ALBANY, NEW YORK

February 11, 1997

3:00 p.m.

REGULAR SESSION

SENATOR NICHOLAS A. SPANO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees. Secretary will read.

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

reports the following bills:

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

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

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

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

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

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

Senator -

ACTING PRESIDENT SPANO: All bills reported directly to third reading. Excuse me.

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

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

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

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

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

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

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

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

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

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

Senator Rath, from the Committee

on Local Government, reports:

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

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

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

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

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

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

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

Senator Levy, from the Committee on Transportation, reports:

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

755, by Senator Goodman, an act

to amend the Transportation Law, in relation to disclosure;

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

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

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

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

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

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

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

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

Senator Cook, from the Committee

on Education, reports:

Senate Print 3666, by Senator Cook, an act to amend the Education Law;

1475, by Senator Present, an act to adjust certain state aid payments.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 118, by Senator Stafford, an act to amend the Environmental Conservation Law;

150, by Senator Stafford, an act to amend the Environmental Conservation Law;

389, by Senator Stafford, an act to amend the Environmental Conservation Law; and

1388, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered directly for third reading.

ACTING PRESIDENT SPANO: Without objection.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

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

ACTING PRESIDENT SPANO: Without objection.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

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

ACTING PRESIDENT SPANO: So ordered.

Senator Skelos.

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

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

Senator Skelos.

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

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

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

326 signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

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

ACTING PRESIDENT SPANO: Secretary will read.

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

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

contributions are nonetheless significant; and

WHEREAS, Edward A. Johnson, the first African-American elected to the New York State Legislature, is one of those individuals who will be commended during Black History Month; and

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT SPANO: Senator Waldon.

SENATOR WALDON: Thank you, Mr.

President, my colleagues. On the resolution.

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

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

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

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

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

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Paterson.

SENATOR PATERSON: Mr. President, I believe that Senator Waldon graciously opened the resolution for co-sponsorship at the beginning of his remarks, and I think he'll affirm that he'd like to open it up for all sponsors if they so desire.

ACTING PRESIDENT SPANO: Senator Johnson.

SENATOR JOHNSON: Mr. President, at this time may we please have the non-controversial reading of the calendar.

ACTING PRESIDENT SPANO: Senator Johnson, Senator Paterson asked if, without objection, all members of the Senate be included on the previous resolution.

SENATOR JOHNSON: Yes, certainly; that's great, Mr. President.

ACTING PRESIDENT SPANO: All members will be included unless you notify the desk, and we will now have the reading of the non-controversial calendar.

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

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT SPANO: Lay aside.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT SPANO: Laid aside.

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

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT SPANO: The bill is passed.

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

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT SPANO: The bill is passed.

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

ACTING PRESIDENT SPANO: Read the

last section.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT SPANO: Laid aside.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT SPANO: Laid aside.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT SPANO: Laid aside.

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

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT SPANO: The bill is passed.

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

SENATOR SKELOS: Can we take up the controversial calendar.

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

ACTING PRESIDENT SPANO: Senator Present.

SENATOR PRESENT: Thank you, Mr. President.

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

ACTING PRESIDENT SPANO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Present would yield for a brief question.

SENATOR PRESENT: Certainly.

ACTING PRESIDENT SPANO: Senator Present yields.

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

SENATOR PRESENT: None that I know, sir.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT SPANO: The bill is passed.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT SPANO: Explanation has been asked for on Calendar 69.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

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

diseases.

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

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

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

ACTING PRESIDENT SPANO: Read the last section.

SENATOR DOLLINGER: Mr. President.

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

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

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

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

SENATOR SKELOS: No.

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

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

Could you tell me what that means? Is it -

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

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

SENATOR SKELOS: O.K.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

paid by the -- by that county.

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

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

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

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

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

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

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

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

Just on the bill, Mr. President.

ACTING PRESIDENT SPANO: Senator Dollinger, on the bill.

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

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

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

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

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

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

problems for our courts in trying to interpret.

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

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

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

SENATOR GOLD: Last section.

ACTING PRESIDENT MAZIARZ: Thank

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

SENATOR SKELOS: I will.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Yes, I will.

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

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Skelos.

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

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

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

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

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

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

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

SENATOR PATERSON: Right.

SENATOR SKELOS: Yes.

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

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

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

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

SENATOR SKELOS: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

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

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

SENATOR PATERSON: Well, now -

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

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

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MAZIARZ:

Senator Paterson.

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

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

ACTING PRESIDENT MAZIARZ:

Senator Waldon.

SENATOR WALDON: Thanks very much, Mr. President.

Would the gentleman yield to a question or two?

ACTING PRESIDENT MAZIARZ:

Senator Skelos, would you yield to a question

from Senator Waldon?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Waldon.

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

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

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

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

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

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

SENATOR SKELOS: Yes.

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

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

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

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

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

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

SENATOR SKELOS: Yes.

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

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

SENATOR WALDON: May I continue,

Mr. President? Would the gentleman -

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Waldon.

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

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

SENATOR SKELOS: Doesn't change any procedures.

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

On the bill, Mr. President.

ACTING PRESIDENT MAZIARZ:

Senator Waldon, on the bill.

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

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

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

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

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

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

Thank you very much, Mr. President. Thank you very much, Senator Skelos.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Waldon.

Senator Leichter.

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

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

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

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

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

officer.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Thank you, Senator Leichter.

Senator Abate.

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

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

SENATOR SKELOS: Same as last year?

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

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

If we really were concerned about

protecting officers and giving them adequate -

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

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

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

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

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

SENATOR SKELOS: 25 percent.

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

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

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

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

thirds of the loaf.

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

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

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

SENATOR ABATE: Not being in the

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

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

SENATOR ABATE: I say let's be practical.

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

SENATOR ABATE: Well, this is not

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

SENATOR SKELOS: The county.

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

SENATOR SKELOS: No, no, no.

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

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

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

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

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

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

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

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

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

bottom line, saving that police officer's life.

ACTING PRESIDENT MAZIARZ: Senator Abate.

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

ACTING PRESIDENT MAZIARZ: Senator Skelos, would you yield to additional questions?

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

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

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

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

SENATOR SKELOS: Fine.

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

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

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

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

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

SENATOR ABATE: O.K. On the

bill. Thank you very much.

ACTING PRESIDENT MAZIARZ: Senator Abate, on the bill.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President.

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

myself.

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

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Gold.

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

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Paterson, to explain your vote.

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Announce the results. I'm sorry.

Senator Paterson.

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

ACTING PRESIDENT MAZIARZ: We knew that.

Senator DeFrancisco to explain his vote.

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

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

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

ACTING PRESIDENT MAZIARZ: Announce the results.

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

ACTING PRESIDENT MAZIARZ: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator DeFrancisco, an explanation of Calendar Number 86 has been requested by Senator Paterson.

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

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

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

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

ACTING PRESIDENT MAZIARZ: Thank you, Senator DeFrancisco.

Read the last section.

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

SENATOR LEICHTER: Explanation, please.

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

Senator Paterson.

SENATOR PATERSON: Mr. President,

if Senator DeFrancisco would yield for a question.

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

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

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

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

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

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

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

negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

The Secretary will read.

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

SENATOR SKELOS: Lay it aside for the day.

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

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

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Excuse me. Senator Leichter.

SENATOR LEICHTER: I'm just voting negative.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

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

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

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

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

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

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

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

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

ACTING PRESIDENT MAZIARZ: Announce the results.

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

ACTING PRESIDENT MAZIARZ: The bill is passed.

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

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

ACTING PRESIDENT MAZIARZ: The Secretary will read.

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

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

ACTING PRESIDENT MAZIARZ: Senator Skelos.

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

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

Committee signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Skelos.

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

ACTING PRESIDENT MAZIARZ: The Secretary will read.

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

ACTING PRESIDENT MAZIARZ: The substitution is ordered.

The Secretary will read.

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

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MAZIARZ:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT HOLLAND: Senator Stachowski.

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

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

spread upon the record. It will take 30 seconds.

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

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

ACTING PRESIDENT HOLLAND: Do you yield, Senator?

Senator Goodman.

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

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

that.

ACTING PRESIDENT HOLLAND: Senator Stachowski.

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

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

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

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

I vote aye on the bill.

ACTING PRESIDENT HOLLAND: Senator Dollinger.

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

ACTING PRESIDENT HOLLAND: Senator?

SENATOR GOODMAN: Yes.

ACTING PRESIDENT HOLLAND: The Senator yields.

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

SENATOR GOODMAN: That's correct.

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

SENATOR GOODMAN: Yes, it would.

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

SENATOR GOODMAN: That's my

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

York to go to the fight in New Jersey.

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

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

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

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

ACTING PRESIDENT HOLLAND: Senator Leichter.

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

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

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

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

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

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

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

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

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

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

SENATOR GOODMAN: Other than boxing, wrestling or -

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

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

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

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

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

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

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

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

I mean, I must say, with all due

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

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

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

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

Now, as far as this is concerned,

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

ACTING PRESIDENT HOLLAND: Senator Dollinger.

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

ACTING PRESIDENT HOLLAND: The Senator yields.

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

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

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

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

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

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

SENATOR GOODMAN: Perish the thought.

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

ACTING PRESIDENT HOLLAND: Senator Paterson.

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

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

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

(Laughter)

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

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

regulated right down to the ticket dollars.

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

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

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

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

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

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

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

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

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

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

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

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

regulations?

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

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

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

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

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

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT HOLLAND: Senator DeFrancisco to explain his vote.

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

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

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

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

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

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

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

ACTING PRESIDENT HOLLAND: Results.

THE SECRETARY: Ayes 59.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Marcellino.

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

ACTING PRESIDENT HOLLAND: The

Secretary will read.

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

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

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

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

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

All bills ordered directly for third reading.

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

Senator Marcellino.

SENATOR MARCELLINO: Move to motions and resolutions.

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

Senator Marcellino.

SENATOR MARCELLINO: Senator Trunzo.

ACTING PRESIDENT HOLLAND:

Senator Trunzo.

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

ACTING PRESIDENT HOLLAND: The amendment is received.

Senator Marcellino.

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

ACTING PRESIDENT HOLLAND: The Secretary will read the title.

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

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

(Response of "Aye".)

All opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Marcellino.

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

ACTING PRESIDENT HOLLAND: No housekeeping, Senator.

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

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

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