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ALBANY, NEW YORK

January 27, 1998

12:05 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

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

2 THE PRESIDENT: The Senate will
3 come to order.

4 Would you please rise and join
5 with me in the Pledge of Allegiance.

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

8 The invocation today will be
9 given by the Reverend Carlton W. Veazey, who
10 is Pastor of the Fellowship Baptist Church in
11 Washington, D.C.

12 Reverend Veazey.

13 REVEREND CARLTON W. VEAZEY:

14 Let us pray.

15 God of all our years, God of
16 all solemn days, Thou Who hast brought us thus
17 far on the way, Thou Who, by Thy might, hast
18 led us to the light. Keep us forever in the
19 path, we pray. God of grace and God of glory
20 in Whom we live and move and have our very
21 being, we come to Thee today with thankful
22 hearts for this great country. We thank You,
23 O God, for our leadership and as we come
24 today, O God, to this Senate, we ask Thy
25 blessings upon this deliberative body. Remind

1 us, O God, to whom much is given much is
2 required. Help us to be mindful of the needs
3 of others, for we know that in Thy day we
4 shall hear the words, When I was hungry, you
5 gave me nothing to eat. When I was thirsty,
6 you gave me nothing to drink. When I was
7 naked, you clothed me not. When I was sick
8 and in prison you came not unto me. We will
9 say to him, Lord, when did we see Thee hungry
10 or thirsty or naked or a stranger or sick and
11 in prison, and he will say unto us, Inasmuch
12 as ye did it to the least of these, my
13 brethren ye did it unto me.

14 Help us to be mindful, O God,
15 of those who are less fortunate and help us to
16 champion justice. Remember the word said by
17 the prophet Micah, to do justly, to love
18 mercy, to walk humbly with Thy God. Now, God,
19 we thank Thee for the great times in this
20 country, and as we commemorate the Roe v. Wade
21 week, O god, remember those who have suffered
22 and sacrificed that others might be treated
23 justly, and that we might have rights. We ask
24 you, O God, to bless these who deliberate
25 today. May they understand that their power

1 is given to them by Thee. Help them to do
2 what is right in Thy sight, so that when we
3 come to the end of our lives, we might look
4 back at the life well spent, that we might
5 hear Your voice saying, Well done, good and
6 faithful servant.

7 This is our prayer, and we ask
8 it in His name. Amen.

9 THE PRESIDENT: Amen.
10 The reading of the Journal,
11 please.

12 THE SECRETARY: In Senate,
13 Monday, January 26th. The Senate met pursuant
14 to adjournment. The Journal of Saturday,
15 January 24th, was read and approved. On
16 motion, Senate adjourned.

17 THE PRESIDENT: Without
18 objection, the Journal stands approved as
19 read.

20 Presentation of petitions.
21 Messages from the Assembly.
22 Messages from the Governor.
23 Reports of standing
24 committees.

25 The Secretary will read.

1 THE SECRETARY: Senator Lack,
2 from the Committee on Judiciary, offers up the
3 following nomination:

4 As a judge of the Monroe County
5 Court, Philip B. Dattilo, Jr., of Honeoye
6 Falls.

7 THE PRESIDENT: Senator Lack.

8 SENATOR LACK: Thank you, Madam
9 President.

10 I rise to move the nomination
11 of Philip B. Dattilo as a judge of the Monroe
12 County Court. Justice Dattilo was nominated
13 by the Governor. He was examined by the staff
14 of the Committee, appeared before the
15 Committee this morning, and received unanimous
16 praise at the committee meeting and his name
17 was forwarded to the floor of the Senate this
18 afternoon for confirmation, and it is with
19 great pleasure that I yield to Senator Alesi
20 for purposes of a second.

21 THE PRESIDENT: Senator Alesi.

22 SENATOR ALESI: Madam
23 President. Thank you, Senator.

24 My colleagues, today is a day
25 of great pride for me to welcome my good

1 personal friend, Phil Dattilo and his wife
2 Linda, as well as those accompanying him
3 today, George and Rose Shaw from back home.

4 Judge Dattilo is not only a
5 distinguished attorney, but a distinguished
6 justice as well. He has earned a reputation
7 as a dedicated family man having for many
8 years served in the community as well. Also
9 recognized as someone who is committed to the
10 community that he will be serving at the
11 County Court level.

12 Justice Dattilo has made a name
13 for himself as someone who is committed to so
14 many issues that are important to him -- DWI.
15 He served on the Boy Scouts. He served in
16 Vince Lombardi Football, and that speaks to
17 the involvement that this man has in his
18 community with his fellow people.

19 As I said, he is a
20 distinguished attorney and well recognized as
21 someone who will interpret the law with
22 wisdom, who will apply it with fairness, and I
23 am personally pleased as I said to welcome him
24 and to applaud the Governor's nomination for
25 this judge who is eminently well qualified to

1 serve the people of Monroe County.

2 Judge, welcome.

3 ACTING PRESIDENT BALBONI:

4 Thank you, Senator Alesi.

5 Senator Maziarz, please.

6 SENATOR MAZIARZ: Thank you
7 very much, Mr. President.

8 I want to join my colleagues,
9 Senator Lack, Senator Alesi, in congratulating
10 the Governor in seconding the nomination of
11 Phil Dattilo. I think the Governor has
12 certainly chosen someone with a great deal of
13 experience in the town justice level, now to
14 move up to County Court, and I just want to
15 commend the judge and wish him well and
16 although I didn't personally know the judge
17 before the last couple of months, as I often
18 do in Monroe County when I want to know about
19 someone and someone's background and whether
20 or not they're qualified for a position, I go
21 to George and Rosemary Shaw, and they gave you
22 the highest recommendation, Judge, and that's
23 good enough for me.

24 Thank you, Mr. President.

25 ACTING PRESIDENT BALBONI:

1 Thank you, Senator Maziarz. The question is on
2 the confirmation of Philip B. Dattilo, Jr.

3 I'm sorry, excuse me.

4 Senator Dollinger.

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

7 I rise just to second my
8 colleagues from Monroe County. Phil Dattilo,
9 in addition to all of his accomplishments as
10 cited by Senator Alesi and Senator Maziarz, is
11 a good man and a good guy and he'll be a good
12 County Court judge.

13 ACTING PRESIDENT BALBONI:
14 Thank you, Senator Dollinger.

15 The question is on the
16 confirmation of Philip B. Dattilo, Jr., as
17 judge of the Monroe County Court. All in favor
18 signify by saying aye.

19 (Response of "Aye.")

20 Opposed nay.

21 SENATOR DOLLINGER: Mr.
22 President, may I just be recognized and ask
23 for unanimous consent to abstain from this
24 voting. I have what I believe something that
25 might create an appearance of a conflict in

1 this case, and I would ask for permission to
2 abstain.

3 ACTING PRESIDENT BALBONI:
4 Without objection, Senator Dollinger will
5 abstain from voting.

6 Now the question is on the
7 confirmation. We've had the vote, and I don't
8 believe I heard any nays. So Philip B.
9 Dattilo, Jr., congratulations. You are hereby
10 confirmed as a judge of the Monroe County
11 Court. The judge is in the chamber with his
12 wife Linda. Congratulations, welcome and have
13 a great tenure.

14 Thank you.

15 (Applause)

16 The Secretary will read.

17 THE SECRETARY: Senator Lack,
18 from the Committee on Judiciary, reports:

19 Senate Print 311, by Senator
20 Skelos, an act to amend the General
21 Obligations Law;

22 1523-B, by Senator Trunzo, an
23 act to amend the Eminent Domain Procedure Law;

24 1588, by Senator Holland, an
25 act to amend the General Obligations Law.

1 Senator Alesi, from the
2 Committee on Consumer Protection, reports:
3 Senate Print 6020, by Senator
4 Stafford, an act to amend the General Business
5 Law.

6 Senator Padavan, from the
7 Committee on Cities, reports:
8 Senate Print 355-A, by Senator
9 Velella, an act to amend the General City Law
10 and the Penal Law;

11 4572, by Senator Cook, an act
12 to amend the General Municipal Law;

13 5559, by Senator Goodman, an
14 act to amend the charter of the city of New
15 York.

16 Senator Hannon, from the
17 Committee on Health, reports:

18 Senate Print Number 1496, by
19 Senator Hannon, an act to amend the Public
20 Health Law;

21 1499, by Senator Hannon, an act
22 to amend the Public Health Law;

23 1591, by Senator Holland, an
24 act to amend the Public Health Law and the
25 Penal Law;

1 1680, by Senator Farley, an act
2 to amend the Public Health Law;

3 2035, by Senator Leibell, an
4 act to amend the Public Health Law;

5 2705-A, by Senator Kuhl, an act
6 to amend the Public Health Law;

7 4964, by Senator Hannon, an act
8 to amend the Public Health Law;

9 4973, by Senator Hannon, an act
10 to enact the Health Care Fraud Prosecution
11 Act;

12 4974, by Senator Hannon, an act
13 to enact the Health Care Capacity Match Act of
14 1997.

15 Senator Spano, from the
16 Committee on Labor, reports:

17 Senate Print 3483-A, by Senator
18 Spano, an act to amend the Labor Law;

19 4149, by Senator Spano, an act
20 to amend the Labor Law.

21 All bills directly for third
22 reading.

23 ACTING PRESIDENT BALBONI:

24 Without objection, all bills directly to third
25 reading.

1 Reports of select committees.

2 Communications and reports of
3 state officers.

4 Motions and resolutions.

5 Senator Skelos.

6 SENATOR SKELOS: Mr. President,
7 I move that we adopt the Resolution Calendar
8 in its entirety.

9 ACTING PRESIDENT BALBONI: All
10 in favor of adopting the Resolution Calendar
11 signify by saying aye.

12 (Response of "Aye.")

13 Opposed nay.

14 (There was no response.)

15 The Resolution Calendar is
16 adopted.

17 Senator Skelos.

18 SENATOR SKELOS: Mr. President,
19 at this time if we could take up Resolution
20 2312, by Senator LaValle, which was previously
21 adopted at the desk. May we please have it
22 read in its entirety.

23 ACTING PRESIDENT BALBONI:

24 Secretary will read.

25 THE SECRETARY: By Senator

1 LaValle, Legislative Resolution honoring
2 Jeremy Lack upon the occasion of his receiving
3 the prestigious Marshall Scholarship for
4 1997-1998.

5 WHEREAS, it is the sense of
6 this legislative body that those individuals
7 and organizations who give positive definition
8 to the profile and disposition of the
9 communities in the state of New York do so
10 profoundly strengthen our shared commitment
11 to the exercise of freedom.

12 Attendant to such concern and
13 fully in accord with its long-standing
14 tradition, it is the intent of this
15 legislative body to honor Jeremy Lack of East
16 Northport, New York, for being chosen as one
17 of 40 Americans to receive the prestigious
18 Marshall Scholarship for 1998.

19 The Marshall Scholarships were
20 instituted by the British Parliament in 1953
21 as a practical and enduring gesture of thanks
22 on behalf of the British people for assistance
23 received from the United States in the after
24 math of World War II.

25 The scholarships are named

1 after General George C. Marshall, President
2 Truman's architect of peace, whose name became
3 associated with the European recovery
4 program.

5 In appointing scholars, the
6 program seeks candidates who demonstrate
7 maturity, self-reliance, self-discipline,
8 intellectual distinction, the potential for
9 leadership, good communication skills and
10 outward looking disposition, an interest in
11 society in general and the potential to
12 promote British-American understanding.

13 Jeremy Lack, one of three
14 students from Cornell University to be chosen
15 this year for the Marshall Scholarship is on
16 the Dean's List in the School of Industrial
17 and Labor Relations at Cornell University. He
18 was a 1997 finalist for the Rhodes Scholar
19 ship.

20 Jeremy Lack is the first
21 Marshall Scholar in the 51-year history of the
22 School of Industrial and Labor Relations.

23 As an undergraduate, Jeremy
24 Lack has combined the studies of industrial
25 and labor relations with biology, with his

1 research pursuits at Cornell focused on
2 economics and biology, and has taken on
3 research projects in the Department of
4 Pharmacology at the College of Veterinary
5 Medicine and at the Cornell Center for
6 Advanced Technology in Biotechnology.

7 Jeremy Lack will enroll in
8 Oxford University in the fall and pursue a
9 doctoral degree in biochemistry.

10 Jeremy Lack has been active in
11 a number of activities on and off campus,
12 including as a member of the Faculty Committee
13 on Academic Programs and Policies and the
14 Cornell Judicial Hearing Board. He also was a
15 group leader for "Into the Streets", a program
16 of the Cornell Public Service Center.

17 An accomplished athlete, Jeremy
18 Lack is captain of the Cornell fencing team
19 and the foil squad.

20 NOW, THEREFORE, BE IT RESOLVED
21 that this legislative body pause in its
22 deliberations to pay tribute to Jeremy Lack
23 for bringing honor upon himself, his family
24 his college, his state and his nation by
25 virtue of winning the prestigious Marshall

1 Scholarship; and

2 BE IT FURTHER RESOLVED that a
3 copy of this resolution, suitably engrossed,
4 be transmitted to Jeremy Lack.

5 ACTING PRESIDENT BALBONI: The
6 Chair recognizes Senator LaValle.

7 SENATOR LAVALLE: Mr.
8 President, I rise to just say a few comments
9 about the resolution that I hope we will pass
10 and that the members of this body will join me
11 by co-sponsoring the resolution.

12 I've always believed that it is
13 important that we as an institution, Senate
14 institution, recognize each other as
15 colleagues, our families, members of our
16 staff, because it is indeed a family. I've had
17 the opportunity of knowing Jeremy Lack and
18 many of you who have been in this Senate
19 chamber know Jeremy, who came into this
20 chamber as somewhat of a little guy, sat in
21 his father's chair, and the chair literally
22 embraced him. As years went on, that chair
23 did not embrace him any longer. He now
24 physically towers over his father and is, as
25 you know, a mature individual.

1 The resolution talks about the
2 Marshall Scholarship as being a very, very
3 prestigious scholarship. The criteria for
4 selection is not only intellectual distinction
5 but the potential for leadership and good
6 communication skills, and it goes on.

7 The one thing that it does not
8 talk about beyond all of the achievements and
9 the requisite skills that you need is the kind
10 of person that Jeremy Lack really is. He is
11 just a super individual and a very nice
12 person, and we don't often place enough on
13 those kinds of qualities in an individual,
14 being a nice person and one that can get along
15 with individuals.

16 Jeremy, we hope and we wish him
17 by passage of this resolution, much good luck
18 in his journey through achieving his Ph.D.,
19 and as you've heard he is multi-talented in
20 handling -- being able to do biology,
21 scientific work, and yet be involved in the
22 labor side and being a graduate of the ILR
23 School at Cornell.

24 To be the first one in 51 years
25 says an awful lot about the young man who we

1 are recognizing and honoring by passage of
2 this resolution. I'm sure that Dr. Therese
3 Lack and our colleague, Senator Jim Lack, are
4 indeed very proud of their son, their
5 children, and I ask that we move the
6 resolution, Mr. President.

7 ACTING PRESIDENT BALBONI:

8 Thank you, Senator LaValle. Please be advised
9 that the resolution was previously adopted on
10 January 15th, and Jeremy Lack is not in the
11 chamber with us, but I know his very proud and
12 beaming father is. Congratulations, Jim.

13 (Applause)

14 Senator Skelos.

15 SENATOR SKELOS: Mr. President,
16 before we start, I do want to congratulate
17 Senator Lack and just say that obviously
18 Jeremy takes after Therese, but both of you
19 are to be congratulated, as Ken said. We have
20 all had the pleasure of seeing Jeremy grow
21 up. I know many of you have seen my own son
22 Adam growing up. Hopefully he turns out half
23 as good, but both of you have done a
24 tremendous job and, on behalf of Senator Bruno
25 and all of us, Jimmy, congratulations.

1 If we could take up the
2 non-controversial calendar at this time.

3 ACTING PRESIDENT BALBONI:
4 Secretary will read.

5 THE SECRETARY: Calendar Number
6 27, by Senator Volker, Senate Print 5789, an
7 act to amend the Criminal Procedure Law.

8 SENATOR GOLD: Lay it aside.

9 THE SECRETARY: Calendar Number
10 54, by Senator Levy, Senate Print 45, an act
11 to amend the Vehicle and Traffic Law, in
12 relation to requiring school bus and other
13 motor vehicle drivers.

14 ACTING PRESIDENT BALBONI: Read
15 the last section.

16 THE SECRETARY: Section 2.
17 This act shall take effect on the first day of
18 September.

19 ACTING PRESIDENT BALBONI: Call
20 the roll.

21 (The Secretary called the
22 roll.)

23 THE SECRETARY: Ayes 52.

24 ACTING PRESIDENT BALBONI: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 55, by Senator Levy, Senate Print 75-A, an act
3 to amend the Public Authorities Law and the
4 Railroad Law.

5 ACTING PRESIDENT BALBONI: Read
6 the last section.

7 THE SECRETARY: Section 5.
8 This act shall take effect on the first day of
9 November.

10 ACTING PRESIDENT BALBONI: Call
11 the roll.

12 (The Secretary called the
13 roll.)

14 THE SECRETARY: Ayes 52.

15 ACTING PRESIDENT BALBONI: The
16 bill is passed.

17 THE SECRETARY: Calendar Number
18 56, by Senator Skelos, Senate Print 308, an
19 act to amend the Vehicle and Traffic Law.

20 ACTING PRESIDENT BALBONI: Call
21 the roll. I'm sorry. Read the last section.

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

25 ACTING PRESIDENT BALBONI: Call

1 the roll.

2 (The Secretary called the
3 roll.)

4 THE SECRETARY: Ayes 52.

5 ACTING PRESIDENT BALBONI: The
6 bill is passed.

7 THE SECRETARY: Calendar Number
8 58, by Senator Velella, Senate Print 699, an
9 act to amend the Vehicle and Traffic Law and
10 the Criminal Procedure Law.

11 ACTING PRESIDENT BALBONI: Read
12 the last section.

13 THE SECRETARY: Section 5.
14 This act shall take effect on the first day of
15 November.

16 ACTING PRESIDENT BALBONI: Call
17 the roll.

18 (The Secretary called the
19 roll.)

20 THE SECRETARY: Ayes 53.

21 ACTING PRESIDENT BALBONI: The
22 bill is passed.

23 THE SECRETARY: Calendar Number
24 59, by Senator Wright, Senate Print 1659-A.

25 SENATOR SKELOS: Lay aside for

1 the day.

2 ACTING PRESIDENT BALBONI: Lay
3 the bill aside, please, for the day.

4 THE SECRETARY: Calendar Number
5 60, by Senator DeFrancisco, Senate Print 2969,
6 an act to amend the Navigation Law.

7 ACTING PRESIDENT BALBONI: Read
8 the last section.

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

11 ACTING PRESIDENT BALBONI: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 53.

15 ACTING PRESIDENT BALBONI: The
16 bill is passed.

17 THE SECRETARY: Calendar Number
18 61, by Senator Wright, Senate Print 3812, an
19 act to amend the Alcoholic Beverage Control
20 Law and the Mental Hygiene Law.

21 ACTING PRESIDENT BALBONI: Read
22 the last section.

23 THE SECRETARY: Section 8. This
24 bill shall take effect on the first day of
25 January.

1 ACTING PRESIDENT BALBONI: Call
2 the roll.

3 (The Secretary called the
4 roll.)

5 THE SECRETARY: Ayes 53.

6 ACTING PRESIDENT BALBONI: The
7 bill is passed.

8 THE SECRETARY: Calendar Number
9 89, by Senator Marcellino, Senate Print 1134,
10 an act to amend the Criminal Procedure Law.

11 ACTING PRESIDENT BALBONI: Read
12 the last section.

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

15 ACTING PRESIDENT BALBONI: Call
16 the roll.

17 (The Secretary called the
18 roll.)

19 THE SECRETARY: Ayes 53.

20 ACTING PRESIDENT BALBONI: The
21 bill is passed.

22 THE SECRETARY: Calendar Number
23 109, by Senator Larkin, Senate Print 3840, an
24 act to amend Chapter 698 of the Laws of 1991.

25 ACTING PRESIDENT BALBONI: Read

1 the last section.

2 THE SECRETARY: Section 6.

3 This act shall take effect immediately.

4 ACTING PRESIDENT BALBONI: Call
5 the roll.

6 (The Secretary called the
7 roll.)

8 THE SECRETARY: Ayes 53.

9 ACTING PRESIDENT BALBONI: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 110, by Senator Velella, Senate Print 4487, an
13 act to amend the Public Authorities Law.

14 ACTING PRESIDENT BALBONI: Read
15 the last section.

16 I'm sorry. Lay aside the
17 bill.

18 THE SECRETARY: Calendar Number
19 132, by Senator Stafford, Senate Print 6025,
20 an act to amend the Real Property Tax Law.

21 ACTING PRESIDENT BALBONI: Read
22 the last section.

23 THE SECRETARY: Section 2.

24 This act shall take effect immediately.

25 ACTING PRESIDENT BALBONI: Call

1 the roll.

2 (The Secretary called the
3 roll.)

4 THE SECRETARY: Ayes 53.

5 ACTING PRESIDENT BALBONI: The
6 bill is passed.

7 Senator Calendar, that -- or
8 Senator Skelos, that completes the reading of
9 the consent calendar.

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

13 ACTING PRESIDENT BALBONI:
14 Secretary will read.

15 THE SECRETARY: Calendar Number
16 27, by Senator Volker, Senate Print 5789, an
17 act to amend the Criminal Procedure Law.

18 SENATOR VOLKER: Mr. President,
19 this is a bill that passed the Senate last
20 year rather late, and I regret to say in
21 August. It was a Governor's program, and is a
22 Governor's program bill that was a revised
23 version of a bill that we had passed earlier
24 in 1997, which was a broader bill on the issue
25 of police stops and on suppression motions.

1 The bill, by the way, just for everybody's
2 information, passed this house by a vote of 48
3 to 9.

4 Primarily, and it's really this
5 bill comes down to two prime issues and rather
6 than go through as we did, Senator Waldon and
7 I went through extensive preliminaries last
8 year on this bill, but I think rather than do
9 that, let me just say that what this bill
10 provides is, and it relates to a series of
11 court decisions that have gone several ways on
12 the issue of police stops, and the changes in
13 the law that have come through court decisions
14 that, frankly, have appeared to have burdened
15 New York with a test that is beyond any test
16 in the United States of America on police
17 stops under either the federal or our state
18 Constitution.

19 At any rate, what it says is it
20 provides that a police officer is authorized
21 to stop someone in a public place, not in a
22 car by the way -- that issue came up last year
23 -- if he has an objective credible reason to
24 approach that person in a public place and ask
25 questions and take such action as is

1 permissible under the law.

2 The reason for that provision
3 relates to constitutional guarantees under the
4 issue, since we are defining stops as to what
5 actions a police officer can take and, as I
6 pointed out, it would relate obviously to
7 reasonability.

8 The other provision in this
9 bill relates to the question of a person's
10 presence at a trial where there have been a
11 number of cases where a person either chose
12 not to be present at a trial or chose not to
13 be present, for instance, during the picking
14 of a jury which, in several cases, has caused
15 cases to be thrown out, never objected during
16 the trial and later on, after a conviction,
17 the person on appeal in one case after he had
18 gone through two or three appeals, then
19 suddenly came up with an appeal that said,
20 Well, I wasn't really present and, therefore,
21 under the Constitution, I wasn't given the
22 right to a -- to a fair trial and one of our
23 supreme judges agreed with that and threw the
24 case out on the basis of the fact that even
25 though his own attorney never disagreed, he

1 never disagreed, there was no evidence in fact
2 that the fact that he wasn't there would have
3 anything to do with the trial itself, the
4 conviction was reversed.

5 So what we're really talking
6 about here is two basic provisions. The first
7 one relates to changing the law which now
8 relates to criminal conduct and that the
9 police officer is supposed to not stop someone
10 unless there is some suspicion in effect with
11 respect to criminal conduct. What our courts
12 have done is twisted that around so that you
13 almost have to have a crime committed,
14 otherwise in a number of cases you cannot get,
15 for instance, things such as drugs and guns,
16 and so forth, introduced into evidence. It's
17 way beyond anything that we have ever -- we
18 have ever thought in the state or federal
19 Constitution.

20 I think that what we're trying
21 to do here is develop a rational standard and
22 the language here, I think, allows us to do
23 that. That doesn't mean that in every case
24 the police officer is going to be found to be
25 right, but what we are trying to do here is

1 develop an evidentiary standard that makes
2 some sense, given the present state of the
3 state and federal constitutional guarantees.

4 ACTING PRESIDENT BALBONI:
5 Senator Gold.

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

8 Mr. President, if the Senator
9 would yield to a question, I'd be very
10 grateful.

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

13 SENATOR VOLKER: Certainly.
14 Certainly.

15 SENATOR GOLD: Senator, I'm
16 glad that you clarified before you even start
17 that this has nothing to do with automobiles
18 because that is a different situation. We
19 don't have to talk about that.

20 I think again just by way of
21 clarification, the bill does limit this to a
22 geographical area, and it deals with him being
23 employed; so again to clarify, Senator Volker,
24 we are not talking about an off-duty cop in a
25 different jurisdiction, am I correct?

1 SENATOR VOLKER: Right.

2 SENATOR GOLD: All right. We're
3 talking about a police officer theoretically
4 on duty within his precinct or general area.

5 Having said that, I would also
6 like to point out, Senator Volker, that as to
7 the second part of this bill, on page 2, you
8 said somebody put forward an argument and a
9 judge agreed, and we're going to change that.
10 As a matter of philosophy, Senator, I agree
11 with what you're doing philosophically. I
12 don't think judges ought to make law, and I
13 think if a judge interprets the law to be a
14 certain thing and we want to disagree, then we
15 do our job, the judges do their job, so that
16 part I don't want to discuss at this time.

17 But I want to ask you some
18 questions on the first part of the bill and
19 that deals with what a police officer can and
20 cannot do, and it says: "In addition, when
21 engaged***", the officer being engaged, "***
22 in criminal law enforcement," so I assume,
23 Senator, that, to begin with, when a police
24 officer leaves the stationhouse, the precinct,
25 wherever it is he starts his employment in the

1 course of the day, isn't it fair to say that
2 from that time until he comes off duty, he
3 would be, quotes, "engaged in criminal law
4 enforcement"?

5 SENATOR VOLKER: Yeah, I would
6 think that that's probably true.

7 SENATOR GOLD: All right. So
8 that the language that follows deals with
9 anything a police officer does, I assume, once
10 he has that uniform on or once he's in plain
11 clothes or whatever, once he's on duty, so
12 we're talking about all of the time. That
13 language, I assume, does not limit his conduct
14 into any specific situation.

15 Then it says, "A police officer
16 may approach***," and it says, "*** when he
17 has an objective credible reason," and then it
18 goes into, and it says very clearly, "*** not
19 necessarily indicative of criminality."

20 Now, Senator, can you give me
21 an idea what you're talking about of a
22 situation where he would have an objective
23 criminal -- I'm sorry, an objective credible
24 reason to approach someone which was not a
25 reason involved with criminality. Give me a

1 few examples of that.

2 SENATOR VOLKER: There have
3 been a number put forth. One relates to a
4 person who may appear to be ill. Another one
5 relates to, in all honesty, somebody who
6 pretty clearly, for one reason or another, is
7 doing something that appears to be out of
8 character with -- with the situation, for
9 instance someone walking out in the middle of
10 the street in front of a car. There's a whole
11 series of things that have been suggested.

12 What we're talking about is,
13 and that's the reason for the "objective
14 credible" standard, and the person, by the way
15 walking out in front of a car deliberately, by
16 the way, not necessarily committing a criminal
17 act but clearly they're doing something which
18 would indicate that it would be in the purview
19 of a police officer to at least question them
20 as to what they're up to. That's just an
21 example, I think, is one of the examples that
22 I would have.

23 I used the other example, by
24 the way, of the -- the hold-up in a nearby
25 neighborhood, something similar to that

1 happened to me when I was -- and I don't want
2 to get into my law enforcement days; I get
3 away from that, but you stop someone who is
4 coming up the street from where you know a
5 hold-up has occurred and, by the way, this has
6 happened, but you don't know if that person
7 had anything to do with it, but you just ask
8 them a couple of questions as to where they
9 came from, if there was any reason to believe
10 that they may have been in that -- in that
11 area, whether they saw anything, in other
12 words whether they did see anybody running or
13 whatever. They didn't commit any crime or at
14 least you don't know they committed a crime
15 but they may have been a witness, and it turns
16 out, by the way, that that person was one of
17 the people who committed the crime and you
18 find out, under some of the cases we've had
19 you couldn't prosecute that person because you
20 didn't have an indication of criminality
21 connected directly with that person, so
22 that's, I think, to me is an example of
23 objective credible evidence.

24 SENATOR GOLD: Mr. President.

25 ACTING PRESIDENT BALBONI: Mr.

1 Gold -- Senator Gold.

2 SENATOR GOLD: Would the
3 distinguished gentleman yield to another
4 question?

5 ACTING PRESIDENT BALBONI:
6 Senator Volker, would you yield?

7 SENATOR VOLKER: I yield to the
8 distinguished Senator.

9 SENATOR GOLD: Senator Volker,
10 you mentioned as your first example someone
11 who appeared to be ill, and let's say for the
12 sake of argument that a police officer thought
13 somebody was ill, and the person was ill or
14 not or whatever, and the officer's act of
15 seeing a citizen who he or she thought was ill
16 is a very nice gesture. It's a kind gesture.
17 It's something that -- it's a compassionate
18 gesture. But supposing that person isn't
19 feeling well for the moment and just doesn't
20 want to have anything to do with the police
21 officer and doesn't want to answer any
22 questions or be involved and just wants to
23 walk away.

24 As you're explaining it under
25 this statute, that police officer, can in some

1 way do something more than just feel bad, if I
2 could put it that way, but their kindness is
3 not being appreciated by the individual, am I
4 correct?

5 SENATOR VOLKER: I think you're
6 incorrect. I think if there is nothing and
7 there is no other -- I don't think other than
8 asking that person some questions, and one of
9 the interesting things that was asked me last
10 year by Senator Waldon, What if the person
11 says, I'm not feeling well, I don't need any
12 help and I don't want to answer any
13 questions. The question was what does the
14 police officer do? And the answer is nothing
15 because from there on in, unless there is
16 something else besides that, he probably has
17 no jurisdiction to do anything else.

18 SENATOR GOLD: Mr. President,
19 if Senator Volker would yield to another
20 question.

21 SENATOR VOLKER: Yes.

22 ACTING PRESIDENT BALBONI: Yes.

23 SENATOR GOLD: Senator, but
24 you're going past my example. The police
25 officer walks over to someone who appears to

1 be ill, and he says, Are you ill, are you
2 this, are you that, and the person looks at
3 the cop, and just starts to walk away, doesn't
4 want to tell the cop, I'm O.K., or I'm not
5 well or Don't worry or No, thank you, just
6 wants to walk away. Under your bill isn't it
7 a fact that the police officer would have the
8 right to do something more?

9 SENATOR VOLKER: I think the
10 only thing he might have the right to do more
11 is just ask a couple questions, and I think
12 probably, let's assume that your example is
13 correct, there's nothing more he could do.

14 SENATOR GOLD: Well, Senator,
15 if you'll yield to another question.

16 SENATOR VOLKER: Sure.

17 SENATOR GOLD: Now, you have
18 somebody who is running down the street away
19 from what you say was a criminal scene.

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

21 SENATOR GOLD: And the police
22 officer says, Stop, I want to ask you some
23 questions.

24 SENATOR VOLKER: Yes.

25 SENATOR GOLD: And the person

1 doesn't want to.

2 SENATOR VOLKER: Right. Well, I
3 think, you know, you've added a different -
4 you've added something different to the
5 equation. Now, you have something which
6 clearly could indicate not only "objective
7 credible" indication, but also an indication
8 that there might be something other than just
9 as -- and you talked about medical situations,
10 and I'm -- now, you're talking about the
11 possibility and, in fact, you're adding in the
12 potential for a criminal act, which you didn't
13 add in, in the first place.

14 SENATOR GOLD: Mr. President.

15 SENATOR VOLKER: Which, of
16 course, is still there.

17 SENATOR GOLD: If the Senator
18 would yield to a question.

19 ACTING PRESIDENT BALBONI:
20 Senator Volker, do you yield?

21 SENATOR VOLKER: Certainly.

22 SENATOR GOLD: Senator, I
23 didn't add anything, but I wanted you by your
24 examples to show that the bill is going too
25 far. I said to you in my first question,

1 Senator, will you tell me what's an objective
2 credible reason, not necessarily indicative of
3 criminality? You gave me two instances. One
4 was the person who appeared to be ill and one
5 where someone was running from something, so
6 I'm only giving you back your instances. If
7 you have a situation where they're involved
8 with criminality and if they have reason to
9 believe, et cetera, et cetera, you're dealing
10 with situations which are far different than
11 the language in your bill.

12 The bill says an "objective
13 credible reason not necessarily indicative"
14 and all I'm saying to you is, a person who may
15 be ill might be a situation which is not
16 indicative of criminal activity. I'm saying
17 what other ones do you have? If you're
18 starting to talk about people running from a
19 crime, as you indicate, Senator, now there is
20 something which is involved with criminal -
21 criminality or may be involved in criminality,
22 and that I'll deal with in another way, but
23 I'm just saying what are the objective
24 credible reasons where it's not involved with
25 credibility where this statute would now have

1 effect, and one of them you gave me was
2 illness, and we discussed that. What other
3 one would there be, Senator?

4 SENATOR VOLKER: The one I just
5 gave you, the person running in front of a
6 car. You see, Senator, you are tying in the
7 fact that someone is running that may have
8 been involved in a criminal act as some sort
9 of indication of criminality. The courts have
10 said in some cases that's not necessarily an
11 indication of criminality although it might
12 well be objective credible evidence of a
13 reason to stop and talk to somebody.

14 I think, Senator, I'm not the
15 one moving ahead. I think maybe, Senator, in
16 a sense you're moving ahead. I think what
17 this is trying to do is bring some sort of
18 rationality. We're not really changing that
19 much by the way, Senator Gold. What we're
20 really doing, is trying to do -- to develop a
21 system that we've always had, and a system
22 that basically says that you do what's
23 rational under the circumstances.

24 The trouble, I think, is that
25 what courts have tried to do is take street

1 situations and after they're done and after
2 all the things have happened that's involved
3 and say, Well, you know what? We don't know if
4 that guy's idea was quite what we think it
5 should have been. What you're really doing
6 here is saying, We want a police officer to do
7 what's logical and what's right under the
8 circumstances if he's -- by the way, if he
9 can't show some sort of credible objective
10 standard and if he's made an arrest and even
11 if he has, for instance, confiscated drugs,
12 which in many cases is the case, or found a
13 gun, and all that sort of thing, it may well
14 be that the arrest may fall and it may well be
15 that the search may fall, but at least we're
16 trying to set up a standard here which makes
17 more reasonable sense than the one that the
18 courts are now following.

19 SENATOR GOLD: Mr. President.

20 ACTING PRESIDENT BALBONI: Yes,
21 Senator Gold.

22 SENATOR GOLD: If the Senator
23 would yield to a question.

24 SENATOR VOLKER: Certainly.

25 SENATOR GOLD: Senator, I'll

1 take your second example. Somebody walks in
2 front of a car now. I assume if they walk in
3 front of a car, they get hit. The police
4 officer is in the middle of an accident
5 investigation, but I assume if they walk in
6 front of a car, somebody blows the horn and
7 they jump back out of the way.

8 You're saying that that might
9 be a reason then why a police officer might
10 stop somebody and start asking them
11 questions? Is that -

12 SENATOR VOLKER: I'm saying if
13 somebody deliberately jumps in front of a car
14 for whatever reason, I certainly think -- I
15 guess I'm using that because it's something
16 which is totally out of the ordinary and might
17 indicate that that person has some -- has some
18 problem that a police officer should inquire
19 about.

20 SENATOR GOLD: Mr. President.

21 SENATOR VOLKER: And which
22 would constitute an objective credible
23 evidence not necessarily of wrongdoing but of
24 a reason to question that person.

25 SENATOR GOLD: Mr. President.

1 ACTING PRESIDENT BALBONI:

2 Senator Gold.

3 SENATOR GOLD: Yeah, on the
4 bill.

5 ACTING PRESIDENT BALBONI: On
6 the bill.

7 SENATOR GOLD: Mr. President,
8 Senator Volker is very kind and I know that if
9 it was a question of debate for debate's sake,
10 we could carry this on and pick it apart, but
11 I see the vote from last year, and I think
12 there was only about nine of us who were in
13 the negative anyway, and I just want to thank
14 Senator Volker for helping me make my points.

15 There is law in this state, and
16 I believe that the law in this state does
17 permit a police officer to do his or her job,
18 and certainly I am one of those people who,
19 over the years, has fought to see to it that
20 police officers are armed properly and that
21 police officers have every opportunity to do
22 their job. I happen to believe that the
23 police officer in the street is not the enemy
24 and thank God they're there and help protect
25 us.

1 But the fact of the matter is
2 that when all of us went to school, if we were
3 getting 99 percent in a subject, we were
4 almost at the genius level and you take a look
5 at how many police officers you have in the
6 state and in the city of New York, for
7 example, and take just one percent, one
8 percent of the police force of the city of New
9 York is a number of hundreds of policemen
10 running around who if, God forbid, they're the
11 bad apple make the whole force look bad and
12 can cause a lot of damage in the streets, and
13 what Senator Waldon was trying to emphasize
14 last year, as I remember it, was the -- the
15 actuality of life in some of the areas of this
16 state where people are not driving Mercedes,
17 and people are not earning six figure incomes
18 and where, unfortunately, some police officers
19 use any excuse to make life kind of in
20 tolerant for some of our citizens.

21 I am not one of those who
22 believe that every time a charge is made
23 against a police officer of brutality that the
24 charge is accurate but, unfortunately, there
25 are enough cases that do reach public opinion

1 -- the public view where we ought to be a
2 little bit concerned about what we do.

3 This statute, in my opinion,
4 would allow police officers to stop
5 individuals for what is almost no reason,
6 because while they -- and by the way, as the
7 head of the Dale Volker fan club, there's no
8 doubt in my mind that if this was the law,
9 Senator Volker as a policeman would not -
10 would not be doing the wrong thing or abusing
11 it, but, unfortunately, every police officer
12 that we have in this state and in this country
13 doesn't pass the Dale Volker test, so we have
14 to be a little bit more careful.

15 But this basically says that
16 any police officer engaged in criminal law
17 enforcement, which means only that he's on
18 duty or she's on duty and in their area, which
19 doesn't help too much either, it says
20 objective credible reason, and the problem
21 with that is when you talk about things which
22 give you objective credible reasons and have
23 nothing to do with criminality you are now
24 taking one major, major step, because the
25 purpose of having a police force and

1 protecting us is to protect us against
2 criminal acts and for keeping the peace in our
3 society, and helping us -- as a matter of fact
4 there are areas where police used to do
5 traffic details, where they're trying to get
6 them out of the traffic details and bring
7 other people in to do traffic, because we want
8 the police out there protecting us on a
9 day-to-day basis against criminal activity and
10 maintaining the peace of society.

11 But this language about "not
12 necessarily involved in criminal activity" is
13 just a huge expansion of the kinds of
14 situations where police officers might
15 determine that they are going to stop people
16 and, as Senator Waldon pointed out last year,
17 his concern was for young people, for young
18 minority people, and I can understand that.
19 Senator Waldon has made arguments from time to
20 time and he has urged upon us that the kinds
21 of situations we are used to in some of our
22 communities which may not be heavily inhabited
23 by minority groups, might be different than
24 people in the -- in the areas which are
25 heavily minority and the experiences they've

1 had and the laws we pass apply to both
2 communities.

3 I remember years ago, and I
4 mean really years ago, if your kid was in
5 trouble and/or a cop picked up your kid, most
6 -- most people would say "Oh, my God, what
7 did the kid do," you know, and they'd give him
8 a slap on the ear, and "Why did the cop pick
9 you up" and that was a more in some
10 communities that the cop was always right, and
11 if the teacher called you and said the kid got
12 to be too wise in class you'd take the kid
13 home and give him a "potch" on the rear
14 because the teacher had to be right and maybe
15 those were better days in certain ways, but
16 unfortunately today there are just too many
17 situations where there are confrontations and
18 the kid didn't do anything except maybe be in
19 the wrong place at the wrong time as far as
20 some police officer was concerned, and I think
21 that we're opening the door for that few
22 hundred, if there are, and I'm not -- I don't
23 want anybody to say that I said there were
24 hundreds of bad cops in the city of New York,
25 because I'm not saying that, but what I'm

1 saying is that when you have a force that runs
2 into 30,000-some-odd, the opportunity for just
3 a half of a percent or one percent, and I
4 think we have to be careful of the doors that
5 we open.

6 The Court of Appeals decision
7 which this case, or which this law seeks to
8 change, has been the law in this state for
9 some 21 years at least. At least that's the
10 restatement of it, and there's no doubt in
11 existing law that a police officer can act in
12 reasonable suspicions and in cases where there
13 have been crimes committed. We allow police
14 officers to act, and thank God we allow them
15 to act for our own protection, but I think
16 with the greatest respect for Senator Volker
17 and the greatest respect for the Governor, and
18 I do have that respect, that this bill goes
19 too far. It tries to handle a problem that
20 doesn't exist, and I'm afraid it's going to
21 create some real problems which we then will
22 have and have to deal with.

23 So I'm going to vote in the
24 negative, Mr. President.

25 ACTING PRESIDENT BALBONI:

1 Thank you, Senator Gold.

2 Read the last section.

3 SENATOR LEICHTER: Mr.
4 President.

5 ACTING PRESIDENT BALBONI:
6 Senator Leichter.

7 SENATOR LEICHTER: Maybe it is
8 superfluous to get up and speak on the bill
9 because I think Senator Gold has made a very
10 good analytical examination of the bill; but I
11 just ask you again to read the bill because
12 with all due respect to Senator Volker or the
13 second floor, if that's where the bill came
14 from, it's an incredibly poorly worded bill.
15 I know no other way to describe it.

16 I don't know what it means that
17 the person has an objective credible reason.
18 These are words that have no known meaning. I
19 don't know what is an objective reason. You
20 could have a reason that could be totally
21 unrelated to the welfare of the person that
22 you're going to stop and ask questions. Could
23 be unrelated to the benefit of society; could
24 be objective. I don't know what objective is.
25 Credible in one sense, credible for the taking

1 a side or credible from the viewpoint of a
2 police officer who is doing certain personal
3 interests, I -- that could be credible, but it
4 may not be justifiable, and then -- and I
5 think Senator Gold pointed this out, that in
6 the event you stop the person you may ask this
7 question and take such other actions as the
8 officer deems appropriate. So the officer is
9 made the judge of what is appropriate in that
10 instance that Senator Gold gave, where an
11 officer stops somebody, seems to be acting a
12 bit strange and says, Are you ill, and the
13 person says, I don't want to talk to you, and
14 so on. Well, the officer could take that
15 person into custody because that's deemed
16 appropriate by the officer.

17 The one thing that's been
18 totally lacking from the explanation in
19 support of this bill: Why do we need it?
20 What instances have you pointed to where
21 society right now is endangered or is a
22 problem because we don't have this provision?
23 I think there is ample opportunity, ample
24 rights for police officers if they have a
25 suspicion of criminality, to stop somebody to

1 ask questions and to take action, but to allow
2 a police officer to do it when, as this bill
3 says, there is a reason not necessarily
4 indicative of criminality, it seems to me is
5 so extending the powers of the police, and I'm
6 sorry to have to say this, but all I see in
7 bill after bill extending the powers of the
8 police, extending the powers of prosecutors,
9 and so on. There seems to be little regard
10 for constitutional protections, little regard
11 for what really created this country, what was
12 the prime motivating cause, which is people's
13 freedoms, people's rights not to be
14 questioned, not to be harassed, not to have
15 authority put its heavy hand on somebody's
16 shoulder and say, What are you doing?

17 Bills like that do move us
18 towards a police state. You may argue, well, a
19 police state is a much safer country. Well,
20 maybe in some respects it is. You give police
21 totally unfettered powers, yes, maybe you'll
22 have less crime, but obviously at a cost that
23 I don't think the people of this state or the
24 people of this country are willing to pay.

25 So while all of us want to give

1 the police all of the powers that are right,
2 that are appropriate, and we certainly want
3 safety in our streets, but don't do it at the
4 expense of people's rights, of people's
5 liberties. Remember what really is the
6 crowning jewel of our society, which is the
7 liberty and the independence and the freedom
8 that we have, and I tell you this bill
9 trespasses on those rights and that liberty
10 and on our freedom.

11 ACTING PRESIDENT BALBONI:

12 Thank you, Senator Leichter.

13 Senator Paterson, please.

14 SENATOR PATERSON: Thank you,
15 Mr. President.

16 If the sponsor would yield for
17 a question.

18 ACTING PRESIDENT BALBONI:

19 Senator Volker, do you yield?

20 SENATOR VOLKER: Sure.

21 SENATOR PATERSON: Mr.

22 President, my question applies to something
23 Senator Volker said earlier. He said this
24 bill does not apply to those individuals that
25 are in a car. Would you explain that, Senator

1 Volker, because in urban areas around the
2 city, people are often sitting in cars and
3 perhaps that's what causes them to appear to
4 be suspicious. They may not be actually
5 operating the vehicle, or would the police
6 officer be able to observe a certain kind of
7 conduct for which the officers found raised an
8 eyebrow and then pursued someone who then got
9 into a car, or an individual who was observed
10 in a car conducting themselves in some fashion
11 that gave rise to inquiry and then got out of
12 the car? What is the actual rule about the
13 automobile?

14 SENATOR VOLKER: I mean the
15 question of whether you get in or out of the
16 car is another issue, but the reason this
17 wouldn't apply to auto stops is that there's
18 another -- there's other areas of the law
19 that, frankly, deal with that.

20 We're talking about in a public
21 place and, as you know, there have been a
22 number of cases that have dealt with the issue
23 of public places, and inside an auto is not a
24 public place as such, and I think it's
25 generally considered that what we're talking

1 about here is someone who is, in effect,
2 stopped on a public street because that's what
3 the cases have talked about and where the
4 issue of police stops as far as cars is,
5 frankly, a different issue.

6 You may -- I suppose you make a
7 point, if somebody runs into a car, I suppose
8 somebody could question somebody but what this
9 really deals with is the question of somebody
10 who is separate from an auto situation in a
11 public place because, when you get into the
12 auto situation, you get into traffic
13 situations and was there traffic violations
14 and all the rest of the things that might
15 allow stops or might involve the right to stop
16 which ironically has been found to be broader
17 than the right to talk to someone on the
18 street, even though their conduct clearly
19 appears to have been questionable conduct. The
20 cases don't seem to go that way.

21 SENATOR PATERSON: Thank you,
22 Senator Volker.

23 Mr. President, on the bill.

24 ACTING PRESIDENT BALBONI: On
25 the bill.

1 SENATOR PATERSON: The content
2 of my questions were covered in the dialogue
3 between Senator Volker and Senator Gold.
4 However, I have a grave concern about this
5 type of legislation.

6 We live in a country, the
7 greatest country in the world, that was
8 founded on the basis of freedom, where people
9 were encouraged to initiate, not to retreat;
10 people were encouraged to explore, not to
11 retire, to prosper, not to plunder, and the
12 whole basis of our Constitution and our
13 Declaration of Independence was to move away
14 from the arbitrariness of the tyrannical
15 British system that subjected people who lived
16 in this land to that kind of scrutiny.

17 I feel that this piece of
18 legislation brings back that type of
19 observation to those who, for the most part,
20 are innocent. There is no evidence that there
21 is a great need for this legislation. Crime
22 is not up; crime is down. Police officers are
23 not being unduly harassed by the citizenry.
24 If anything, the greater complaint is often
25 that few and very few police officers often

1 exercise their duties in an excessive manner.

2 So the relationship between the
3 public and the police is actually, other than
4 that, rather good, and so to expand the
5 jurisdiction of police officers and to adopt
6 what is called an objective standard but can
7 only be enforced in a subjective way, in my
8 opinion, is taking a giant step backward in
9 our history.

10 I recognize that the Governor's
11 office put this legislation on the table. I
12 hope the office knows about the situation that
13 occurred in Oneonta where a woman identified
14 an African-American male as the perpetrator in
15 a crime, and the officers went to a school and
16 then questioned every African-American student
17 in the school who was male.

18 When we look at the number of
19 times that individuals bring forward, as
20 Senator Waldon did in his eloquent debate last
21 year, his own scrutiny as a former police
22 officer, as an elected official, it really
23 raises an eyebrow.

24 I myself, Mr. President, have
25 been stopped on at least four or five

1 occasions, once because the officer said that
2 someone had robbed a house in a block that I
3 was running out of. I was out running; I had
4 a jogging suit on. He didn't know that that
5 was the block, or he didn't know that that was
6 the block in which I resided and took the time
7 to ask. There was no house that was actually
8 robbed on that particular block.

9 In the last four years the
10 automobile that I use, in spite of the fact
11 that it used to be used by Senator Gold, we've
12 been stopped four times for reasons such as,
13 We checked the license plate number and we
14 thought it was a stolen vehicle. One time I
15 was called at my home because the police
16 officer did not believe that a staff member of
17 mine really was a staff member, and he called
18 me to make sure that the officer's interest
19 was addressed.

20 So what I'm trying to say is
21 that the issue of the disproportionate effect
22 that this bill would have on particularly
23 African-Americans and Hispanics in this state
24 and the fact that there is often selective
25 enforcement outweighs any positive value of

1 this legislation that I can find.

2 There are many pieces of
3 legislation that I have felt privately had a
4 disproportionate effect on the African
5 American community, and I hope my colleagues
6 would recognize that I actually don't get up
7 and address the issue, and the reason that I
8 don't is that even though I feel that it may
9 have that actual effect, I don't want to in
10 any way diminish the value of my argument by
11 applying it in every single case or in
12 numerous cases, but it is in situations such
13 as this that I think that it is very important
14 to raise this issue, because while not wanting
15 to minimize the argument over other cases
16 where there may be some degree of selective
17 enforcement, this is a situation where almost
18 any African-American male you will talk to has
19 a litany of experiences about problems with
20 police officers regardless of their ideology,
21 whether it be liberal or conservative or
22 whatever their party affiliation is, and the
23 reason that it seems to occur is not because
24 the police officers are biased, not because
25 the police officers are necessarily bigoted,

1 but because these officers have actually
2 fallen into the trap of making associations
3 and profiling criminality with certain
4 elements of the community which I think is a
5 human frailty that we all suffer, and
6 therefore, it's not actually the individual
7 conduct of the police officers that I'm
8 objecting to. It would be applying a legal
9 standard as we would be here today that would
10 actually, in a sense, lure and seduce the
11 individual into those types of ideosyncratic
12 behavior from which we all suffer.

13 So I oppose this bill without
14 any malice toward police officers, but
15 actually with a great confidence in our laws
16 that already exist, and the two cases that the
17 Court of Appeals has ruled on have really
18 given us great guidance in this particular
19 area. They have first suggested that probable
20 cause should be the reason that police
21 officers should stop and question
22 individuals. Now, any police officer that
23 wants to render assistance as another member
24 of the public or as a police officer is
25 actually welcome.

1 The second is that the court
2 has rules that even those inquiries that fall
3 short of any kind of Fourth Amendment seizure,
4 or any kind of unconstitutional search, even
5 those inquiries that fall short, still
6 actually impugn -- impede on the integrity of
7 a person's individual right to freedom, and
8 this is something that is severely challenged
9 by this bill.

10 So as much as any negative vote
11 that I would actually recommend in this
12 session, I strongly suggest that this -- the
13 passage of this legislation is only going to
14 create unnecessary fear and anxiety in the
15 hearts of the innocent public, the
16 overwhelming number of people who are just
17 trying to conduct business and make use of our
18 public places without any undue inhibited
19 action on the part of any law enforcement and,
20 therefore, I would suggest a no vote on this
21 bill, Mr. President, and that in an otherwise
22 piece of legislation that has some other
23 values, I think that the Governor's office
24 really needs to reconsider this particular
25 measure which is actually not borne out by any

1 need and is in many respects devastating in
2 its effect not only in the selective
3 enforcement, but in the public confidence in
4 their police department.

5 ACTING PRESIDENT BALBONI:

6 Thank you, Senator Paterson.

7 Senator Montgomery.

8 SENATOR MONTGOMERY: Yes, thank
9 you, Mr. President.

10 Senator Paterson has stated so
11 much more eloquently. I would just like to add
12 and reiterate that the legislation, as I have
13 said to Senator Volker in the past, in past
14 years when the legislation has come before us,
15 that this particular bill, the police officers
16 right now, as I have been instructed by police
17 officers in my district, they have the
18 authority to make an arrest or at least take a
19 young person into the precinct if that
20 youngster does not have proper I.D., so they
21 have, therefore, instructed me and others that
22 one of the things that we should be doing is
23 trying to develop a system whereby youngsters
24 can have I.D., carry it with them, to carry
25 with them at all times in the event that a

1 police officer stops them. So that is already
2 in the law. They already have the authority
3 to do that, and obviously on occasion they
4 do.

5 Very often what I see young
6 people who are idling on the street doing
7 their -- whatever their activities are, it is
8 not criminal -- it is not with criminal intent
9 that they gather and play their music and talk
10 loud, and swear and do whatever they do, but
11 with this legislation, we now set up a
12 situation where an officer can move into that
13 kind of gathering of young people and, if I
14 read this correctly, take whatever action they
15 deem necessary, and so not only does it give
16 the officer the authority to do that, but it
17 also places the officer in a position to
18 provoke young people to respond in a hostile
19 fashion.

20 So the whole notion of
21 community respect and responsibility that the
22 City has instituted would be undermined just
23 to a large extent by this, and I must say that
24 it is obviously specifically going to impact
25 most dramatically on young African-American

1 males in particular, but young people in
2 general, and so I think this is, as Senator
3 Paterson has so eloquently stated, and Senator
4 Gold, this really is a step in the wrong
5 direction.

6 We really take the whole issue
7 of law enforcement far out of the realm of
8 stopping crime or protecting the safety of the
9 public. We now put it in a position where the
10 police become the enemy in neighborhoods
11 because they have the authority to stop
12 anyone, me or anyone else, just because they
13 feel that they want to stop and force me to
14 show my I.D. for no apparent reason.

15 So I am opposed to this and I
16 hope that my colleagues will join those of us
17 who will be voting no on this legislation.

18 ACTING PRESIDENT BALBONI:

19 Thank you, Senator Montgomery.

20 Senator Volker.

21 SENATOR VOLKER: Mr. President,
22 let me first of all say, and I understand the
23 sensitivity of some of my colleagues, and I
24 hesitate to over-simplify things because, you
25 know, obviously this is a very sensitive

1 issue.

2 Senator Montgomery, let me
3 suggest this to you. Whoever the police
4 officer that told you that he can bring
5 someone in to a police station because they
6 don't have any I.D., you can tell him the
7 chairman of Codes Committee who used to be a
8 police officer would like to know under what
9 authority that person would be able to do that
10 unless there was some criminality or, by the
11 way, under this legislation it would limit
12 that even more. The ironic twist is this
13 legislation's passage would mitigate against
14 that because they would have to have some
15 objective credible evidence to do it.

16 The second thing I'd like to
17 point out to everyone is, before you get too
18 excited that this is going to change the
19 world, this will change extremely little out
20 in the streets. For one thing, and I think
21 it's something that all of us should think
22 about, particularly minorities, most of the
23 cases -- and there's been a lot of cases and
24 one thing I would just -- Senator Gold is
25 extremely bright, and I mean this very

1 sincerely, and has been involved in these
2 areas longer than I have, I would say to you
3 that the standard -- you said the standard has
4 been in place for 21 years.

5 Senator, the standard has been
6 in place totally for one year. The latest
7 change in the standard was 196... 1996
8 rather, the Terrigo case. Let me point out to
9 you that a number of the people who were
10 victims whose cases now, the convictions of
11 the people who either killed them or
12 victimized them were minorities because the
13 minority neighborhoods are the places where
14 many of these crimes are being committed.

15 The real impact of this bill
16 lies not really as much in the street as it is
17 in the courtrooms, because what's really
18 happening, this won't have a dramatic effect
19 out there because police officers are going to
20 operate in reasonably the same way that they
21 have. The fact that we're going to do a bill
22 that says, Well, you have to have reasonable
23 credibility or whatever it is, they're going
24 to deal with it and hopefully, by the way,
25 they'll be apprised of even more of their

1 obligation, and that's something that I think
2 we all want.

3 The real truth is that one of
4 the things that we as legislators should
5 understand is we're dealing with the courts.
6 We're really not dealing with the streets as
7 much. We can say we are. We can think that
8 everybody reads our legislation and says,
9 Well, now I can do this or I can do that.
10 It's not really the way it works. We're
11 talking about what's happened here is the
12 courts have been reinterpreting statutes that
13 we have passed for years and set up. For
14 instance now, we used to have a one-tier
15 standard for stops; now it's four, four tiers.
16 By the way, no state in the Union has that,
17 and I am very sensitive -- and by the way I've
18 been stopped also, so that you understand in
19 fact as legislators, I can tell you some
20 instances of people calling on, Where is my
21 car, things of that nature, so it's not just
22 minorities. I mean law enforcement people are
23 much more aware, which is probably a good
24 thing, by the way. When my son was driving my
25 car one time, they saw a young person driving

1 the car, he did not have -- they wanted to
2 know, you know, Is this your son, and so forth
3 and so on, not necessarily a bad thing I guess
4 because of the world we live in.

5 But, and I don't mean to tell
6 you that there isn't a sensitivity in the
7 minority neighborhood. The problem is -- and,
8 by the way, it's sometimes in the white
9 neighborhoods for other reasons, and I think
10 it's unfortunate, and I think the way to stop
11 it, though, is to deal with the root cause of
12 it, which is crime.

13 One of the things we forget
14 sometimes is that the relationship between law
15 enforcement people and the people in the
16 streets is extremely important and, if we
17 frustrate the process with interminable
18 nonsense in our courts and allow criminals -
19 let's face it, criminals to go free because
20 we've decided on -- the judges have decided on
21 some complicated ratio system that has nothing
22 to do with our rights, but has to do with the
23 fact that they're redissecting the process
24 after a police officer has done what he
25 thought was rational under the circumstances,

1 and which they don't even say what's
2 irrational. It's just they say he didn't
3 follow the procedure completely and,
4 therefore, the Terrigo case, they found the
5 body, they found the drugs and the guns, and
6 so forth, but he didn't approach him
7 correctly. I mean does that make any sense?
8 And I think this is really the problem here.
9 I would not -- and I tell you this very
10 sincerely. I would not develop any standard
11 that I believed would directly enhance the
12 problems that are occurring out there in the
13 street or give any law enforcement officer the
14 authority to do something he shouldn't do and
15 any police officer that tells you that he can
16 pick someone up simply because they don't have
17 identification and take them to the station,
18 all other things being absent, because I don't
19 know, you know, all other things being absent,
20 if there's a crime been committed or in the
21 case if this person is a suspect for whatever
22 reason or, of course, if he gives information
23 that's clearly erroneous for some reason,
24 that's different, but simply because he
25 doesn't have identification, there is no such

1 law and you can tell that police officer for
2 me and I'd like to know where that -- where
3 that statute came from. It goes for any
4 neighborhood, whether it's minority, whether
5 it's majority, whatever it is, and it's
6 possible some law enforcement people do that,
7 but if they're going to arrest somebody,
8 they're going to end up losing that case.

9 ACTING PRESIDENT BALBONI: Read
10 the last section.

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

13 ACTING PRESIDENT BALBONI: Call
14 the roll.

15 (The Secretary called the
16 roll.)

17 SENATOR LEICHTER: Mr.
18 President.

19 ACTING PRESIDENT BALBONI:
20 Senator Leichter, to explain his vote.

21 SENATOR LEICHTER: Just one
22 second. You checking on Catherine and other
23 people?

24 Mr. President, I just want to
25 answer some of the things that Senator Volker

1 said. I mean, Senator, you know, this court
2 bashing, like the Legislature has got to step
3 in because these judges don't know what the
4 Constitution is, they don't read the laws
5 correctly, these are the judges that we
6 confirm here, a judge like we confirmed
7 earlier. Everybody gets up and praises the
8 judges, the judges that we elect. There's
9 many of them are former members of the
10 Legislature. The fact of the matter is that
11 the courts traditionally have the role of
12 protecting the liberties and the rights of
13 people and, Senator Volker, I don't know
14 anything the courts have done that have
15 impeded the rights of police officers if they
16 have a probable cause from stopping somebody
17 and taking appropriate action.

18 What you're doing is giving
19 police officers the right to stop people and
20 to possibly arrest people or in other ways
21 impose their authority on people when, as your
22 bill says, there's no indication of
23 criminality. That's not needed. That's wrong.
24 That infringes on our liberties, and let me
25 say it's not only the courts, Senator Volker,

1 but it's us here too that ought to have a
2 concern about the right of free people.

3 I vote no.

4 ACTING PRESIDENT BALBONI:

5 Thank you, Senator Leichter.

6 Senator Montgomery, to explain
7 her vote.

8 SENATOR MONTGOMERY: Yes, Mr.
9 President. I just want to, in brief response
10 to my colleague, Senator Volker, who obviously
11 knows the law much better than I do having
12 been in law enforcement and all, but as I read
13 what the law allows already, it is that if an
14 officer reasonably suspects that a person is
15 committing, has committed or is about to
16 commit, now in many instances he may take
17 action and may demand of him his name, address
18 and an explanation of his conduct.

19 Now, what happens frequently is
20 that officers do come along. There is some
21 special drug enforcement activity going on or
22 whatever, but I am aware that the police do
23 have the authority, and I'm not certain of all
24 of the circumstances. They do have the
25 authority to take young people in, and they

1 do. They have said they do, especially if
2 that young person does not have proper I.D.

3 That is a very big issue in New
4 York City, and it is one of the things that we
5 are working together with the police
6 department to try and do, develop a system of
7 having I.D. made available to youngsters so
8 that they won't be stopped.

9 So certainly it is the case. I
10 certainly don't want to say to you that the
11 police are doing anything wrong. I think that
12 they are doing what is -- what is under their
13 -- in their authority to do based on the law
14 that already exists.

15 So, Mr. President, I'm voting
16 no on this, and I hope that my colleagues will
17 join me in voting no because clearly this sets
18 up a very, very dangerous situation between
19 police and the public.

20 Thank you.

21 ACTING PRESIDENT BALBONI:

22 Senator Montgomery in the negative.

23 Senator DeFrancisco, to explain
24 his vote.

25 SENATOR DeFRANCISCO: To

1 explain my no vote by saying that the standard
2 reasonable credible standard not necessarily
3 indicative of criminality is too broad, and I
4 believe it's also unconstitutional.

5 ACTING PRESIDENT BALBONI:

6 Senator DeFrancisco votes no.

7 Senator Stavisky, to explain
8 his vote? Thank you, Senator Stavisky.
9 Senator Abate also in the negative. Senator
10 Smith in the negative. O.K. Senator Santiago
11 in the negative.

12 THE SECRETARY: Those recorded
13 in the negative on Calendar Number 27,
14 Senators Abate, Connor, DeFrancisco, Gold,
15 Leichter, Mendez, Montgomery, Paterson,
16 Sampson, Santiago, Seabrook, Smith and
17 Stavisky. Ayes 45, nays 13.

18 ACTING PRESIDENT BALBONI: The
19 bill is passed.

20 THE SECRETARY: Calendar Number
21 110, by Senator Velella, Senate Print 4487, an
22 act to amend the Public Authorities Law.

23 ACTING PRESIDENT BALBONI:

24 Senator Velella, an explanation has been
25 requested.

1 SENATOR VELELLA: This is a
2 bill that we have debated and passed several
3 years now. What it says is that, when in the
4 city of New York we are awarding contracts to
5 build schools, no longer will the requirement
6 that one percent of the cost of construction
7 be devoted solely to producing works of art
8 within that school.

9 Many of you will remember, and
10 I believe Senator Leichter has alluded to the
11 photograph of the Governor and I at a school
12 in the Bronx in past debates, and that school,
13 there was an arch that was built with some
14 wire hangers dangling from it. We paid
15 \$187,000 for that piece of work that was such
16 an exquisite work of art. To the best of my
17 knowledge, we have still not located the local
18 resident artist who created this beautiful
19 piece of work. \$187,000 worth of art work in a
20 school that the elevators weren't working.

21 I think that the priority ought
22 to be to put those dollars that are available
23 for bricks and mortar, to repair our schools.
24 Certainly the Speaker has expressed a very,
25 very keen interest in seeing that dollars go

1 into repairing our schools in the city of New
2 York and that we ought not to be putting one
3 or two percent of a contract to being
4 appropriated for art work.

5 There are other avenues to
6 provide art work within our schools. There are
7 foundations that will provide us -- loan art
8 work to our schools. There are the students
9 themselves that produce art work. There are
10 locals artists who would be happy to have
11 exhibitions within our schools. So we're not
12 being totally insensitive to the artistic
13 community. What we're saying is we've got to
14 get our priorities in order, and if there are
15 a limited amount of dollars, the dollars ought
16 to be spent in giving our children and our
17 young people the opportunity to have an
18 educational experience in sound settings
19 without roofs leaking, without windows
20 rattling, without the danger of a building
21 collapsing around us, and I think that's the
22 priority, and we can work on the Council -- on
23 the arts work later on.

24 There are certainly funds
25 available through the Council on the Arts.

1 There are local groups that would be happy to
2 participate in artistic programs within the
3 schools, and that basically is the bill.

4 ACTING PRESIDENT BALBONI:
5 Senator Gold.

6 SENATOR GOLD: Yeah, Mr.
7 President. Thank you very much, and I will be
8 brief, but I just wanted to make a point. I
9 couldn't help thinking as Senator Velella was
10 speaking how many of us on this side of the
11 aisle from the city of New York have been
12 fighting for years on the issue of dollars for
13 schools, and yesterday the mayor who is not of
14 my political party, the mayor of the city of
15 New York spoke before the Finance Committee on
16 the Governor's budget, and I thought the mayor
17 was very eloquent, and one of the points he
18 made was the need for some proper adjustment
19 of the school aid formula and, Senator
20 Velella, I need not tell you that without
21 getting into the issue of art which I think is
22 being scapegoated in this bill -- and I say
23 that respectfully because I think you're very
24 sincere about the presentation -- but without
25 getting involved in the art question, if you

1 just did what the Republican mayor of the city
2 of New York suggested and give us a fair deal
3 on the school aid formula, if you gave us a
4 fair deal on the STAR program, and if we
5 weren't constantly being cut in our
6 percentages of state dollars, we could have
7 that little bit of art work, and we could take
8 care of all the needs of the schools also.

9 ACTING PRESIDENT BALBONI:
10 Senator Oppenheimer.

11 SENATOR OPPENHEIMER: Thank
12 you. In a way, I think Senator Velella was
13 sort of pitting education against art, or the
14 arts.

15 You can't hear me, Guy? You
16 sounded like you were pitting education and
17 quality buildings in which education should be
18 taking part against the art.

19 Many of us feel a major
20 component of education is art -- is the arts,
21 is the viewing of arts, the teaching of arts.
22 Many of us feel that though math and science
23 will in many ways stay with us the rest of our
24 lives that it is music and visual and
25 performing arts that is with us on a daily

1 basis.

2 So to say that art is not a
3 part of the academic or educational experience
4 is, I think, a misrepresentation of what many,
5 many people in New York State feel, where art
6 is so important to our state, not only for the
7 value that it gives to society, but for the
8 enormous economic incentive it gives for the
9 engine to drive here in our state.

10 So I think up to one percent of
11 the cost, where it is not mandated, is -
12 simply said is it may be applied to the arts.

13 SENATOR VELELLA: No,
14 required.

15 SENATOR OPPENHEIMER: No? It's
16 required, but still I think it is a small
17 price to pay for something so enormously
18 significant to the state of New York and, if
19 we don't bring our young people along in the
20 arts, they are not going to be a party to it.

21 I spend a considerable amount
22 of time in Lincoln Center. May I say that
23 there almost everybody has gray hair. And
24 it's kind of sad, because we certainly want
25 the arts to stay alive and without educating

1 our youngsters, it won't.

2 ACTING PRESIDENT BALBONI:

3 Thank you, Senator Oppenheimer.

4 Senator Montgomery.

5 SENATOR MONTGOMERY: Yes, thank
6 you.

7 As I had said last session,
8 when Senator Velella introduced this bill, Mr.
9 President, the bill -- if I may just ask
10 Senator Velella to -- if he would yield for
11 one question.

12 SENATOR VELELLA: Yes.

13 ACTING PRESIDENT BALBONI:

14 Senator Velella, do you yield?

15 SENATOR VELELLA: Yes.

16 SENATOR MONTGOMERY: The bill
17 seems to essentially ultimately eliminate the
18 arts program entirely.

19 SENATOR VELELLA: Those of us,
20 if I may respond, those of us who are on this
21 side of the aisle have a Majority Leader who
22 tries to lead us a little bit on something
23 that is very important, and that is
24 communicating with each other. He constantly
25 stresses that. What I said apparently is not

1 what you and Senator Oppenheimer heard.

2 This is not involving arts
3 programs, teaching people about art, dance
4 programs, Council on the Arts money. We are
5 probably going to be increasing that. There
6 will be increased arts programs, so that the
7 revenue you are concerned about, Senator
8 Oppenheimer, that the arts generate will be
9 going up. Senator Goodman would have a heart
10 attack here if I were proposing to cut arts
11 money. That is going to be increased.

12 This is saying where we have
13 construction money in your district, Senator
14 Montgomery, there are tremendous needs to
15 improve the structure of buildings, the
16 infrastructure, the bricks and mortar, the
17 leaking roofs, the windows that are broken.
18 Where that money is, let's not take one
19 percent of that money and put it towards
20 decorating school buildings with arches and
21 hangers on them so that these local artists or
22 whomever they may be, are peddling the stuff
23 at the cost of \$187,000 dollars for one piece
24 of art I still can't figure out.

25 I think maybe if we look back a

1 few years if I were here, I would say we made
2 some mistakes in some of the art work that we
3 appropriated for the Mall, but then again I'm
4 not very sensitive to that art type. I'm not
5 a modern art fan.

6 But what I am saying is we
7 should not be wasting our money on art work
8 when we need to spend our money on the
9 physical structures for our students to learn,
10 an environment where the roof isn't leaking,
11 where the windows aren't being blown out, and
12 the bricks aren't falling out of the building
13 like we're seeing in our city. 187,000 in the
14 school that I went to with the Governor would
15 have made that elevator work, would have done
16 a lot of repair work instead of an arch and
17 some hangers. That's what I'm talking about,
18 not eliminating the arts program in our
19 schools. It's funded differently and
20 certainly, you know, I support the mayor's
21 concept that we should be restructuring the
22 financial system by which the City receives
23 money. We have a lot of work to do to undo
24 all the harm that Mario Cuomo did, and we're
25 working on it. We're going to straighten that

1 out inch by inch and step by step, so work
2 along with us on this.

3 SENATOR MONTGOMERY: I
4 apologize for my miscommunication, but I do
5 understand that this is a different program
6 from the arts program in the schools, the arts
7 curriculum. I understand that, but
8 nonetheless, this eliminates essentially the
9 opportunity for schools to invest in art work
10 that is related to the permanency of the
11 building which becomes part of the culture.

12 SENATOR VELELLA: Will you
13 yield to a question?

14 ACTING PRESIDENT BALBONI:
15 Senator Montgomery.

16 SENATOR MONTGOMERY: For as
17 long as the building exists.

18 ACTING PRESIDENT BALBONI:
19 Senator Velella, why do you rise?

20 SENATOR VELELLA: Senator, let
21 me ask you this question. You have a choice,
22 fixing the roof that's leaking in the
23 classroom and water dripping down on these
24 kids or having a nice painting on the wall,
25 which would you take?

1 SENATOR MONTGOMERY: Let me
2 just respond by saying -

3 SENATOR VELELLA: You can't
4 have both.

5 SENATOR MONTGOMERY: -- that we
6 can have both. One has nothing to do with the
7 other, because the maintenance and upkeep
8 ongoing of a building happens long after the
9 art has been placed in the building, long
10 after the building has been built,
11 constructed. We still, no matter what, if you
12 have art or not, you still are going to have
13 to find additional funding to fix the
14 elevators and the roof and the windows at some
15 later date.

16 This program happened as part
17 of the initial construction of the building,
18 so what you are referring to, the broken
19 elevators don't really have to do and are not
20 -- was not caused by the fact that school
21 invested in art.

22 What I'm talking about, what we
23 are talking about, Senator Velella -- Mr.
24 President, if I can speak to Senator Velella
25 through you -- what I'm concerned about is

1 that we have an opportunity to create a very
2 unique environment that incorporates some form
3 of art work that will last for the lifetime of
4 the building and becomes part of the community
5 and an identifying aspect of that school.

6 It has nothing to do with the
7 fact that the elevators are going to break
8 down and things are going to happen. That
9 school must also, in addition, have an ongoing
10 source of funding for the maintenance of the
11 building. So this is your -- as one of the
12 Senators before me has said, the art is being
13 scapegoated here and that's what we're talking
14 about, Senator Velella.

15 We don't want to lose the
16 opportunity to have art in the schools because
17 we're concerned about the elevator breaking
18 down.

19 SENATOR OPPENHEIMER: Tell him
20 the art won't break down.

21 SENATOR MONTGOMERY: One has
22 nothing to do with the other.

23 ACTING PRESIDENT BALBONI:
24 Thank you, Senator Montgomery.

25 Senator Smith.

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

3 I'd like each and every one of
4 us to take the opportunity to look around this
5 beautiful room. This room gives art, elegance,
6 quietude, and if you go into the Assembly
7 where the decor is not as elegant, the members
8 there are not as genteel as they may be on
9 this side in this chamber.

10 Surveys have shown that young
11 people learn better when they have the things
12 that are aesthetically beautiful, when they
13 have barren gray walls there's nothing to
14 view, there's nothing -- it doesn't -- it's
15 not creative, and I think that art is
16 important to the learning process and
17 hopefully, the beauty in this room will be a
18 learning process for some of you on the other
19 side of the aisle, and you will vote no on
20 this bill.

21 ACTING PRESIDENT BALBONI:
22 Thank you, Senator Smith.

23 Senator Paterson.

24 SENATOR PATERSON: Thank you,
25 Mr. President.

1 I can't add very much to what
2 Senator Smith said. I think she really hit the
3 nail right on the head not only about the art
4 work but the relative relationship of the
5 houses of government here. I agree completely,
6 and would one of those who makes this body so
7 much more distinguished, Senator Velella,
8 kindly yield to a couple of questions?

9 ACTING PRESIDENT BALBONI:

10 Senator Velella, do you yield?

11 SENATOR VELELLA: Be careful
12 what you say. I did ten years in the big
13 house.

14 SENATOR PATERSON: Mr.

15 President, Senator, you're -- I don't really
16 understand your legislation. I don't think it
17 actually cures the problem that you wish to
18 cure. I guess sometimes there's these little
19 simple expressions that explain what one feels
20 about a situation. I want to say that you're
21 barking up the wrong tree, but maybe you're
22 hanging from the wrong arch.

23 I think that you have touched
24 upon an issue that needs to be addressed, but
25 I don't know why you would address it through

1 this type of legislation and obviously what
2 happened was somebody threw a bunch of hangers
3 together or some really appalling work that
4 they called art and strung it up on some
5 school and then billed the state for \$187,000,
6 and you may have gotten the impression -
7 excuse me.

8 SENATOR VELELLA: And then
9 disappeared.

10 SENATOR PATERSON: And then
11 disappeared after that.

12 Well, I've been here talking to
13 you about this for four years about this
14 person and we really need to find him because
15 the issue is -- the issue really is that the
16 system as we created it doesn't work, and what
17 I would suggest is, for instance, in those
18 types of situations perhaps we would have a
19 task force and it doesn't have to be any big
20 deal but some people just to go around and
21 look at the finished product so that we don't
22 have this kind of waste.

23 But what you've actually done
24 is to create legislation where your own memo
25 says that there isn't enough money for -- for

1 adequate school construction, and that's
2 exactly what we fear, that in other words
3 because there's an assumption that there isn't
4 enough money that there would, therefore,
5 never be any kind of artistic work or any kind
6 of expression that would be considered when -
7 when building these edifices that we use as
8 schools, and that, therefore, they would stand
9 as eyesores rather than pillars of learning,
10 and my question -

11 SENATOR VELELLA: Is your
12 question "is that correct"? If your question
13 is "is that correct," the answer is no.

14 SENATOR PATERSON: Pray
15 elucidate.

16 Well, then, Senator Velella,
17 what I'm saying is, isn't it going to be the
18 case that after we make this proposal that
19 you've offered us law, that we'll never see
20 any artistic construction in these buildings?

21 ACTING PRESIDENT BALBONI:
22 Senator Velella, I believe there's a
23 question.

24 SENATOR VELELLA: Let me
25 respond. First of all, by this committee that

1 you suggest, I think that might be very nice
2 but would you like me to be a member of that
3 committee to evaluate the value of that art
4 and whether or not we ought to pay the person
5 who created these rather unique artistic
6 expressions?

7 SENATOR PATERSON: I would
8 suggest that, sir, you seem to have a great
9 range -

10 SENATOR VELELLA: Well, let me
11 tell you, I wouldn't spend \$187,000 on arches
12 and hangers and some of the things we've seen,
13 and certainly less than we've spent on the
14 Mall and around here. Certainly in the days
15 before they created the two chambers I would
16 say that the Senate is a lot more artistic,
17 because of the sensitivity of the members.
18 I'm sure both houses had equal amounts of
19 money back in the old days, but I would say we
20 probably spend the money more wisely but
21 certainly I would not have a problem in trying
22 to incorporate the works that you speak about
23 in a budget, were the money available.

24 We are in serious problems in
25 the city of New York and I would venture to

1 say that if you went to your own constituents
2 like we went to some of the people in some of
3 these schools where we saw this proposed art
4 work, the parents in those schools said, We
5 don't want this. We want good solid
6 classrooms, good desks, good fixtures, windows
7 that don't let water in, roofs that don't leak
8 on our kids, and bricks that don't fall on
9 their heads.

10 We want our kids to have a good
11 learning environment and, yes, we can find
12 alternative ways of providing art. We're not
13 eliminating an art budget. As I said before,
14 we're putting more money into the arts. Let
15 some of our artistic institutions, some of the
16 foundations lend some art work out to the
17 schools. It's been done before. Let some of
18 the teachers, some of these programs develop
19 artistic things, local art, cultural art,
20 those are all things that can be done. Let
21 the students participate in decorating the
22 building. We don't have to spend one percent.
23 That adds up to an awful lot of money. The
24 building of a high school it's almost \$300,000
25 in the building of a high school, 180,000 in

1 the building of a junior high school, and
2 maybe 120,000 in the building of an elementary
3 school. That can provide something more for
4 those students by way of construction needs as
5 opposed to the artistic waste of money that's
6 being spent now on these types of structures
7 like an arch with some hangers, and I use that
8 only as an example. There are many more. If
9 we traveled around the City, we'd see them.

10 One you might be familiar with
11 is down in the Police Plaza where they have a
12 couple of gigantic manhole covers that they
13 put together and call art, which I think cost
14 about a million dollars. Those are things
15 that, if you like them, great, but what we
16 have to get back to basics of where your kids
17 are being educated, what type of a building it
18 is, whether or not they're safe.

19 I venture to say to you that
20 every parent in your district would vote for
21 repairing the roof, repairing the windows,
22 building the new schools, rather than having
23 an artistic expression there. We can find
24 other ways, so we ought to work together to do
25 that, to decorate these buildings and provide

1 artistic sensitivity.

2 We haven't eliminated art
3 classes. We haven't eliminated the arts
4 programs. We're eliminating taking
5 construction money and spending it on these
6 artistic expressions that we can't afford. We
7 need bricks and mortar, not more art.

8 SENATOR PATERSON: Mr.
9 President, I do not believe that Senator
10 Velella's bill cures this problem because at
11 some point he does not eliminate the art work
12 being involved in the actual construction of
13 buildings. What he does is he removes the
14 mandate that one percent of the funds be
15 designated toward art work when erecting the
16 buildings and so, therefore, as long as there
17 is -- as long as the School Construction
18 Authority has the option to actually engage in
19 using art work, as long as that's the case,
20 the same problem that Senator Velella is so
21 exercised about can happen again. It will
22 happen again, and what I'm simply saying is,
23 let's not confuse what decisions we would make
24 if it came to weighing the value of art work
25 versus the value of construction.

1 Independent School 88, which is
2 known as the Wadleigh School, which is located
3 in my district, was in such an appalling state
4 that I actually invited the late Senator
5 Donovan there ten years ago to look at that
6 school and it became actually emblematic of
7 the creation of our School Construction
8 Authority.

9 I would suggest that many of us
10 have seen schools like that and we know very
11 well that you can't, as a matter of humanity,
12 ask children to study in schools where there
13 are holes in the roof or they're sitting in
14 the halls, where the buildings are falling
15 apart, where the windows have been blown in by
16 wind, where bricks are falling off the
17 building.

18 We would never misprioritize
19 the choice of whether or not to put art work
20 in or to finish the construction of the
21 building, but what I am trying to let Senator
22 Velella take notice of is the fact that when
23 it comes to curing the actual problem as long
24 as the School Construction Authority still has
25 the option which you've left them after we

1 pass this bill, Senator Velella, they will
2 still have the process and the case of our
3 people putting up monstrous looking pieces of
4 or collections of wires and arch work and
5 calling it art can still happen. What I'm
6 saying is it's not cured by capping it when
7 it's not cured by removing the mandate.

8 Now, on the issue of art work
9 itself, it is great that we tell young people
10 that they should have an appreciation for art
11 and then ask them to learn in these eyesores
12 that often are lacrimose and dolorous in their
13 appearance to the public.

14 What we are really saying is
15 that there's an inexorable connection between
16 the appreciation of art and education itself.
17 It's education which comes from the Latin
18 educo or educare, which really means to lead
19 out or away from what would be an ignoble
20 presence into what would be a sense of
21 understanding. Education and art are really
22 correlative.

23 I mentioned last year that the
24 president of the American Museum of Natural
25 History visited Albany some years ago and he

1 said that no matter how far back archaeological
2 studies revealed certain elements of history
3 that even when they found the most primitive
4 hammers and shovels and little artifacts from
5 that period, on almost all of those artifacts
6 there was some insignia, there was some
7 signal, there was some design, and that is
8 really something that even some of our most
9 fascist dictatorships understand. In Cuba,
10 where there are no civil liberties, they still
11 understand dance and the culture as it relates
12 to their own education, and what we're saying
13 that those young people who are studying in
14 those buildings, you can tell them to
15 appreciate art but when you put them in an
16 edifice that has no actual cultural value,
17 you're really sending a mixed message.

18 When you look, Senator Velella,
19 at a magnificently organized piece of art,
20 something kind of shines through. It's kind
21 of like a light. You know it as soon as you
22 see it. As soon as Senator Smith got up and
23 talked about this chamber, we all looked up
24 and saw how beautiful it is and we don't know
25 what the connection is between our own ability

1 to engage in dialogue and the actual facility
2 that we're actually in.

3 What I'm saying is that that
4 also applies to younger people. The more they
5 are exposed to the true beauties of not only
6 our educational system and the books that they
7 read, but even the environment that they are
8 studying within, the more they get the
9 opportunity to have that light reach out and
10 touch them, the more they dream, the more they
11 think about what they can be, the more they
12 fantasize and perhaps create lofty ambitions
13 and goals for themselves and then act to
14 actually fulfill them. That connection
15 actually is there. It exists.

16 Now, the poet John Keats wrote,
17 Heard melodies are sweet, but those unheard
18 are sweeter. We know that the building has to
19 be strong. It has to have a foundation. It
20 has to protect children but what we often -
21 we often don't know is that its actual
22 appearance actually influences their desire to
23 learn and that's why we think it's so
24 important, but because you are -- continue to
25 be so inspired by that arch work, Senator

1 Velella, we have decided to help you out.

2 All of us here in the Minority
3 Conference have put our funds together and we
4 are going to find the person who had put that
5 piece of whatever it was called up. We're
6 going to locate him, and so I appeal not only
7 to my colleagues but to all of you who are
8 here or even within the sound of my voice, if
9 you have any information leading to the
10 discovery of the individual that put that
11 piece of whatever it's called up in the Bronx,
12 please get in touch with my office or call our
13 toll-free number, 1 (800) APPRECIATION.

14 Thank you.

15 SENATOR VELELLA: Would the
16 Senator yield to a brief question?

17 ACTING PRESIDENT BALBONI:
18 Senator Paterson, would you yield to a
19 question?

20 SENATOR VELELLA: I don't know
21 where this guy went, I don't want to ever see
22 him again. I don't know, I don't want to see
23 him, but wherever he is, we've never found
24 him.

25 SENATOR PATERSON: If we found

1 the individual, Senator, we could attach the
2 property.

3 ACTING PRESIDENT BALBONI:
4 Senator Abate.

5 SENATOR ABATE: Yes. I'm not
6 sure what I can add to this debate, but I will
7 attempt to do this.

8 Would Senator Velella yield to
9 a question. Would you yield to a question?

10 ACTING PRESIDENT BALBONI:
11 Would you yield?

12 SENATOR VELELLA: Yes.

13 SENATOR ABATE: Senator, I'm
14 not going to question you on your (inaudible)
15 ability, I want to ask you of your awareness
16 of how much we invest in the arts in the
17 United States as compared to other countries.
18 Are you aware that France invests \$27 per
19 capita in the arts.

20 SENATOR VELELLA: France? That
21 would be -

22 SENATOR ABATE: The country in
23 Europe.

24 SENATOR VELELLA: Let me -- I
25 want to confess in my research on this bill, I

1 did not check what France spends per capita on
2 the arts.

3 SENATOR ABATE: O.K.

4 SENATOR VELELLA: I might have
5 been negligent in my research, Senator.

6 SENATOR ABATE: And are you
7 aware that Germany -- you know, I was
8 incorrect. Germany -

9 SENATOR VELELLA: Germany
10 either.

11 SENATOR ABATE: I was incorrect.
12 I stand to be corrected.

13 ACTING PRESIDENT BALBONI:
14 Senators, would you come through the Chair,
15 please.

16 SENATOR ABATE: Pardon me?

17 ACTING PRESIDENT BALBONI:
18 Would you address your remarks through the
19 Chair.

20 SENATOR ABATE: Yes, Mr.
21 Chairman, I would ask that Mr. -- Senator
22 Velella yield to another question.

23 ACTING PRESIDENT BALBONI:
24 Senator Velella, do you continue to yield?

25 SENATOR VELELLA: Yes.

1 SENATOR ABATE: I was incorrect,
2 Senator Velella. Are you aware that Germany
3 invests \$27 -- not France, Germany invests \$27
4 per capita and that France invests \$32 per
5 capita in the arts, and the United States,
6 which is an industrialized, civilized nation
7 who cares about the arts, right? Cares about
8 children, cares about education, only invests
9 68 cents per capita in the arts. I just
10 didn't know if you were aware of that and if
11 you were -- now that you are aware of it,
12 would you change your position on this bill?

13 SENATOR VELELLA: Senator, what
14 I am aware of, let me tell you, is that
15 between 1989 and the present date, we have
16 spent over \$11 million from our school
17 construction fund on 107 projects benefiting
18 only 61 schools, \$11 million. I don't know
19 what that comes out to per capita but I say
20 for \$11 million, we could have done a lot more
21 within the city of New York to help make our
22 buildings a lot sounder than we did, and for
23 \$11 million, I would have thought even you
24 would have some projects in your district that
25 would have benefited from that \$11 million

1 rather than just \$11 million worth of art
2 work.

3 I believe this is a priority
4 and I am very happy that France is spending
5 whatever it is, \$27, and Germany is spending
6 whatever it is, maybe their legislature
7 decided that's their priority. I think this
8 Legislature ought to make a statement and say
9 our priority is decent schools for our kids to
10 learn in and, if we have any money left over
11 -- we spend a fortune on the arts in this
12 state. I don't know where you got your 60
13 cents, but if you took -

14 SENATOR ABATE: 68 cents.

15 SENATOR VELELLA: 68 cents, but
16 if you take a look at what we spent on the
17 Council on the Arts, I would say and Senator
18 Goodman ought to be here shortly -

19 SENATOR ABATE: I checked all
20 my numbers with Senator Goodman.

21 SENATOR VELELLA: I would say
22 to you that I believe that we're spending a
23 lot more than that, but I can be corrected and
24 I will be back when we talk about the budget
25 and remind you about what we're spending on

1 the Council on the Arts in New York State and
2 what New York City puts into the budget for
3 the arts, and we do get a lot of benefit out
4 of that, there is a lot of revenue that's
5 generated through our supporting the arts, but
6 I don't think we are as callous as the picture
7 would be the way you're painting it when you
8 talk about Germany and France spend all this
9 money and we just have no sense of spending
10 any money on the arts. Let's spend the money
11 on the schools. The art will come later.

12 SENATOR ABATE: On the bill.

13 ACTING PRESIDENT BALBONI: On
14 the bill, Senator Abate.

15 SENATOR ABATE: We probably
16 agree that we should be spending as much money
17 as possible to educate our youth, and that's
18 the problem I have with this bill. We should
19 not be pitting education on the arts against
20 education on math and science and English, and
21 what you're suggesting is, if we don't find
22 this money for construction, and there is
23 plenty of money for construction and
24 maintenance, if we make that a priority. We
25 have \$1.8 billion surplus; New York City is

1 facing a surplus. If that's not priority to
2 rehabilitate and make safe schools let's do
3 it, but let's not make a statement that we
4 only have money to do one thing.

5 Where in this Legislature have
6 we said we have one priority, we make it that
7 priority and everything else falls to the way
8 side. I don't think we would have this debate
9 today if the argument was should we cut the
10 math program, should we cut English, should we
11 cut civic programs, or whatever, and now you
12 may say, what's art work. It's not the
13 teaching of art. What is that painting in the
14 school? What meaning does that have to
15 students, and I suggest that's the gateway to
16 their learning and to the appreciation and
17 history of art.

18 Many young people who come into
19 the schools have never seen a piece of art.
20 It may be their first and only exposure to
21 something different in their world. And so I
22 take the premise, yes, I agree, we need to
23 spend money on construction, but we're talking
24 about pennies here. We need to invest in
25 introducing young people to the arts. It not

1 only enriches their minds, their souls.

2 SENATOR VELELLA: Mr. President.

3 ACTING PRESIDENT BALBONI:

4 Senator Velella, why do you rise?

5 SENATOR VELELLA: You said
6 something about -- would you yield to a
7 question?

8 SENATOR ABATE: Absolutely.

9 SENATOR VELELLA: You said that
10 some of our students come into our schools
11 without ever having seen a piece of art. I
12 think that's baloney. I mean let me tell you
13 something. Some of the best art has come from
14 the poorest areas throughout the world.
15 Simply because you're poor doesn't mean that
16 you have a lack of sensitivity to the arts or
17 that you haven't experienced something
18 artistic. I have seen some artistic works of
19 cavemen that are very interesting.

20 I think it's unfair to equate
21 poverty or deprivation or certain social
22 opportunities with the fact that you have a
23 lack of sensitivity to art and that we have to
24 educate you. I'm not that patronizing to the
25 poor. I hope that's not what you're

1 insinuating.

2 SENATOR ABATE: I think you
3 could have the record reread. There's nowhere
4 in that statement that I talked about poor
5 people, rich people, or any people that -

6 SENATOR VELELLA: Well, who are
7 the people that come to school that don't have
8 exposure to art?

9 SENATOR ABATE: You're -

10 SENATOR VELELLA: I ask you
11 again, where are those who don't have exposure
12 to art?

13 ACTING PRESIDENT BALBONI:
14 Senators, please address your comments to the
15 Chair, if you would please.

16 SENATOR ABATE: Yes. I would
17 like to be able to continue to speak on the
18 bill.

19 I don't think it's a question
20 of wealth. I think it's a question of
21 exposure, what people learn in their family
22 and community. There are some communities and
23 families where young people have not seen,
24 maybe they've seen scribbling of art, and
25 maybe they've seen things on television, but

1 many of our young people, I don't care, rich
2 or poor, have not been exposed to the art, and
3 that's an opportunity within the educational
4 system to ensure everyone gets that exposure.

5 It's very important. I ran, and
6 I didn't understand the importance of the arts
7 until I ran art programs at Rikers Island
8 where there were young people who were exposed
9 to painting and drafting for the first time
10 and actually became proficient and they began
11 to see themselves differently and the world
12 differently. It taught them skills about
13 themselves, and so this is about opening
14 doors, it's opening up who they are,
15 understanding who they are, who the world -
16 what the world around them is.

17 So it's more than just an art
18 in a frame. It is about self-awareness. It's
19 about the awareness of the world, and it's
20 about general education. So if you were to put
21 forward today a companion bill that said we
22 need to spend this money differently for the
23 arts and for art appreciation and we need to
24 find -- definitely find some money for the
25 arts, I would say that's O.K. You want to

1 spend more money for construction and
2 maintenance but we're going to find another
3 pool of money and fund it appropriately and
4 spend it appropriately to make sure there's
5 art work and art appreciation classes in our
6 high schools and our elementary schools, then
7 that would be a good debate and we can talk
8 about how to wisely spend those dollars and
9 achieve our goals.

10 But, in fact, what this bill
11 does is says we only can have one value and
12 that value is, firstly and only, construction
13 and maintenance, and I think we're doing a
14 disservice to our communities, a disservice to
15 our children by supporting this bill; and also
16 be mindful we care about jobs. We want all
17 kinds of young people to pursue different
18 careers. Some people will become lawyers,
19 some legislators and doctors and teachers and
20 some people will become artists.

21 Over 1.53 million people in
22 this country are artists, and the whole
23 industry contributes about 6 percent to our
24 gross national product, and if we did not have
25 the arts in New York City, if we didn't have

1 all the associated trades and businesses
2 working with the arts, we would have an
3 economy that's dwindling.

4 So let's support it. It may
5 not -- you may not see the correlation between
6 the introduction of art in our high schools
7 and what happens in our economy, but the link
8 is there. Let's nourish it; let's invest in
9 it. Art is not a luxury; it's something we
10 need to do for our economy, for our
11 communities and for our young people.

12 ACTING PRESIDENT BALBONI:

13 Thank you, Senator Abate.

14 Senator Leichter, please.

15 SENATOR LEICHTER: Yes, Mr.
16 President, I guess just about anything that
17 can be said about this bill and probably more
18 has been said, but since Senator Velella likes
19 to bring what I call his "quonset hut" bill up
20 before this body, I think it's fair to point
21 out some additional things about it.

22 First of all, Senator, I agree
23 with the statement that you made to Senator
24 Abate, although I think you misconstrued what
25 she said about that appreciation of art

1 doesn't really reflect the neighborhood or
2 your wealth or your background and I think you
3 proved that very well by your comments on art.

4 Senator, I'm going to wait
5 until you -

6 ACTING PRESIDENT BALBONI:
7 Senator Leichter. Senator Leichter.

8 SENATOR LEICHTER: O.K. Yeah.
9 But as I said, I think you just proved the
10 point that you made that the fact that you
11 have no appreciation of art doesn't relate to
12 your community or neighborhood or your
13 background, but Senator, I think Senator
14 Paterson, you know, his idea about our pooling
15 our money and trying to find that artist, I
16 don't agree with that, but I'm going to
17 propose that we pool our money and send you to
18 an art appreciation course and let me -- let
19 me say with all due respect, Senator, I have
20 not heard such misanthropic and negative view
21 of the arts since Eddie Mason tried to -
22 Senator Ed Mason got up and he wanted to
23 eliminate all the funding for the Council of
24 the Arts, and Al Lewis, Senator Al Lewis, got
25 up and said, Senator Mason, if you were the

1 Pope at the time that the Sistine Chapel were
2 built, you would have sent Michelangelo out to
3 do it with a drop cloth and a roller.

4 Senator, I wish you -

5 ACTING PRESIDENT BALBONI:

6 Senator Leichter. Senator Leichter, could I
7 interrupt for just one second. Could we please
8 have some order in the chamber. Would you
9 please keep the conversations quiet, please.
10 Thank you, Senator Leichter.

11 SENATOR LEICHTER: Senator, I'd
12 be delighted to go to that school that you
13 mentioned with the art work that so offends
14 you and I must say that the works of art that
15 I look at, mainly modern art and I
16 occasionally have some difficulty in
17 understanding it but I try to be broadminded
18 enough and to appreciate that art has
19 different -- attracts people in different
20 ways, and states different things, but what
21 your bill does, you couldn't even have a
22 picture of George Washington. If somebody
23 wanted to say, I want to have a picture of
24 George Washington, I'm going to spend some
25 money that's up to that one percent that the

1 law presently allows, can't do it, not -- not
2 under Senator Velella's bill. No art. Don't
3 show a picture of Washington. You want to show
4 one of these great pictures of the signing of
5 the Declaration of Independence, no, can't do
6 it under Senator Velella's quonset hut bill.
7 Just bare walls and the basic rudiments.

8 Senator, you've set up a false
9 choice. The choice isn't between having roofs
10 that don't leak or art. The fact is that we
11 need to have both. Art is an integral part of
12 education, and the learning environment, the
13 ambience in which students learn is terribly
14 important, if they're going to, in fact, be
15 reached by the educational system.

16 Quonset huts don't produce good
17 learning, Senator. We do need the arts. We do
18 need to provide the proper environment and
19 conditions for students to appreciate, and art
20 is certainly part of it.

21 So yes, we need money to
22 construct schools properly and we need money
23 to repair our schools and we also need money,
24 a very small amount, a very, very small amount
25 of the sums that we're spending on

1 construction to see that the schools are
2 attractive. That's all that we're saying.
3 May not always be a mobile hanging that
4 Senator Velella doesn't appreciate or like, it
5 could be, as I said, a picture of George
6 Washington, but it's something that makes the
7 school more conducive for the student to
8 appreciate, and that's really what we're
9 talking about.

10 Let me just make a suggestion
11 for you, Senator, because you put this false
12 choice before us. Well, it's either money for
13 construction or money for art. It isn't. If
14 you could convince your Conference to stop
15 cheating the city of New York on school funds,
16 then maybe, as Senator Gold said, we wouldn't
17 have to make this sort of a Hobson's choice
18 which you're trying to put before us.

19 Senator, I really think your
20 bill does not advance education in this
21 state. It means that we're going to have
22 barren, sterile schools, that education will
23 be hindered and hampered. But Senator, maybe
24 after you take that arts appreciation course,
25 you'll be back next year and you'll agree with

1 me there is a place in the school for arts.

2 ACTING PRESIDENT BALBONI:

3 Thank you, Senator Leichter.

4 Senator Marcellino.

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

7 We've debated this bill every
8 year since I've been in this chamber and maybe
9 I'm confused. I've heard these arguments
10 before, we're cutting money for art. We're
11 cutting out art appreciation. We can have no
12 aesthetics in schools unless we spend at least
13 one percent of school construction money on
14 art work.

15 I have heard the term "unfunded
16 mandates". How about an unfunded -- how about
17 a funded ripoff. When we say we're going to
18 put money into schools to have school
19 construction and it doesn't go to
20 construction, it goes to someone buying
21 pictures for walls.

22 Senator Leichter, what about
23 aesthetically designing a school to be a nice
24 place, to be an attractive environment instead
25 of some barren institutional building. What

1 about the architect and the engineer who
2 design it? Can we not make it architecturally
3 pleasing to be in? Does it have to have
4 paintings on the wall to be a pleasing place?
5 Let's think beyond the box. Let's think out
6 the issue more clearly.

7 I'm hearing a debate here which
8 is really just plain silly. There is nothing
9 that I know -- well, let me ask the question.
10 Senator Velella, would you yield to a question
11 please?

12 SENATOR VELELLA: Yes.

13 SENATOR MARCELLINO: Are you
14 opposed to spending money on art in schools?

15 SENATOR VELELLA: Absolutely
16 not. This bill doesn't do that. It makes it
17 optional.

18 SENATOR MARCELLINO: Let's just
19 qualify that again. Does your bill prevent the
20 city of New York from spending money on art
21 work in schools?

22 SENATOR VELELLA: No, it does
23 not.

24 SENATOR MARCELLINO: Pardon
25 me. Say that one more time. Senator Gold,

1 kind of overlooked, I'm sure -

2 SENATOR VELELLA: I will repeat
3 that answer because there are minds that are a
4 little more dense and set in their ways than
5 we have on this side of the aisle. No, it does
6 not prevent that spending.

7 SENATOR MARCELLINO: Does your
8 bill, Senator, if you will yield to another
9 question. Does your bill, through you, Mr.
10 President, in any way cut any money for art
11 programs in the schools?

12 SENATOR VELELLA: No, it does
13 not.

14 SENATOR MARCELLINO: What are
15 we arguing about, ladies and gentlemen? Let's
16 put more money into new school construction.
17 Let's build better schools for the city of New
18 York. Let's build more schools for the city of
19 New York, and let's let them spend their money
20 on as much -- as much of their money on art as
21 they want in consultation with community
22 school districts and community school boards
23 rather than doing a mandate from Albany that
24 you must spend X millions of dollars on art
25 when it isn't wanted in a lot of districts.

1 They could do it better, they could do it more
2 properly and more appropriately themselves.

3 You keep talking about
4 mandating it from up here. This is exactly
5 what you're doing. You're telling the people
6 in the City, This is what you will do. Why
7 can't we say, What do you want to do? Here's
8 the money. What do you want to do with it?
9 Go get them. Let's build better schools, let's
10 build more schools. Let's not waste any more
11 time. Pass this bill.

12 I vote aye.

13 ACTING PRESIDENT BALBONI:

14 Thank you, Senator Marcellino.

15 Read the last section.

16 THE SECRETARY: Section 2.

17 This act shall take effect immediately.

18 ACTING PRESIDENT BALBONI: Call
19 the roll.

20 (The Secretary called the
21 roll.)

22 SENATOR GOLD: Mr. President.

23 ACTING PRESIDENT BALBONI:

24 Senator Gold, to explain his vote.

25 SENATOR GOLD: Yes, I just want

1 to say, firstly, just a personal plea from me
2 to you. After this debate, I hope you're not
3 going to follow your instinct and run right
4 back to the Assembly. Give us a few more days
5 and a few more opportunities before you judge
6 us; and secondly I'd like to say that while I
7 agree that most youngsters starting school are
8 not seeing art for the first time obviously,
9 Senator, the biggest problem I see is they
10 come from a family and they've seen Rembrandt;
11 they've seen a Van Gogh. Maybe now, all of a
12 sudden they are seeing Picasso and others, so
13 it's a question of opening minds; but maybe,
14 maybe a kid walks in who feels exactly like
15 you. He sees those hangers or whatever, and
16 he says, That's art? I could do that, I could
17 do better than that, and maybe now you've
18 inspired a new artist who doesn't say, as you
19 have, I don't agree with it, we'll never have
20 art again in the world. It's a waste of
21 money.

22 Maybe they are a little Velella
23 walking around, saying, I could do that and
24 that's a good profession; I could do better
25 than that. So, Senator, the bottom line of

1 all this, the amount of money is infinitesimal
2 compared to to what we get out of it. I agree
3 with all that's been said in opposition to
4 this bill, but I do thank you for giving us an
5 opportunity to fill the day in these early
6 days of session with these old chestnuts.

7 I vote no.

8 ACTING PRESIDENT BALBONI:

9 Senator Gold in the negative.

10 Senator Paterson to explain his
11 vote.

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

14 SENATOR VELELLA: Could you
15 briefly interrupt and withdraw the roll call.
16 Senator Goodman has an announcement that he'd
17 like to make, if you would just withdraw the
18 roll call for a moment and recognize Senator
19 Goodman.

20 ACTING PRESIDENT BALBONI: Roll
21 call is withdrawn.

22 SENATOR GOODMAN: Senator
23 Velella, it's my great privilege and pleasure,
24 ladies and gentlemen, to introduce to you
25 today Miss America 1998. Her name is Kate

1 Shindle. She's seated in the front of our
2 chamber.

3 Miss America Shindle travels
4 20,000 miles a month on a national speaking
5 tour entitled "On the Way to a Cure Preventing
6 HIV Transmission in America." During her year
7 of service she's choosing to direct the Miss
8 America spotlight away from herself and toward
9 the critical need for HIV prevention.

10 Prior to becoming Miss America,
11 Kate was a senior Theater and Sociology major
12 at Northwestern University in Illinois, where
13 she volunteered for the Chicago Test Positive
14 Aware Network. She's recently named honorary
15 board member of the AIDS Policy Center for
16 Children, Youth and Families. She's also been
17 honored by the Ryan White Foundation and the
18 Oleander Foundation as America's role model in
19 1998 for her tireless work in the area of HIV
20 AIDS.

21 Since launching her nationwide
22 initiative from Capitol Hill last fall, Kate
23 has been criss-crossing the country educating
24 and enlightening diverse audiences in the need
25 to fight the spread of this deadly epidemic.

1 I know that the entire chamber
2 will join me in extending a warm Senate
3 welcome to a young American, a lady of
4 idealism and practical involvement in one of
5 the worst problems, a great and distinguished
6 American, Miss America, Kate Shindle.

7 (Applause)

8 ACTING PRESIDENT BALBONI:

9 Thank you, Senator Goodman. Without
10 objection, the Senate recognizes Miss
11 America.

12 SENATOR VELELLA: Continue the
13 roll call.

14 ACTING PRESIDENT BALBONI:

15 Thank you. Please return to the roll call.

16 Senator Paterson, did you
17 conclude your remarks concerning your vote?

18 SENATOR PATERSON: No.

19 Actually, Mr. President, I hadn't started.

20 ACTING PRESIDENT BALBONI:

21 Senator Paterson, to explain his vote.

22 SENATOR PATERSON: Mr.

23 President, just briefly. Senator Marcellino,
24 I think, refocused us on what the discussion
25 was. It didn't have to do with art programs;

1 he's absolutely right, but inadvertently he
2 touched on what I think is really the argument
3 against this bill.

4 The option of the School
5 Construction Authority to still have that
6 amenity of aesthetics in the construction of
7 the school buildings can still be violated and
8 abused as much as it was in the case that we
9 would all deplore that was brought to our
10 attention by Senator Velella.

11 What we are simply saying is
12 that you cannot put a really numerical value
13 or financial quotient on what proportion of
14 the art work or of the construction should be
15 dedicated to art work, but that it should be
16 something, even as slight as one percent,
17 because even though it adds up to a lot of
18 money, that's still one percent of a greater
19 amount of money and that that percentage
20 reflects some priority that we're giving to
21 the value of children learning in an
22 environment that has some -- has some
23 aesthetic.

24 Certainly we can't ask children
25 to have an appreciation for art if they're

1 learning it in a place that has absolutely no
2 aesthetic value to it, and what young people
3 may or may not have seen before they come to
4 school or what types of neighborhoods from
5 which they are indigenous really isn't at
6 issue here.

7 What's at issue is what we're
8 trying to show them in our conduct as adults.

9 ACTING PRESIDENT BALBONI:

10 Thank you, Senator Paterson. How do you vote?

11 SENATOR PATERSON: Oh, I'm
12 sorry, Mr. President. I vote no.

13 ACTING PRESIDENT BALBONI:

14 Thank you. Senator Paterson in the negative.

15 Senator Oppenheimer to explain
16 her vote.

17 SENATOR OPPENHEIMER: One thing
18 that I believe we can say on behalf of the art
19 work, even the one you detest, you should have
20 knocked down the one you detest, but -- it's
21 not that; I didn't say that. But I think the
22 difference between the art work and the
23 building is that this art work will not fall
24 apart. It will be there for as long as the
25 building is there and can be transferred

1 elsewhere. This is an enduring thing.

2 The maintenance seems to me to
3 be quite a separate issue from the
4 construction cost in which this art work,
5 whatever the art work is involved. Further, I
6 would say we were talking now about some of
7 the beautiful spots, the cities in our
8 country, and I commented on the beauty of
9 Chicago, which has as part of their
10 requirement sidewalk art of distinction, so
11 that you walk around in what would otherwise
12 be a concrete cold environment and you see
13 things of beauty as you walk around, and I
14 think the same thing with schools, the things
15 of beauty will remain, and I wasn't referring
16 before just to the teaching of art. It has to
17 be the experience of seeing beautiful art, and
18 that does enhance a child's education.

19 I'm voting no.

20 ACTING PRESIDENT BALBONI:

21 Thank you, Senator.

22 THE SECRETARY: Those recorded
23 in the negative on Calendar 110 Senators
24 Abate, Connor, Gold, Leichter, Markowitz,
25 Mendez, Montgomery, Oppenheimer, Paterson,

1 Sampson, Santiago, Seabrook, Smith and
2 Stavisky. Ayes 44, nays 14.

3 ACTING PRESIDENT BALBONI: The
4 bill is passed.

5 Senator Velella.

6 SENATOR VELELLA: Mr.
7 President, on behalf of Senator Bruno, in
8 consultation with the Minority Leader, I hand
9 up the following minority committee assignment
10 changes and ask that they be filed in the
11 Journal.

12 ACTING PRESIDENT BALBONI:
13 Notice will be filed in the Journal.

14 Senator Velella.

15 SENATOR VELELLA: Is there any
16 housekeeping?

17 ACTING PRESIDENT BALBONI: Yes,
18 there is.

19 Senator Volker.

20 SENATOR VOLKER: Mr. President,
21 on page 13, I offer the following amendments
22 to Calendar Number 150, Senate Print 5691, and
23 ask that that bill retain its place on the
24 Third Reading Calendar.

25 ACTING PRESIDENT BALBONI:

1 Amendments received and the bill will retain
2 its place on the Third Reading Calendar.

3 SENATOR VOLKER: Mr.
4 President.

5 ACTING PRESIDENT BALBONI:
6 Senator Volker.

7 SENATOR VOLKER: I have another
8 one. On page 4, I offer the following
9 amendments to Calendar Number 21, Senate Print
10 3407, and ask that said bill retain its place
11 on the Third Reading Calendar.

12 ACTING PRESIDENT BALBONI:
13 Amendments are received and the bill will
14 retain its place on the Third Reading
15 Calendar.

16 SENATOR VOLKER: Mr. President,
17 on behalf of Senator Larkin, on page 12 I
18 offer the following amendments to Calendar
19 Number 130, Senate Print 2305, and ask that
20 said bill retain its place on the Third
21 Reading Calendar.

22 ACTING PRESIDENT BALBONI:
23 Amendments are received and the bill will
24 retain its place on the Third Reading
25 Calendar.

1 Thank you, Senator Volker.

2 Senator Velella.

3 SENATOR VELELLA: Mr.

4 President, any other further housekeeping?

5 There being no further business, I move we
6 adjourn until Monday, February 2nd, at 3:00
7 p.m., intervening days to be legislative
8 days.

9 ACTING PRESIDENT BALBONI: On
10 motion, the Senate stands adjourned until
11 Monday, February 2nd, at 3:00 p.m.,
12 intervening days being legislative days.

13 (Whereupon at 2:18 p.m., the
14 Senate adjourned.)

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