ALBANY, NEW YORK

January 27, 1998

12:05 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

Reverend Veazey.

REVEREND CARLTON W. VEAZEY: Let us pray.

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

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

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

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

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

THE PRESIDENT: Amen.

The reading of the Journal, please.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

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

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

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

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

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Madam President. Thank you, Senator.

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

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

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

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

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

serve the people of Monroe County.

Judge, welcome.

ACTING PRESIDENT BALBONI: Thank you, Senator Alesi.

Senator Maziarz, please.

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

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

Thank you, Mr. President.

ACTING PRESIDENT BALBONI:

Thank you, Senator Maziarz. The question is on the confirmation of Philip B. Dattilo, Jr. I'm sorry, excuse me.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

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

ACTING PRESIDENT BALBONI: Thank you, Senator Dollinger.

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

(Response of "Aye.")

Opposed nay.

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

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

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

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

Thank you.

(Applause)

The Secretary will read.

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

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

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

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

Senator Alesi, from the Committee on Consumer Protection, reports:

Senate Print 6020, by Senator Stafford, an act to amend the General Business Law.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 355-A, by Senator Velella, an act to amend the General City Law and the Penal Law;

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

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

Senator Hannon, from the Committee on Health, reports:

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

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

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

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

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

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

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

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

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

Senator Spano, from the Committee on Labor, reports:

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

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

All bills directly for third reading.

ACTING PRESIDENT BALBONI: Without objection, all bills directly to third reading.

Reports of select committees.

Communications and reports of state officers.

Motions and resolutions.

Senator Skelos.

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

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

(Response of "Aye.")

Opposed nay.

(There was no response. )

The Resolution Calendar is adopted.

Senator Skelos.

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

ACTING PRESIDENT BALBONI: Secretary will read.

THE SECRETARY: By Senator

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

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

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

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

The scholarships are named

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

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

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

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

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

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

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

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

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

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

Scholarship; and

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

ACTING PRESIDENT BALBONI: The Chair recognizes Senator LaValle.

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

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

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

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

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

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

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

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

(Applause)

Senator Skelos.

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

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

ACTING PRESIDENT BALBONI: Secretary will read.

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

SENATOR GOLD: Lay it aside.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT BALBONI: The bill is passed.

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

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

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

ACTING PRESIDENT BALBONI: Call

the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 52.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

SENATOR SKELOS: Lay aside for

the day.

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

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read

the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Read the last section.

I'm sorry. Lay aside the bill.

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT BALBONI: The bill is passed.

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

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

ACTING PRESIDENT BALBONI: Secretary will read.

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

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

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

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

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

permissible under the law.

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

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

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR VOLKER: Certainly. Certainly.

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

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

SENATOR VOLKER: Right.

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

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

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

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

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

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

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

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

few examples of that.

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

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

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

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Mr.

Gold -- Senator Gold.

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

ACTING PRESIDENT BALBONI: Senator Volker, would you yield?

SENATOR VOLKER: I yield to the distinguished Senator.

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

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

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

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT BALBONI: Yes.

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

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

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

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

SENATOR VOLKER: Sure.

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

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

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

SENATOR VOLKER: Yes.

SENATOR GOLD: And the person

doesn't want to.

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

SENATOR GOLD: Mr. President.

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

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

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

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

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

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

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

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

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

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

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Yes, Senator Gold.

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

SENATOR VOLKER: Certainly.

SENATOR GOLD: Senator, I'll

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

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

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

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Senator Gold.

SENATOR GOLD: Yeah, on the bill.

ACTING PRESIDENT BALBONI: On the bill.

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

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

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

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

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

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

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

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

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

had and the laws we pass apply to both communities.

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

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

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

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

ACTING PRESIDENT BALBONI:

Thank you, Senator Gold.

Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT BALBONI: Senator Leichter.

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

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

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

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

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

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

So while all of us want to give

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

ACTING PRESIDENT BALBONI: Thank you, Senator Leichter.

Senator Paterson, please.

SENATOR PATERSON: Thank you, Mr. President.

If the sponsor would yield for a question.

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

SENATOR PATERSON: Mr. President, my question applies to something Senator Volker said earlier. He said this bill does not apply to those individuals that are in a car. Would you explain that, Senator

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

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

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

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

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

SENATOR PATERSON: Thank you, Senator Volker.

Mr. President, on the bill.

ACTING PRESIDENT BALBONI: On the bill.

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

We live in a country, the greatest country in the world, that was founded on the basis of freedom, where people were encouraged to initiate, not to retreat; people were encouraged to explore, not to retire, to prosper, not to plunder, and the whole basis of our Constitution and our Declaration of Independence was to move away from the arbitrariness of the tyrranical British system that subjected people who lived in this land to that kind of scrutiny.

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

exercise their duties in an excessive manner.

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

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

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

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

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

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

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

this legislation that I can find.

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson.

Senator Montgomery.

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

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

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Montgomery.

Senator Volker.

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

issue.

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll. )

SENATOR LEICHTER: Mr. President.

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

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

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

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

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

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

I vote no.

ACTING PRESIDENT BALBONI: Thank you, Senator Leichter.

Senator Montgomery, to explain her vote.

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

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

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

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

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

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

Thank you.

ACTING PRESIDENT BALBONI: Senator Montgomery in the negative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: To

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

ACTING PRESIDENT BALBONI: Senator DeFrancisco votes no.

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

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

ACTING PRESIDENT BALBONI: The bill is passed.

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

ACTING PRESIDENT BALBONI: Senator Velella, an explanation has been requested.

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

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Senator Gold.

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

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

ACTING PRESIDENT BALBONI: Senator Oppenheimer.

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

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

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

basis.

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

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

SENATOR VELELLA: No, required.

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

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

our youngsters, it won't.

ACTING PRESIDENT BALBONI: Thank you, Senator Oppenheimer.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT BALBONI: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

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

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

what you and Senator Oppenheimer heard.

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

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

I think maybe if we look back a

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

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

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

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

SENATOR VELELLA: Will you yield to a question?

ACTING PRESIDENT BALBONI: Senator Montgomery.

SENATOR MONTGOMERY: For as long as the building exists.

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

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

SENATOR MONTGOMERY: Let me just respond by saying -

SENATOR VELELLA: You can't have both.

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

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

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Montgomery.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Smith.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

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

ACTING PRESIDENT BALBONI: Senator Velella, do you yield?

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

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

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

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

SENATOR VELELLA: And then disappeared.

SENATOR PATERSON: And then disappeared after that.

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

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

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

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

SENATOR PATERSON: Pray elucidate.

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

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

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

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

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

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

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

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

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

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

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

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

artistic sensitivity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Velella, we have decided to help you out.

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

Thank you.

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

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

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

SENATOR PATERSON: If we found

the individual, Senator, we could attach the property.

ACTING PRESIDENT BALBONI: Senator Abate.

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

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

ACTING PRESIDENT BALBONI: Would you yield?

SENATOR VELELLA: Yes.

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

SENATOR VELELLA: France? That would be -

SENATOR ABATE: The country in Europe.

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

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

SENATOR ABATE: O.K.

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

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

SENATOR VELELLA: Germany either.

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

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

SENATOR ABATE: Pardon me?

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

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

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

SENATOR VELELLA: Yes.

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

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

rather than just $11 million worth of art work.

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

SENATOR ABATE: 68 cents.

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

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

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

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

SENATOR ABATE: On the bill.

ACTING PRESIDENT BALBONI: On the bill, Senator Abate.

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

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

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

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

only enriches their minds, their souls.

SENATOR VELELLA: Mr. President.

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

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

SENATOR ABATE: Absolutely.

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

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

insinuating.

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

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

SENATOR ABATE: You're -

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Abate.

Senator Leichter, please.

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

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

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

Senator, I'm going to wait until you -

ACTING PRESIDENT BALBONI: Senator Leichter. Senator Leichter.

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

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

Senator, I wish you -

ACTING PRESIDENT BALBONI: Senator Leichter. Senator Leichter, could I interrupt for just one second. Could we please have some order in the chamber. Would you please keep the conversations quiet, please. Thank you, Senator Leichter.

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

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

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

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

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

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

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

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

me there is a place in the school for arts.

ACTING PRESIDENT BALBONI: Thank you, Senator Leichter.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

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

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

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

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

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

SENATOR VELELLA: Yes.

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

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

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

SENATOR VELELLA: No, it does not.

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

kind of overlooked, I'm sure -

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

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

SENATOR VELELLA: No, it does not.

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

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

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

I vote aye.

ACTING PRESIDENT BALBONI: Thank you, Senator Marcellino.

Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Mr. President.

ACTING PRESIDENT BALBONI: Senator Gold, to explain his vote.

SENATOR GOLD: Yes, I just want

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

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

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

I vote no.

ACTING PRESIDENT BALBONI: Senator Gold in the negative.

Senator Paterson to explain his vote.

SENATOR PATERSON: Thank you, Mr. President.

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

ACTING PRESIDENT BALBONI: Roll call is withdrawn.

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

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

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

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

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

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

(Applause)

ACTING PRESIDENT BALBONI: Thank you, Senator Goodman. Without objection, the Senate recognizes Miss America.

SENATOR VELELLA: Continue the roll call.

ACTING PRESIDENT BALBONI: Thank you. Please return to the roll call.

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

SENATOR PATERSON: No. Actually, Mr. President, I hadn't started.

ACTING PRESIDENT BALBONI: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, just briefly. Senator Marcellino, I think, refocused us on what the discussion was. It didn't have to do with art programs;

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

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

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

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

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

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

ACTING PRESIDENT BALBONI: Thank you, Senator Paterson. How do you vote?

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

ACTING PRESIDENT BALBONI: Thank you. Senator Paterson in the negative.

Senator Oppenheimer to explain her vote.

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

elsewhere. This is an enduring thing.

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

I'm voting no.

ACTING PRESIDENT BALBONI: Thank you, Senator.

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

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

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Velella.

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

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

Senator Velella.

SENATOR VELELLA: Is there any housekeeping?

ACTING PRESIDENT BALBONI: Yes, there is.

Senator Volker.

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

ACTING PRESIDENT BALBONI:

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

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT BALBONI: Senator Volker.

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

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

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

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

Thank you, Senator Volker.

Senator Velella.

SENATOR VELELLA: Mr. President, any other further housekeeping? There being no further business, I move we adjourn until Monday, February 2nd, at 3:00 p.m., intervening days to be legislative days.

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

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