NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 13, 1999

3:05 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: In the absence of clergy, may we all bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 12, the Senate met pursuant to adjournment. The Journal of Friday, April 9, 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, reports the following nominations:

As a judge of the Nassau County Court, Arthur M. Diamond of New Hyde Park.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Arthur M. Diamond of New Hyde Park as a judge of the Nassau County Court.

Mr. Diamond has appeared before the committee. His credentials have been examined by the staff of the committee. And this morning he was unanimously moved from the committee to the floor of the Senate for confirmation this afternoon.

And it is with a great deal of respect that I yield for purposes of the seconding to Senator Balboni.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Thank you,

Madam President.

It is indeed an honor for me to rise today on this floor and hopefully to welcome to the bench an individual who I know has harbored the desire to ascend to that lofty position all of his adult life.

Arthur Diamond has spent time in the trenches, time in the trenches protecting the families and the communities of Nassau County. He has served with distinction in the office of Dennis Dillon, the district attorney for the County of Nassau. He has been a community activist. He has even opened up businesses and worked within the body politic so as he could understand the lives and the nature of our communities. He provides an excellently well-rounded background.

And as I said in the committee, Arthur Diamond is an individual not only who brings intelligence and enthusiasm to this particular position, but he doesn't take himself too seriously. But yet he takes protecting his family and his community very seriously.

Madam President, I can think of few

people who have striven as hard as Arthur has and who are as well deserving as Arthur is for this nomination. And I sincerely hope that this body confirms him.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Arthur M. Diamond of New Hyde Park as judge of the Nassau County Court. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Arthur Diamond is hereby confirmed as a judge of the Nassau County Court.

And at this time, as president of the Senate -

(Applause.)

THE PRESIDENT: -- I hereby acknowledge, on behalf of the Senate, and congratulate Judge Diamond on your appointment and recognize his wife, Jody Pugach Diamond; his son, Spencer; and Adele Diamond, Ethel Pugach, Merle Fishkin, and Brian Fishkin, who are all here with Judge Diamond today.

Congratulations.

Senator Lack.

The Secretary will read.

THE SECRETARY: As a judge of the Warren County Court, John D. Austin of Queensbury.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

It's my pleasure to rise once again to move the nomination of John D. Austin of Queensbury as a judge of the Warren County Court. Judge Austin's credentials have been examined by the committee. He has been vetted by the staff of the committee. This morning he appeared before the committee and was unanimously moved from the committee to the floor of the Senate this afternoon.

And it is with a great deal of respect that I yield to one of my senior colleagues and a former chair of this committee, who always did such an excellent job and which I try to emulate him in his great endeavors, the honorable Senator Ronald Stafford, for purposes of a second.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Thank you. And Senator Lack, thank you. And you should just continue on for this very fine nomination.

I want to say, Madam President, that John and I go way back. He doesn't go as far back as I do. His brother doesn't, quite, either. But, on the other hand . . .

John was a reporter, was with the -- in the newspaper reporting, and then he decided to go to law school and did very, very well. He got some experience working in the Senate. And again, I think it was probably over 30 years ago. I don't remember the Senator he was working for, but I think probably it was me. My memory doesn't go back that far.

I have to say I wish that his uncle was here speaking on his nomination, Fred Bascomb, who was one of the last orators that I have known, have been privileged to know.

But on a very serious note, this is an example of the system working so well. John has been the family court judge for years

in Warren County. He has the ability, the concern, the temperament. He's a judge's judge.

And I can only say, Madam President, that the Governor and all who are responsible for John being in the judiciary and for him now being confirmed as a Warren County judge are certainly to be complimented.

And he has been a credit to his family, his community, to anyone he has ever been associated with, and including himself.

So, Madam President, he has with him his two -- I'm not going to say children -- issue, Jay and Susan, and his brother Fred is also here with him. I ask you to welcome them after we confirm a very, very fine family court judge who I'm sure will be a very, very fine county judge.

THE PRESIDENT: The question is on the confirmation of John D. Austin of Queensbury as judge of the Warren County Court. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: John D. Austin is hereby confirmed as a judge of the Warren County Court.

And on behalf of the Senate and as its president, I hereby congratulate you and recognize you and your family present today and wish you all the courtesies and success of the New York State Senate. Congratulations.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a judge of the Nassau County Court, Joel B. Gewanter of Cedarhurst.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once more to move the nomination of Joel P. Gewanter of Cedarhurst as a judge of the Nassau County Court.

Judge Gewanter's credentials were examined by the committee. He has been -- the staff of the committee has checked into him. He appeared before us this morning. He was unanimously moved from the committee to the

floor of the Senate for confirmation at this time.

And I most respectfully yield to my colleague from Nassau County, Senator Skelos, for purposes of a second.

THE WITNESS: Senator Skelos.

SENATOR SKELOS: Thank you very much, Madam President.

Senator Lack and the Judiciary Committee and the Governor, thank you for making this day possible for those of us who represent Nassau County. But of course for Judge Gewanter, who has a broad experience in life: a lieutenant in the United States Army Reserve, a village trustee in the great Village of Cedarhurst -- and I know that its mayor, Andy Piarise, is here today -- village attorney, district court judge in Nassau County, and a sole practitioner.

And I think that's important, because Joel understands what it is for individuals to practice law, what courtesies should be extended to members of the bar just as members of the bar should extend the respect to the judiciary that they appear in

front of.

He's been a good friend of mine for so many years, a person who is well respected within the County of Nassau, the community of Cedarhurst, Atlantic Beach, where he resides now. He's married with three daughters, and I know his wife Sandi is here. We welcome you.

This is a wonderful, wonderful appointment. I know, Judge, that you will do us proud in Nassau County and the state of New York. And I congratulate you. And it's my pleasure to second his nomination.

THE PRESIDENT: The question is on the confirmation of Joel B. Gewanter of Cedarhurst as a judge of the Nassau County Court. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Joel B. Gewanter of Cedarhurst is hereby confirmed as a judge of the Nassau County Court.

(Applause.)

THE PRESIDENT: As president of the Senate, I hereby acknowledge and

congratulate Judge Gewanter and acknowledge his presence and the presence of his family members with him here today. Congratulations, and I extend to you all the courtesies and success wishes of the New York State Senate. Congratulations.

The Secretary will read.

THE SECRETARY: As a judge of the Dutchess Family Court, Peter M. Forman of Beacon.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Peter M. Forman of Beacon as a judge of the Dutchess Family Court. Mr. Forman's credentials have been examined by the committee. He appeared before us this morning. He was unanimously moved from the committee to the floor of the Senate, notwithstanding the fact that he was a member of Senator Saland's staff.

And I most respectfully would yield to the good Senator for purposes of a second. Senator Saland.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Senator Lack. Thank you very much, Madam President.

And there are some subtle resonances here of recall, and I'll do my best to be brief and not prejudice my dear friend's opportunity.

It's a pleasure for me to rise on behalf of Peter Forman, a man who I've known for a number of years. He is here today with wife and members of his family -- his parents, his in-laws. It's certainly a glorious day for Peter and the Forman family.

He really represents, I think, a continuing tradition of excellence that Dutchess County has seen in its judiciary, certainly manifested most recently with the appointment of Judge Al Rosenblatt to the Court of Appeals.

Peter has a lengthy history of public service, public commitment, whether as an assistant district attorney, whether it has been serving his municipality as a corporation counsel or attorney to the City of Beacon,

whether it has been serving, as he has so ably, as confidential law secretary to one of our county court judges.

But within all of these accolades and all of these accomplishments, he basically, as a human being, has manifested the kinds of characteristics that we would particularly want within the ranks of our judiciary. He has just excelled in any endeavor he's participated in. He has been truly beyond his public life dedicated to his community in any number of ways. And he's been a wonderful father, husband, and I'm sure a wonderful son as well.

He brings the kinds of qualities, concern for family, to the family court bench, and an understanding from his work as a confidential law secretary about the system that I'm assured he will hit the ground running and do an absolutely superb job.

I wish you nothing but the best. God bless you. Keep up the good work, Peter.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

I don't think that there's a great deal, as the number two Senator from Dutchess County, that I can add to what our colleague has said, Senator Saland. Let me just say that I have also had the good fortune to know Peter Forman for a great many years, know of the great respect with which he is held by the bar in Dutchess County and throughout the Hudson Valley.

This is a wonderful nomination. Peter Forman will be a great judge. And I'm pleased to second the nomination.

THE PRESIDENT: The question is on the confirmation of Peter M. Forman of Beacon as a judge of the Dutchess Family Court. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Peter M. Forman is hereby confirmed as a judge of the Dutchess family court.

(Applause.)

THE PRESIDENT: On behalf of the New York State Senate and as its president,

Judge Forman, I hereby wish you all the success of the New York State Senate and have a wonderful celebration today of your confirmation. And we also acknowledge the presence here today of your family with you for this joyous occasion. Congratulations.

The Secretary will read.

THE SECRETARY: As a judge of the Chenango County Court, W. Howard Sullivan of Norwich.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Judge W. Howard Sullivan of Norwich as a judge of the Chenango County Court. Judge Sullivan has appeared before the committee. His credentials have proved to be perfect before the committee. He was unanimously sent from the floor of the committee to the floor of the Senate for confirmation at this time.

We had a little bit of a problem. Although he technically lives in Senator Libous's district, both Senator Libous and Senator Seward have been daily calling for a

month to find out when this confirmation would take place. And we're going to go by the strict technicalities, how we handle these things in the Senate.

And so I most respectfully yield, for purposes of a first seconding, to Senator Libous.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. Thank you, Senator Lack. And thank you to your Judiciary Committee and to the Governor for sending up this fine nominee.

And, Senator Lack, you received a number of calls from both my colleague Senator Seward and I for good reason. As I look up in the gallery, I see the entire city of Norwich with us today.

(Laughter.)

SENATOR LIBOUS: Along with many esteemed members, I see City Trustee Ed Nelson, and Assemblyman John Ravitz is also up there. And in our chambers, Assemblyman Clifford Crouch.

And I think, Madam President, this tells you a little bit about the nominee and

what we all think of Howard Sullivan and why this was important to not only Chenango County but all of us who know Howard as a friend.

I'm going to let Senator Seward talk a little bit more about his professional background, and I'd like to just take a minute to talk about his personal background. If you look as his resume and you see the organizations that he's been involved with, you know that Judge Sullivan has spent his entire life in Chenango County helping others.

And I can only reflect on a story when, maybe about five or six years ago, Judge, when I came to Chenango County and they had a program called, if I get this right, the Big Brothers/Big Sisters program. And this is a program where adults help kids who are less fortunate, kids who do not have families. And they actually take time and spend time with those kids to be a Big Brother or a Big Sister and try to show them the proper way and the guidance that they don't have because they don't have parents.

Judge Sullivan has been involved in that program and been a Big Brother I think

for a number of years. And on that time and that day, Judge, it told me a little bit about the compassion that you have for not only for young people but for your fellow man and fellow citizens.

And that is certainly one of the reasons why that he is fit for this position. The other thing that I'd like to say before I yield the floor to my colleague, Senator Seward, is the judge also is a very talented individual. Not only has he been talented in the city court for a number of years and done an outstanding job, but if you're ever traveling through Norwich and you smell a great aroma and it smells like fresh bread, it may be coming out of the judge's kitchen.

It is an honor for me to stand before this body and to move forward the Governor's fine choice for this nomination, Howard Sullivan.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Thank you, Madam President.

It's certainly an honor and pleasure for me to rise and join in support of

this nominee, Howard Sullivan, to be the next Chenango County judge and surrogate.

And I just want to congratulate, number one, the Governor for making this outstanding choice, particularly when you take a look at the background of Howard Sullivan. He has been a very respected practicing attorney in our area for many, many years. He's been a prosecutor in Chenango County. And since 1978, Howard Sullivan has been the city court judge in the City of Norwich. As well as a long list of involvement in the judicial organizations in our area and statewide.

If you take a look at these credentials, there's no question that Howard Sullivan is eminently well qualified to be a Chenango County Judge.

But he's also served -- and Senator Libous alluded to this very, very eloquently -- Howard Sullivan has also served his community off the bench as well. And he brings all of these qualities to this new position. Obviously a keen intellect, a great empathy for people, and very much a judicial

temperament. When you take a look at the list of community involvements of Judge Sullivan, it's a full page, single-spaced. And I'm sure this is a mere sampling of his involvement on behalf of the people of our area.

He's a real people person, and we know that he's going to be a firm yet very fair judge who will serve the people of Chenango County very, very well.

And I want to say it's a great testimony to Judge Sullivan to have so many Chenango County residents here to witness this great occasion personally.

So I rise to urge my colleagues to support the confirmation of Howard Sullivan to be the next Chenango County judge and surrogate. It's a great day for Chenango County, it's a great day for the Sullivan family, and I'm pleased to be part of it.

THE PRESIDENT: The question is on the nomination of W. Howard Sullivan -

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: -- as judge of the Chenango County Court.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I just want to add a thought on the part of the Senate Democrats. We participate in the Senate Judiciary. We thank the courtesy extended by Senator Lack.

And as I've said before, and I think Senator Lack agrees with me, I may have had my disputes with the second floor, but these five men are part of a continuing contribution of this Governor to excellence in the judiciary. The comments of Senator Libous and Senator Saland attest to the community involvement of these men, that they've been involved in the science of government, they've been involved in politics, they've been involved in the community, they've worked as lawyers. Senator Skelos properly points out they've worked as lawyers. All the attributes that good judges need -- a sense of their community, a sense of their profession -- I think are embodied in these five gentlemen.

There were no negative votes from the Democratic conference in the Judiciary

Committee. I don't anticipate there will be any. I know Senator Breslin and others who were there. This is a good contribution.

And I commend the Governor for sending us these five names. He's sent us a lot of good ones over the past. I hope the trend continues. And I feel confident on behalf of the Democratic conference in this state that the future of justice is in good hands, gentlemen. God speed.

THE PRESIDENT: Thank you, Senator Dollinger.

The question is now on the confirmation of W. Howard Sullivan as judge of the Chenango County Court. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: W. Howard Sullivan of Norwich is hereby confirmed as a judge of the Chenango County Court.

(Applause.)

THE PRESIDENT: As president of the Senate and on behalf of the New York State

Senate, Judge Sullivan, I congratulate you, acknowledge the presence of your wife, Sherri, and your other family members here with you today, and wish you continued success in all of your endeavors as described by your colleagues here today. Congratulations.

The Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

As deputy comptroller for the City of New York, Kathleen Grimm of New York.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, I certainly move the nomination of Kathleen Grimm with a great deal of pleasure. And again, just a very, very fine appointment.

I've been here a while, Madam President, and one can see that the nominee is a scholar. She has a tremendous resume. She's done so well both in her profession and also she has done a great deal of volunteer work, and I'm sure she will do an excellent job.

And, Madam President, I would just point out that we listen to many statements when people come before the Finance Committee, but I can share with you today that Kathleen Grimm's statement was one of the best that I have had the pleasure of listening to. And I don't say that lightly.

And I believe there are some other Senators that would like to move the confirmation. Thank you.

THE PRESIDENT: Thank you, Senator Stafford.

Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

I also want to salute the outstanding career in public service that Kathleen Grimm has had thus far. I couldn't be happier, then, to add my voice to confirm her appointment.

And I want to single out just one item where she was really very, very helpful, and that was on the issue of equalizing tax policy for co-ops and condos with other classes of residential property.

And she's really, really smart and she's really, really easy to work with. And I think that she'll do an outstanding job with the comptroller. So I'm happy to vote for her confirmation.

Thank you.

THE PRESIDENT: Thank you, Senator.

The question is now on the confirmation of Kathleen Grimm as deputy comptroller for the City of New York. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Kathleen Grimm is hereby confirmed as deputy comptroller for the City of New York.

(Applause.)

THE PRESIDENT: Congratulations, Deputy Comptroller Grimm, on behalf of the Senate. And I extend to you all the courtesies of the Senate, and have a wonderful celebration today.

The Secretary will read.

THE SECRETARY: As a member of the Public Employment Relations Board, John T. Mitchell, Esquire, of Delmar.

SENATOR STAFFORD: Move the confirmation, please.

THE PRESIDENT: Thank you, Senator Stafford.

The question -

SENATOR PATERSON: Move confirmation please.

THE PRESIDENT: Senator Breslin. Excuse me, Senator.

SENATOR BRESLIN: Thank you, Madam President. I'd like to make a brief comment, if allowed.

THE PRESIDENT: Go ahead.

SENATOR BRESLIN: John Mitchell is another example of our Governor making good appointments. He's been a long-time friend, a neighbor, and a very distinguished member of our bar in Albany County.

Terry, as he's known, is up in our audience today, and really speaks well again for the quality of appointments not only to the judiciary but other administrative

appointments as well. And I'm delighted to be here to participate in it.

THE PRESIDENT: The question is on the confirmation of John T. Mitchell, Esquire, of Delmar, as a member of the Public Employee Relations Board, for a term to expire May 31st in the year 2001. All those in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: John T. Mitchell, Esquire, is hereby confirmed as a member of the Public Employee Relations Board, for a term to expire May 31, 2001.

(Applause.)

THE PRESIDENT: On behalf of the Senate and as president of the Senate, I would like to echo Senator Breslin and the other - Senator Stafford's remarks, for my own personal knowledge as an attorney in Albany County of John T. Mitchell's excellence in the community as well as in his profession.

It's an honor to be here as president of the Senate to preside over your

confirmation. Congratulations, best wishes, and have a great celebration.

The Secretary will continue to read.

THE SECRETARY: As a member of the State Harness Racing Commission, Charles D. Lohrfink of Yonkers.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Charles D. Lohrfink of Yonkers as a member of the State Harness Racing Commission. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Charles L. Lohrfink of Yonkers is hereby confirmed as a member of the State Harness Racing Commission, for a term to expire February 1st in the year 2004.

The Secretary will read.

THE SECRETARY: As members of the

Advisory Council to the Commission of the Quality of Care for the Mentally Disabled, Dale R. Angstadt of Gansevoort and Mary H. Derby of Geneseo.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please, Madam President.

THE PRESIDENT: The question is on the confirmation of Dale R. Angstadt of Gansevoort and Mary H. Derby of Geneseo as members of the Advisory Council to the Commission of the Quality of Care for the Mentally Disabled.

First of all, for Dale Angstadt for a term to expire November 29th in the year 2001, and for Mary H. Derby for a term to expire February 17th in the year 2000.

All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Dale R. Angstadt is hereby confirmed, and Mary H. Derby is also hereby confirmed as members of the Advisory

Council to the Commission on the Quality of Care for the Mentally Disabled for their respective terms.

The Secretary will continue to read.

THE SECRETARY: As a member of the State Council on the Arts, Judith O. Rubin of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

I just want to add my voice and say that you could not reappoint a greater champion of the arts than Judith Rubin. She is unbelievably supportive and just outstanding where it comes to the arts and its importance in our great state. And I'm thrilled that she has agreed to serve another term.

Thank You, Madam Chair.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam

President.

I have known Judith Rubin for many a year. She has completed many years on the State Council of the Arts. For many more years than that, she was the head of the 92nd Street Y in Manhattan. For years she travelled the state, usually in combination with Dee-Dee Barclay, the wife of a former distinguished member of this house, Douglas Barclay. And the two of them, Dee-Dee Barclay and Judy Rubin, would go from arts council to arts council, from rural area to rural area, from museum to museum, tirelessly promoting the work of the New York State Council on the Arts in everything that they did, and continue to do.

She is a totally dedicated person in her own right, notwithstanding the rather involved political involvement of her family, as is Dee-Dee Barclay, notwithstanding the political involvement of her family. And the two of them, although from different political parties, have come together to work to show that development of the arts in this state and of the arts council and all the work it does

certainly goes beyond day-to-day politics.

And I congratulate the Governor most heartily for renominating, and Judith Rubin's agreement to serve once again on the -- as a member of the New York State Council of the Arts. She has done a wonderful job. And although not here today, I would certainly join in congratulating her in the great work that she's done for the state and specifically for the arts in New York State.

THE PRESIDENT: The question is on the nomination of Judith O. Rubin as a member of the State Council on the Arts. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Judith O. Rubin is hereby confirmed as a member of the State Council on the Arts.

The Secretary will continue to read.

THE SECRETARY: As members of the Mental Health Services Council, Jeffrey Davis of Binghamton and John M. Morihisa, M.D., of

Albany.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Jeffrey Davis and John M. Morihisa, M.D., as members of the Mental Health Services Council. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Jeffrey Davis and John M. Morihisa are hereby confirmed as members of the Mental Health Services Council.

The Secretary will read.

THE SECRETARY: Senator Balboni, from the Committee on Water Resources, reports:

Senate Print 3086, with amendments, by Senator Kuhl, an act to amend the Soil and Water Conservation Districts Law;

3653, by Senator Balboni, an act to amend the Environmental Conservation Law;

3889, by Senator Balboni, an act to

amend the Soil and Water Conservation Districts Law;

And 4014, by Senator Balboni, an act to amend the Environmental Conservation Law.

Senator Spano, from the Committee on Labor, reports:

Senate Print 840, by Senator Marcellino, an act to amend the Labor Law;

4273, by Senator Spano, an act to amend the Labor Law;

4359, by Senator Spano, an act to amend the Workers' Compensation Law;

And 4360, by Senator Spano, an act to amend the Workers' Compensation Law.

Senator Stafford, from the Committee on Finance, reports:

Senate Print 762, by Senator Johnson, an act to amend the State Finance Law;

1197, by Senator LaValle, an act to amend the Executive Law;

1745, by Senator LaValle, an act to amend Chapter 554 of the laws of 1996.

1788, by Senator Padavan, an act to

amend the State Finance Law;

3025, by Senator Seward, an act to amend the State Finance Law;

3647, by Senator Stafford, an act to amend the Executive Law;

3691, by Senator Rath, an act to amend the Executive Law;

3832, by Senator Stafford, an act to amend the Executive Law;

3843, by Senator Stafford an act to amend the Executive Law;

4550, by the Senate Committee on Rules, an act making appropriations for the support of government;

And 4551, by the Senate Committee on Rules, an act making appropriations for the support of government.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 121, by Senator Rath, an act to amend the Real Property Tax Law;

141, by Senator Nozzolio, an act to amend the General Municipal Law;

742, by Senator Seward, an act to repeal Section 4 of Chapter 668 of the laws of

1977;

745, by Senator Volker, an act to amend the Real Property Tax Law;

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

1771, by Senator Johnson, an act to amend the Real Property Tax Law;

1994, by Senator Padavan, an act to amend the Real Property Tax Law;

2440, by Senator Padavan, an act to amend the County Law and the Civil Practice Law and Rules;

3090, by Senator Kuhl, an act in relation to the application of the real property tax exemption;

3275, by Senator Skelos, an act to amend Chapter 583 of the laws of 1998;

3793, by Senator Bonacic, an act to amend the Town Law;

3947, by Senator McGee, an act to amend the Real Property Tax Law;

4072, by Senator Seward, an act to amend the Town Law;

And 4205, by Senator Rath, an act to amend the General Municipal Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 21, by Senator Larkin, an act to amend the Criminal Procedure Law;

111A, by Senator Volker, an act to amend the Criminal Procedure Law;

743, by Senator Alesi, an act to amend the Penal Law;

814, by Senator Hannon, an act to amend the Civil Practice Law and Rules;

853A, by Senator Balboni, an act to amend the Civil Rights Law;

1025, by Senator Volker, an act to amend the Criminal Procedure Law;

1170, by Senator Meier, an act to amend the Criminal Procedure Law and the Education Law;

1618, by Senator LaValle, an act to amend the Criminal Procedure Law;

1830, by Senator Saland, an act to amend the Penal Law;

1962A, by Senator Johnson, an act to amend the Penal Law;

2005, by Senator Padavan, an act to amend the Penal Law;

2139, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure Law;

2320, by Senator Saland, an act to amend the Criminal Procedure Law and the Family Court Act;

2352, by Senator Velella, an act to amend the Criminal Procedure Law;

2401, by Senator Johnson, an act to amend the Penal Law;

2753, by Senator Goodman, an act to amend the Penal Law and others;

2795, by Senator Rath, an act to repeal paragraph F of subdivision 1 of Section 70.30 of the Penal Law;

2936, by Senator Volker, an act to amend the Civil Practice Law and Rules;

3070, by Senator Skelos, an act to amend the Civil Practice Law and Rules;

3071, by Senator Skelos, an act to amend the Civil Practice Law and Rules;

3106, by Senator Volker, an act to amend the Penal Law;

3181, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure

Law;

3289, by Senator Stavisky, an act to amend the Penal Law;

3299, by Senator Stavisky, an act to amend the Penal Law;

3502, by Senator Waldon, an act to amend the Criminal Procedure Law;

3689, by Senator Rath, an act to amend the Civil Practice Law and Rules and the Executive Law;

3715, by Senator Bonacic, an act to amend the Penal Law;

3719, by Senator Bonacic, an act to amend the Criminal Procedure Law;

3926, by Senator Johnson, an act to amend the Penal Law; and

4252, by Senator Volker, an act to amend the Criminal Procedure Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 4203, by Senator Trunzo, an act to amend the Highway Law;

4247, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4248, by Senator Trunzo, an act to

amend the Vehicle and Traffic Law;

4249, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4250, by Senator Trunzo, an act to amend the Highway Law and the Public Authorities Law;

4251, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4406, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4407, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4409, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

And 4412, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

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

Senate Print 3812, by Senator Saland, an act to amend the Domestic Relations Law and the Family Court Act;

3813, by Senator Saland, an act to amend the Family Court Act and the Social Services Law;

3817, by Senator Saland, an act to

amend Family Court Act;

3931, by Senator Holland, an act to amend the Social Services Law;

3934, by Senator Holland, an act to amend Chapter 942 of the laws of 1983;

3985, by Senator Saland, an act to amend the Domestic Relations Law and the Family Court Act;

3987, by Senator Saland, an act to amend the Family Court Act and the Criminal Procedure Law;

3988, by Senator Saland, an act to amend the Executive Law and others;

4439, by Senator Skelos, an act to amend the Social Services Law.

Senator Goodman, from the Committee on Investigations, reports:

Senate Print 1741A, by Senator Johnson, an act to amend Civil Rights Law;

1911A, by the Senate Committee on Rules, an act to amend the Tax Law;

2124, by Senator Maziarz, an act to amend the Tax Law;

2285, by Senator Goodman, an act to amend the Alcoholic Beverage Control Law;

2364, by Senator Meier, an act to amend the Tax Law;

3601, by Senator Volker, an act to amend the Tax Law; and

3720, by Senator Fuschillo, an act to amend the Tax Law.

Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, reports:

Senate Print 1512, by Senator Alesi, an act to amend the Correction Law;

1563, by Senator Nozzolio, an act to amend the Correction Law;

3773, by Senator Nozzolio, an act to amend the Correction Law;

3775, by Senator Nozzolio, an act to amend the Executive Law;

3776, by Senator Nozzolio, an act to amend the Executive Law;

3781, by Senator Nozzolio, an act to amend the Correction Law;

3782, by Senator Nozzolio, an act to repeal subdivision 9 of Section 500B;

4027, by Senator Maltese, an act to amend the Executive Law; and

4069, by Senator McGee, an act to amend the Correction Law.

All bills ordered direct for third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Wright.

SENATOR WRIGHT: Madam President, on page number 10 I offer the following amendments to Calendar Number 220, Senate Print Number 2733, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, Senator Wright, and the bill will retain its place on Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I'd like to star my bill, place a sponsor star on Calendar Number 239.

THE PRESIDENT: The bill will be so starred, Senator Farley.

SENATOR FARLEY: Madam President, on behalf of Senator Libous, I wish to call up Calendar Number 441, Assembly Print 6982, if the Secretary would read the title.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 441, by Member of the Assembly Brennan, Assembly Print 6982, an act to amend Chapter 720 of the laws of 1979.

SENATOR FARLEY: Madam President, I now move to reconsider the vote by which this Assembly bill was substituted for Senator Libous's bill, Senate Print 3455, on April 12th.

THE PRESIDENT: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

SENATOR FARLEY: Madam President, I now move that the Assembly bill, 6982, be

recommitted to the Committee on Mental Health and Development Disabilities, and that Senator Libous's Senate bill be restored to the order of the Third Reading Calendar.

THE PRESIDENT: The Assembly bill is recommitted. The Senate bill is restored to third reading, Senator.

SENATOR FARLEY: I now offer the following amendments to that bill.

THE PRESIDENT: The amendments are received.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Farley.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time may we please adopt the resolution calendar in its entirety.

And Senator DeFrancisco has indicated that if anybody wishes to sponsor Resolution Number 973, they should notify the desk.

THE PRESIDENT: On the motion, all in favor of adopting the resolution

calendar, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please take up Resolution 820, by Senator Lachman. This resolution previously was adopted on March 30th, but may we have it read in its entirety at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Lachman, Legislative Resolution 820, honoring the first, second and third place winners of the New York State's U.S. Savings Bonds 1999 National Student Poster Contest.

WHEREAS, The Department of the Treasury, United States Savings Bonds Division, annually conducts a National Student Poster Contest to show how savings bonds can help goals and dreams come true; and

WHEREAS, The United States Savings

Bonds Student Poster Contest has been designed for our Nation's schoolchildren in grades four, five and six as a creative learning activity and has been endorsed by the nation's leading educational organizations;

The theme for the U.S. Savings Bonds 1999 National Student Poster Contest "Creating a New Century of Savings" is artistically expressed in the winning poster which will be displayed in an exhibit in Washington, D.C.; and

WHEREAS, First Place Winner, 11 year-old Lev Stravchinsky, a Russian immigrant and resident of the 22nd Senatorial District, represented by Senator Seymour Lachman, is a sixth grade student at I.S. 239 Mark Twain in Brooklyn, New York;

Second Place Winner, 9 year-old Sara Brooke Reinstein, a resident of the 2nd Senatorial District, represented by Senator James Lack, is a fourth grade student at Otsego Elementary School in Dix Hills, New York;

Third Place Winner, 11 year-old Ryan Rimmer, a resident of the 61st Senatorial

District, represented by Senator George Maziarz, is a sixth grade student at Emmet Belknap Middle School in Lockport, New York; and

WHEREAS, Lev Stravchinsky, Sara Brooke Reinstein and Ryan Rimmer have brought enduring honor to their schools, their families, and their communities; awards will be given to each student in the form of U.S. Savings Bonds for $1,000, $500 and $200, respectively;

Contest awards have been provided by State Sponsors, Mr. Thomas Y. Hobart Jr., President, New York State United Teachers and Mr. Alan B. Lubin, Executive Vice President, New York State United Teachers; and

WHEREAS, Lev Stravchinsky's poster will represent New York State in the National competition where First, Second and Third Place National Winners will receive respectively, a $5,000, $2,000 and $1,000 U.S. Savings Bond at the National Awards Ceremony in Washington, D.C.;

Accommodations and transportation to and from Washington, D.C., will be provided

for the three National Winners, and a parent or guardian; while in Washington, winners and a parent/guardian will be invited to tour the historic Treasury Building, the Bureau of Engraving and Printing and the U.S. Capitol; and

WHEREAS, It is the sense of this legislative body to extend its highest commendation to Lev Stravchinsky, Sara Brooke Reinstein, and Ryan Rimmer who have through their efforts brought enduring honor to this great Empire State; they clearly personify that spirit of excellence which distinguishes the student body of the State of New York; now, therefore, be it

RESOLVED, That this Legislative Body pause in its deliberations to honor the First, Second, and Third Place Winners of the New York State's U.S. Savings Bonds 1999 National Student Poster Contest; and be it further

RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to Lev Stravchinsky; Sara Brooke Reinstein; Ryan Rimmer; I.S. 239 Mark Twain; Otsego

Elementary School; Emmet Belknap Middle School; New York State United Teachers; Department of the Treasury-U.S. Savings Bonds Office, Washington, D.C.; and Nancy Dougherty, Area Manager, Department of the Treasury-U.S. Savings Bonds Marketing Office.

THE PRESIDENT: This resolution was previously adopted on March 30th.

Senator Lachman.

SENATOR LACHMAN: Madam President, I rise to personally congratulate all three winners, first place, second place, and third place.

It is not a coincidence that all of these winners represent different parts of the state of New York: first place, New York City, and second and third place, Long Island and upstate New York. We are one state and we have the best and most creative students of any of the 50 states.

I also want to add to my remarks some personal statements of belief that I have. First I want to personally commend and congratulate Lev Stravchinsky, his parents, Irina and Stanislaus Stravchinsky, who are

sitting alongside of him, and grandma, who is sitting behind, as well as Zoe Taptal, his art teacher from Mark Twain Junior High School.

Lev, I have the privilege of living around the corner from you and your parents in Bensonhurst. I also have the privilege of representing grandma in the Brighton part of my senatorial district. And, thirdly, I have the privilege of having your intermediate school, Mark Twain, in the Coney Island part of the 22nd Senatorial District. I am mighty proud of you, Lev, and your entire family.

And while you're standing, and while grandma is schepping noches, I also want to add something else. And I received Lev Stravchinsky's permission to say this. The greatness of the United States rests in part on the fact that we are a nation of immigrants. Whether from Guinea or Trinidad, from Korea or China, from Italy or the former USSR, generations of men and women have come to this nation, have become part of this nation, have given their lives for this nation. We are proud of that fact, Lev. We are proud of your profound talents. We are

proud that you are now, instantaneously, by being placed as Number One in New York State, a finalist in the national contest, which gives you a prize of $5,000. Which I'm sure when you win you will use for your college education. We are proud to have you here, and your colleagues, the second and third place winners as well.

And let me say this also. Lev, I look forward to the day when I will be in the gallery and perhaps you or the second or third place winners will be installed in this chamber as New York State Senators. Maybe in 10, 15, or 20 years -- you have a while to go yet.

But let me say to all the winners, all their families, to NYSUT, the U.S. Treasury department, congratulations. You make us all proud to be citizens of United States of America.

(Applause.)

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

I want to join my colleagues,

Senator Lachman and Senator Lack, in congratulating the Savings Bond Poster Contest winners.

I am particularly proud, Madam President, that I represent the third place winner, Ryan Rimmer, from Lockport, New York, a student at Emmet Belknap Middle School in Lockport. Now, the unusual fact about Ryan, Madam President, is that this is his third year in a row having won this poster contest. I believe one year he was first and second, and this year he was third. The competition is getting a little bit better out there, Ryan.

But I join with Senators Lachman and Lack. This is a great program. I think that the New York State United Teachers and Tom Hobart should be congratulated for sponsoring these fine young people, the leaders of tomorrow.

I do want to recognize my colleague and Ryan's representative in the Assembly. Assemblyman Dave Seaman is here. And, Ryan, I'm not sure if someday in your future that you may be interested in running for the New

York State Legislature. But if you are, you may want to consider the Assembly. It's a great place to serve.

(Laughter.)

SENATOR MAZIARZ: I also, Mr. President, want to welcome Ryan's parents, who are here for the third time also, Bob and Cheryl, both of whom, by the way, are public schoolteachers in Niagara County.

So certainly, Ryan, I understand that this is your last year of eligibility. So three years of eligibility and a winner three years in a row, a perfect score, Ryan. Congratulations and good luck, and we look forward to seeing you back here.

Thank you.

(Applause.)

THE PRESIDENT: This resolution was previously adopted on March 30th.

And as president of the Senate, I want to acknowledge that I had the privilege earlier today of meeting with all three award winners. I was impressed and wish you a wonderful celebration. Congratulations.

Senator Goodman.

SENATOR GOODMAN: I'd like to say a quick supplemental word with regard to the nomination of Judith Rubin, which has recently been passed by the Senate to serve on the New York State Council on the Arts for another term.

Madam President, Judith Rubin is a very rare and unusually gifted individual. She has not only carved out her own separate career as a very distinguished producer of plays and is not only a cultural leader in the City of New York, but she serves on the National Endowment for the Arts Council, where she has national influence in the protection of that great institution and in the advancing of the arts and culture in the country as a whole.

Judy Rubin is a person of great grace and wisdom, in my judgment, and I think that her reappointment to the State Council is great beneficial. She is the only individual who has served simultaneously as a member of the State Council as well as the National Endowment. She and I served together on that body for a period of some time, and I've

learned to see her in the light of her remarkable accomplishments and judgment about what constitutes great art.

She's a person of whom we can be very proud indeed, and I'm very happy to have this opportunity to add a word of warm support for her renomination to the State Council on the Arts.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 214, by Senator Meier, Senate Print 925A, an act to amend the General Business Law, in relation to the use of the designations of "and associates."

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 362, by Senator Seward, Senate Print 1061, an act to amend the County Law, in relation to authorizing the County of Herkimer.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 378, by Senator Velella, Senate Print 2530, an act to amend the General Business Law, in relation to the possession of equipment.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 388, by Senator Wright, Senate Print 2423, an act to amend the Public Service Law, in relation to unauthorized charges.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 401, by Senator Alesi, Senate Print 3485, an act to amend the State Administrative Procedure Act, in relation to adjudicators proceedings.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This

act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 410, by Senator Balboni, Senate Print 1481A, an act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 411, by Senator Kuhl, Senate Print 1775, an act to amend the Penal Law, in relation to criminal possession of a weapon.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 414, by Senator Libous, Senate Print 2086, an act to amend Penal Law, in relation to

authorizing an additional term of imprisonment.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 417, by Senator Lack, Senate Print 2247, an act to amend the Penal Law, in relation to definitions of criminal enterprise.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 422, by Senator Velella, Senate Print 2678, an act to amend the Penal Law, in relation to the crime of unauthorized use of a motor vehicle.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 423, by Senator Volker, Senate Print 2865, an act to amend the Civil Practice Law and Rules, in relation to in rem foreclosures.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 425, by Member of the Assembly Hochberg, Assembly Print 5203, an act to amend the Penal Law and the Criminal Procedure Law, in relation to increasing the penalties.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 443, by Senator Libous, Senate Print 4043, an act to amend the Mental Hygiene Law, in relation to local planning for mental hygiene services.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Excuse me. In relation to Calendar 443, ayes 56, nays 1. Senator Kuhl recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 468, by Senator Rath, Senate Print 2942, an act to amend the General Municipal Law and others, relating to the rate of interest.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Thank you, Madam President. If we could take up the controversial calendar.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 410, by Senator Balboni, Senate Print 1481A, an act to amend the Civil Practice Law and Rules, in relation to prohibiting.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, might we have an explanation on that bill? I just wondered if Senator Balboni was prepared to discuss it today.

THE PRESIDENT: Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Thank you very much, Madam President.

THE PRESIDENT: You're welcome.

SENATOR BALBONI: And thank you, Senator Paterson, for your interest in this particular piece of legislation.

My colleagues, this bill is a bill that we've had before in this house. The timing of this bill, though, is somewhat intentional. This bill brings back the concept of contributory negligence in the Civil Practice Laws and Rules as it pertains to lawsuits brought by convicted felons

against their victims.

This is a public policy that has been long established and upheld and affirmed again and again and again in the courts of this state, first beginning with Barker versus Kalish in 1984, then Manning versus Brown in 1997, and then, last Thursday, by the Appellate Division, Third Department, in the case of Johnson versus State. And I'd like to thank minority counsel for helping me remember -- know about that case.

My colleagues, this is a case - this is a statute that for many years has eluded us, not because of this house's inaction but rather the inaction of the State Assembly. We continually try to put this on the table so that the common sense is codified. And I would also like to state that it's my belief that this corrects a problem that perhaps was an oversight back in 1975 when this Legislature created the Comparative Negligence Statute and forgot to carve out actions by individuals that were intentional and felonious. I hope that that gives you some examples of the conduct that this bill

hopes to reach.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I was actually kidding before. You were not here last year. And for all those who were not here last year, when I suggested that I wasn't sure whether or not Senator Balboni would be prepared to discuss this case, that was really just an inference drawn by myself in a humorous way, because Senator Balboni is as prepared as anybody in this chamber. And exactly last year when we discussed this precise bill, responding to questioning from Senator Gold, Senator Balboni cited a case from 1896 -- actually, I think it was 1894 -- related to or on point with Barker versus Kalish. And perhaps we can persuade him to get up and discuss it further, as I ask him if he would yield for a question.

THE PRESIDENT: Senator Balboni, will you yield to a question from Senator Paterson?

SENATOR BALBONI: Yes, I would.

THE PRESIDENT: Senator Paterson, go ahead.

SENATOR PATERSON: Senator, as you referred to just a moment ago, on April 8th, the Court of Appeals, the Third Department, of the State of New York ruled in the case Johnson versus the State of New York that where an individual was handcuffed and held in the back of a police van, he escaped from the police van, ran off into the woods, the police were unable to apprehend him, he was later found to have died in the woods, and his family sued claiming that there was a malfeasance of duty on the part of the police -- the Court of Appeals held, as you would in this bill, Senator, that -- right, in the Third Department, that the -- that there could be no recovery where there was a presumed felonious conduct on the part of this individual who's being apprehended who was not even at this point convicted.

But since the conduct of escaping a police van was not one that would really be an argument of fact, that this is actually a higher standard than you're even holding in your bill. But at the same time, nowhere does the dicta in the Court of Appeal's decision

bar the door of the court. It just affirms the decision of the lower court.

And really, my point is, while we would want to ban recoveries, do we want to bar the courthouse when there could be cases such as a Rodney King case? Where, in spite of a 1983 civil rights action that prevailed in that federal inquiry, and there was also a state criminal charge against the police officers involved, you would still want to leave that door open, just in case the other options have failed -- not to coddle criminals, but just to allow the courts to take a look in the individual cases based on the specific facts.

SENATOR BALBONI: Senator Paterson, I appreciate your question. And this is probably the most common misnomer about this particular type of legislation.

For those of you in this audience who are not attorneys, might I point out that there are actually three systems of justice that could be applied to a police brutality case. And many people fail to recognize these.

The first is the criminal system, where you would assess criminal liability. The second is a state tort system -- run particularly under the Civil Practice Laws and Rules, but other statutes as well -- which is brought in state courts. And the third, which is oftentimes forgotten, is the Civil Rights Law under the federal statutes, specifically Title 1983.

The relevance of this particular measure is that we are, as I said, codifying this state's enunciation that we will not open the courts to those who have chosen to step outside the boundaries and be convicted of a crime. And to those people who say, well, wait a minute, what about -- where's the deterrence against future activity by - particularly about police officers, I would say to you and argue strenuously that it is much better to bring a 1983 civil rights cause of action if it is in fact your goal to recover monetary damages. And if you truly want to punish and prohibit this conduct in the future, then what you should do is bring a case -- a complaint, a felony complaint to the

district attorney and have the district attorney go after the individual police officer.

And to further make my point, the current statutory scheme of New York State is replete with statutory immunities for police officers which the federal government does not have. Specifically, I think it's 50(l) of the General Municipal Law refers to the police officers of my county and the Nassau County police officers. And it basically immunizes them for even gross negligence.

And so -- and if you take a look also at the Monelle decision in the federal courts that speak against the assessment of individual liability, against servants of a government, it basically says that you cannot sue them individually but you can go after them individually in a 1983 action, that is again where these suits should be brought.

So to answer your question, or to address your concern, if we were to eliminate the ability of convicted felons to sue in this state court, we would do nothing other than follow the case laws that have already been

decided, the public policy that's been articulated, and we would do nothing as to the deterrent effect by either criminal liability or by civil liability.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, there's a case right here in Albany, the Jermaine Henderson case, where the district attorneys did bring an action against the police in a situation such as might apply to the nature of the legislation that you're presenting. And the jury was unable to get a conviction.

As would be very likely in these types of cases, also you have the situation where you have law enforcement in a sense pursuing law enforcement.

And so in those types of situations, this is why I would suggest that a tort action within the state would actually be valid. And of course in the Rodney King case it was only in the second attempt to receive justice by use of a 1983 federal civil rights action that that was actually achieved.

So what I guess I'm really asking is, since -- there are really two elements to your legislation. One is the standard, which I agree with and which the Court of Appeals of the Third Department has now also raised the standard. It's actually higher than the one you presented in this bill.

So I don't think that we have any argument about that. If someone is convicted of a felony or if someone is even considered to be engaging in what would be un -- what would not even be argued as anything other than felonious action, that we would bar recovery.

But in terms of keeping the courthouse open, I don't understand where Barker v. Kalish or even some of the public policy stated in the Johnson case actually

affirm this.

Now, of course, I'm still waiting for you to get back to that case from a hundred years ago. I came here -

SENATOR BALBONI: -- versus Palmer, 1889.

SENATOR PATERSON: Pray elucidate.

SENATOR BALBONI: The point for us in this state is illustrated by a case that I tried personally. The case was called Key versus the County of Nassau. I was the deputy county attorney when we tried the case. The case involved a scenario where an officer responded to a call of two individuals fighting; one of them had a knife, one of them had a baseball bat. The individual with the knife proceeded to follow, in an attempt to stab the other individual, who then ran behind the Nassau County officer. The officer retreated, shout "Stop. Stop. Stop." He did not. He fired four times, dropping the individual.

The individual survived, but was paralyzed, brought a suit against the officers

in Nassau County. He was subsequently convicted of attempted assault on the officer.

Now, as you know, in that case, in order to get a conviction, you have to have beyond-a-reasonable-doubt standard of evidence. It's much higher than by the preponderance, which is what the standard is in civil actions. And my frustration as a deputy county attorney was that I could not win on a motion for summary judgment.

We actually had a month-long trial, empaneled 22 witnesses, and then gave the case to the jury and they came back in a little over two hours. In other words, it was a slam-dunk. And if this statute had been in effect, the individual would not have been able to do that.

And the point is, that cost taxpayer dollars. That was a huge drain on our office. Once again, we do not deny the individual the remedies, both criminally and civilly. What we do is we take the public policy of the state and we apply it in such a way so we don't have to expend taxpayer dollars in civil defense. But furthermore,

insurance companies, physicians -- I mean, everybody who gets sued -- motorists, anybody else out there, they would be able to use the same bill to stop the suit on a motion for summary judgment.

And that's the point of this particular statute. It would save dollars.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. On the bill.

THE PRESIDENT: On the bill.

SENATOR PATERSON: In all seriousness, Madam President, I appreciate the amount of work and the amount of effort that Senator Balboni has put into this piece of legislation. And particularly it is my wish to congratulate him, because it does become frustrating to see individuals who are committing crimes, who are injured in the process of apprehending them, who, but for the fact that they were apprehended, may have actually injured the police officers or some other citizens and then have the audacity, literally the temerity to go to court and to sue, claiming that somebody else should pay

for their injuries. It is more than frustrating. It's really a disgrace.

And yet, in my opinion, it is one of the burdens, one of the encumbrances of living in a democracy. The defense attorney -- I guess the plaintiff, I'm sorry, not the defense attorney, but the plaintiff in the action that Senator Balboni describes, the case I believe of Key versus Nassau County, probably argued that it was one of the last bullets of the four shots -- maybe they argued that it was the last shot that paralyzed this particular individual, trying to imply that after the first couple of shots maybe the individual was disabled and there was some negligence on the part of the police officer that the last shot caused the individual to be paralyzed. That argument lost, because Senator Balboni, who was then acting in the capacity of counsel, proved that this action was rightly taken.

But you can't always know that without conducting a trial. And all Senator Dollinger, who voted in the negative last year, and Senator Connor, and myself are

trying to say is that in these situations, we would better let it go to the court. And as frustrating as it may be, with the 22 witnesses that had to be called, that that was a better determining factor than for a judge to look at some papers and try to find out what was there without having to have heard from a number of witnesses.

It is something that is somewhat paradoxical, that an individual in that type of situation would even attempt this type of procedure. But we feel that most often our judicial system will handle it correctly. And the fact that we do have to be burdened with these types of problems is what makes our democracy greater than any other on this planet right now. And it's the fact that we live through this and we recognize that we want as much as possible to keep the opportunity to go to court open.

And so for that reason, in spite of case law from 110 years ago, I'm going to vote no on this, Madam President.

THE PRESIDENT: Read the - Senator Dollinger, excuse me.

SENATOR DOLLINGER: Madam President, would you please recognize Senator Schneiderman.

THE PRESIDENT: Senator Schneiderman.

Thank you, Senator Dollinger.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

Will the sponsor yield to a question?

SENATOR BALBONI: Yes.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Senator Balboni, I have not had the opportunity to review your great body of work that led up to this legislation, being the newcomer here. But I have a simple question.

Is this limited to actions brought against a police officer or the victim of a crime, or would this also limit recovery against a third party, perhaps who aids in the presentation of the felon, someone steals a purse and runs down the street and either a well-meaning citizen or a vigilante, depending

on your point of view, shoots them, would this bar recovery by the felon against that person as well?

SENATOR BALBONI: The defense would have to be raised in the third party action defense.

SENATOR SCHNEIDERMAN: Right.

SENATOR BALBONI: So in other words, once this was codified, then it would just be raised as an affirmative defense on behalf of any party sued.

SENATOR SCHNEIDERMAN: But upon any party, not just the police or the victim of the crime?

SENATOR BALBONI: The only thing that I could see where it would not apply is for some reason -- for example, if -- let's take a -- I mean, this is all conjecture. But -- no, I believe there would be a general application for it.

SENATOR SCHNEIDERMAN: Thank you, Madam President. On the bill.

In addition to the concern that Senator Paterson raised, I have a concern about barring recovery against third parties

who get involved in a situation where it's often very difficult to assess what is a proper use of force in circumstances like this. And I appreciate the fact -- as an attorney, I hate to not be able to win on summary judgment myself. But I think that given that, that particular limitation is an additional reason why I'm afraid I'm going to have to vote against this very well-intended piece of legislation.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, my dialogue I think last year with Senator Balboni about his bill, I just rise for a couple of purposes.

One is I -- my friend from Nassau County describes going to trial and not getting this case dismissed through the motion of summary judgment as a waste of taxpayer dollars. I would just think he's short-selling his services. It sounds to me like the taxpayers of Nassau County got every penny of their dollar's worth by having Mike

Balboni, then an attorney, try this case and bring it to a successful and, it appears, proper conclusion under the facts.

So I think the right thing was done in your case. And let me tell you why I think this is an interesting idea but I don't think it's the right one for public policy.

It's very simple. Any policy built on Barker against Kalish, which is in my judgment one of the worst cases ever to come down from the New York Court of Appeals, with all due respect to Judge Kaye and the rest, they fumbled the ball in that case. There was a little boy playing with fireworks in the back yard. He had obtained the fireworks and other ingredients in this little firework he was building from several neighbors. As he was putting it together, it exploded and it blew off the fingers of his hand.

And what happened, they raised the defense in that case that he was making a pipe bomb, which is a felony under New York law. And they said he was engaged in criminal conduct. He was ten years old. He blew off his fingers.

And so what they said was you can't sue the neighbors, who willy-nilly made all these combustible materials available, because this little boy was engaged in building a pipe bomb, he was an urban terrorist. He was a 10-year-old playing with firecrackers.

What that case does is it demonstrates the illogical nature of a rule such as the one that Senator Balboni wants to enshrine in our law, to make permanent in our statutory law.

I would point out that we may yet get a chance to discuss a case today about a guy who was shot. And I would suggest to you, suppose that was standing on a street corner and he had a weapon in his pocket and it was an illegal weapon. That's a felony under New York law. And the word goes out to the police, there's a suspect, Richard Dollinger, on the corner of Fourth Avenue and Pearl Street in Albany, and he has a gun and we think it's illegal. That's right on the corner where I live.

And all of a sudden, the police show up and I happen to make a gesture toward

my pocket. In fact, I do have an illegal weapon on me, but I never display it, I never show it, and all of a sudden I'm hit by a hail of bullets. Well, I'm clearly guilty of a felony in possessing -- unlawfully possessing a weapon. And that possession of an unlawful weapon raises the awareness of the police and causes, suddenly, a hail of bullets to come in my direction.

Am I now prohibited from going into the civil courts of this state and saying that the force used against me was unreasonable? That they were engaged in far more culpable conduct than I was and I have no civil remedy regardless of the damages I sustained?

I would suggest, Senator Balboni, that this is an interesting idea. You've done a lot of work on this. I respect your judgment. Your experience, I think, had a certain frustration to it. It would be an interesting or perhaps the right thing in some cases to be able to say we have a blanket rule and those who commit crimes should not be able to go into the civil court and recover.

But I would just suggest that if we

pass this bill as drafted, what we will do is we will say to a whole bunch of people that when unreasonable or deadly force is used against you and you've been engaged in some criminal activity which under some definition may be an felony, you can never get into the courtroom.

I would submit to you that that little boy in Barker against Kalish was absolutely wrongfully denied his opportunity to sue someone because someone suggested that when he was playing with fireworks, he was really an urban terrorist preparing a pipe bomb. And that's the problem with this rule.

I would leave it the courts of this state to apply the common law rules established in Palmer, established in Barker, even though I disagree with them. I ran into the same problem in Smith against Julie, which is the case that I litigated that's cited in Senator Balboni's law review article. I would just leave it the courts of this state. Let them have the discretion to figure out when the rule should be applied, when it should be an absolute bar, and when it should perhaps

only be a partial bar giving a partial summary judgment that the defendant is guilty of some culpable conduct which must be weighed by the jury.

I think Senator Balboni is trying to do the right thing here. I think it's a interesting approach. But I think because of its very black-letter effect on all cases, it just goes too far and solves more than the problem he's addressing but in fact will deny a whole group of people in this state the potential to have their cases heard by a jury of their peers and to recover for damages that they've really sustained.

I'll be voting no again this year, Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: If I may just choose to close on the bill, if there's no other speakers.

Madam President, three quick points. The first is a motion of summary judgment is decided on a standard where judicial review is involved. The judge will use his or her discretion to decide whether or

not there is no question of fact involved in the application of a law. If there is a question of fact, then the motion for summary judgment is denied.

So to assume that the enactment of this statute would somehow now bring the door down on all suits with absolutely no judicial involvement is incorrect. First thing.

Second thing. Barker versus Kalish was decided by Judge Wachtler. And any student of the decisions during that tenure as chief judge of Judge Wachtler will be hard put to find a better reasoned, a better written, and, in my opinion, a more reaching decision than Barker versus Kalish.

Senator Dollinger, it was a pipe bomb. And they chose that case because of the grave potential for injury, not only to the two children playing with this pipe bomb but to the community.

The third point is this. This is an easy bill to vote against if you only apply the context, the emotionally charged context of police brutality. And I have been on televised debates on that particular issue.

And let me share with you a conversation I had with fellow attorneys and fellow colleagues about whether or not we should have amended the bill so that we take out any cases involving police brutality.

After all, now consider this bill not involving police brutality. Would it be an easy bill to vote against? Perhaps. But the reason why we did not choose to leave that section out was because of the civil rights law. Because any plaintiff's attorney worth their salt would never bring a police brutality case in state court.

Why? Well, first of all, the federal courts are much faster. Secondly, discovery is much broader. Third, you have a better application individually and as against the police department in the suit. And the last reason, which is really the crux of it, is in 1983 civil rights cases you get attorneys fees. So you can afford to go through all of the discovery, all of the different witnesses, because you're going to get paid at the end. So no one's going to bring a case in state court.

So we left in the law the ability to apply to police brutality cases because we realized we weren't affecting it. Anyone who is injured by a police officer in this state is free to go to the federal court and, I would argue, get better justice than in the state court.

But let me leave you with the words that I use on my stump speeches when I go around my Senate district and I talk about justice and how sometimes there are holes and quirks. And when I finish, I have everybody, but particularly the senior citizens, jumping up and down on this.

And that is this scenario. God forbid someone breaks into your house tonight, sticks a gun to your head, a knife to your spouse's, robs you of all your possessions, and then on the way out trips over Johnny's toy. Under this state's law, you can now be sued. That's a fact. People are outraged by that. They want that loophole closed. That's the reason for the bill.

Thank you, Madam President.

(Applause.)

THE PRESIDENT: Read the last - read the last -

(Applause.)

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Just to explain my vote very briefly.

It was Judge Wachtler who wrote Barker against Kalish. He started with the wrong assumption, he finished with the wrong conclusion, and the decision is just basically wrong.

The other thing I'd just point out, Senator Balboni, is that your bill does change slightly Barker against Kalish, because you require a conviction with a felony. In Barker against Kalish, there was never a conviction.

But I think that the danger that this bill poses to closing the doors of the

state courts -- and I would just submit that with all due respect to Senator Balboni, telling to the people of this state that we're going to leave the door to the federal courthouse open but close the door to the state courthouse doesn't seem to make sense or doesn't seem to be fair or certainly means that we in New York are less respectful of justice than our federal counterparts. I'm not so sure we want to tell that to anybody in this state. We ought to be just and fair in our state courts as much as we are in our federal courts.

I'm voting no, Madam President.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in the negative.

The Secretary will announce the results.

Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: To explain my vote.

First of all, I commend Senator Balboni on being able to bring the senior

citizens to their feet even in this chamber.

(Laughter.)

SENATOR SCHNEIDERMAN: I also do want to point out, very seriously, that I appreciate all the work he's done on this. I do feel, as Senator Dollinger has stated, that this is a bad solution to a difficult problem.

And I'd also like to add that while many people do get upset about the fact that someone can be sued, it doesn't say anywhere in the state laws that exist now that you will necessarily prevail on that suit. And I think that our system of justice generally reaches the right result and it does take a little bit of time.

So that is my reason for voting no, Madam President. Thank you.

THE PRESIDENT: You will be so recorded, Senator Schneiderman, as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 410 are Senators Connor, Dollinger, Lachman,

Markowitz, Montgomery, Nanula, Paterson, Rosado, Sampson, Santiago, Schneiderman, Seabrook, Smith. And Senator Duane.

Ayes, 45. Nays, 14.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 411, by Senator Kuhl, Senate Print 1775, an act to amend the Penal Law, in relation to criminal possession of a weapon in the third degree.

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I'd like to waive the explanation of the bill and just be able to ask a question of the sponsor through you.

THE PRESIDENT: Senator Kuhl, will you yield for a question from Senator Montgomery?

SENATOR KUHL: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator

Montgomery.

SENATOR MONTGOMERY: Thank you.

Senator Kuhl, the summary of the provisions of this bill states that it amends the Penal Law to add a new subdivision which provides that an individual convicted of a violent felony who subsequently possesses a rifle or shotgun shall be guilty of the crime of criminal possession in the third degree.

And I'm wondering if this is the case whether or not possession of that rifle or shotgun is with intent to do anything. It's just automatic, if you just possess it, you're still going to be found guilty under this law?

SENATOR KUHL: I think I have the gist of your question.

SENATOR MONTGOMERY: Yes, Senator.

SENATOR KUHL: There's a lot of movement around -

SENATOR MONTGOMERY: Yes, we're -- we're being interfered -

SENATOR KUHL: -- new members who aren't familiar with the rules of the house

and that sort of thing.

But in any case, you may remember we discussed this bill last year. This bill is exactly the same bill as last year passed this house unanimously except for your vote in the negative.

The bill essentially is aimed at - there currently is a law which says if you are a convicted felon and you possess a weapon, then that is a violation, possess in -- I think it's the fourth degree, which is a Class A misdemeanor. This bill says if you are a convicted violent felon and you possess a weapon or if you have been found previously to be in possession of a weapon and were convicted for a first offense and that this is a second alleged violation and you're eventually convicted for a second time, that there is an elevation of the crime from a Class A misdemeanor to a Class D felony.

So that is the essence of what we're trying to deal in this bill, and that is to say, listen, we'll give you a break one time, we're only going to have a Class A misdemeanor if you're found in violation, but

the second time we're going to make it a felony.

SENATOR MONTGOMERY: Madam President, I'm going to -

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: I'm going to again vote no. I just think that there's - it's rather loose and we wouldn't want to convict people or to convict a person who essentially is not really intending to create -- to do another crime, necessarily, but nonetheless would be eligible, it seems to me, to be reconvicted.

So I'm going to vote no on this.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I'd like unanimous consent to be recorded in the negative on Calendar 414.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator Montgomery, on Calendar 414.

The Secretary will read.

THE SECRETARY: Calendar Number 468, by Senator Rath, Senate Print 2942, an act to amend General Municipal Law and others, relating to the rate of interest.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Rath, an explanation has been requested.

SENATOR RATH: Senator Paterson, this bill, as you asked last year, and as we suppose of last year, amends the General Municipal Law by linking the rate of interest paid by municipal corporations upon judgments against it to prevailing market rates; specifically, to the 52-week United States

Treasury bill rate.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you. Madam President, if Senator Rath would yield for a question or two.

THE PRESIDENT: Senator, will you yield to Senator Paterson?

SENATOR RATH: Surely.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, about 15 years ago the interest rates in this country were up at about 15 percent. What your bill does is take the lower number of a cap at 9 percent or linking it to the annual 52-week United States Treasury bond. So therefore, if the interest rates went up far above 9 percent, the recovery could only be 9 percent. And you could have a situation where the interest rate, as it did 15 to about 20 years ago, would be much higher than what would be the rate of recovery.

Would you be thinking of amending the law at that particular time? Or, if not, why do you have this apparent discrepancy?

SENATOR RATH: Senator Paterson, this all changed in 1982. And things certainly have changed with interest rates since 1982. And interestingly enough, the memorandums in favor and in opposition, the trial lawyers are in favor -- or, pardon me, are opposed and the school boards are in favor.

And I have found myself in an interesting role as I've come to be familiar with being chairman of the Local Government Committee, because I find myself representing the interests of the taxpayer and the people who have to cover the costs when huge judgments come in. And when the taxpayers and the school boards -- of course, they have to pay dollars back out when assessments are challenged.

And if we keep picking away dollars from the deep pockets of the schools or the municipalities, the cities, the towns, whoever it might be, we end up spreading more costs on the property tax. And that, of course, is the very worst and most regressive kind of taxation that we can have on folks in New York

State. I think that's pretty well agreed.

And so here's an opportunity to give these municipalities and these schools boards and these jurisdictions an opportunity to not pay a rate of interest that is much higher than in many cases many of their own investments are earning.

So here's an opportunity for us to get an equity circumstance out there for these municipalities. Because really, who does represent the municipalities? Their own lawyers, when they go to court. But on the floor of the Legislature, there are not a lot of people who are worried about the deep pockets of the taxpayers of the State of New York. I happen to be that person, and that's why this bill came out of my committee and why I'm advocating for it.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Rath.

And, Madam President, if Senator Rath would yield for another question.

THE PRESIDENT: Senator, will you yield?

SENATOR RATH: Surely.

THE PRESIDENT: Thank you, Senator Rath.

Go ahead, Senator Paterson.

SENATOR PATERSON: If there were a different kind of recovery in the courts, a judgment for personal injury, it would provide for the recovery, the interest rate to be in effect from the time of the personal injury. As opposed to what we have here, which is that the postjudgment -- that the interest rate is derived out of the date that the judgment is arrived at, so it's really a postjudgment interest.

So, for instance, you could have a situation where three years might transpire before the case is actually adjudicated in court. And so then what you have is no interest for that three-year period that would otherwise be recovered in a personal injury case.

So this could be a significant amount of money that the plaintiff loses because of the nature at which time the recovery is awarded.

If Senator Rath would yield for a question, the question is, why do we have a difference between the way municipalities would pay the judgment and any other defendant in a civil action?

SENATOR RATH: Senator Paterson, I think you've raised an interesting point. And if you'd like to bring that into another piece of legislation, I'd be real happy to talk with you about it.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. On the bill.

The discrepancy as I just explained, between the postjudgment and prejudgment interest rate, factoring in on these cases where you have a difference depending on whether or not you sue the municipality and whether you sue just another individual, is one of the reasons that I think there might be a better crafting of this legislation.

On the issue of the deep pockets of taxpayers, we have to remember that a taxpayer, presumably -- someone who was

injured, one of our neighbors was injured, was harmed by the municipality. So while the rest of us are taxpayers and we may in a sense collectively be contributing for what was the misfeasance of duty of our government or in some way some agency of our government, we do have to understand that there are a number of catalysts, a number of factors that probably influence far greater the amount of money that taxpayers have to pay or the increase in different types of property taxes or school taxes that would accrue from having to need more revenues in government.

And so I don't think it is exactly fair to take it out on the individual, who tomorrow could be any one of us, who would be harmed by some action taken by an agency and then we, the individual, the individuals, go to court, win a judgment, and are somehow not allowed to recover or not -- we are allowed to recover, but our interest rate is capped at 9 percent, when who knows what the interest rate could be somewhere in the future.

So we would like to support Senator Rath's idea of indexing what would be the

interest rate. And we suggest that there be an index rate that perhaps corresponds to the annual 52-week figure, which is now 9 percent, of the United States Treasury bond.

But what this bill does is not just to link that number to whatever the coefficient is of the 52-week Treasury bond, but caps it at 9 percent. So it can only go up but so much. And what we are suggesting is that that creates a hardship on the winner of a lawsuit and, in a sense, creates a situation where the defendant always wins when it comes to interest.

And for that reason, we recommend a no vote on this legislation.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will Senator Rath yield to one question?

THE PRESIDENT: Senator Rath, do you yield?

SENATOR RATH: Sure.

SENATOR DOLLINGER: Does this bill apply to all judgments against local

governments by any person, any entity?

SENATOR RATH: Let me check.

Municipal cor -- yes.

SENATOR DOLLINGER: Thank you, Madam President. On the bill.

I applaud Senator Rath's concern about taxpayers. But let me give you an example of where the taxpayers will be hurt by this bill. A taxpayer has a tax certiorari claim against a school district, against a town, against a village, against a city, and he's awarded a huge judgment because it turns out that the town and the village or the local government has wrongfully assessed him, has broken the laws of this state. The taxpayer whose tax money was taken wrongfully by government then says, "I want my money back. I'm entitled to have it back. It turns out, local government, you were wrong to take my money."

And what happens if your bill becomes law? The local government is able to say, "We don't have to pay you 9 percent. We can pay you less than that. That gives us plenty of time to appeal. We can hold your

money during the appeal, and it doesn't cost us anything." We, a good old-fashioned taxpayer, the very taxpayer that you're concerned about, gets less money back on the interest rate because the village or community just continues to hold the money.

I would point out that that may not only be true in a tax certiorari case, but what about the contractor who does a ton of work for the municipality, helps the municipality, takes the taxpayers' money, provides services to the taxpayers and their government, and it turns out that the government wrongfully withholds their retainage or wrongfully withholds, after a judgment, wrongfully withholds the money that that taxpayer, that business taxpayer, that guy who's out there trying to make a payroll, he wants his money back. He's a contractor, he's entitled to it. This bill would say, no, you don't get 9 percent interest, you get some lower rate.

I would suggest that this bill is antibusiness. I would suggest that this bill actually backfires in the face of taxpayers

involved in tax certiorari cases. And in fact, I think this attempt actually loads the deck in favor of government.

I know you, Senator Rath, and a whole bunch of people in this room have said, "Let's run government like a business." Well, I would just suggest to you that all we're suggesting here is that government shouldn't be a favorite business. It should be treated like everyone else. Whatever I have to pay as postjudgment interest on my judgments against me, I pay 9 percent. Why should government be treated any differently? Let's run government like a business, like my business. You get a judgment against my law firm, you get the statutory rate of interest.

All I think we're doing is suggesting that to give government the favoritism that you suggest may backfire in the face of taxpayers, may cost businesses who deal with governments money, and may actually end up not running government like a business but running it like a favorite little corporation.

You either want to run it like a

business or you don't. And this suggests that they don't have to. And I would suggest that that really flies in the face of trying to get governments to run like businesses and respond like businesses.

I've voted against this bill in the past. I'm going to vote against it again. I would suggest that the taxpayers for whom this bill may be designed to help are actually - there are actually going to be a whole group of taxpayers who will end up being hurt by it because they're not going to get the time value of their money when it's held by governments after a judgment is rendered against them.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Senator Dollinger, I might note for you that the plaintiffs I think would benefit under the bill from a rise in interest rates, since the interest rates on the judgment would continue to parallel market realities.

And the School Board Association points out rightly, I believe, that by filing challenges as close to the final expiration

date as possible, entities that have overpaid their real property tax obligations receive a higher rate of return at a substantially lower risk than investment opportunities provide.

And I believe that it was an interesting -- as I listened to you, as you used the word "taxpayer," as plural and singular, the taxpayer is some great unknown out there. And as that person has very few people protecting him in a real way, and as we expect our local governments to be the watchdogs of those tax dollars, and we load them up with unfunded mandates, which you and I have discussed over the years and we keep avowing that we are not going to do or continue to do, I think it's important that where we can give the municipalities a break -- and it's on a sliding scale, and it will be go back and forth in relation to the T bill rates.

And so I think we're putting any great hardship on people who are going to go to a municipality to try to get redress for some unpaid amount or some incorrect amount. I think that this is a case where the

taxpayer, the broad level of taxpayers need to be protected.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 468 are Senators Connor, Dollinger, Duane, Lachman, Paterson, and Sampson.

Ayes, 53. Nays, 6.

THE PRESIDENT: The bill is passed.

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

SENATOR FUSCHILLO: Will you recognize Senator Fuschillo, please, Madam President.

(Laughter.)

SENATOR FUSCHILLO: Madam President, will you recognize Senator Mendez, please.

THE PRESIDENT: Senator Mendez,

please. Excuse me.

SENATOR MENDEZ: Thank you. Madam President, I wish to have unanimous consent to be recorded in the negative on Calendar Number 410. Thank you.

THE PRESIDENT: Without objection, Senator, you will be recorded as voting in the negative.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there is not, Senator Fuschillo.

SENATOR FUSCHILLO: I believe there's motions to discharge.

THE PRESIDENT: The Secretary will read.

Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I believe there is a motion at the desk. And I ask that it be read, and then I would like to be heard on the motion.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Senate Print 2303, by Senator Duane, an act to amend the Criminal Procedure Law, the Penal Law, and the Civil Rights Law, in relation to strengthening civil rights protections.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

The reason I'm rising at this point is to ask the body to discharge the Bias-Related Violence Bill to the floor so that the full Senate can debate it and vote on it.

I don't have to remind people about the most recent terrible cases -- James Byrd, Matthew Shepard, Billy Jack Gaither. And I think also you'll hear, as this motion is being debated, about the increasing penalties which the bill includes in its provisions. But I'd like to speak at this point specifically about documentation and reporting and how very important that is for our state.

I'm sure that people will say, and I've seen it in the press, a murder is a

murder, a rape is a rape, an assault is an assault. But in fact, my concern is not just about the prosecution of heinous crimes that are bias-related. My concern is also about the prevention of bias-related crimes across the state of New York.

And what this bill will do is to help protect classes of people -- specific classes of people, yes -- in the state of New York from bias-related violence, but it also, in fact, will end up, I believe, protecting all of the people of the state of New York. Because if any of us are at risk of bias-related violence, in fact all of us are at risk of bias-related violence.

In fact, in the district that I represent, what often happens is people come into the district with bad intentions. People are beaten up, people are verbally threatened, not because they may or may not be gay or lesbian, but because they are perceived to be gay or lesbian just because they happen to be living in or visiting my district.

And I think that that happens in many neighborhoods across the state of New

York. And we need to have this legislation because it will increase protection for everybody in the state of New York.

One thing that we don't have the in the state of New York is documentation and reporting. And so I can tell you till I'm blue in the face that these things happen every day in the state of New York, but you don't have to believe me because there is no statewide reporting or documentation of cases of bias-related incidents and violence in our state. And by increasing awareness of the terrible problem of bias-related violence and bias in our state, it will help to increase awareness of the problem and make it a real problem to people across the state. And it will also focus the attention of law enforcement, police departments and district attorneys, to bias-related incidents across the state. And also that will continue to sensitize educators, elected officials like ourselves to the problem, counselors, but indeed the public at large as to bias-related violence in our state.

So this legislation not just

enhances the penalties after a bias crime has been committed, but in fact it goes an awfully long way towards trying to prevent bias-related crimes from occurring.

You know, when I speak before a lesbian and gay group of people anywhere, one of the questions I ask them is, how many of you have been victimized verbally or physically in an antigay attack? And every time, every time, 95 percent of the people in that room say that they have been the victim of a bias attack, oftentimes a physical attack, and almost all of them to a verbal attack.

And you never know -- you never know when someone verbally attacks you because they think you're gay or lesbian whether or not they're going to come after you in a violent way, with a bat or a knife. You don't know. And you are unsafe or we are unsafe all across this state, because you don't know whether or not a verbal attack is going to turn into a physical attack.

I'll tell you something else. When I speak in front of young people who I don't

know whether they're gay or straight -- I assume some of them are gay, I assume the majority of them are straight, I ask them, how many of you have verbally harassed a person because you perceived them to be gay or lesbian? And you know what? Too many of them raise their hands.

And that's what we have to stop as well. And that's why we have to reach law enforcement, DAs and police officers, and educators, so that nongay young people know that it's not right to harass and threaten people that they perceive to be gay or lesbian. And that has to be started at an early age.

Let me talk about my experience. One time I was leaving a bar, a car pulled up, people piled out of the car, someone was left in the car so they could make a fast getaway. They came over. They started calling antigay epithets at me which I don't -- I'm not going to repeat what they are, but they were pretty despicable and you would know what the words mean. And I'll tell you, I was really scared. Not so much because of the words specifically,

but because I had no idea whether or not they had a gun or a knife that they were going to go after me with.

And I was all alone. And they beat me -- they beat me to the point that I was bleeding, my clothes were ripped, my ribs were bruised. It was only because I was able to fight back -- but I was afraid to fight back too much, because I was afraid that they had a knife and that that would escalate the fight. And I did all the things that I'd been trained to do, because I'd gone to a self-defense class. But you know what? There were more of them than me.

And only when people -- other people left the establishment did they jump to the getaway car and get away. And I was brought to the emergency room, where I was treated.

But what happened was while the perpetrates were caught, it was treated as if it wasn't a big deal, as if, you know -- as if it didn't really matter that I had been beaten up. In fact, the case went before a judge without them even contacting me, so I didn't

even have a chance to testify as to what had happened.

And what's even worse is that if you looked in the records about this, you would see nothing. You would see nothing. It would be as if it never happened, as if I'd never been beaten up, as if they'd never driven up and beaten me. It was as if it had never happened because it's not documented anyplace, it's not reported anyplace.

In the neighborhood where I live, I've had -- I'm not even talking about all the times where epithets have been hurled at me. But I'll tell you about two where it did escalate to physical. I had a full bottle of beer hurled at me. I got slammed in the face for no other reason except for that they thought I was gay. Broke my glasses; again, I was cut.

And yeah, I did report them, because by now you can report those things in New York City. But you don't report them across the state. So nowhere in New York State is that this happened to me counted. And for the countless number of gay, lesbian,

bisexual, and transgendered people in this state, nobody knows at what level bias-related attacks are occurring.

But believe me -- well, you don't have to believe me, because we don't count. But if you care to believe me, it happens every day. It happens in my district. It happens across this state. And no one counts it. Nobody even knows that it's going on, because there is no way to document or report it.

And how do we stop that? First of all, by proving that it happens. And then and only then will we be able to take the steps to stop bias in our state. So that people like me and people like the people I represent and so many other people don't have to live in fear of being beaten and in some cases being killed. Because you know what? It's only a very thin line because what happened to me in that bar, in that bar parking lot and what happened to Matthew Shepard. It could happen to any New Yorker.

That's why we need to have the full debate on this bill. And that's why

ultimately -- and I know it will happen -- we will pass this law so that we can stop bias-related crime in our state.

Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

In substance, what Senator Duane's bill would do -- and we certainly thank him for his long fight on this issue. For those of you who don't know, Senator Duane has been an elected official in New York City serving the New York City Council since 1991, and has been fighting on this particular issue for many, many years.

But what it would do is increase the penalties for crimes committed with people for a purpose, a purpose of hatred. And it would be committed against people who were attacked because of their race, religion, national origin, age or disability, sex or sexual orientation.

Now, just sitting here, everybody in this room is eligible to be the victim of a hate crime. And we have found that there have

been hate crimes that have been committed against every race, every religion, every national origin, against gay and lesbian citizens in this state, against the elderly, and certainly against people who are disabled.

And so let's not look at this bill with any preconceived notion of an agenda. For those who have led the fight for passage of this legislation may just be in the vanguard of the attack but are no means separated from anyone else here who could certainly be victimized.

In 1986, on December 20th, there was a terrible attack in Howard Beach, New York, which claimed the life of a young man named Michael Griffith. In 1987, I introduced a bias bill similar to that of Senator Duane's. But I wanted to point out to the Senator and to everyone here that one difference in the legislation that I proposed from the one here today is that I wanted to establish a continuing special prosecutor that would examine hate crimes all over the state, to accomplish exactly the purpose for which Senator Duane stated when he got up, and that

would be to bring some kind of understanding to, in many respects, document these evidences of crime all around the state.

Now, since I introduced the bill, most district attorneys' offices in the 62 counties of New York now have hate crimes units and to some degree address these issues a lot better than they did before. But the documentation is still nonsubstantive and really not at a point that we can really understand how grave this issue actually is.

Those who oppose this legislation want to disconnect the First Amendment right of speech from the action taken by the perpetrator. They state, and they state correctly, that we already have laws on the books that cover these types of crimes. If you assault someone, if you in any way injure another person, we already have laws that convict you. But what sets hate crimes apart from the other crimes is that they not only injure the victim but they send a message to everybody within the group that the victim lives.

And so therefore, if you were

Jewish and lived in Crown Heights, you might be afraid to go out of your house for days after the injury, the death of Yankel Rosenbaum on August 18, 1991. If you lived in Bensonhurst, Brooklyn, and happened to be African-American, you might not want to go into that neighborhood after what happened on August 24, 1989, to an individual named Yusuf Hawkins. If you were African-American and you lived in Brooklyn, you might not have wanted to interrupt a disturbance outside your store, as an individual named Arthur Miller did, and met with the same end. If you were a 70-year-old woman who was suffering from a mental disability, you would not have wanted to walk up to police armed with only a kitchen knife and be shot down by six police officers, all with weapons, as happened to Eleanor Bumpers on October 19, 1984.

So what we are saying in this situation is that if you can manifest bias or definitely document that there was a purpose of hatred, you are now attacking a pillar of our society. We already have laws on the books that make it a greater crime to

vandalize a cemetery because of what it does to the religious beliefs of those who have their loved ones buried in that cemetery. We have legislation, we have laws on the books that increase the penalties if you attack a police officer, because a police officer is a pillar of our society.

And what we want to do by passing Senator Duane's bill, and first discharging it to the floor for debate, is we want to create the opportunity to raise the level of hate crimes to the same level that those other maladies in society are that we've already addressed.

In 1945, the New York State Senate and the New York State Assembly passed the Quinn-Ives bill. This established for penalties for the discrimination of employment by reasons of race, religion, or national origin. They wanted to employ a special prosecutor at that time to examine violence in situations of employment and perhaps violence for reasons of race or religion. They decided not to. But they added to Executive Law 63 Sections 9 and 10, which gave the Attorney

General the right to come into cases in any jurisdiction for this explicit purpose. The Attorney Generals, from 1945, have never used this opportunity.

But the fact that statewide elected officials have eschewed the opportunity to exercise a compelling state interest, as is the prerogative of the Attorney General, does not limit us as a Legislature from bringing some teeth to Sections 9 and 10 of Executive Law 63 and to buttress the Constitution of the State of New York under Article 4, Section 2, which would give us the right to create a situation where we can further examine the number of these types of cases, the increases in particular areas.

Attacks against Jewish New Yorkers are up one-third in the last decade. Attacks against gay and lesbian New Yorkers are up by half in the 1990s as opposed to the 1980s.

And yet, if we can't guarantee protections for individuals, how are we ever going to give them any kind of equality in the areas of housing and health care and education and employment? This is the most basic

concept that we have in this society, the right of individuals to live in a democracy without having it violated by others.

President Eisenhower said you cannot legislate morality but you can legislate to protect individuals from the immorality of others. And that's what I think Senator Duane's bill sets forth today. I congratulate him for moving to discharge it from committee, to bring it to the floor for debate, and I certainly speak in support of it and hope all of you will as well.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: We've spoken on this bill in the past -- thank you, Madam President.

We've spoken on this bill in the past, and I remember I think the last time we speak on it, it was following a pretty serious incident that happened in my village. And at that time I said that when there are examples of hatred in a community that, as Senator Paterson has mentioned, everybody of that group, of that circle, gets very scared,

whether it's a gay person or a Jew or a black man or anyone who belongs to a specific minority group.

In our case, in my village and in Westchester County, we had a very unfortunate period of time, several months, where a great deal of anti-Semitic graffiti was found on people's homes. And needless to say, this caused great fear and intimidation. People were afraid to go into their own homes once they saw this on the walls. And everybody in that community, not just Jewish people, became very fearful.

And at the end of a few months, we decided the best way to rally around was to create a march which went throughout two communities. The march was comprised of all peoples, and all peoples were coming together, all religions, all colors. And we marched from church to synagogue to church to temple to church to -- we just kept moving through the community. It took several hours, and we did it in light rain. And it was one of the most joyous things that I have ever seen.

I believe people want this bill,

because this bill reaffirms what happened in my community, that people want to come together and they want to make us feel more protected and secure in our environment.

As many of you know, I'm Jewish, and we Jews believe that our protection resides in the protection of all minority groups, irrespective, every minority group. And indeed, our government is based on that, because we don't want the tyranny of the majority. And we feel that to stand by and see any group's rights threatened is a threat to everybody in our nation.

And we have seen some very horrible examples. Indeed, right now we are seeing, in Yugoslavia, some pretty horrible examples of what happens when the majority says that their way is the way and everybody else should either be gone, killed, or not a part of their country.

And so I feel very strongly that this bill -- it's been around for a while but, by George, we need this bill. This state needs this bill.

Thank you.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MENDEZ: I rise in support of discharging Senator Duane's bill to the floor for debate. And in this question is a fascinating thing, the argument that a murder is a murder is a murder.

However, in the instance of bias, of crimes that are biased by nature, in my view they do represent, they are a reflection of the institutionalized prejudice that unfortunately exists in our society. Therefore, it is imminent, in my view, that we must have protections for those different groups that we are talking about here today.

I think that -- of course, nobody has mentioned Puerto Ricans. And I am a Puerto Rican. We are usually the invisible - the invisible minority throughout the state. But it does affect my people as well.

And therefore, we all must join together to ensure that the necessary -- the necessary protection that the state should

give its residents. It is a duty of the state to protect all its residents. And of course we are a part of that.

So besides, Madam President, once you are a member of a minority group, you cannot afford to ever go against another member of any other minority group, because it boils down, unfortunately, that you'll be working against yourself.

So I support the motion.

THE PRESIDENT: Senator Santiago.

SENATOR SANTIAGO: Madam President, I rise in support of Senator Duane, Senator Duane as a person and certainly in support of Senator Duane's bill.

I have -- I've prepared notes, but to listen to him -- I -- I'm terribly sorry that the -- that only our side of the aisle is here. Because to listen to you and not to be moved, you really have to be made of stone, absolutely made of stone. This is not about your issue, it's about our issue. It's a New York State issue. And I think we need to understand that.

And I prepared my notes because I

was really looking forward to this day. Since you joined us in the Senate chamber, I was looking forward to the day that I could stand up publicly and to support you and to stand by you. Because it is a very difficult issue for many people. But because you bring us to the floor, we have to bring it to the floor. Every person here has to search their own conscience, their own conscience. And it has absolutely nothing to do with gay rights or lesbian rights or black and white rights or - it has to do with human rights, what's right for people.

And that's really what I was listening, and that's what I heard. I think, as I was thinking through this bill -- and it's been difficult for me. I've got to tell you, it's very, very difficult. I'm a staunch Catholic. I've had to deal with that. I come from a very conservative family. I represent a very conservative community. It's not easy. But what I can say about the Puerto Rican community that I represent and the community that I represent is that we're decent people. We're poor people, but we're decent people.

It's very hard to hear what you went through. I -- I'm sure -- I'm sure that African-Americans, my people, the Puerto Rican people, the people that you mentioned, the people from Yugoslavia, are going through the same thing. It's very, very hard to walk into an area that you think -- when you know someone hates you, when you know your life is at stake.

I am the mother of two boys that I am very proud of. I want to leave them a world that doesn't have this problem. This is a horrible problem.

I am so sorry that there are other members who are not here because it's very hard for me to believe that ideology would separate us on this issue. It's impossible. It's impossible. It has to be that everyone in this room is united on this issue. We were all elected by the people. All of us were elected to represent all people. And it's impossible that we wouldn't be unanimously supporting your bill and supporting you as a human being.

And all of us should apologize to

you publicly for what some people did. And if we were part of that unconsciously, then I apologize on behalf of those horrible people that harmed you. And people who have bad thoughts.

I think you're right -- now, as a good Catholic I will tell you that Catholics say, you know, you shouldn't have bad thoughts. And part of your message is you shouldn't even have that thought. And I think that's a wonderful concept. You shouldn't even have the thought of harming another human being. You shouldn't even have that thought. And I thank you for bringing that to my consciousness, because I hadn't really considered that before at all.

I'd like to be part of a Legislature that supports human rights, all human rights. And that's why I stand by you and you can count on me and I trust that we will bring this to a vote, that we will discuss it. And whatever fears we have, bring them to the floor. Whatever fears we have - you know, someone like -- I normally, as you know, I normally don't address this issue,

because it's a very passionate issue for me. Because I wouldn't like to see a Puerto Rican child walk down the street and be afraid, or an adult be afraid, anyone be afraid. You shouldn't walk in America's streets and be afraid because your skin is black, because your skin is brown, because you walk differently, because you talk differently, because you have a disability. Not in America. That doesn't happen in our country. It happens in somebody else's country, but not here. Not here.

And that's what your legislation does, and I really trust and pray in God that we can support this legislation, that we will urge every colleague, the people who are absent, the people that are absent in every one of those chairs, that they come, that they listen, at least listen from their offices, or that they read that transcript that this young lady is passing, and that they really think about what this means, and that we bring it to that vote at some point. At minimum, a debate. At minimum, a debate.

Thank you, Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

Let me preface my comments just by saying that in light of Senator Duane and Senator Santiago's comments and all the other comments of my Democratic colleagues, I would urge all of my Senate colleagues to vote your conscience on this one. This one is as important as any other piece of legislation that we have considered this session or that we will be considering this session.

Madam President, since about the end of 1992 it's pretty well documented that in the City of New York every single one of the seven FBI index crime categories that are tracked have shown precipitous drops in crime, including, most notably, murder rates, down about 60 percent. What has not gone down? Bias crimes.

And Senator Duane laid out for us one of the problems, which is the lack of reporting that's currently not required under state law. Although I will suggest to everyone here that as a result of the very

acute problem that we have in the city of New York, there is a bias crime unit in the NYPD, and they do do some tracking.

So let me share with you some of the numbers that allow me to suggest that we have a tremendous problem on our hands. There are an average -- over the past 10 years, there have been an average of 511 bias-related crimes every year. That's about 10 every single week. And I would suggest to everyone that there is unbelievable underreporting of these crimes. And we don't know how many of these crimes are never brought to the public light, how many of these crimes are violent in nature and how many are not, what the end results are, what policy ramifications there might be to attempts that we have to remedy this problem. We don't know.

So that is one aspect of this legislation that is absolutely essential. Now let me suggest to you something else, because I think there's somewhat of a misconception about this piece of legislation and that maybe this only affects homosexuals, that we're only doing this to protect homosexuals. Last

September 20th, Sunday, 10:00 p.m., in South Ozone Park, Queens, just south of the district I represent, Mr. Rishi Maharaj, standing on his doorstep with members of his family present, and down the street come three individuals who set upon him with a baseball bat to his head, beat him until he's unconscious, and put him in the hospital. His crime? He was of Indian descent. There can be no more disgraceful action on anyone's part than this.

And let me suggest something else. Because I've heard the argument that an assault is an assault, it's not worse in one case, it's not worse in another case. I reject that. I repudiate it on its face. An assault that is driven by pure, naked hatred and ugliness is worse than an assault driven by some other motivation.

Plus, plus, let's get a little bit into the psychology here of the bigot, the racist. What's the profile? The profile in most cases -- well, let me do this -- in all cases is the racist, the bigot is ignorant. Period. In all cases. In most cases that

individual is also stupid. But always ignorant. What does it mean? It means that his bigotry and his racism is not inborn, it's a learned behavior. Learned behavior. Picked it up. Picked it up because somebody taught it to him or picked it up because of cues that he got from society or the lack thereof, and then when incidents happen and there's no response, there's no redress, it validates it.

It means that if there's no reprisal, if there's no response on the part of government it sends the message that this is okay. Well, it's not okay. It's never okay. And we've failed. Being one of the handful of states that has not enacted hate crime legislation, we've failed. The most diverse state, not just in the United States, the most diverse entity, the most diverse geographical jurisdiction in the world, we have it here. We represent it. I represent parts of it in Queens County. And we don't have hate crimes legislation that protects people on the basis of who they are, their ethnicity, their gender, their age, a disability, and sexual orientation? Let me

hit this one head on. Let me hit this one head on. Because it's my belief -- and I don't think anybody is going to dispute this, publicly at least -- that if we struck from this bill the provision of sexual orientation, that protection, that the bill would pass. Would pass. It would probably be let out onto the floor, would pass, would become law.

Let's think about what that means for a second, because it's frightening. It means that somebody who would allow that to happen, who would allow it to pass if we take sexual orientation out of it believes, probably, most likely, that if we it be enacted this legislation with those protections for all the other individuals that would be protected, the ones we've left in, we may deter some violent action against those people. And so by extension it means that they recognize this legislation could be efficacious, it could protect homosexuals from violent crimes.

And Senator Duane has articulated more eloquently and more passionately than anybody else could just how real this problem

is, how palpable it is, and how it does not wane as other crimes wane. This problem continues, it persists.

We cannot continue with this inaction. We must act. And as a concluding point here, let me share with you how close this hits home for me. Because I would also suggest that most legislators in this room know of bias-related incidents that have happened within their own districts. And let me just tell you one has happened that's very close to my heart.

My brother attended school in Jackson Heights in Queens. And he used to play basketball on the Garden School basketball team. And one of the players on the team was a gentleman named Danny Doyle. Six foot five inch, Irish kid, nice guy, my brother Andy tells me. Danny Doyle's a nice guy, friendly, everybody liked him. He's terrific. Well, a few years ago Danny Doyle was convicted of murder, along with two other individuals, in the death of Julio Rivera. His crime? He was gay, and he was out on the street. Gay man, out on the street. So they

killed him. So they killed him.

And we don't have a hate crimes legislation in this state? Day in and day out, people are being discriminated against, intimidated, harassed, and abused physically, and there is no response from this government. We don't stand up and say "We're not going to tolerate it anymore" because of some obscure reason that I believe to be perverse. It's wrong.

Ladies and gentlemen on both sides of the aisle, this one is vitally important. Let's vote our conscience on this one. This one let's say, you know what, let's get above the politics, let's get above all the rhetoric, let's get above the debate and let's do the right thing on this one. Because we may be wrong. Maybe this legislation won't work. Maybe. But if we're wrong and it does work and we don't enact it, it means that there are people out there that we represent, our constituents, who will be victims and we could have prevented it. We could have prevented it by our action today. Let's act accordingly.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I think after what we've heard from many of my colleagues, the reasons to support this motion to discharge and to support this legislation to me are abundantly clear.

I want to focus on one aspect of this, though, that I think should be very important to all of the members of this house. We're talking about a crime problem. We're talking about a very serious crime problem, one that has not declined when other areas of crime are going down.

And I think that in the Senate, in my brief experience here, issues relating to criminal justice, issues of crime and justice and personal safety are taken very seriously. I think there are a lot of members of the Senate who think of themselves and portray themselves to their constituents as being tough on crime. But I think it's very important to recognize that if we are not tough on the area of crime that expand as all

other areas contract, we are not truly tough on the crimes that matter in the state of New York in 1999.

I have listened to this debate for a number of years. It's the first time I've participated as a legislator. And I must say, I do not, as I get into this more, really do not understand the arguments against bias-related crime legislation. I don't see the validity. And no one has stood up to me and said, "If someone sprays graffiti on your door that says 'Joe loves Marie,' that's no more of a crime than if they spray swastikas on your door and say 'Jews, die.'"

No one believes that. And yet we have this opposition. People say one form of vandalism is the same as another, one form of assault is the same as another. I don't think that if you think it through you really believe it either, ladies and gentlemen. And I urge you to think this one through.

There is a difference between a random act of violence against an individual and an act that has the purpose and the effect of instilling terror in an entire group of

people. And a bias-related crime is no more the same as just a random act of street violence than the assassination of a president is the same as any other act of murder. Assassination has a dual purpose. You kill an individual but you negate the right of people to participate in a democracy. You hurt all people.

And bias-related crime -- and we have it, I'm sad to say, in my district as well as the others, and I think in every district in the state we all are aware of these experiences -- this is something that is a different sort of crime. And if anyone here can honestly say that as a gay person or a black person or a white person or a Jew or a Christian. It doesn't have a different effect on you and your entire community when you know that someone was targeted because of who they are and what they are rather than what they've done. I don't think that's really an honest assessment.

I urge you that if we are going to be serious about crime, if we are going to be tough on crime, that this is a bill we must

bring to the floor. This is a bill we must make law. I don't want to be here for another year of debate and another recitation of incidents that could have been prevented. And I commend to all of you that if you think it through, you will see that the arguments against this piece of legislation don't really hold water. We are talking about an identifiable type of crime that we can address with carefully drafted legislation.

And I think I would like to echo something else that Senator Hevesi just mentioned, and you have to really look into your hearts on this. It has been told to us for many years that if we would take out the provision on sexual orientation, this would pass the Senate. That means that people are willing to say it's wrong and it's an additional sort of criminal penalty to act with a racist intent and target a white person or a black person or to target a Jew or to target a Muslim, but that we're going to take a pass on targeting someone because they're born to be a gay or a lesbian. That is a disgrace if that is true. I hope it's not

true. And I hope we will pass this bill this year.

Thank you.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, Madam President. The hour is late. I will be brief.

But I would like to hone in on one point that has not been perhaps mentioned as adequately as it should. In the deep labyrinths of this bicameral Legislature, there are a group of controversial bills that unfortunately will never see the light of day. And they will never see the light of day because they are called controversial bills. Three weeks ago it was campaign finance reform. Today it is hate crimes. And it will be followed by another bill that one of my colleagues will introduce to discharge.

We are paid, and sometimes not paid, to be a deliberative body. We're not deliberating today on the merits of a bill that is on the calendar, as much as we would want to. We're deliberating whether we can discharge or not discharge this bill.

Ladies and gentlemen, let's do what we're supposed to do. Let's deliberate, let's debate, let's discuss. Perhaps differ, as I'm sure we will. Perhaps attempt to alter, as I'm sure we will. But at least allow us to be permitted to vote, not just to discharge a bill, but to vote on a bill. Open up this process to the light of day.

As Justice Brandeis once said, sunlight is the best disinfectant. Take all these controversial items out of the darkness of the labyrinth that it is buried in. Bring it to the fore so we can discuss this legislation, discuss it as a bill and not just a bill to discharge it.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I rise to speak in favor of discharging this bill, bringing it to the floor for debate. And the reason is very simple.

First of all, understand what this

bill does, as I read it. This is not revolution, ladies and gentlemen. This is what we've done all kinds of other places in our Penal Law. This bill says that if you're charged with a bias crime and you're convicted of a bias crime and an underlying assault or other serious attack, you, under the discretion of the court, can be required to serve your sentences consecutively, not concurrently.

Now, we've done that. This is not revolution in our Penal Law. We've done that with all kinds of offenses where we simply say to the courts, we believe these offenses are so egregious that they should be consecutively imposed instead of concurrently imposed. You don't get to serve time for both crimes at the same time. They're serious enough so that you have to serve separate time for each crime. That's what this bill does.

Understand what else it does. It already takes a protection that we accord to people in this state. Now, if you are physically assaulted because of your race, your color, or your religion, you can be

guilty of an additional crime. So we already protect people because of their race, we already protect people because of their color, and we already protect people because of their religion. If a crime is directed against me because I'm a Catholic, this bill -- the current law already protects me. What does this bill do? It simply adds another category of people that we protect.

And what does it protect? Senator Hevesi, Senator Schneiderman said it perfectly. It protects those who are attacked on the basis of their sex, those who are attacked on the basis of their disability, and those who are attacked on the basis of their sexual orientation. We're taking a right and a protection that we already give to people of race, color, and religion and we're extending it to people because of sex, disability, and sexual orientation.

This is not revolution. We've already done this in our employment laws. We've tried to do it with respect to sexual orientation in our employment laws, but we've already done it in a whole bunch of other

laws. This is not revolutionary. This is evolutionary, and an important evolution.

Senator Schneiderman talked about being soft on crime. I'm astounded that we're debating a crime bill in this house and the members on the other side of the aisle either aren't in attendance or aren't going to participate in the debate. This is -

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: You know, there are many members in the chamber, there are many members not in the chamber, performing their functions. If we are going to start now pointing out who's here and who's not, then I can go through this conference and point out attendance records for every single member on this side of the aisle.

If that's what you want to do, Senator Dollinger, we can start doing that.

SENATOR DOLLINGER: Madam President -

SENATOR SKELOS: But there are many things that are going on right now within your conference, within our conference, where

people are acting responsibly and their legislative duties.

SENATOR DOLLINGER: Madam President, I'll withdraw that comment and I retract it. I think Senator Skelos is correct, and I apologize to the Majority for it.

THE PRESIDENT: Thank you, Senator.

SENATOR DOLLINGER: What I simply want to emphasize, Madam President, is that this issue, the question of this issue is an important one. And I simply call attention to the fact, as Senator Snyder did, that this is an issue of being tough on crime. This is an issue of being tough on a certain group of criminals.

And I think we can rightfully ask, if we don't pass this bill, who are we protecting? Who is it that we're protecting by not making this a more egregious crime?

I would simply close with this point, Madam President. I have a suggestion for Senator Duane. I think it would be an even better bill if we included crimes against

personal property in this bill. Because my opinion is that you can also have bias crimes that are -- result in personal property. Going into a cemetery and hacking off the top of all the graves that have a Star of David on them is not mere vandalism. Going into a public bathhouse, as they did in Rochester, New York, and painting racial epithets on the wall is not simply graffiti. And burning a cross on someone's front lawn is not simply trespass.

That's what this bill is all about. It simply says that we will not protect people whose motivation in committing a crime is hate against their victim. This is a victims' rights bill. It's a tough on crime bill. It ought to be on the floor and ought to be debated in this house.

And again, I repeat my comment, Senator Skelos. I think that's a fair comment. I do apologize. And I sometimes, in my debate, perhaps get overzealous.

But I think this is a bill that tends to create great emotions. And I think it's a bill that ought to be debated by this

house.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, I don't think I've spoken at a time when motions to discharge were being made five times in my life. Nevertheless, they do serve a useful purpose. In all the years that I've -- this is my 43rd year in the Senate as a member, and four years earlier I was counsel. In all those years, I was in the minority for one year. And we had another device, I think, by amending bills, and another way of expressing and bringing to public view.

But you have served a decent purpose, Senator Duane. And sharing -- when I heard you, Nellie, Senator Santiago, I share your pain. I share your feeling. It was very evident in every word that you said.

So it's not that there isn't a personal revulsion against the idea of negating and excluding any human being from our love and affection and respect. That's not what we were brought up on. Our Constitution states that our creator has

endowed us with inalienable rights. Which could go beyond the inalienable rights, our Creator. We were created by Almighty God in a divine image.

Is there anyone here in this chamber or outside this chamber that should be hated for no reason at all? This mindless thing that Senator Oppenheimer reminded us when she made reference to what was happening in Serbia, what happens in many ways throughout societies throughout the world.

These are terrible things. Terrible things. We address crimes when they are identified and legislated. And we should. I don't know where they failed you. There was a big failure when you were -- suffered assault and battery and you weren't even notified when it came up to court. That was a sin. That was a monstrosity. That should not have happened.

I mean we can't call ourselves a civilized society when things like that go on and you don't even know about it. Not even an opportunity to say "ouch" publicly. And you had every right to do it.

But we are created in a divine image. We're only around here for a short while. It's a trice, really, when compared to an eternity. But we have an eternal destiny. And we will have to account. And I don't know how we can address that problem by saying that we're going to legislate against hatred. We legislate against the manifestations of it in crimes and offenses as we identify them. But we also have an affirmative responsibility in the formulation of conscience.

Madam President, you are preceded or you preside and you introduce someone to invoke divine blessings on the work that we are about to undertake and, if not, to engage in our contemplation of the responsibility that we care with the trust that has been placed in each and every one of us. But we have that. What do we do with our children? They don't even have the right to contemplate. Contemplate. That's been all ruled out of being against our system, our system of freedom. I don't see -- freedom of what, I don't know.

But we ought to be very positive

about the education of our youth, the spiritual element that goes into the formulation of a sound conscience. Not this dirty, sordid spiritual depravity of denying personality to human beings.

I heard nothing here that offended me. It touched me in every way. But our job is to do it in a most affirmative fashion. We do it in the education and in the raising of our children, in the formulation of citizenship, in following through in circumstances, such as you found yourself in, vigorously.

And I believe it was Senator Paterson who mentioned the fact that in the 62 counties the DAs have been sensitized to this. They should be, if they are not. These things are simply not acceptable. They should not be -- I mean, they should offend each and every one of us in a most profound way.

But the answer must come from us. It must come from the people, Madam President, from all of us. We must reject it with the utmost power that we have at our command, and we must enlist our maximum effort.

I feel indebted to you, sir, for having brought this up. I -- a motion to discharge is -- sure, a lot of things come up, and it's your way of ensuring that we are entertaining a wide variety of approaches to human problems and social problems. But you touched on something -- not in the formulation that I see, but you touched on something that needs further formulation.

How we do this in a constructive, affirmative way, with our people in the families, societies, the smaller, the larger, and nationally, the things that happen nationally that offend us. And if we witness the daily tragedy, as Senator Oppenheimer - you know, this is so obvious. And it's dramatized to an extreme degree. But only to a degree, because that problem exists. It's a part of the human condition, part of the challenge that we have for our service here on earth before we have to meet our Maker.

So you've raised a very significant spiritual argument and spiritual consideration, and one which we should take to heart. And our response should be

constructive in addressing the myriad problems that we face day-to-day, so that it does fortify and reinforce an orderly society and a society where interpersonal relationships are respected, that we have love and positive concern for each other.

It's not enough that I don't do anything wrong to you. How about doing something right? If you go through life not having done wrong to anybody, you haven't done a doggone thing. There's an affirmative aspect to our responsibility, moral. All of you, by your presence here and by the sentiments you've expressed, I think have expressed it eloquently on the floor in your own way. But we have to channel it in constructive directions.

I know, as Senator Hevesi brought up, it may be -- have a good effect, it may not. I'm not sure that -- unless we identify those wrongs and offenses and go after them seriously. But the rest of it is a very heavy responsibility. Some of it we can help legislatively; some of it we must, using whatever poor powers we have in our office to

encourage that attitude in the public at large.

So I think this was a constructive time that we've dedicated. And I'm grateful for it. And I believe we should take it to heart, and I think most of us do. And I don't agree with -- I don't agree with this at all as the approach. But certainly raising it and putting our minds and conscience on a problem that is real, real for everybody -- and it can be real for everybody, under one circumstance or another -- one that demands more attention than so much more legislation than we consider every day.

This stuff, I've been here 43 years and I've seen a million bills. Some of them I've seen a million times. But this is very, very important. It's so basic to our reason for being here. And it also measures the kind and should reinforce the quality of our response in what we do across the board.

THE PRESIDENT: Senator Nanula.

SENATOR NANULA: Thank you, Madam President. On the motion.

So many good things have been said,

and I won't stand today to present the legal arguments. They've been made. Emotional arguments that are from the heart have been made. I want to just speak what I believe to be a little bit of common sense.

And with respect to that, from a commonsense perspective, I look at the bill very simply, in that this bill or this motion to discharge to create a bill would create a special distinction for crimes motivated by hate. And we can talk about murder or assault. There's already laws on the books to cover those crimes. This isn't about the crime. It's about the motivation. It's about the fact that this crime was created, this assault or murder was enacted because the person who committed that crime was motivated to do so out of a sense of hatred, out of a motivation to hurt and to maim because of the differences between that person and the person they were setting out to inflict pain upon.

And in 1999, in a country that was created, most fundamentally, in all men and all people being created equal -- and as Senator Santiago said, the sad statement that

in 1999 we have to even sit in a chamber like this one and talk about a bill like this, I think is a great tragedy.

But nonetheless, when you see acts like the one -- hear about acts like the one that was tragically, tragically committed on Senator Duane, we have no choice but to stand. We have no choice but to bring forward a piece of legislation like this one.

And I'll tell you what I think is sad. I think it's sad that this issue has devolved in a political debate. Why? Well, the issue of homosexuality has been brought up. And all of a sudden everyone has to take the party line. The liberals take their party line, the conservatives take their party line.

In my opinion, this bill isn't about the homosexual agenda, this bill isn't about gay rights or registering your vote in an area that is inconsistent with what your political platform is. That's hypocrisy, in my opinion. And it's a shame that this chamber, on so many issues, has to divide itself on party lines. We devolve so far away from what is, in effect, a human rights issue,

a human rights issue, when we simply say, "Oh, I can't support that because I don't support the gay agenda. And this motion to discharge protects sexual orientation."

Well, that's wrong. That's wrong, in my opinion. The people of this state deserve better than that. Tom Duane deserves better than that. And clearly, unfortunately, this issue has become political because our conference is standing up with a motion to discharge. And whenever our conference is standing up with a motion to discharge, it usually means there isn't a bipartisan approach. The conference that has the responsibility of criticizing those rolling the rock up the hill, the people on this side of the aisle, believe that the people in the majority aren't doing their job. And in my opinion, that's simply what's happening here.

I think it's common sense. I think it's common sense that we should put these platforms aside. I think it's common sense that we should get together in a bipartisan fashion. And I think it's common sense that we should put out, as a Senate chamber, a

responsible bias-crime bill.

I hope, Senator Bruno -- and I'm happy to see you here at this point in the discussion -- that we can do that in a bipartisan fashion and protect every population that deserves protection under this bill.

Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

As we come to the close, over the next year -- or, depending on how you define it, the next two years -- of a century that I think has been notable for the incredible advances that have been made, advances in science, technology, and in the human spirit and in the spirit of tolerance, I would also remind everyone it's the close of what has been without a doubt the most violent or one of the most violent, tragic centuries in terms of suffering and death imposed on whole populations because of hatred, because they were different. If that isn't the tragic dichotomy of this century, what else is?

Nothing, nothing can ever compare to the Holocaust. Yet we've seen in Rwanda, more recently, we see in the Balkans that same kind of hatred and killing and death. That's not -- not about wars. It's about killing women, children, old people, noncombatants, helpless people because they're different, because they go to a different church or synagogue or mosque, because they're from a different ethnic group. And certainly in the Holocaust there was a genocidal attempt against the Jewish people and there was also wholesale slaughter of Romany Gypsies because of who they were. And, yes, of gay men and women and of people of other minority religions and of people who were not from minority religions but had the courage to stand up against what was going on.

You can get very jurisprudential, because this is legislation. And I know opponents will say, well, murder, assault, all these crimes are already crimes. And they protect everyone, as they should. Well, they're right, but.

I would remind my colleagues, in

many other areas of the law we do precisely what this legislation would do. We do make an educated value judgment, a discernment as to the motive and impose different sanctions for conduct that comes -- that while it may appear from an objective purview to be the same bad conduct, we impose greater sanction where we deem the motive to be peculiarly unacceptable to our values.

For example, do we not make assault or murder of a police officer carry a greater penalty than an assault or murder of any other citizen? And in doing that, do we any way put down the other citizens? No, we still protect them. But we are delivering a message about our values, about our values, about how we value those who protect us as police officers and about how reprehensible an assault we regard it when someone is motivated to shoot or strike out at a police officer. Because we take that as an attack on not just a fellow human being but on our entire body, on our entire value system. Someone is assaulting our fundamental societal values in assaulting people who are doing their job of protecting

us. And we give greater sanctions to that.

So, I mean, I've read the memos in opposition. Those who would couch it in some jurisprudential thing, I daresay they'd support increased penalties, and have in the past, for assaults on police officers. And we've entertained in past years other legislation protecting other categories, for example, of public servants doing their duty.

And do we not on a national basis make an assault or murder of a president or vice president a greater offense, an offense tried at a different level? Yes, we do. Why? Because we're making a value statement, we're making a statement of what our values are. That's viewed as an assault on our fundamental democracy, to assault the person or persons chosen by the public to lead us.

And do we not -- I have in my years here seen legislation sponsored by Majority members that passed this house to provide greater penalties when one assaults a senior citizen. And we certainly, as we ought to, make greater penalties for certain crimes committed against children or disabled people

than against the body of the whole.

And in doing that, we don't minimize or denigrate at all those same crimes committed against the public at large, but we focus on two things, the fact that people because they either represent us, as a police officer does, or because they're particularly vulnerable. We punish those in a special way who would take advantage of that vulnerability, whose motive is mugging senior citizens because they can't fight back and it's an easy mark. We punish that especially, and we ought to.

We are making a statement in those laws, a statement not about -- we're making a statement that we are particularly offended by those who are motivated to take advantage of such vulnerability. We do it all the time. So I say to the opponents, your intellectual house is not in order when you try and make this, oh, it's just a matter of jurisprudence, we protect everybody with the general laws. There are times when we do and we ought to put special emphasis, special sanctions down against people who are motivated by not just

ordinary criminal intent but have a particularly vile motivation for striking out at a particular group, such as children, senior citizens, or those who are different in ways that we've already protected, race and so on.

Now, that's what this legislation is about. It's not a partisan issue. This governor has called for anti-bias crime legislation. The past governor did. People in both parties have called for it. A series of attorney generals have submitted different types of legislation like this in the state. It's not partisan. And it's intellectually honest because -- and, you know, you've heard it -- there are tragic, tragic examples of the consequences of that kind of hatred and so on.

But I think the best reason for this isn't just to reassure those who are different than the majority that we want to protect them from the haters. It's important as a value statement of what we as New Yorkers prize. And, you know, you can say motive, motive, motive. I believe in the death penalty statute there's a special -- singled

out, for example, of professional killers, hired killers. Why? Because their motive isn't anger, their motive isn't normal human emotions. It's just greed. So we say, okay, you're among the baddest.

So we do this. We look at motive. And we ought to look at it here, in this century, that's seen so many tragic genocidal attempts -- tragic -- that's seen a Holocaust, that's seen literally tens of millions of people slaughtered. We ought to nip that kind of hatred in the bud. We ought to make a special statement that says that's not acceptable to us as New Yorkers.

What's wrong with that? Show me how that doesn't fit into our whole scheme of law where in so many other instances we've singled out particularly bad motives with extra sanctions because we want to make that statement right now. This is a real no-no because it strikes at our fundamental value system.

And I appreciate what Senator Marchi said about the positive things we ought to be doing in education and in other ways to

combat the seeds of hatred, to explain differences, to encourage tolerance, explain why that's such a -- that tolerance -- and as I said, this has been a century that has seen this dichotomy. The good thing in this century is I think we have seen a growth in tolerance, a growth in opportunity for all, a much, much wider appreciation for diverse cultures and, yes, sexual orientations. And we now, I think, as Americans are aware of the variety of religious beliefs that our American family encompasses, and we've grown tolerant for that, and that's good.

But there are haters out there. In this year, 1999, we know there are haters out there. We've seen their evil work, we've seen their helpless victims. And it's time for us as New Yorkers to say, no, this is particularly offensive. Yes, we want to protect all of our citizens against murder, mayhem, and assault. But we also want to deliver the message that when your motive's hate, we're going to stop you. There's an extra sanction there. Before you join up and form a whole club, before you join some of the

hating societies that have engaged in more widespread massacre. You know, when Hitler started out with his cronies they didn't have -- I venture to say that there are Ku Klux Klan klaverns, yes, even in this state of New York, that have as many members as Hitler started out with. Because he started out with a handful of haters, and the hatred grew and grew and grew.

So I think we ought to deliver to those haters out there this message right now: No, not in the state of New York. Your motive's hate, your victim's singled out because they're different, they're different from you, their religion's different, their ethnicity's different, their language is different, their parents came from a different place, their affectional preferences are different from yours, we say no, we're not going to tolerate that.

That's not a partisan issue. It's an American issue. It's one that ought to be on the floor of this house. We ought to pass this bill. I urge a yes vote.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, as I believe it is probably generally understood in this house, the bill which is the object of our consideration this afternoon is a bill which I've carried in this house for the better part of a decade. The bill bears the name of a different Senator, for purposes of this parliamentary approach, but it is a bill which not only I have carried but which is the Governor's first-priority bill in his 1999 legislative program.

I feel very deeply about this bill, and I have for some time. But I think the focus of my attention has never been greater than it was today when a comrade of ours, a fellow Senator, stands up before us and describes a personal experience which he has had which etches more sharply in my consciousness the dilemma of this problem than anything I've ever heard before in this chamber. Because as the old saying goes, there but for the grace of God go we. There but for the grace of God we are. We're here. We have him right in our midst, and he's told us what he personally suffered.

Now, multiply that exponentially by thousands and thousands of cases and add to it the agony which has been superimposed on this problem by the AIDS epidemic. Because the AIDS epidemic has generated not only hate but fear. People feel that those with AIDS are in some way stigmatized in a special way. They've got a death sentence upon them, and some have even dared to suggest that it's the Lord's means of taking vengeance upon a special class of people. This demented kind of thinking needs to be repudiated.

But far more than that, in a body that's this collegial -- and you know this is my only term I shall serve as president of the Senate Club. The Senate -- the Senate for me has a very special meaning. We're a group of people who care very much about each other. And if you just take a look at what goes on next door as we slice our salami or eat our pears or apples or whatever, there's a real collegial sense of comaraderie, and we like each other. And in fact, at times we have a real feeling of wanting to help in any way that we can.

And then we get into this situation in which we have a sharp apparent line of division between a number of us on this issue. And I say to you that this needs a little more time for reflection. Let me start at the very beginning. Let's hypothesize for a moment that you're a young man. Let's suppose you've reached the age of puberty and you wake up one morning and you suddenly realize that you have a slightly different point of view, that your point of view impels you to be attracted not to the women in society but to the men, that you have a homosexual rather than a heterosexual view of the world. It's not something which you did by preference, it's something which happened to you psychologically for reasons that are far too complex to be explored on this floor.

I'm being terribly candid about this because I think we have to get to the heart of this matter once and for all. Is that predilection, which is something which has happened to you and which in many ways you may wish did not happen to you, a reason why you should be narrowly defined for the rest of

your life as an object of special hate and contempt? I think not.

It's not as though you were doing something wrong, it's as though something had happened to you which makes you a little different from perhaps the majority of society, but which causes you to join a group which has a different outlook on life. Is that a reason for feeling that you must be the object of crimes that are specially directed with a feeling of the most intense type of burning hatred? I don't believe it is.

But that's what's happening in our real world. And let's be candid. What's going on with this bill is very simple. I know it because, as I've told you, I've pushed it for many years. It is the fact that this bill deals with homosexuality and the fact that this bill involves a specific delineation of crimes that are committed against homosexuals which causes it to be opposed repeatedly in several special quarters. I'd like to tell you something which I believe is a hopeful indication of something very significant. I was at the Friendly Sons of

St. Patrick's dinner this year, and I was paying my usual courtesy call on members on the dais, and Cardinal O'Connor beckoned me to come over. He's an old friend whom I've seen and worked with on many issues before. He said, "Roy, I want you to know that I think we may have a new approach to the bias-crime bill, and I hope we'll have a chance to talk about it before this session is over, because certain attitudes are changing and we need to discuss this."

I think what I'm hearing from the cardinal -- and I haven't had a chance to meet with him yet, and I hope to do it in the very earliest moment -- is that there is a new perception that some other approach must be taken which will recognize the special character and the intensity of this particular issue as it divides society.

Now, I may be overly optimistic in my anticipation, but I believe that with the Governor having had the courage to make this his top priority, with the highest and most respected Catholic leader in the state, if not the nation, going out to reach especially to

one who's been an advocate of this type of legislation, saying let's see if we can't work something out, that there's a different wind blowing on this issue.

Now, I would like to say to Senator Duane that Tom, you and I of course have discussed this at great length during this session. You were gracious enough to forbear in the handling of this in the manner in which you found it necessary to do today because I believe you're laboring under a deadline for various motions and resolutions, and I understand and respect why you felt it had to be done.

But I say this to my colleagues. I think that there's going to be a change. And I especially address this to my very distinguished and frankly beloved friend, the Majority Leader of the Senate, Joe Bruno.

Now, Joe's just had a 70th birthday, and from that vantage point of mature consideration, I think I can even detect in him a sense of ripening deliberation, if I can put it this way, which may cause him to have a slightly different

approach to this in the days ahead as well.

I'm being a little bit presumptuous in daring to suggest this, but we're close enough and I've got enough gray hairs myself so that maybe he won't misunderstand and be upset with me for suggesting it. We've got something cooking here, my friends, and it could be terribly important for all of us.

Now, let me point out to you that what really happens is that there's a sense of unidentifiable revulsion which seems to take overtake certain people. In some people that becomes a hatred which has to be acted out for psychological reasons that are also very complicated. But have you not noticed the degree to which your biased friends, those who wish to act out against minorities of any kind, seem to have a certain demented intensity? It's almost unbelievable the concentrated way in which these people want to inflict harm on others.

That's why I think we have to be especially sensitive to the need for escalating the penalties for dealing with such people, because they have involved themselves

in an internal form of escalation which causes them to be abnormal in their intense need to hurt those who are of certain categories, so we must try to deter them with equal intensity.

Now, it's been plainly stated by Marty Connor, I think as eloquently as I've heard it, that there is escalation throughout our penal system for special categories of crime. He's spelled it out so that I needn't go back over that ground. But there's no question that the Conservative Party memorandum, which I hold in my hand, I think is in error when it says "New Yorkers know that discrimination is illegal. We also know that adding a specific category to existing law discriminates against everyone not in the category. This legislation is unnecessary, and we urge you to vote against it."

This is a unique form of topsy-turvy reasoning. We're saying, if you accept the Conservative memorandum, that the law discriminates against everyone not in the category. Now, look, let's face what's going on in the real interplay here. It is the

Conservative Party and to a degree the Catholic Church -- which for reasons that we needn't go into, but some of which have great validity, undoubtedly -- have a formal opposition to this situation. But there - there is change, as I've described it already to you, and I predict that within the next hopefully several weeks before we leave here for the end of this session that there's going to be a difference and we're going to be able to pass Governor's Bill No. 1. It's my fervent hope that that's the case. I hope this is not naive.

I will not vote for your motion because I don't wish to either symbolically indicate a disloyalty to my leader, for whom I have the highest regard -- but let it be noted that I don't fly under a false flag. I resent the fact that it's taken this long to get a chance to vote for this. I think we should get it onto the floor.

I'll even remind the leader and my colleagues that he has said to us in an earlier conference this year that there will be a chance in a Republican conference to

discuss this once again. I'm as confident as I can be that that will be an illuminated discussion which will reach an enlightened conclusion, and I trust and hope and pray that that conclusion will enable us to pass this type of legislation in the year 1999.

THE PRESIDENT: To close debate, I recognize Senator Bruno.

SENATOR BRUNO: Thank you, Madam President and colleagues.

I've listened, as you have, to the debate on the issue of a hate/bias crime bill. And I rise really to just say what has been said before by many of my colleagues. The debate that took place here was constructive in that points of view were aired. But the debate was out of order. And yet we had that debate. And unlike some other circumstances recently where debate on the issue was not allowed, in this house we have talked about the issue.

The debate, Madam President, is a procedural motion to get a bill to the floor. And if people are disturbed over their inability to get a bill to the floor, then the

discussion should relate to that particular issue, on the rules of this house and not on the merits of the issue that is not on the floor, a hate/bias-related bill. That is not on the floor.

The debate that's gone on for a couple of hours -- and I say again -- was not on the issue of a procedural motion to discharge a bill. But the discussion took place because the feeling was that there are strong feelings and that this was a way of airing those feelings.

But I don't want to have anyone in this chamber mistake a vote against this motion to discharge as relating the feelings of the people that are voting against a procedural motion to discharge.

Senator Connor and Senator Goodman and so many others related the things that we have done together in this chamber, and with the other house, as relates to people who are violated by criminals. Senator Volker had a bill that we passed that specifically related to increased penalties for hate crimes against any discernible group. That bill never passed

the Assembly.

And I was always troubled, Senator Duane, as to why that bill never passed the Assembly, because that would have covered the issue that is on the floor that we have talked about here in the bill that you attempt to get to the floor. I still am puzzled on why that bill, which was a hate-related-crime bill, could not make it through the Assembly.

So I am left with the thought, and it disturbs me greatly, that the issue really isn't trying to do something about criminals who violate people, groups, in some harmful way, but the issue is more political. And that's very disturbing, if the issue is political, because we're trying to get to a result. We are in this chamber having done Jenna's Law, two-time violent offenders staying in, the graffiti laws, the gang violence bill that did pass both houses.

We did all of those things together, and we have reduced violent crime substantially, protecting the public here in this state, which is a credit to both sides of the aisle and to the other house, and to this

Governor, who has provided the leadership to help us make this state a safer place for people to live.

We will go forward, and we will continue to do things together. And we are open. And Senator Goodman talks about me in terms of a birthday. And, Senator Goodman, I prefer to relate that I have just celebrated the 30th anniversary of my 40th birthday. But we will -- you're figuring that out?

(Laughter.)

SENATOR BRUNO: We will stay open. Senator Duane, we've had some very constructive discussion. We will stay open on issues that are important to members of the Senate, individually and collectively. And we will keep the discussion open, because we feel that the process should be an open process for discussion.

But, Madam President, as I close debate, I want to just again reiterate that the vote that is being cast is on a procedural motion to discharge to get a bill to the floor. Period. And it is not in my way relating to the merits, approval or

disapproval, of any of the substance that would be in a bill if it were to be debated on the floor.

Thank you, Madam President.

THE PRESIDENT: All in favor of accepting the motion to discharge, signify by saying aye.

SENATOR PATERSON: Roll call.

THE PRESIDENT: All right. The Secretary -- I see five members standing. The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: No.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: No.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: No.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DEFRANCISCO: No.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: If I may explain my vote, Madam President.

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you very much.

You know, frankly, I don't really know that much the politics of the Assembly, and I'm not very familiar with the politics of this body as well. I'm new.

I do want to say that my having been beaten up and my having been slammed in the face and had beer bottles and epithets thrown at me at the time it happened didn't feel political, it felt frightening. And frankly, the first time, when the case went on without my being there, for a long time, because in law enforcement and with the DA it was as if it had never happened, in fact I made believe that it hadn't happened to me

either. And I would have sympathy for other people who told the story of what had happened to them, but because it didn't really matter or count, it was as if it hadn't happened to me.

And I -- I hope -- at the time I didn't think there was a greater purpose to it, but that I had just gotten beaten up. But I hope maybe there is a greater purpose to that having happened, and maybe today's discussion was a part of that.

I want to thank from the bottom of my heart my colleagues in my conference, because frankly, after they permitted me some leeway and some freedom, which is really above and beyond I think what often happens in this partisan body. And I am really very grateful to you for allowing me that kind of free rein over an issue that matters an awful lot to me.

I want to also commit to, as I have before, to trying to come to a bipartisan solution. I've been heartened by the Governor's statements. I was heartened by what did happen in the Assembly this year. I've been heartened by the outreach of my

colleagues on the other side of the aisle, including the Speaker. And I just want to commit to continuing that effort -

THE PRESIDENT: Senator Duane, I want to interrupt you to notify your time is up.

SENATOR DUANE: Thank you.

-- to see that we do have inclusive bias-crime-related legislation enacted this year.

Thank you, Madam President.

THE PRESIDENT: Senator, how do you vote?

SENATOR DUANE: Yes.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator. Thank you.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: No.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: No.

THE SECRETARY: Senator Holland.

(No response.)

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: No.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Yes.

THE SECRETARY: Senator Lack.

SENATOR LACK: Madam President.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam

President. I rise to explain my vote.

I was sitting in my office when I started to hear this debate. And of course, since I am knowledgeable about the Senate rules, I could certainly have stayed there and been absent for this vote, since it requires an affirmative vote in the Majority to bring this motion to discharge to the attention of the chamber.

But I came down to vote no as a cosponsor of the underlying bill, to underscore the Senate's rules and the Senate's procedures, and that I understand what a motion to discharge is, and as a cosponsor of this bill, firmly committed for years to its passage, to come down and to vote no to support the aims of the Senate Majority and the rules of the Senate and the order that we have in the Senate and that I can feel entirely comfortable not staying in my office and being absent but to come down and underscore the parliamentary movement that the motion to discharge is.

And therefore, Madam President, I feel very comfortable, for purposes of this

motion to discharge, in voting no.

THE PRESIDENT: Senator Lack, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: No.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: No.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: No.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: No.

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: No.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

(No response.)

THE SECRETARY: Senator McGee.

SENATOR McGEE: No.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Madam President, to explain my vote.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: To examine my vote briefly.

Even though obviously, Senator Duane, this is a technical, mechanical exercise, it still is a marvelous, I think, example of how democracy works, that we can - that we still have the capacity and the freedom to speak on this issue. And I'm happy that you brought forth this motion to discharge.

And I just -- I'm reminded of the multitude of different cultures and religions and people from different nations, some of them from nations that are warring against

each other, but when they find themselves here in New York they somehow understand the meaning of what America is and stands for. And I think this is antibias, this is an antihate bill, it's a message and we should be sending it to the citizens in our state. It means that we will not tolerate this hate based on the difference between us, and I think that it supports the notion of what America means.

Certainly there are still parts of the state where I cannot go because of the color of my skin. There are parts of my own borough where I am deathly afraid to be caught at night by myself because I know that it is dangerous, because people do hate me not because they know me, not because I've done anything to them, but simply because of my color. So I understand that.

We are the government, and we should be sending this message. And so, Madam President, I vote yes because I think this is the right thing to do, even though this is simply a motion. It's a motion that is so important, I think we should pass it.

Thank you.

THE PRESIDENT: Senator Montgomery, you will be recorded as voting in the affirmative.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Madam President, to explain my vote.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: I rise to support this motion.

Senator Bruno and others have alluded to the fact that it may be procedural. But I'm on the Investigations Committee with Senator Goodman, and we have voted this bill out on several occasions over the past ten years, and it has never seen the light of day on this floor.

If the rules are to be changed - and I would urge Senator Bruno to form a bipartisan committee to change the procedural rules so that some of the bills that we do

vote out of committee do see the light of day on this floor.

I believe the issue is of such importance that for the past ten years that we have been providing this legislative body with motions to discharge out of frustration, utter frustration that we cannot get these bills out of committee when they have been voted out of the committee to see the light of day on this.

So if this is the way we have to do it, I will continue supporting the procedural motion in order to have it see the light of day. I vote yes.

THE PRESIDENT: Senator Onorato, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Just briefly, Madam President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: What is

very upsetting and painful is that last year the Governor came down to Westchester County and in front of several hundred people in Westchester said that he felt dedicated and supportive of this measure and that he was going to work in the direction of its passage.

There are so few states that do not have to bill, it is an embarrassment for me that our state, which is so incredibly diverse, doesn't have this bill. I mean, it's less than two handfuls. I really think the other side of the aisle has to give very serious attention to this now. It's really getting to be an embarrassment for us.

I vote yes.

THE PRESIDENT: Senator Oppenheimer, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, to explain my vote.

My understanding of the Senate rules that the motion to discharge this bill is in order. In fact, it's under Rule 11. Today was set as the last day for motions to discharge. So based on time agreed upon earlier this session by the two parties, and based on the Senate rules -- and based on the actual rules themselves, you can vote against this motion and defeat it, but it is a misnomer to state that this motion is out of order.

The reason that I point that out is because we have tried to get action on this type of legislation for about 13 years, since I introduced a bill on March 5, 1987. Senator Goodman has basically the bill we're looking at today, and Senator Duane sponsored it.

The point is the reason that we wanted to suspend the rules and bring the bill to the floor, which we do all the time -- when we bring bills to third reading, that's a motion to suspend the rules to bring a bill to third reading, all the time -- is because this

is an issue that has hurt so many people and has intimidated so many communities.

Finally, on the issue of whether or not the Assembly could pass Senator Volker's bill, I wouldn't have any problem if the Assembly passed that bill. But the procedure is political. Because as we explained before, we already have on our books laws that would protect people, but what we want to do is to classify those protections just as we did in the federal Civil Rights Act of 1964.

My final point, New York State has never passed the civil equivalent of the federal Civil Rights Act of 1964 that doesn't even have the protected class that's so much in dispute today. I have never been quite satisfied that I really know why we can't pass hate crime legislation in New York as we have in so many other states.

THE PRESIDENT: Senator Paterson, you will be recorded as voting in the affirmative.

The Secretary -- Senator Paterson.

SENATOR PATERSON: That's correct.

THE PRESIDENT: The Secretary will continue to call the roll.

THE SECRETARY: Senator Lack.

SENATOR LACK: No.

THE SECRETARY: Senator Rosado.

SENATOR ROSADO: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Seward.

(No response.)

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Affirmative.

THE SECRETARY: Senator Trunzo.

(No response.)

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Madam President. Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, I normally don't do this, but because of this issue, let me just clarify a couple of things.

George, if I just might say, Senator Onorato, the bill that you're talking about is not the bill that's in Roy's committee. That's another civil rights bill. The bill is in my committee. I just want to make that clear. It's been in Codes for some time.

This house, over the years, passed bias-crime bills on a number of occasions. And the reason -- and I normally don't get into this. I was the person who went down to the second floor with the previous governor and offered to negotiate and was basically told by the governor's counsel at that time that they had won the political issue and they really weren't interested in negotiating.

This house not only passed the death penalty, by the way, which covered the crime that Senator Duane was talking about out in the West, we also passed gang violence. And the gang violence piece came out of our bias-crime bill. We pulled it right out of that bill because we couldn't get the Assembly to do our bias-crime bill. So we pulled the gang violence out, which they passed, the Governor signed, which is now in law. And which has been used, by the way, on a number of occasions for bias-crime situations in regards to gang violence, because most of the most serious crimes that are involved in bias crimes are gang violence issues. So that - let me just explain that.

The problem, I think, with this issue -- and let me just say, Senator Duane, so you don't think you're alone in this house, I was assaulted nine times in 1968 as a police officer. The interesting thing about it is you talk about people who are susceptible to assaults, not one of those were we able to maintain prosecutions for the assaults themselves, because assaults on police officers, especially at that time -- and even now -- are so common that you have to have a serious injury before courts will even maintain them. I only point that out because that's something I think most people don't understand.

As far as we're concerned, as Senator Bruno has said, we are very, very sympathetic to this issue. And over the years we've passed legislation that would deal with any discernible group. And we have been ready to pass that bill for years. Unfortunately, this issue is political.

And, Senator Duane, you haven't been here, and I understand your feelings. But in the long haul, the problem here I think

is that we have done as much as we can under the circumstances, many of us believe. We would like to negotiate an overall bill, but the problem in the long haul is -

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: -- the likelihood of it happening is very unlikely.

THE PRESIDENT: Senator Volker, your two minutes -

SENATOR VOLKER: I vote no.

THE PRESIDENT: Thank you, Senator.

You will be recorded as voting, Senator Volker, in the negative. Thank you.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Waldon, excused.

Senator Wright.

SENATOR WRIGHT: No.

THE PRESIDENT: The Secretary will call the absentee roll.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Holland.

(No response.)

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Abstained.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Seward.

(No response.)

THE SECRETARY: Senator Trunzo.

(No response.)

THE SECRETARY: Senator Velella.

(No response.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 24. Nays, 30.

THE PRESIDENT: The motion is defeated.

Senator DeFrancisco.

SENATOR DEFRANCISCO: Yes. With unanimous consent, I'd like to be recorded in the negative on Calendar 468, Senate Bill

2942.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator DeFrancisco.

SENATOR DEFRANCISCO: Thank you.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Madam President, I believe there's a motion at the desk. I ask that it be read in its entirety.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Breslin, Senate Print 1832, an act to amend the Vehicle and Traffic Law, in relation to authorizing a residential parking permit system in the City of Albany.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: This parking permit bill has been in this house for a number of years, and in fact several years ago passed with only a couple of dissents.

It's a parking permit bill with a home rule message. That home rule message would allow our Common Council here in Albany

to set up a parking permit system in and around the capital to protect the viability of our residents here in Albany, and to protect the value of their houses and their quality of life.

This is not a monumental bill. Similar bills have been passed in this house routinely with home rule messages. During the past two years, Senator Saland sponsored a bill, with my support, and it passed. Senator Nozzolio had a bill for a parking permit with Democrat and Republican support; it passed. Senator Spano, a similar bill. Senator Oppenheimer, from the Democratic side, a bill I voted on in the positive. And one other bill as well passed.

This is a bill that's important to the constituents in Albany, a bill that shouldn't be viewed on a partisan basis but viewed in the true spirit of our home rule system here in this body. This bill, if it comes out on the floor, I believe would be voted on in the affirmative, as many members on the other side of the aisle have voted on a positive basis, a yes basis, before.

I urge both sides, my friends on both sides, and colleagues, to vote in the affirmative on this motion to discharge.

Thank you, Madam President.

ACTING PRESIDENT McGEE: All in favor of accepting the motion to discharge signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The motion is defeated.

The chair recognizes Senator Skelos. No?

Senator Smith.

SENATOR SMITH: Thank you, Madam President.

I believe there's a motion at the desk. I ask that it be read, and then I would like to be heard on the motion.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Smith, Senate Bill 2951, an act to amend the Civil

Service Law, in relation to employment of peace officers and police officers.

ACTING PRESIDENT McGEE: Senator Smith.

SENATOR SMITH: Thank you.

This bill will prohibit the employment as police officers or peace officers of an individual who has been convicted of any offense or violation of a civil rights or human rights law.

Currently, officers are not required to leave their jobs, and it is solely up to the police department to take disciplinary action. In numerous studies it has been shown that most officers have been allowed to stay employed and repeatedly commit the same infractions over and over again. In other instances, the officers just move from one jurisdiction to another, committing the same heinous acts.

This bill requires the suspension without pay of an individual for 30 days, pending a hearing and the determination of charges. And if found guilty, the person is subject to immediate dismissal.

Police officers are responsible for upholding the law and protecting the rights of all members of society. Their job is often difficult and sometimes dangerous. Experience from around the world shows that constant vigilance is required to ensure the highest standard of conduct, standards necessary to maintain public confidence and to meet national and international requirements.

This bill is imperative in the wake of Amadou Diallo, Abner Louima, Anthony Baez, and the list goes on. Common patterns of ill-treatment by police have been identified throughout this country in what has been deemed high-crime areas. Studies further show that this type of behavior is prevalent in communities of color.

I'm not saying that if this bill had been in effect we would not have had the tragic, unnecessary, brutal death of Mr. Diallo. As a person who was raised to believe that police officers are your friend and that they're the good guys -- and surprisingly, I still believe that the majority of our cops are good, decent human

beings. But take it from someone who has been maced, arrested, manhandled, abused, libeled, and falsely charged and lied about by an officer out of control, we have got to make some changes, and now is the time.

ACTING PRESIDENT McGEE: Senator Markowitz.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I rise to support this motion to discharge. And I want to thank Senator Smith, who probably has been most recently victimized by out-of-control police.

We've talked about this issue. We've tried in so many different ways at so many different levels to address the issue of policing. And we know that in the final analysis, policing involves a relationship between two individuals, one who is the authority figure -- who more than likely carries at least two weapons, his stick and his gun, and possibly other weapons -- and a citizen. Some of the citizens also have weapons.

We also know that policing is very

dangerous. It's a very dangerous job for those officers involved in it. But more importantly, it is a professional position. And we expect to have standards related to professionals in our society. We want them to do their jobs in the most professional manner as it relates to policing of citizens, whether or not there is crime involved.

And so what Senator Smith's legislation would do, if we could see that legislation come to the floor and have a debate on it and hopefully have a consensus on it, this is one small piece in a larger puzzle to try and make certain amendments and corrections as it relates to policing. I think that it would professionalize it more because it would raise the standards.

And I believe that now is the perfect time for us to consider such a bill as this. So I'm -- I'm in favor of this motion, and I hope we can get it passed.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Markowitz.

SENATOR MARKOWITZ: Thank you

very much. Thank you very much.

This motion will not answer all of our concerns. Just like all of us are elected to serve, if at any time in the future we get into trouble -- and let's say a regular citizen gets into trouble -- does the press cover the average citizen, or does the press cover us a little bit more? And the reason why they cover us a little bit more is that the public has given us a special trust. And when we violate that trust, we then are held to a higher standard. And you and I know that's true, every one of us.

In the same way, police officers that are empowered by our society and our state to carry that gun and their badge, they are also held to a higher standard. And that's the truth. The overwhelming number of our police in the City of New York are superb men and women.

But to make the police force and all that it must be, it must be a force that people are young and old, Christian and Jewish, African-American, Latino, and every race and creed and nationality must look

towards as people as a force, as a service, doing the benefit of the public. Trust and respect must go both ways.

So, Senator Smith, I look upon this legislation that we're trying to discuss this evening as just an additional step to help our city, to help our city make New York's finest -- and they are indeed, in a nation the finest -- to make them reach even higher levels. Higher levels of responsibility, of abilities, of competence, of respect.

And I believe that if every police officer had the opportunity to understand the concerns of many of us, especially those of us that serve diverse communities in New York City, they too, because they value their professions, and I know they do, then they know that a better police force working at the optimum can only increase the level of respect that they have for their work.

And so we are working hand in hand with the police, the department, and all of us that value and treasure the important role that police have in the society and in our City of New York.

And so, Senator Smith, I commend you. I have a hunch that in the months to come, there'll be increasing discussions on this issue, this Thursday for sure in New York and for many future times. And a Senator that just spoke about bias-related bills, there's that song that Bob Dylan made famous, if you don't understand, get out of the way, because the times they are indeed changing.

ACTING PRESIDENT McGEE: Senator Seabrook.

SENATOR SEABROOK: Yes, Madam President.

I rise in support of Senator Smith's bill, because I think that when we look at the policing that takes place in our communities and what has to be done -- and I always tell people that there's a different type of policing that take place in various communities. One is called policing, and the other one is called patrolling the community. And one needs to understand that there are some changes, institutional changes that have to take place when we deal with policing.

We have witnessed probably one of

the most horrendous acts of individuals who are out of control and that also have a license to take a life. I had the opportunity to visit the site where a young man was slaughtered in the Bronx, Mr. Diallo. And if one would ever want to see a death chamber, take a visit to that shrine. And you would see that there was the dislodging of 41 shots at an individual, and 19 of those shots hit the individual. And he was even shot in the bottom of his feet, so obviously he was down. The second bullet severed his whole spleen. He was killed with the second bullet.

But we've seen a systemic destruction of young men killed by police. And we constantly use the response that it's a few bad apples. And a few bad apples spoil the whole bushel. And bad apples are used for other things as well, because bad apples are used by farmers to feed hogs and pigs as well. So there's a purpose for bad apples.

There was an incident that took place a couple of years ago in the Bronx, young men out playing football one night. Didn't commit a crime. Football hit the car,

police officer grabbed the individual around the neck in an illegal choke-hold that the police department has outlawed. This was an illegal choke-hold that the police department -- and the instructions is never to use this type of choke-hold on an individual. This individual did not commit a crime, but he lost his life.

So this is not about getting rid of a few bad apples, because that's what we look at. This is about how do we begin to educate and train and also not to allow individuals who have violated the civil rights of individuals to be allowed to be on the force.

In that case, the institution which we have to change, the judge -- in a bench trial, the judge said that he had never witnessed such a den of perjury in all his days on the bench. It has nothing to do with the police officers or being a police officer, but it has something to do with an institution that we allow to exist.

This was not this police officer's first incident. He had had a litany of incidents. We have something in New York City

that's called a street-crime unit. And their job was basically to take guns off the streets and deal with drug situations with guns. That was their job, and it was very clear. But they had a different idea of their job.

Because one of the misnomers, and I wanted to say this, is that the street crime unit don't look for rapists. That is not their job. But they indicated that they were looking for a rapist that night, the street-crime unit. That is not their job. Never been their role at all. Detectives and those units go after rapists, not the street-crime unit. That's their role.

But here we had a situation which I guess when all the facts are given, we will find out who they really were after or what they really were after. Because there are no detectives in the street-crime unit. These are just police officers.

But here we have an institution about educating and training police officers. This bill says, about individuals who have committed violations of civil rights -- we just had a discussion here about civil rights.

That was about civil rights. And part of the street-crime unit was to disregard civil rights. On a number of occasions -- and I will say that the majority of the legislators who look like me have had some police story that they can tell in this room. That's for sure. And their kids have some police stories to tell in this room. Police have decided to disregard all rights. My son told me that he was stopped in front of the house, grabbed, pushed up against the wall, searched, frisked. And they asked him what was he doing. He said, "I live right here."

So a clear violation, and understanding what the role and responsibility -- there is something called civil rights, and we talked about it in the previous bill, and we talked about what should have been obtained and dealt with in 1964 that Senator Paterson had talked about.

So I will tell you that there was a discussion and people will say that the police were just doing their job and there was an accident that took place. The reason I am saying this is because there have been those

who have made statements that the police was responsible even in that incident. And if that was so, then the Mayor would not be making changes systematically in the system. So there is a need for changing and discussion.

The Mayor understood that, because it was late, but he made those changes that had to be made. Because it is hard to justify 41 bullets. Remember, these are guns that you have to pull the trigger 41 times.

And it was hard to talk about that two weeks prior when there was a tiger loose in New Jersey, across the George Washington Bridge. And there was a humane way to deal with that tiger, with a tranquilizer gun. There was a wild elephant that got loose by Madison Square Garden a couple of years ago, and he was never shot at 41 times, because those were some trained individuals who understood that they also had to tranquilize that elephant.

But what we saw here, and in this incident -- and I think it's important, because today it was Diallo, it was Diallo.

Twenty years ago it started with Clifford Glover and Randolph Evans, Baez, Michael Steward, and Rosario. So it don't just happen. It's systematic. Systematic. The institution has to change.

And so we're saying here that this is a bill -- but there is a bill that has to deal with residency. There is a bill that has to deal with a cadet program for police officers in terms of changing the complexion of police officers. It also deals with some innovative programs that we have to deal with police officers that talk about allowing the police officers to use their pension fund to build and develop housing that's affordable for them to live within the city, that we should look at ways of dealing with that.

So this is not just about a couple of bad apples. This is about an institution and how do you change the institution. Because we will begin to perpetuate about a few bad apples. It has nothing to do with apples. It has something to do -- if every police officer looked like me, you would still have the same situation. Because the

institution has to change. How you change policing. How you educate police. How you pay police. And your expectations of police. That's what has to change. And we have to do some things here in this body that would allow those things to happen. Had we ridded ourselves of a number of individuals, we would have young lives here today.

So I think that it's important that we have this discussion and that we allow people to talk about an incident that everybody seemed to have a little silence about. Because this has nothing to do with color. This is about humanity, when 41 shots take place and 19 times an individual is hit. And ex-police officers in here and the way that they were trained and the way we look at those incidents, obviously, there were some individuals who had gone mad.

And I will say that it's important that we look at this and understand our role and responsibilities as human beings and as legislators and at the price we pay for being silent. Because it was Diallo yesterday, and who knows who it will be tomorrow. But we

have a golden opportunity to take a stand today.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Madam President, let me set the context for my comments a little bit. I love cops. My grandfather on my mother's side was a cop. My aunt was a cop. That entire side of my family were cops. Before I was elected to the State Senate, I served as director of management analysis for the Queens Borough President and liaison to the New York City Police Department.

Police officers die in the line of duty with frightening regularity. I attend their funerals. They are amongst the most heroic in our society.

Having said that, I want to be very clear about this. Individuals who oppose changes to how policing is performed, to the constitution and composition of the police force, should not and cannot be labeled anticop. There was no liberal, there is no conservative. There is a desire to make a

police force which is ultimately accountable to the people who put that police force into place, to make that police force the best possible police force it can be.

In 1989, Madam President, I was driving in my car, as a young man. I ran a stop sign and was pulled over in Forest Hills, Queens, white neighborhood, by two white cops, one of whom approached the window and was so obscenely out of line with me that discourteous doesn't even begin to approach it. Yelling and screaming. The classic good cop/bad cop routine, because the other cop did not behave in that fashion.

And in the wake of the Amadou Diallo tragedy, I think we have all paused for reflection a little bit at incidents that have happened to us and evaluated them maybe in a different way than we had at the time that they happened.

And that's what happened for me. And I started to look back on this incident which happened to me and started to think the following. If I as a white man was a minority and New York City police force was

predominantly black and the cop who had treated me so terribly was black, I probably, in searching for a rationale for his disgusting behavior, might have assumed that he was doing it at least in part due to some racial undertone. And that would have set me off even more than I was already fired up.

And why is this important? Because in a day and age when any one of these little sparks can lead to a huge conflagration, blow our city up over this racial divisiveness and very real issues of racism and brutality, that we need to address them. And I commend Senator Smith for bringing this concept to our attention today and would like to shed light on one particular facet of it that in light of my experience has made me an advocate for a policy change that I think is essential.

We have a police department in New York City that is currently 68 percent white when the population of whites in New York City is 43 percent. It's a huge problem. Huge problem. Want to see the problem get worse? Let's look in the leadership ranks of the New York City Police Department. There are 449

captains in the New York City Police Department. Do you know what percentage white they are? 94 percent white.

Let's take a look at the inspectors and the chiefs, the top echelons of the New York City Police Department. There are 236 inspectors and chiefs. Do you know how many of them are white? 92 percent of them are white.

Now let's take an look at the minority population on the New York City police force, see where they come from. 75 percent of them live in the City of New York. What's the current resident-nonresident composition of the New York City police force? 55 percent live in the city, 45 percent live outside of the city.

My colleagues, we have an opportunity here to take another action in this legislative session and allow the City of New York, pursuant to Senate Print 3507, allow the City of New York to act on its own accord to amend the New York State Public Officers Law and allow the City of New York to enact the residency requirement prospectively -

prospectively -- for newly hired New York City police officers. Which will in some ways avert the incredible crisis of confidence that we have right now in New York City. We need to take this action to increase minority participation on the New York City police force.

I reject the notion that housing is too expensive in New York City. And even if you can articulate an argument that it is, well, I can articulate arguments, as can my colleague, Senator Seabrook, on how we need to put forward ideas; such as, having the pension funds in the City, underwrite mortgages at low interest rates for residents of the City of New York.

We have to remember, that in the wake of the Colin Ferguson shooting on the Long Island railroad, remember this, this legislative body, along with the Assembly and the Governor, immediately enacted legislation which enabled police officers from New York City, Nassau and Suffolk, to travel on the trains for free. Why? Because logic dictates that if you have police officers on the

trains, the trains are safer.

Well, if we had a residency requirement and thousands of police officers now living in New York City, the streets of the city would be safer. Plus these individuals would be more apt to become involved in civic life, in Little League, and in every facet of life in the City of New York.

It is an action that we need to take, ladies and gentlemen. And it is something that's not anticop. It's not something that we need to be attacking people for supporting. It's something that we need to do to restore confidence. It's not a panacea. Not the only thing.

We need to reconstitute the Civilian Complaint Review Board, a toothless organization, that has no power to independently discipline police officers. There needs to be an additional independent police monitor. We have to do intensive, intensive recruitment, as is currently going on.

I'll remind everybody, that in the

New York City Police Academy right now, seventy percent of the applicants today are minority. Why? Five additional points on a residency -- on the police test for residency.

And we must do aggressive, aggressive education and recruitment in the New York City public school systems, which are 85 percent minority, which is problem, Madam President, in and of itself. But that's where we need to do our recruiting.

And change this notion right now, which currently exists, with the day in and day out attacks on the police department, many of which are justified, but served as an impediment for individuals, particularly of color, to get involved in the New York City Police Department.

We must address these issues. And I want to say as clearly and loudly as I possible can, this is not to be anticop. This is to be procop, propolice force. And in order to make sure that our police force more accurately reflects the composition of our society, so that the people who put us here, who enabled the elected leaders to fund the

police force and protect us, have confidences in those cops, and that if there are tragedies that exist, then at least we'll know that we've done all due diligence to insure that those cops have been properly trained. They are the best possible police force they can be. And that we've done everything we can to avert tragedies such as happened not too long ago in the Bronx.

Thank you.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, as the hour is late, I will try to be very brief.

I think it is very important that we're able to begin to talk about this set of issues today. I hope we will have a chance to discuss them more thoroughly as this session goes on.

I commend Senator Smith for raising this, because I've been experiencing almost a sort of a cognitive dissonance going between New York City and Albany in the last few months.

I -- and I urge my colleagues who are not from the City, that we have a very, very serious problem. It is not just a problem in the view of the black community or the Hispanic community. This is a problem in the view of the overwhelming majority of people in the New York City. We understand we have a problem with the ability of our police officers to work with the communities. They must work with them if they are to enforce the law effectively.

This is something, and I speak again, I -- I -- I have to echo what Senator Hevesi said, I'm certainly not anticop. I - I spent two years, before I went to law school, as a deputy sheriff. I've worked in -- with law enforcement. I was the lawyer for the Local Anticrime Group for more than a decade in Manhattan, bringing civil actions to back up criminal investigations. And I've worked with many police officers on those actions over the last fifteen years. And I know, particularly from working with me, on trying -- and in community crime efforts, you can't effectively enforce the law if the

people in the community wouldn't work with you.

And, so, this is not just an issue. It's not -- we're not anticop. We're procop. We're pro law enforcement. We have to begin to address this issue.

And I -- I urge you that the issue of residency, the issue of the composition of the police force, is not a casual thing. It is a critical thing for the City of New York. We have to begin address this issue in a positive way. We want to work with the police department.

And I also think that it's very important in this Senate, again, I'm proud of the fact that we take our law enforcement issues and criminal justice issues seriously in this house, to show some leadership on this issue.

And I've -- I've -- in speaking with some of my colleagues, some people have expressed concern that some people who have shown leadership in some of the protest and things, are not to their liking. Well, I urge you, that if you don't like that, then let's

show some leadership here.

If we don't show leadership, then we have no right to criticize those who do.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Madam President, I rise to support Senator Smith's motion to discharge. But I also want to be the bearer of some good news.

Something is happening in New York City that we should be aware of. And I want to commend my colleague and the Deputy Minority Leader, Senator David Paterson, for being a sparkplug for a committee of concern that brings healing to the City of New York.

Senator Paterson, along with Dr. Diane Steinman of the American Jewish Committee, have formed this committee of concern, and it has a panoply of inter religious, an interracial, interethnic groups. Including the three premiere Jewish human relations agencies in the nation; The American Jewish Committee, Antidefamation League, and American Jewish Congress.

They have been meeting and will continue to meet. They had a press conference in March. People of different faiths are involved. People of different positions; the President of John Jay College of Criminal Justice, the Hundred Black Men, the Central Labor Counsel.

And we believe to -- to resolve this problem, we must work together as a unit.

Diversity is the sign of New York City. And in order to achieve our goals, we have to not only have diversity, but unity.

And I have been asked by their - and this is all I have to say, because the next thing I'm going to read is a statement prepared by the -- by Senator Paterson, and by the Executive Director of the American Jewish Committee, and Dr. Diane Steinman.

And Dr. Diane Steinman has asked me to read this statement, which is only two paragraphs, to be part of our official record in the New York State Senate.

It represents the position of Dr. Steinman and Susan Jaffe, the President of the New York Chapter of the American Jewish

Committee.

Quote, "As individuals reflecting a broad cross section of New York, we are united by the love of our city and the belief that its diversity is part of what makes it great.

During the days that have followed the tragic shooting of Amadou Diallo by four police officers, it has become disturbingly clear that many of our communities distrust and indeed fear the police.

"We call on the Mayor and the Police Commissioner to make a public commitment, to a comprehensive package that will assure all New Yorkers that they will be protected, safe and free from police insensitivity, disrespect and abuse.

"We share the Mayor's pride of the dramatic decrease in crime during his administration, resulting from his strong leadership and the efforts of so many police officers throughout the city.

"We call on them to implement with the same urgency and dedication, a campaign against police misconduct.

"His policy is zero tolerance for

crime, must be matched by an equal public commitment to zero tolerance for police abuse and misuse of authority, as well as suitable, prompt punishment for violations."

Last paragraph now begins. "For this campaign to be more than cosmetic, a comprehensive plan is needed that will have an impact on the culture of the police department, long standing departmental issues, many of which predate this administration, must be addressed with a goal of systematic change.

"This plan must include effective and sustained training of police officers, that provides for each of them a thorough understanding and respect for the communities they serve.

"It must provide for the enforcement of clear protocols outlining acceptable police conduct and supervisory responsibilities.

"It must strive to increase opportunities for minority police officers so diversity is effected at all levels of the department.

"It must promote the development of a true partnership between police and community, built through ongoing consultation and communication.

"We stand for New York that is humane and safe, in which the institutions of government treat every person with equal dignity and respect.

"We call on the Mayor to implement the policies that advance these goals.

"A great city can expect no less."

Again, in closing, I want to commend Senator Paterson and Dr. Steinman of the American Jewish Committee, performing and working on this organization of concern to bring healing to New York City.

Thank you, Madam Chair.

ACTING PRESIDENT McGEE: Thank you, Senator Lachman.

Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

I want to thank Senator Smith for providing an opportunity to discuss critical issues of law enforcement in our city and our

state.

I was able to address some of my feelings through an act of civil disobedience on this very topic of police misconduct and brutality. But I -- I looked forward to the time when I could address it as a Senator on the floor of the New York State Senate.

I think that the tragedy was something that was foreseen with the Louima case.

And the Mayor's putting together - Mayor Giuliani's putting together a task force which brought to people -- together people as diverse as Christine Quinn, the Executive Director of the Gay and Lesbian AntiViolence Project, Staten Island borough President Guy Molinari, Felipe Luciano, Stanley Crouch, others, and together they came up with a terrific and very doable plan for improving police community relations and the role of the police and the functioning of the police department in our city.

And sadly, and we were to find out tragically, what happened was, the Mayor just tossed that report out. Even though people

from very diverse backgrounds came together on a multitude of points to address what could be done to make the police department better in the City of New York.

And what we found is, virtually all of those recommendations are things which the Mayor now says are needed.

Although, unfortunately, he has chosen to focus on, for instance, that police officers should be more courteous.

And yet I remember just two years ago, there was a huge campaign about courtesy, professionalism and respect. Police cars were repainted. Was that a failure? I guess it must have been a failure since now the Mayor is reinventing that wheel.

But it's not enough. And it's not enough that that be the only major public thing that the Mayor does.

In fact, very publicly, what he should have done, and what he still needs to do, is to put into effect all of those recommendations.

But sadly, because of the Diallo tragedy, that now is not enough and more

drastic measures are being called for.

You know, as a Caucasian male, I do think that a lot of what happened, in terms of policing, was to make people like me feel safer. And, you know, that -- that probably did happen. That did happen. Not probably, that did happen. And I think that probably across the board a lot of New Yorkers felt safer.

But the other thing that happened is, is that many, many, many New Yorkers felt incredibly intimidate and threatened by the police. Not white people like me, but people of color and particularly and especially, young people of color.

The very people who we need to respect the police department and to want to join the police department.

But what happened is, now we've lost enormous ground over the past few years of inaction on this. And young people who are going to be attracted to the professions, are not going to be attracted to the police department. And that is a terrible tragedy because it creates an enormous setback for

creating a police department that looks like the city its supposed to be protecting.

That's why drastic measures are called for now because we have so much lost time and lost ground to make up for, to finally create a police department that is responsive to and looks like the people that it is supposed to be representing.

We need a police department that engenders respect and not fear.

Thank you.

ACTING PRESIDENT McGEE: Thank you, Senator Duane.

Senator Paterson to close.

SENATOR PATERSON: Thank you, Madam President. I'm going to defer to the leader, Senator Connor, to close.

Thank you, Senator Smith, for her efforts in bringing this legislation forward, that enabled us to have this discussion.

And to thank Senator Seabrook and Sampson, Senator Markowitz and Duane, who joined me a few weeks ago in engaging in a civil disobedience, that we hoped would bring publicity to this entire issue.

It's a very difficult issue to discuss because we all know that law enforcement officials put their lives on the line every day. And in many respects are encumbered by great difficulties and threats as they try to perform their jobs.

So, that is probably the reason, the great respect, that we have always had for police officers, that we do -- that we are, many times, unable to see that there are some situations where excessive police force has been used. Where, unfortunately, there has been stereotyping and the identification of those who might be suspects. Where there have been at times, situations where officers have gone beyond their authority, to actual criminality.

These are not the majority of cases. But they are significant enough that they have run through the system when we think of the Diallo case, and the Louima case. They're just the recent cases.

Clifford Glover, as Senator Seabrook alluded to, was a young man who was shot while walking to work with his father.

The police thought he was carrying a gun. They saw him at five o'clock in the morning.

Randolph Evans, was -- that was in 1973. In 1977, Randolph Evans was shot in an apartment building by a police officer named Torzney. At the trial, and the defense of psychomotor epilepsy syndrome, was asserted by the defense.

This was a not responsible by reason of mental disease or defect defense; not approved by the American Psychiatric Association, but yet was enough to acquit Officer Torzney.

In 1979, was a case of Arthur Miller, a Brooklyn businessman, who was trying to break up a fight. Became -- was -- was choked by police officers and died several hours later.

Earlier we covered the Eleanor Bumper's case. In this case, a seventy year old woman, who was disabled and moving slowly, was -- had her hand shot off.

We also had the case of Michael Stewart, where eight -- eight police officers stopped a young art student in the subway. He

was beaten. There were several witnesses that -- he was beaten by three of the eight police officers, but no one could figure out which of the eight were the three that beat him.

So, the district attorney's office tried almost a joint and several liability type prosecution. Because even they didn't have any witnesses that could specifically identify the officers who beat him.

So, even though everyone, including the officers, knew that three of the officers beat him, they all had to be acquitted because there was reasonable doubt about the eight.

The list goes on and on. And includes cases such as Louise Ravera case. The Philip Mie case. A Dominican art student. Killed very much the same way as Michael Stewart.

And in none of these cases have there been any convictions. So, it wasn't so much the Diallo case, but the tension and anxiety that people felt, not only from these high profile incidents, but on the lower frequencies, the type of incident that Senator Hevesi described happening to him, that are

making many of us cry out now to reorganize the rules and regulations of the department, and to try to create a situation with those officers who discharge their duties, very professionally, and very sincerely, would even get the opportunity to speak in situations without fear of retribution, so that those who have not performed responsibly are brought to justice.

That is really just the notion of what I wanted to offer, Madam President.

I'd like to thank the Majority for allowing us this time to express our views on this issue.

ACTING PRESIDENT McGEE: Senator Connor to close.

SENATOR CONNOR: Thank you, Madam President. And I want to thank Senator Smith for her motion.

As my colleges may have gathered, the motion was a very useful way to allow members to discuss their concerns about the New York City Police Department. Some of the problems there. And certainly the recent tragedy.

But as Senator Paterson has pointed out, there's been a history of tragic incidents.

And I think what came to mind as Senator Paterson was speaking, and I don't remember the names of the victims, but I can recall four or five incidents where undercover police officers of color, African-American and Latino police officers who were undercover. And, as we know, obviously, undercover police officers dress like raggedy street folks so they blend in, have been shot by other police officers who afterwards, I'm sure, felt devastated that they had shot a fellow officer. But because of their stereotypical view, you know, saw an African-American man holding a gun on somebody and assumed he was the bad guy and shot him, only to find out it was a police officer making a proper arrest. So, these tragedies happen.

The answer to them, obviously, is training and training and training, and recruiting people who are comfortable policing neighbors they're comfortable in.

When Senator Duane pointed out the

Mayor's task force, after the Louima case, which was, well, I had some representatives of what you would regard the liberal community, was by and large, a pretty conservative body, they came back with a report addressing that Louima thing, that was by no means antipolice.

I think the first or second proposal was to dramatically increase the pay of New York City police officers, as well as a number of variety of recommendations for enhanced training and recruitment.

Now, with all due represent to Senator Skelos and my colleges from Nassau County, maybe it's just my Brooklyn basis, but I think being a police officer in New York City is a lot tougher job. And I'm not trying -- looking for debate, but it's a tough job. It's -- let's put it this way, it's at least as tough as being a police officer in Nassau County. And I think from what I see on T.V., it's tougher.

Why are our police officers paid dramatic -- thousands and thousands of dollars less? That doesn't make any sense.

Just by virtue of the density of

the population in New York City, the kind of urban environment there is there, of course it's a tougher job than the average suburban police officer; I mean, that has it's own problems, but would encounter. So, why do we pay -- why are our police officers paid literally, I think the differential is nearly twenty thousand dollars a year, is starting pay. I mean, why -- you know.

And there's an old saying, Madam President, you get what you pay for.

I mean, if you want to have a professional police force, that feels professional, you want to attract -- and we do have rules now in New York City, that you need a half of a college degree to be a police officer. We're going to attract more and more, better educated people, and more and more minorities who have gone through CUNY for example.

Let's pay them. Let's recognize that it's not the old job it used to be. It doesn't just take a brawny guy with a night stick walking a beat. It takes a lot of professionalism, judgment, knowledge.

Knowledge of not just the law, but you have to have the knowledge of sociology and psychology. And, you know, it's a tough job.

And the people who have the skills to be the finest police officers, in many cases, can make more money doing something else. Or taking the test and becoming a Nassau County police officer. And, so, let's -- let's recognize this and pay them.

One of the proposals that came out of a group of members, in the wake of the Diallo tragedy, was a proposal to -- I mean, he's not here today, but Senator Waldon proposed that we take a look at the police cadet program. The ones that existed in CUNY. Inexplicably, Mayor Giuliani ended the program. This is not -- I'm not looking to start a fight with the Mayor. But he ended it. Yet that program, for a modest investment, was able to enroll a thousand CUNY students, through college, as police cadets, without any overt outreach to any particular community, such that more conservative people who think affirmative action isn't fair, they

got a high percentage of women, Puerto Rican and Latino and African-American enrollees, because, let's face it, the student body at the City University represents the city and is a diverse population. And when you encourage those young men and women to go into a police cadet program, invariably they reflect the city. And they reflect the finest in the city, as well as it's diversity.

And here they had an opportunity to have a four year college program in conjunction with the police department.

Now, you say, I don't know what got ended. I don't know why the Mayor ended it. I'd like to see it reinstituted. It's a way to have a professional police force.

Policing with all -- I think my colleagues all, we all have the greatest respect for professional police officers. We know that's a tough job. That's the toughest job out there.

And the fact of the matter is, there have been national proposals for a national police academy, along the lines of our military academies.

You know, once upon a time, if you go back a couple hundred years, we recognized that being an officer in the military wasn't just -- you know, once upon a time the officer in the military was the guy who could recruit a thousand people and say, I'm the colonel. And you just needed a lot of guts and bravery. And that's what you did.

We recognize some time back that - obviously we wanted -- it was a profession. We needed more professional training. We had military academies. We had officer training programs. Well, we -- with an academic element, with another element. And there have been proposals for a national police academy.

And I respectfully suggest that we ought to encourage CUNY to take the lead in setting up this cadet program as a -- as a way to recruit and train and professionalize police officers.

The New York City Police Department has had a dramatic growth in size. The average police officer on the New York City Police Department, I believe, has less than five years on the job, as they say. And is

under age twenty-seven or twenty-eight. The average sergeant, I believe, has only seven years or six years on the job, to be sergeant. And the average sergeant is under thirty now.

And that's not to say youth doesn't have its wisdom. And whatever. But what's gone, a whole -- you know, we had the fiscal crisis in the '70s. A lot of police officers were laid off and let go, and went into other areas. So, we're missing a whole generation here.

We had an aged out police force. They're retiring. The experienced officers are retiring. The experienced sergeants are retiring.

You know, you now put a young cop on the beat, and he don't have that twenty year veteran sergeant to put his arm around him and say, look, you got to use some judgment around here. Every guy who's sipping out of a brown paper bag, on his own stoop, is not a criminal, to be hassled, frisked, roughed up a little bit, you know. A lot of them are just plain working guys and they got nowhere else to sit after work except on their

front stoop. And if they're not throwing the bottle on anybody or giving anybody any trouble, you don't necessarily have to make a bust out of the whole thing.

That's -- we all know that's the judgment that goes into being a police officer. And that takes some wisdom.

When the sergeant's only been on the job five or six years, it's hard to get that kind of on the job mentoring, that was always the traditional way police officers professional ethic was formed, on the job mentoring.

It's tougher now. It's a bigger force. A younger force. The level of supervision doesn't have that much experience on the job.

So, these are things we have to address.

You know, there's a lot of talk about residency. Well, so many police officers don't live in the city. And the people say, well, that was always true. But I've noticed something in the last fifteen or twenty years. And it's this. Yes, a lot of

police officers, fifteen and twenty years ago, in New York City, lived in Long Island or Rockland or Westchester or in the suburbs. But by and large they were young -- mostly young men, and some young women, who grew up in New York City. Grew up in New York City. Had military experience, which is a very good thing. A lot of our cops now, they don't have that military background. Had a couple of years in the military. Came back. Took the test. Made the force. Became cops. Lived in the city a year or two. Got married. Had a family. And because of housing reasons, and so on, moved out to Long Island or moved up to Rockland, or elsewhere.

But when they went back on the job in the city every day, they weren't in alien territory. They were used to that concrete. They grew up on that concrete. They played on those concrete streets. They bounced balls off of those tall walls. They're used to the big buildings. The crowded streets. And the diversity of the population. Because you can change the vowels at the end of the names or the -- whatever, New York City's always been

diverse. Maybe it's different groups now that form the major minority communities. But back when it was, you know, Irish cops with Jewish neighborhoods, and whatever, but they were used to that. They grew up in the city.

This newer generation of police officers, a lot of them grew up outside the city. And in many cases there are the sons and grandsons and granddaughters and daughters of that other generation of police officers. And they take the test. They want -- it's in their family. It's their tradition. They want to be cops. But when they go back to New York City, the physical surroundings, the culture, the whole way the economy works on the streets, in the neighborhoods, is very alien to them. And that can be very frightening, as anybody knows. It can be frightening to be in a strange place. And the diversity of people they encounter is very different to them. They're not used to it.

You know, their fathers and grandfathers generation, they may have had lived in Long Island, or elsewhere, but they grew up in the city. They weren't strangers

when they went to work in the city.

And that's a problem. And I don't know what the solution is. But I think more people ought to pay attention to that, as a problem that may have encouraged some of the alienation we see between the younger police force and the people it serves and protects.

So, Madam President, I think it was important to have a discussion on the record, in the Senate, of these issues.

I don't think anybody's against the police force. Indeed, we want to see the most professional, best trained and well paid police force that we can possibly have in New York City, to protect all of the residents of New York City.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Connor.

All in favor of accepting the motion to discharge, signify by saying aye.

(Response of Aye.)

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of Nay.)

ACTING PRESIDENT McGEE: The motion is defeated.

The Chair recognizes Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Wednesday, April 14th at 11 a.m.

ACTING PRESIDENT McGEE: On the motion, the Senate stands adjourned until Wednesday, April 14th at 11 a.m.)

(Whereupon, at 7:54 p.m., the Senate adjourned.)