staging the ultimate fighting championships here
3 in New York State?

4 So I'm very much troubled by the
5 fact that we have so many other pressing matters
6 that we could be dealing with here in New York
7 State. There are so many unreasonable things
8 that people do to each other that we could be
9 paying attention to ahead of this one. Why at
10 five minutes of 5:00 this afternoon, instead of
11 talking about the budget or the other state
12 agencies, we want to ban ultimate fighting in
13 New York State?

14 It seems not a terribly
15 productive use of our time and one that's a
16 little bit shortsighted since there is already
17 in place an entity duly empowered to regulate
18 this issue. I don't think it requires our
19 attention.

20 ACTING PRESIDENT HOLLAND: Read
21 the last section.

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

24 ACTING PRESIDENT HOLLAND: Call
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes -

3 ACTING PRESIDENT HOLLAND:

4 Senator DeFrancisco to explain his vote.

5 SENATOR DeFRANCISCO: I'm going
6 to vote yes, but I -- I want to mention just a
7 couple of things that were mentioned in the
8 debate that I think were a little bit
9 inaccurate.

10 First of all, the regulations
11 were not upheld by the court. The question was
12 whether the promoters were being -- would be
13 allowed a temporary injunction to hold up the
14 enforcement of the regulations until this fight
15 took place and all the court decided was there
16 was not irreparable harm shown and moved to a
17 later date whether the regulations were
18 enforceable or not.

19 I think at that later date,
20 however, it will turn out that they are
21 enforceable and, you know, the irony of the
22 situation is that there are many, many dangerous
23 sports that are regulated in this state and
24 regulations were imposed and the promoters
25 decided they wanted to go elsewhere. That's a

1 decision that the promoters should have, but if
2 the regulations apparently were too tough and
3 because they had some of the protections that
4 maybe many of us would like to see in this type
5 of sport, regulations that may ultimately take
6 place in other states -- so I -- you know, I
7 think it's academic at this point in time
8 because promoters will not touch New York State
9 with a ten-foot pole, but when you have Niagara
10 Falls, some hotels losing 30 percent of their
11 occupancy overnight and you have bouts in boxing
12 that Senator Goodman enjoys where people have a
13 nervous breakdown and start crying to stop a
14 fight, there's a very, very thin line that we're
15 dealing with here, a very, very thin line and
16 that line is even blurred more when I still
17 watch the ultimate fight Friday night because I
18 wanted to see what we were preventing to be
19 shown in the state of New York, and I saw it on
20 the TV.

21 So the children we're trying to
22 protect, the competitors we're trying to
23 protect, all of these wonderful social benefits
24 that we're trying to impose aren't going to
25 happen because they're still going to be on TV

1 and anybody who wants to see them, child or
2 adult alike, will see them. The only difference
3 is, just like in casino gambling, the revenue is
4 going to Canada, Alabama, the Indian nations or
5 anywhere else. So we're on a high moral ground
6 and we're not doing a darn thing to promote
7 anything other than a loss of economic
8 well-being in the state of New York.

9 As I mentioned, the issue is
10 academic. No promoter under the regulations now
11 is going to have his fight here. So for that
12 reason, I'll vote yes, but it doesn't make any
13 sense because we've already regulated the sport
14 out of this state.

15 ACTING PRESIDENT HOLLAND:

16 Results.

17 THE SECRETARY: Ayes 59.

18 ACTING PRESIDENT HOLLAND: The
19 bill is passed.

20 Senator Marcellino.

21 SENATOR MARCELLINO: Mr.
22 President, can we return to reports of standing
23 committees for a report from the Veterans
24 Committee.

25 ACTING PRESIDENT HOLLAND: The

1 Secretary will read.

2 THE SECRETARY: Senator Meier,
3 from the Committee on Veterans, reports the
4 following bills:

5 Senate Print 76, by Senator Levy,
6 an act to amend the Public Service Law;

7 423, by Senator Goodman, an act
8 to amend the Real Property Tax Law;

9 462, by Senator Larkin, an act to
10 amend the Vehicle and Traffic Law; and

11 463, by Senator Larkin, an act to
12 amend the Education Law.

13 All bills ordered directly for
14 third reading.

15 ACTING PRESIDENT HOLLAND:
16 Without objection, all bills ordered direct to
17 third reading.

18 Senator Marcellino.

19 SENATOR MARCELLINO: Move to
20 motions and resolutions.

21 ACTING PRESIDENT HOLLAND: Yes.
22 Return to motions and resolutions.

23 Senator Marcellino.

24 SENATOR MARCELLINO: Senator
25 Trunzo.

1 ACTING PRESIDENT HOLLAND:

2 Senator Trunzo.

3 SENATOR TRUNZO: Mr. President, I
4 move to amend Senate Bill Number 709-A by
5 striking out the amendment made on January 27th
6 and restore it to the original Print Number 709.

7 ACTING PRESIDENT HOLLAND: The
8 amendment is received.

9 Senator Marcellino.

10 SENATOR MARCELLINO: Mr.
11 President, I believe there's a resolution at the
12 desk by Senator Stafford. We would like the
13 title read and the resolution adopted
14 immediately.

15 ACTING PRESIDENT HOLLAND: The
16 Secretary will read the title.

17 THE SECRETARY: By Senator
18 Stafford, Legislative Resoluation commemorating
19 the 200th Anniversary of the office of State
20 Comptroller.

21 ACTING PRESIDENT HOLLAND: All in
22 favor of the resolution signify by saying aye.

23 (Response of "Aye".)

24 All opposed, nay.

25 (There was no response.)

1 The resolution is adopted.

2 Senator Marcellino.

3 SENATOR MARCELLINO: Mr.

4 President, is there any housekeeping at the
5 desk?

6 ACTING PRESIDENT HOLLAND: No
7 housekeeping, Senator.

8 SENATOR MARCELLINO: There being
9 no further business, I move we adjourn until
10 Wednesday, February 12th, at 10:00 a.m.

11 ACTING PRESIDENT HOLLAND: Upon
12 motion, the Senate stands adjourned until
13 Wednesday, February 12th, at 10:00 a.m.

14 (Whereupon, at 5:01 p.m., the
15 Senate adjourned.)

16

17

18

19

20

21

22

23

24

25