NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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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: We are honored to have with us today the Reverend Robert J. Romano, pastor, Shrine Church of the St. Bernadette in Brooklyn, and chaplain of the New York City Police Department.

REVEREND ROMANO: Let us pray.

Almighty and eternal God, You have revealed Your glory to all the nations. God of power and might, wisdom and justice, through Your authority is rightly administered law, laws are enacted, and judgment is decreed.

Assist with Your spirit of counsel and fortitude the Senators of the great State of New York, that the light of Your divine wisdom direct the deliberations of this great body and shine forth in all the proceedings

and laws framed for the rule and government of our state.

We pray for the members of this great Legislature who are entrusted to create the laws that benefit the citizens of New York. May they all be enabled by Your powerful protection to discharge the duties of their great office with fairness, honesty, and ability.

We likewise commend to Your unbounded mercy all the citizens of this great state, from Buffalo to Brooklyn, from Ogdensburg to Orange County, and from the Finger Lakes to Long Island Sound. May we be blessed in the knowledge and sanctified in the observance of Your holy law.

Lord, may we strive for unity and peace, love and understanding no matter what the cost. Let us work together, black and white, rich and poor, young and old, to follow our state motto of "Excelsior," to send our prayers upward to You.

We make this prayer to You, who are Lord and God forever and ever, Amen.

THE PRESIDENT: Reading of the

Journal.

THE SECRETARY: In Senate, Sunday, April 2, the Senate met pursuant to adjournment. The Journal of Saturday, April 1, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Skelos, please place a sponsor's star on Calendar Number 257.

THE PRESIDENT: So ordered, Senator.

SENATOR MEIER: Madam President,

amendments are offered to the following Third Reading Calendar bills.

On behalf of Senator Seward, Senate Print Number 3516.

On behalf of Senator Nozzolio - I'm sorry, on behalf of Senator Nozzolio, at page 13, Calendar Number 248, Senate Print 6282B.

On behalf of Senator Morahan, at page 19, Calendar 384, Senate Print 6511.

On behalf of Senator LaValle, at page 24, Calendar 454, Senate Print 2760.

On behalf of Senator Farley, page 25, Calendar 479, Senate Print 6669.

On behalf of Senator LaValle, at page 33, Calendar 571, Senate Print Number 6487.

On behalf of Senator Rath, at page 10, Calendar Number 189, Senate Print 2942.

THE PRESIDENT: The amendments are received, Senator Meier, and the bills will retain their place on the Third Reading Calendar.

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: Thank you.

Senator Skelos, resolutions.

SENATOR SKELOS: Madam President, there's a privileged resolution, 3586, at the desk, by Senator DeFrancisco. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution 3586, recognizing the White Ribbon Campaign, sponsored by Vera House of Syracuse, New York, to take place the week of March 31 through April 9, 2000.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I just would like to rise in support of the resolution.

And the Vera House is an organization that one of its main objectives is to maintain awareness of the seriousness of domestic violence, and also provide shelter for battered women and children of those

women.

It's a wonderful organization. In 1995, they started the White Ribbon Campaign. I distribute them to each of the Senators and hope that during this week they will wear this white ribbon to show our concern over the issue and to show our support for groups such as Vera House.

THE PRESIDENT: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please take up Privileged Resolution 3585, by Senator Marcellino -- this concerns Earth Day -- have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator

Marcellino, Legislative Resolution Number 3585, commemorating the 30th anniversary of Earth Day, April 22, 2000.

THE PRESIDENT: On the resolution. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Senator Marcellino has consented to the resolution being opened for sponsorship by all the members. If you do not wish to be on the resolution, please notify the desk.

THE PRESIDENT: Those members who do not wish to be included on this resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 326, by Senator Libous, Senate Print 6288A, an act to amend the Public Authorities Law, in relation to the financing of construction.

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 SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 342, by Senator Padavan, Senate Print 1893 -

SENATOR BRESLIN: Lay the bill aside.

THE PRESIDENT: The bill is laid aside, Senator Breslin.

THE SECRETARY: Calendar Number 360, by Senator Kuhl, Senate Print 2729A, an act to amend the Agriculture and Markets Law, in relation to the producer referendum under the Rogers-Allen Law.

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 SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 364, by Senator Marcellino, Senate Print 6729A, an act to amend the Public Health Law, in relation to prohibiting the sale or distribution.

THE PRESIDENT: Read the last section.

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

SENATOR BRESLIN: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 371, by Senator Lack, Senate Print 6744, an

act to amend the Judiciary Law and the Penal Law, in relation to providing a juror with a gratuity.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 378, by Senator Morahan, Senate Print 5861B, an act to amend the Military Law, in relation to modernizing the title and functions of the Bureau of War Records.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator McGee, Senate Print 6464, an act to amend the General City Law and the Village Law, in relation to the filing of decisions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 397, by Senator Volker, Senate Print 100, an act to amend the Penal Law, in relation to the criminal possession of marijuana in the third degree.

SENATOR BRESLIN: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 402, by Senator Meier, Senate Print 922, an act to amend the Penal Law, in relation to permitting a court to impose.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 424, by Senator Balboni, Senate Print 5605 -

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 507, by Senator Padavan, Senate Print 6964, an act to -

SENATOR ADA SMITH: Lay it aside, please.

THE PRESIDENT: The bill is laid aside, Senator Smith.

THE SECRETARY: Calendar Number 521, by Senator Bonacic, Senate Print 6314, an act in relation to creating the Stone Ridge Library District in the town of Marbletown,

New York.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 524, by Member of the Assembly Cahill, Assembly Print 9580, an act to amend Chapter 723 of the Laws of 1992 relating to establishing.

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, 50.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the

noncontroversial reading of the calendar.

SENATOR SKELOS: Thank you, Madam President.

I'm just wondering if the Minority would want to reconsider the lay-aside on Senator Balboni's bill.

(Laughter.)

THE PRESIDENT: So ordered.

(Laughter.)

SENATOR SKELOS: Madam President, if we could now go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 342, by Senator Padavan, Senate Print 1893, an act to amend the General Business Law, in relation to the possession and sale of drug-related paraphernalia.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Explanation, please.

THE PRESIDENT: Senator Padavan, an explanation has been requested by Senator Breslin.

SENATOR PADAVAN: Thank you, Madam President.

A number of years ago, in the mid-eighties, this house, the Legislature and then the Governor put into law a bill that outlawed the sale of drug paraphernalia. "Drug paraphernalia" is a broad term meaning all kinds of devices, chemical kits, everything that's used in the consumption of illegal substances, including heroin, cocaine, hashish, and a variety of other products.

What this bill would do is allow a locality -- and the bill is specifically requested by the City of New York -- to adopt a local law that would be in addition to the state law. It might increase the penalty or the fine which is provided for in state law.

That's it.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you. Through you, Madam President, if Senator Padavan will yield just to a couple of questions.

THE PRESIDENT: Senator Padavan,

will you yield for two questions?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Senator Padavan, I'm not familiar with this section of the General Business Law. Does this only apply to cities with populations in excess of a million, or is this a broad application to all municipalities?

SENATOR PADAVAN: It is a broad application. A local government, a municipality, as it says very specifically, which is currently precluded from enacting a local law would be authorized to do so.

SENATOR DOLLINGER: Okay. Through you, Madam President, if Senator Padavan would continue to yield.

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Thank you.

Is it your intention to allow every village and every town to create their own separate -- potentially their own separate

penalties for the possession of this kind of drug paraphernalia? And doesn't that create, in essence, a hodgepodge of different statutes?

For example, you could come from the Queens line into Nassau County and have a building on one side of the dividing street and have one set of penalties in one store and another set of penalties in another, or someone caught on both sides.

SENATOR PADAVAN: Well, there would be obviously minimal penalties, as provided for in state law. But situations vary in different parts of the state.

As you can imagine, the city of New York, particularly in certain parts of the city, the penalties that might be needed to discourage entrepreneurs from selling these products might necessarily be required, or increased penalties might be required.

So in answer to your question, yes, it would allow cities such as the City of Albany to adopt a local law in this subject area.

But then again, there are many,

many examples of that. If you look at our traffic laws, we have many local laws that increase local penalties for everything from parking violations to traffic violations, to speeding violations, and a whole host of areas. There are many sections of law that allow local municipalities to adopt greater penalties for an infraction different than in another municipality, or by the -- for the state itself.

SENATOR DOLLINGER: Through you, Madam President, if Senator Padavan would yield to another question.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Is there any portion of the General Business Law that limits the severity of the penalty that could be imposed in either one of these cases? Does this give a municipality, a small town or a village the ability to make a felony out of these -

SENATOR PADAVAN: No, it does not.

SENATOR DOLLINGER: - possessions?

SENATOR PADAVAN: This does not give them that authority.

SENATOR DOLLINGER: Through you, Madam President, if Senator Padavan will continue to yield.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Is that contained in the proposed bill, or is that in some other portion of the General Business Law that restricts that?

SENATOR PADAVAN: It's in the underlying statute that we adopted in the mid-eighties.

SENATOR DOLLINGER: Through you, Madam President, just on the bill, briefly.

I've voted for this in the past, and I'm probably going to vote for it again.

I think Senator Padavan's point about giving certainly the City of New York, a population of a million people, the ability to set up its own penalties for possession or the sale of drug-related paraphernalia makes sense.

I would, however, suggest that in a bill that has this broad application to every municipality and town may pose a host of problems. In a community such as mine, a county like Monroe where we have 19 towns and the City of Rochester, associated villages, this type of bill could create a hodgepodge of regulations and criminal and civil penalties that I don't think will necessarily always serve the public interest.

And I appreciate what Senator Padavan is going to do. I'll vote for this for the City of New York. They've asked for it, they're a big enough community. They've got the ability to impose severe penalties, misdemeanors, up to a year in prison for possession of this. I'd give them that authority.

However, we may run into a problem that I can foresee when towns and villages may

try to utilize this and we'll end with a hodgepodge of civil and criminal penalties across the state that may serve no one's interest.

So I'll vote for it now, Madam President, but there may be a dark cloud on the horizon on this bill.

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, 52. Nays, 1. Senator Sampson recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 364, by Senator Marcellino, Senate Print 6729A, an act to amend the Public Health Law, in relation to prohibiting.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, on behalf of Senator Marcellino, it's my

understanding that this legislation passed last week and it's a technical chapter amendment to the bill. It changes a section number of the bill.

SENATOR PATERSON: Let me think.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: Yes, thank you, Madam President. Just on the bill.

I notice that there are some technical amendments to this bill that we voted on last week on banning herbal cigarettes. And I think it was a good bill last week, it's a better bill this week - except that it still does not address the issue of herbal cigarette sales over the Internet. And that is a major and growing problem in our state.

And I think that while I will vote in favor of this bill, I think we still have to address that issue of selling these herbal cigarettes over the Internet. So I will vote in the affirmative, but we need to do some more work.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, I think the bill also addresses the issue of some transaction scanning of motor vehicle licenses.

But I won't take Senator Skelos through that. He was kind enough to get up to explain the corrections for us.

And I'll also vote in favor of the bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just briefly.

I too will vote in favor of this bill. But I really think that if we want to do something in tobacco prevention, frankly, we ought to go back to Senator Padavan's bill and the bill that I carry that would create safe burning cigarettes.

That's really the problem we have to face. With all due respect to Senator Marcellino, while the issue of smoking herbal cigarettes may be a big issue for some people, the issue of safe burning cigarettes that we could mandate that would cut down on the fire loss and the risk to our firefighters and our

police officers who are confronted with far too many cigarette fires, that's what we ought to be spending our time doing.

I'm going to vote in favor of this bill. We shouldn't have herbal cigarettes, we should restrict them. But this is merely using a flyswatter to go after the big problem. The big problem is safe burning cigarettes. We ought to pass Senator Padavan's bill or my bill to make sure that people don't die in cigarette fires. Then we'd have something to really say is an accomplishment.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Energy Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Energy Committee in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 371, by Senator Lack, Senate Print 6744, an act to amend the Judiciary Law and the Penal Law, in relation to providing.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, with the permission of the Majority, might we lay that aside just for a couple of minutes for Senator Duane, who is out of the chamber at the moment?

SENATOR SKELOS: No objection.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will read.

THE SECRETARY: Calendar Number 397, by Senator Volker, Senate Print 100, an act to amend the Penal Law, in relation to criminal possession of marijuana in the third

degree.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Skelos, an explanation has been -

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will read.

THE SECRETARY: Calendar Number 424, by Senator Balboni, Senate Print 5605, an act to amend the Penal Law in relation to enacting the "Anti-Weapons of Mass Destruction Act."

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, may we have an explanation from Senator Balboni? Who would be very disappointed if he didn't get to give one.

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

SENATOR BALBONI: Thank you. Thank you, Madam President. And I do appreciate the opportunity to discuss this piece of legislation.

As many will recall, this is a bill that we discussed last year. And as recently as this afternoon I was reviewing the comments in last year's transcript. And I have to at the outset thank Senator Paterson for his wonderful remarks about my erudite comments and the proficiency with which the bill was written and the severity of the subject matter.

Notwithstanding those things, however, I'd like to just briefly state that this is an issue which is not going away. Notwithstanding the fact that this house has signaled its overwhelming support behind this bill by a vote of 53 to nothing.

Just the other day, as recounted in the New York Times article of February 14th, a Glendale village community was the site of a mock biological attack. It was responded to by a branch of the military, specifically the "22-member team is a part of a newly formed counterterrorism capability, a cadre of full-time specialists created to help local police and firefighters after a chemical, biological or nuclear attack."

Ladies and gentlemen, last year in the debate Senator Dollinger raised the issue of whether or not anyone in this state had ever died as a result of a chemical, biological, or nuclear attack. At the time, I told him that he was in fact correct. But what has become apparent is that though no one perhaps has perished in this state, nonetheless it is being taken very seriously in this state by the federal government.

To review the contents of the bill and what it does, essentially what it does is it takes the Penal Law and brings it to the frightening reality of what today's terrorism capabilities are. It essentially says that if you possess, manufacture, provide equipment, plan to deliver or threaten to deliver a biological or chemical or nuclear weapon in the state of New York, you are guilty of a B felony to an A-1 felony. An A-1 felony, as you know, is the most serious crime in the state.

This is an issue that is continuing to garner serious consideration by the federal government. And just recently in Nassau

County, on June 15th, we had a threat of an anthrax attack at the Mineola Courthouse. Mineola is my home district and basically my home community.

And though Senator Mary Lou Rath has taken the issue of the threats of biological or chemical weapons, it is nonetheless something that would be covered also in my bill. If in fact you could show that an individual had reasonable access and intended to use this weapon and then threatened to do so, that would be a B felony.

With that, I yield to any questions that anyone might have.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Senator Balboni has a bill that I think is crafted with excellence and is quite a propos at this time. We don't need for anyone in this state to die in order to recognize a hazard or a catastrophe as it's approaching. And so I don't think it's necessary to look at those types of statistics when you think in terms of

the type of devastation that this type of chemical warfare can cause.

However, Senator Balboni, if you would yield for a question.

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

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: The fact is that we have weapons of mass destruction that are killing people in this state right now, and they relate to firearms.

And although it is not really right to bring this to your attention, the fact is that whenever you see a piece of legislation like this, the notion of why we would be selective in our concerns for weapons of mass destruction of all kinds has to be discussed.

And so I just want to ask you, why would colleagues of ours be so interested in this very effective piece of legislation and still, for some reason, not recognize those other weapons that have already done damages

in schools, in our streets, in business offices and other places around our state?

SENATOR BALBONI: Madam President, in order to respond to my colleague's inquiry -- or statement, I should say, more than a question -- I would just make two points, two observations.

As you know, Senator Paterson, gun use in this state is already dealt with in the Penal Law. The specifics as to firearms are also dealt with in the federal law. And I know that this house is under a process of considering it, as is the State Assembly. And whether or not there will be legislation this session remains to be seen, but I know that individuals are working towards a consensus from both houses.

As you know, recently the Governor has come out with his package. And, surprising or not, the Assembly has failed to address the package as it is right now. And therefore, the traditional advocates of that type of legislation have been considering the issue also.

So in other words, there has been

no rush to conclusion. And I think that that's what we want to do in this state right now, Senator Paterson, is we want to deal with that issue. But that's not the issue at hand.

What is at hand in this bill is the fact that our Penal Law does not take into account the seriousness of this particular agent of destruction. And the significance of this, by the way, Senator Paterson, is that this is much more insidious. A gun shows up at someone's house, you know it's a gun. The chemicals that are used in order to make some of the most deadly gases known to man, most deadly chemical agents are as commonplace as a mail-order catalogue.

Most likely biological agents occur naturally in the environment. Specimens can also be obtained by mail from the American Type Culture Collection in Maryland, or other similar collections around the world. For example, anthrax specimens can be purchased for about $35, according to one author. He complains that marijuana is more closely regulated in the United States than access to and distribution of the most deadly biological

cultures. That's a report from Douglas and Livingston, published in 1987.

So what we have here is not only the fact that these agents are easily accessible, but they are insidious because certainly in the chemical form they're used in manufacturing processes.

And it is time that we bring New York State's Penal Law into the 21st century, in recognizing that these items also should be specifically prohibited.

Thank you, Senator.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

I demur to Senator Balboni's complaint. I agree with everything he said. Particularly the fact that this type of warfare is insidious, and to a great degree we may not have recognized how available many of these chemicals, such as anthrax, may be. And therefore, just the publication of this issue as much as passing the legislation is very effective.

But I just simply don't need to ask

Senator Balboni the question as much as I need to ask all of my colleagues the question: What's the difference between chemical warfare and armed weaponry? Particularly the types of weapons that could only be used to assault other human beings. They don't have any other purpose in mind. And we still as a state have not regulated them.

And I would just simply answer, because there are not the same type of interests pressuring the Legislature as there would be in chemical warfare. There's no anthrax lobby. There's nobody saying that this is something that we should be passing around among our constituency.

So the consensus is one that if we had it in a vacuum, there would be a consensus tomorrow. And what we as legislators have done is knuckle under to special interests rather than thinking about special human beings, our neighbors.

And so I don't mean to in any way diminish the caliber or the quality of Senator Balboni's legislation, other than to restate the fact that we aren't covering all of the

types of weapons of devastation, particularly ones that are doing the most damage in this state. And the more we engage in this conversation, the more we are also in a way hoodwinking the public into believing that we are really addressing the most immediate problem, when actually we are not.

And I certainly hope that Senator Dollinger, who is now approaching 2,269 days of trying to get effective gun control legislation in this state, will get up and say a word on this.

SENATOR DOLLINGER: Madam President, I will yield to Senator Schneiderman.

THE PRESIDENT: Thank you.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Oh, thank you, Senator Dollinger. I just want to slip in a word before you take the stage.

If the sponsor would yield to a question, through you, Madam President.

THE PRESIDENT: Senator Balboni, will you yield for a question?

SENATOR BALBONI: Of course,

Madam President.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: My question is I notice a repeated reference in this legislation to chemical substances, biological substances used in an industrial or commercial process. And I was wondering if you could explain what that includes.

And specifically, would that include biological or chemical substances that are used in military processes; you know, used by the military?

SENATOR BALBONI: Yes. The - one of the most disturbing characteristics of these types of chemicals is the relatively simple transposition of the chemical equation into a deadly chemical equation. There is one study that concludes that ballpoint-pen ink is one step away from saran gas in terms of its chemical composition.

And so it does include the military. But of course that is a specific exemption in the bill, when it says "the lawful use of the weapon." So this is what -

or the chemicals. This is a question that Senator Dollinger had asked last year, as to whether or not the military was exempted. And in fact they are.

But if I might, Senator Schneiderman, because I anticipated you were going to perhaps go down a similar vein as Senator Paterson -- let me just make a statement, if I can, to my colleagues. Because I also want to make a challenge to you.

The statement is this. What I'm talking about here are weapons of mass destruction. And I guess "mass destruction" is a subjective phrase. What is mass destruction to some might not be mass destruction to others. And of course wanting to avoid the simplification or the -- how shall I say this -- the failure to recognize the loss of any human being. One death is too many.

But the weapons that I'm talking about, there is a 1972 study by the Advanced Concepts Research Corporation of Santa Barbara, California, which postulated that an

aerosol attack with anthrax spores in the New York City area could result in 600,000 deaths. We are talking at a scale that mankind has never known before. Think along the lines of Hiroshima, Nagasaki. That's the kind of devastation and destruction we are talking about.

To lump this in and refer to any type of firearm, unless it's a nuclear-tipped artillery shell, I think is somewhat inappropriate in this terminology. So for the purposes of the record and for the purposes of the legislative intent, those are the weapons that we're speaking about.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: If the sponsor will continue to yield.

What I was focusing on, though, Senator Balboni -- although I certainly appreciate your substantial response to my brief inquiry -- the -- I'm really interested in the fact that any chemical -- and I'm referring to the language that's repeated

several times in the bill -- any chemical or biological substance generally used in an industrial or commercial process.

That includes lots and lots of things. As you pointed out, ballpoint-pen ink. And if you say that could be someone with chemicals that would be routinely used for many purposes, and the key factor, as I gather from your legislation, is really just the intent of the user, what they intend to do with that substance -- it may be a substance used in a factory, used in a household, used in a gas station; is that not correct?

SENATOR BALBONI: That is in fact the case.

SENATOR SCHNEIDERMAN: Well, I'm pleased, then, that today, when we're going to be speaking about other types of crimes where the only distinction is intent, that my Republican colleagues are joining me in recognizing that every possession of a substance is not the same, that every type of act of potential violence is not the same, and that the subjective intent of the perpetrator is key.

And that's really the issue in the hate crimes legislation we're bringing forward later today.

So on the bill, I appreciate Senator Balboni's thoughtful work on this issue, and I look forward to our debate on a related subject relating to intent later today.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will Senator Balboni yield to a question?

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I will.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President.

Has anyone in this state been killed by a weapon of mass destruction since we debated this bill last?

SENATOR BALBONI: No, there has not.

SENATOR DOLLINGER: Through you, Madam President, will Senator Balboni yield to another question?

THE PRESIDENT: Senator Balboni, do you yield for another question?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Has anyone been seriously injured as a result of a weapon of mass destruction in this state since we last debated this bill?

SENATOR BALBONI: Well, there were several injuries associated with several threats in terms of evacuation of buildings and schools over the last couple of years.

SENATOR DOLLINGER: But, through you, Madam President, was anybody actually hurt because of one of these weapons being used?

SENATOR BALBONI: No.

SENATOR DOLLINGER: Through you, Madam President, is there so much as a -

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

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Has anyone in the state of New York suffered so much as a sniffle because of one of these weapons of mass destruction in the last year since we last debated this bill?

SENATOR BALBONI: Senator Dollinger, I know that you're in your cross-examination mode, and I appreciate that very much, because you're very good at it. However, let me do what you can't do in court. I'm going to jump to the chase because I know where you're going, because we went here last year.

Here's what I challenge you to do, all of you. Let's not wait until there's a death. Let's not wait until we have the scenes of people being brought out in thousands of body bags. Let's not wait until we have mass destruction and devastation.

I want the Democratic members of this house, if you voted for the bill, don't let that be enough. I want you to go to the

Assembly and help me pass it there. I really mean that. This is a bill that we should have see the light of day in the State Assembly. And we should get them to move on it, because that's so crucial.

Because I know how proactive we are in this house, and how forthright we are, and we can move forward on this.

SENATOR DOLLINGER: Madam President, through you. I have one more question for Senator Balboni. But let me just address him for a second, if I could.

THE PRESIDENT: Are you on the bill? Are you on the bill?

SENATOR DOLLINGER: On the bill, Madam President.

I accept that challenge wholeheartedly. I couldn't agree with you more, Senator Balboni. Let's take this bill that will save lives and let's go convince our Assembly members to do that. I'll take responsibility for that.

I'd ask you to take one other challenge, Senator Balboni. Go back in your conference and tell those who don't want to

enact reasonable gun control measures -- that are killing people every single day in this state -- and tell them that they should take the same logic and apply it to reasonable gun control measures.

Senator Balboni, I know you've been in that conference, and I know you've probably said those kinds of things. You go convince them, and I'll go over to the Assembly and get this bill passed. And I will ask every one of my colleagues to do it.

But what I refuse to do -- and I voted for this bill, and I'll vote for it again. But, Senator Balboni, this is the exact same kind of bill that when we put it forward in terms of gun control, people say it's not the right thing to do. It's the exact same kind of bill. You define the kinds of -

SENATOR SKELOS: Madam President -- Madam President, if I could interrupt for a moment -

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: -- without raising a question of germaneness, I think it

would be more appropriate, Senator Dollinger, if we discussed the bill before us -

SENATOR DOLLINGER: I was just about to get to that.

SENATOR SKELOS: -- rather than going tangentially off on every other thing that seems to be bothering you today.

SENATOR DOLLINGER: With all due respect to the Deputy Majority Leader, Senator Balboni issued a challenge to me to ask me to do something. I've responded and said that I'm willing to do it in exchange for something else.

SENATOR SKELOS: I believe the challenge was based upon the bill before the house, not some other issue that's bothering you today. So if we could -

SENATOR DOLLINGER: Well, but I don't think something's bothering me today. I think -

SENATOR SKELOS: -- stick to the bill, I think it would be appropriate.

THE PRESIDENT: Senator Paterson, why do you rise?

SENATOR PATERSON: Madam

President, Senator Skelos is raising a point of order, and then he's debating the bill.

SENATOR SKELOS: No, I didn't. Madam President, to clarify, I didn't raise a point of order. I just suggested, rather than getting into the issue of germaneness, points of order and everything, if we could stick to the bill, perhaps that would be more appropriate, so we do not have to go in that direction.

SENATOR PATERSON: Madam President, it's just that -

THE PRESIDENT: Senator Paterson, do you wish to be recognized?

SENATOR PATERSON: Yes.

THE PRESIDENT: All right. Why do you rise, Senator Paterson?

SENATOR PATERSON: I rise as a point of order, Madam President. That -

THE PRESIDENT: State your point of order, please, Senator.

SENATOR PATERSON: Well, that Senator Dollinger had the floor. Senator Skelos did not ask to be recognized to ask him to yield for a question. That's why I assumed

he was raising a point of order.

Now -- as he himself said -- he wasn't raising a point of order, that made him out of order, and Senator Dollinger should have been allowed to continue.

THE PRESIDENT: Senator Dollinger, you have not requested to continue. Do you wish to be acknowledged and recognized?

SENATOR DOLLINGER: Yes, I do, Madam President. I'm -

THE PRESIDENT: You may proceed, Senator Dollinger. On the bill.

SENATOR DOLLINGER: I'll be mindful of the comments made by the Deputy Majority Leader.

THE PRESIDENT: Are you on the bill, Senator Dollinger?

SENATOR DOLLINGER: Yes, I am, Madam President. Yes, I am.

THE PRESIDENT: And please keep your comments germane, Senator Dollinger.

SENATOR DOLLINGER: Absolutely.

THE PRESIDENT: You may proceed with germane comments on the bill.

SENATOR DOLLINGER: Thank you,

Madam President.

THE PRESIDENT: You're welcome.

SENATOR DOLLINGER: This bill describes a series of weapons of mass destruction, describes them in detail. I'd just point out, what happens if someday it isn't Crimean-Congo fever which is the problem, but it's Korean-Congo fever, it mutates, we develop a new -- how does this bill cover it?

This is exactly the same kind of description that's been in bills which describe assault weapons, and everybody says you can't describe it. I would suggest that this bill can't describe it.

Then the second question that Senator Balboni has talked about are these are the weapons of the 21st century. I would simply point out to him, we haven't solved the problem of the 20th century yet. We haven't figured out how to deal with the weapons of the 20th century, to deal with those, those things called guns.

And lastly, I'd conclude with one other thing, Senator Balboni. I've voted for

this bill. I'm willing to buy into the 21st century. But we all know that these weapons don't kill people. We know that people kill people. It's not the weapons that kill them. Weapons don't kill anyone.

That's what I've been told. I've been told it for the last ten years, on the floor of this Senate and elsewhere: It's not weapons that kill people, it's people that kill people. Then why would we ban these? Are you suggesting that this kills a lot of people all at once?

I agree with you, Senator Balboni. I agree with you that someday in our neighborhoods, anthrax and Crimean-Congo hemorrhagic fever virus may be as common as Smith & Wesson and Colt and Beretta. And my hope is that when it becomes that common, we have the courage to ban both these weapons of mass destruction and those other little weapons of mass destruction that you can walk around with concealed in your pocket.

I join you, I welcome you, I take your challenge. I'd ask you to take ours.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 5. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I was hoping, without objection, I could be recorded in the negative on Calendar Number 342 and 397.

THE PRESIDENT: Without objection, you will be recorded as voting in the negative on Calendar 342, Senator Duane.

But Calendar Number 397 has not been -

SENATOR DUANE: Excuse me, Madam President.

THE PRESIDENT: -- is ahead.

The Secretary will read.

THE SECRETARY: Calendar Number 507, by Senator Padavan, Senate Print 6964, an act to authorize the Dormitory Authority or

the Commissioner of General Services to sell or lease.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Yes, Madam President.

THE PRESIDENT: Senator Smith.

SENATOR ADA SMITH: Thank you. Would the sponsor yield for a couple of questions?

SENATOR PADAVAN: Yes.

SENATOR ADA SMITH: Thank you, Senator.

THE PRESIDENT: Senator Padavan, do you yield for a few questions?

SENATOR PADAVAN: Yes. Yes, I do.

THE PRESIDENT: Senator Smith, through me, you may proceed with two questions.

SENATOR ADA SMITH: Thank you.

THE PRESIDENT: You're welcome.

SENATOR ADA SMITH: Through you, as I was saying -

THE PRESIDENT: Excuse me, Senator?

SENATOR ADA SMITH: I said "through you," as I was saying when I was interrupted.

THE PRESIDENT: I did not hear that, Senator.

You may proceed with two questions.

SENATOR ADA SMITH: Thank you. Thank you.

Senator Paterson -

SENATOR PADAVAN: Padavan. He's Paterson. I'm Padavan.

SENATOR ADA SMITH: I'm sorry, Padavan.

SENATOR PADAVAN: I know we look alike, but -

(Laughter.)

SENATOR ADA SMITH: You're much more substantial.

SENATOR PADAVAN: He's better-looking.

SENATOR ADA SMITH: Could you tell me what would be the disposition of this property once it is sold to the Board of Ed?

SENATOR PADAVAN: Pardon me?

SENATOR ADA SMITH: Could you

tell me, what would be the disposition of this property -

THE PRESIDENT: Senator Smith, I cannot hear your remarks. Please direct your remarks to me, as President of the Senate.

SENATOR ADA SMITH: Senator Padavan, could you please let us know, through the -- through Madam President -

THE PRESIDENT: Senator Smith, I just asked you for the -- this is now the second time. Your remarks should be directed through me, as President of the Senate.

SENATOR ADA SMITH: Madam President, as I said -

THE PRESIDENT: Thank you, Senator Smith.

SENATOR ADA SMITH: -- to the - to Senator Padavan, through you.

THE PRESIDENT: You may proceed.

SENATOR ADA SMITH: As I said three times, could you please tell us what the disposition of this property would be once it is sold to the Board of Education?

SENATOR PADAVAN: Yes. Madam President, in response to the question, the

plans are to build three schools: a high school, an intermediate school, and an elementary school.

SENATOR ADA SMITH: Could Senator Padavan also enlighten us as to what -

THE PRESIDENT: Senator Smith, do you wish Senator Padavan to yield for an additional question?

SENATOR ADA SMITH: Thank you, Madam President. As you stated to me earlier, I could ask at least two questions.

THE PRESIDENT: You may proceed.

SENATOR ADA SMITH: And I was on my second one.

THE PRESIDENT: You may proceed, Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

Through you, would Senator Padavan tell us what districts in Queens would be involved in this endeavor?

SENATOR PADAVAN: They'll be Districts 26 and 29 for the intermediate school and the elementary school, and of course the high school comes under the High

School Division, which is Borough 1.

SENATOR ADA SMITH: Madam President, would the Senator continue to yield?

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

SENATOR PADAVAN: Yes. Yes, I would.

THE PRESIDENT: Senator Smith, you may proceed.

SENATOR ADA SMITH: Thank you. Through you, Madam President.

Would you tell us, have there been public hearings on this issue?

SENATOR PADAVAN: There have been public hearings held by Community School District 26 and 29, and the High School Division in Queens County.

SENATOR ADA SMITH: Would the Senator just answer one more question?

THE PRESIDENT: Senator Padavan, will you yield for an additional question?

SENATOR PADAVAN: Yes.

THE PRESIDENT: All right. Senator Smith -

SENATOR ADA SMITH: Through you, Madam President.

THE PRESIDENT: Senator Smith, you may proceed with a question.

SENATOR ADA SMITH: Through you, Madam President.

Would you acknowledge that there has been some dissension from some of the - at least one school board?

SENATOR PADAVAN: There were a number of questions and issues from both school boards which have been addressed in the current plan that we are now dealing with, as announced by the borough president, myself, Harry Thompson, the Queens member of the school board. And that has been shared with the community school boards in question.

And there seems to be, from everything I've heard, unanimity in accepting the plan.

SENATOR ADA SMITH: Thank you very much. On the bill.

After a long list of hearings and the community having their opportunity to address this issue, I am a little upset that

Community School Board 29 is still objecting to this. However, with the need for additional classrooms and the overcrowdedness in the Queens school system, I will certainly support this bill.

SENATOR MALCOLM SMITH: Madam President.

THE PRESIDENT: Senator Smith.

SENATOR MALCOLM SMITH: Madam President, through you, will Senator Padavan yield to a question?

SENATOR PADAVAN: Yes, I would yield.

THE PRESIDENT: Go ahead, Senator Smith.

SENATOR MALCOLM SMITH: Senator Padavan, what is the area size that -

SENATOR PADAVAN: I'm sorry, can you -

SENATOR MALCOLM SMITH: -- the size of the area that they're looking to sell?

SENATOR PADAVAN: The acreage that will be purchased is 32.69 acres.

SENATOR MALCOLM SMITH: Madam President.

THE PRESIDENT: Senator Smith.

SENATOR MALCOLM SMITH: Yes. For the record, I just want to indicate to the Senator that what I would hope would happen is there's a big concern -

THE PRESIDENT: Senator Smith, are you speaking on the bill at this time?

SENATOR MALCOLM SMITH: Yes, on the bill.

THE PRESIDENT: You may proceed on the bill, Senator. Go ahead.

SENATOR MALCOLM SMITH: There's a major concern as to the size and the area in which these schools will be built on.

While it is important for the students to be trained academically, there is some clear concern as it relates to the recreation that they will be involved with. And I would just hope that the size and acreage which they will offer to the Board of Ed would also consider that as well.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: On the bill.

Just to give Senator Smith some comfort, first -- later I'll be glad to show

you the layout. And when you see it, you will note that there are recreational facilities around each school as well as the construction of a baseball field, a soccer field, and a football field on this acreage. More than enough in terms of adequate recreational and athletic opportunity.

SENATOR COPPOLA: Madam President.

THE PRESIDENT: Senator Coppola.

SENATOR COPPOLA: Yes. On the issue or the item, can Mr. Padavan tell us a little bit about the environmental review -

THE PRESIDENT: Senator Coppola, are you requesting that Senator Padavan yield for a question?

SENATOR COPPOLA: Yes. Thank you.

THE PRESIDENT: All right. Senator Padavan, will you yield for a question?

SENATOR COPPOLA: The environmental review on -

THE PRESIDENT: Excuse me, Senator.

Senator Padavan, will you yield for a question from Senator Coppola?

SENATOR PADAVAN: Well, I'm delighted to yield for a question. I'm curious to know what Buffalo has to do about this, but I'll wait to hear.

THE PRESIDENT: All right. Senator Coppola, you may proceed with a question.

SENATOR COPPOLA: Buffalo is going to vote in support of it.

But I'd like to know about the environmental review that you did on the property. It's of great interest to me because of these projects coming up. And sometimes we get hit over the head if we don't ask the questions.

SENATOR PADAVAN: Well, as you know, this is state land. It's on the grounds of Creedmoor State Hospital. The property in question already has buildings on it which will be demolished and replaced by school buildings.

The environmental review by the School Construction Authority indicates there

is no problem, obviously. On this acreage there is one stand of trees which will remain intact.

SENATOR COPPOLA: Thank you.

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, 61.

THE PRESIDENT: The bill is passed.

SENATOR MONTGOMERY: Madam President, may I -

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President. I would like unanimous consent to be recorded in the negative on Calendar 342.

THE PRESIDENT: Senator Montgomery, without objection, you will be so recorded as voting in the negative on Calendar Number 342.

The Secretary will read.

THE SECRETARY: Calendar Number 371, by Senator Lack, Senate Print 6744, an act to amend the Judiciary Law and the Penal Law, in relation to providing a juror with a gratuity.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator Lack, Senator Duane has requested an explanation.

SENATOR LACK: It's a very simple bill, Madam President. This is the Abe Hirschfeld bill.

It is reprehensible and unfortunately a void in the law of this state that after a mistrial, a defendant obviously of some means -- as well as a certain degree of eccentricity -- offered to pay an amount of $2,500 to every juror who voted on his mistrial, and indeed tendered such sums to those who wanted it.

Much as, I must say, to all of us who have practiced law for many years, that indeed such a practice is indeed legal. It is, as we speak, legal.

This would make that practice illegal.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. Would the sponsor yield to a small set of questions?

THE PRESIDENT: Senator Lack, would you yield to questions?

SENATOR LACK: I will not only yield, but I'll yield without payment.

(Laughter.)

THE PRESIDENT: That indicates that you may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President. You know, no one interprets a "yes" like you.

(Laughter.)

SENATOR DUANE: I'm wondering if the sponsor is aware of any other cases besides the infamous Abe Hirschfeld court case where this has been a problem.

SENATOR LACK: Madam President, I'm aware of no other cases.

Mr. Hirschfeld, in addition to being an occasional political candidate, seems

to be a case totally unto himself. And I would certainly hope that by action that we take today, and hopefully followed by the Assembly and signed into law by the Governor, it will not serve as further precedent for anybody else to have the same type of mind-set as Mr. Hirschfeld.

SENATOR DUANE: Thank you. Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: You have authorization, Senator.

SENATOR DUANE: Thank you, Madam President.

I'm wondering what happens in the case of a juror who's taken out to lunch at the conclusion of a case, whether or not they would then be liable under this law.

SENATOR LACK: Well, Madam President, that of course would depend upon who takes the juror to lunch afterwards.

If the juror went to lunch by himself, nothing would happen. If he went - if it was an assignation with someone not connected with the trial, nothing would

happen.

If indeed, as the bill says, it is a party in a civil or criminal action or proceeding, then something definitely will happen. It will be the commission of a Class A misdemeanor.

SENATOR DUANE: Through you, Madam President -

SENATOR LACK: That is, Madam President, providing that, as with our own rules, the juror didn't buy the lunch.

SENATOR DUANE: Thank you.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Through you, Madam President, while I just soak in what a terrific example we are here in the Senate, I'm wondering whether or not this law applies to a person or persons who may have been taken out to lunch by a defendant both before - does it apply to if they were taken out to lunch before, by coincidence, as well as after?

SENATOR LACK: Madam President, the answer to that is contained in line 9, where it says "having been." As I read the

words "having been," it requires that the lunch, in the example that Senator Duane is utilizing, to have taken place after the person in this -- assuming it's hypothetical, has bought the lunch, has indeed bought the lunch.

SENATOR DUANE: And through you, Madam President, if the sponsor would tell me whether or not there's a time limit. Does this gift or gratuity count for five years, ten years, twenty years, a lifetime?

SENATOR LACK: The gratuity would count at any time.

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

I understand the intent of this bill, and I'm very aware of the Abe Hirschfeld situation where payments were made to jurors. But that is the only case of its kind that I know of where there had been a question as to whether or not that could have an impact on - whether or not that had an impact on the disposition of the case.

I understand that if jurors knew that the defendant was a wealthy person, it

might put the idea of great wealth in their heads and that sort of thing. But I'm very concerned that this legislation is a huge reaction to one case, one aberrant case.

I believe this bill should be drafted much more tightly so as to not capture people who might innocently go out to lunch with the defendant five, ten, twenty years afterwards. I don't think that there's much malice in our criminal justice system that people would take advantage of taking jurors out to lunch or jurors demanding to be taken out to lunch after a case.

And so while I understand and I approve of the actual intent of this bill, I just believe absolutely that this bill could be more tightly crafted. And I actually think it's the kind of legislation which we should craft in consultation with various bar associations and the district attorneys, so that we could actually profit by the knowledge of their experience if others have actually abused the ability to take jurors out to lunch or give them payments.

So I would recommend a no vote at

this time, pending a better-crafted piece of legislation that really addresses the more heinous examples like the Abe Hirschfeld example.

Thank you, Madam President.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

Senator Duane's comments are certainly appreciated. Unfortunately, I would suggest that in the future Senator Duane read the bill.

First of all, this is not the bill that was originally drafted by us in the Assembly, nor by anybody in the Assembly. This bill was put in at the request of the judiciary. Because prior to the completion of drafts by members of the Legislature, together with bill drafters for the Office of Court Administration, we all sat down and structured a bill that is now introduced at the request of the judiciary.

And who is the judiciary? Well, the Office of Court Administration. All those who are involved in the court system that

administer the justice and were absolutely, totally taken aback by the vacuum that Mr. Hirschfeld capitalized on, offering payment to jurors for their service.

And finally, I would just refer Senator Duane to line 15 of the bill, which says that the lunch, the gratuity, the gift, anything that he's talking about, has to be on the account of such service as a juror.

So if twenty years later you still want to pay off the juror with a lunch, that's covered under the bill. If, twenty years later you, having married the juror, want to buy him or her a ring, help yourself. That's not covered under the bill.

I think the bill is very nicely and tightly drafted, and I thank the judiciary for their nonpolitical, nonpartisan draftsmanship which has brought this bill to the floor of the Senate today, and would certainly ask for everyone's vote.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of

November.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President, just briefly.

THE PRESIDENT: Go ahead.

SENATOR DOLLINGER: This vote that I'm going to take right now is absolutely consistent with something I did in December, a vote I cast on this floor in December. Because this vote says today that we shouldn't let the gratuities and the appearance of taking gratuities influence the judicial process, even if the gratuity is given after the person has rendered their service as a juror.

In December I voted for a bill that said no one in this Legislature should take a gratuity from a lobbyist because it would influence the legislative process.

And what Senator Lack just said, when people were taken aback by what happened with Mr. Hirschfeld, I would suggest our voters out there are taken aback when they find out that we're taking gifts from

lobbyists which, whether they're given before or after the fact, are nonetheless designed to say thanks for a job well done on behalf of our special interest.

I would just suggest that if we believe gratuities are a bad thing because they influence jurors in the judicial process, we all ought to affirm the pledge that the Democratic Conference in the Senate gave last December when we said we wouldn't take gratuities from lobbyists because it will interfere with the integrity of the legislative process.

Let's have a constant, consistent rule. What's good for the judiciary to protect jurors from bias, from influence, should be equally as good for us. If the people in the chicken coop are going to follow this rule, maybe the foxes should as well.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. To explain my vote.

Just to refresh the chair's memory, I raised this exact same issue in committee. And I additionally requested that we have a

hearing. I was told having a hearing was a waste of time, although I personally think having a hearing where the public comes to testify is never a waste of time.

That said, the objections that I raised to the bill at that time when I voted without recommendation remain the same. And I'm going to vote no on this.

Thank you, Madam President.

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

Senator Dollinger, how do you vote?

SENATOR DOLLINGER: With consistency, Madam President.

THE PRESIDENT: On this bill.

SENATOR DOLLINGER: In the affirmative. Consistently I've voted against gratuities.

THE PRESIDENT: All right. Senator Dollinger, you will be so recorded as voting in the affirmative on this bill.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60. Nays,

1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 397, by Senator Volker, Senate Print 100, an act to amend the Penal Law, in relation to criminal possession of marijuana in the third degree.

SENATOR MONTGOMERY: Explanation.

SENATOR VOLKER: Madam President -

THE PRESIDENT: Senator Volker, Senator Montgomery has requested an explanation.

SENATOR VOLKER: Yes, ma'am.

Madam President, this bill passed the Senate last year by a vote of 57 to 3. And what it essentially does -- and let me start off by saying this has absolutely nothing to do with Rockefeller Drug Laws. In fact, I was looking at last year's debate. And let me point out that this was part of an amendment, Chapter 265 of the Laws of 1979, and it was further amended by Chapter 75 of the Laws of 1995.

Rockefeller Drug Laws were 1993 - or 1973, I'm sorry. I was there. In fact, one of the few people that was there in the Assembly when the Rockefeller Drug Laws passed. And it's one of the reasons I'm in the Senate now, because the governor at the time didn't like some of our responses. But that's neither here nor there.

What this bill basically does is - when the law was changed back in '79, it lowered the penalties for marijuana rather dramatically. We have since amended them, but still the penalty for 2 ounces, possession of 2 ounces to 6 -- or to 8 ounces, I'm sorry, of marijuana is only a Class A misdemeanor.

Even though in certain cases it is patently obvious that the person that possesses the drugs intended to sell them. One case, for instance, involved 6 ounces of marijuana packaged in 100 individually sealed plastic bags, stored in two large Ziplock bags labeled with the total weight and number of packages of marijuana each bag held.

In another case, the defendant was found with a phone pager, a portable cellular

phone with three separate batteries, records of customer sales, and so forth and so forth. Clearly a seller. All that person could be charged with, because it was only 6 ounces of marijuana, was a Class A misdemeanor.

But the same situation with crack cocaine, that person could get a B felony. Let me remind you, a B felony.

All we're doing with this bill is saying in that circumstance, a person with between 2 and 8 ounces of marijuana, that is found with the intent to sell -- and you must prove the intent to sell -- that person could receive a Class E felony. And in New York City, as many people know, you don't go to a Class E felony -- a Class A misdemeanor isn't looked at very strongly. In fact, it's said by some DAs they don't really pay much attention to misdemeanors.

So what this really is is it says that for up to 8 ounces of marijuana, if you're charged and convicted of intent to sell, that you could be charged and convicted of a Class E felony.

THE PRESIDENT: Read the last

section.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Madam President, I would like to know if the sponsor would answer a question for clarification.

SENATOR VOLKER: Certainly.

THE PRESIDENT: Go ahead. Senator Volker does yield, Senator Montgomery.

SENATOR MONTGOMERY: Okay, thank you.

Senator Volker, I'm just trying to figure out from you, it's my understanding that for a misdemeanor charge, one can get up to one year in prison. Is that correct?

SENATOR VOLKER: Right.

SENATOR MONTGOMERY: And with a Class E felony, how does that change?

SENATOR VOLKER: One to four years. They could still get one year. But under the felony section, you can get one to four years.

The real difference, by the way, is that you could go to state prison -- where, by the way, you'd probably be able to get better

drug treatment, I would only point that outlet. With a misdemeanor, you stay in a local jail, generally speaking. I say generally speaking because very often the person who gets the misdemeanor doesn't end up going to jail at all in New York City.

But you're right, it -- what it is is when you look at the Class A misdemeanor is up to one year, and then the Class E felony is the lowest felony, which is one to four years. It doesn't mean you get four years, it means you can get one to four years.

SENATOR MONTGOMERY: Thank you. Just one further question, Madam President, if the Senator would yield.

SENATOR VOLKER: Certainly. I yield.

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

Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: So now, Senator, you say that it requires 6 ounces of marijuana?

SENATOR VOLKER: Well, no, it's actually 8 ounces. Two to 8 ounces, and you

have to prove intent to sell. It really doesn't change anything as far as possession is concerned. Possession still remains a misdemeanor.

But if you can prove intent to sell -- and I just made a description of a situation where clearly the person was a seller. And if you can prove that person is a seller, even though you don't actually prove the sale itself -- in other words, the problem, I think, Senator, you're aware, with drug undercover people, in fact, you can find somebody with pounds of marijuana, for instance, but you can't necessarily prove they're a seller unless you actually see them selling or have evidence that they sold.

What we're saying here is that up to 8 ounces of marijuana, between 2 and 8, that if a person is caught with between 2 and 8 ounces of marijuana and you can prove an intent to sell, then that person could be subject to a Class E felony.

SENATOR MONTGOMERY: Okay. All right. Thank you.

Madam President, briefly, on the

bill.

THE PRESIDENT: Senator, go ahead on the bill.

SENATOR MONTGOMERY: I just want to remind my colleagues that while Senator Volker is trying to address, I suppose, the small drug dealers on the streets -- this is the only -- only person or only thing that I can see that he would be concerned about, with chasing people for 2 ounces.

We're now in the process, I hope, between the two houses in the Legislature, between the two parties, to try and look at what is wrong with the Rockefeller Drug Laws, that we have filled up our prisons with thousands and thousands of people who were arrested under the Rockefeller Law, which is already draconian. And one of the problems is it leads to arrest of very small time, very often, drug users, as opposed to really being a mechanism to address drug trafficking in a meaningful way.

So certainly I am going to oppose this. Because it is my district and other districts like mine where these draconian

so-called drug laws have wreaked the most havoc in terms of large numbers of people who are locked away, no drug treatment, no rehabilitation, and the ultimate -- and long, long sentences -- and ultimately are sent back to their communities that are simply more - better criminals, as opposed to being reformed citizens.

So I'm going to vote no. And I certainly hope that we can address the Rockefeller reform in this legislation as quickly as possible. Thank you.

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, 59. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

SENATOR HOFFMANN: Madam

President.

THE PRESIDENT: Senator Hoffmann, that completes the controversial reading of the calendar.

SENATOR HOFFMANN: Thank you, Madam President. May we please return to reports of standing committees. I believe there are reports at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Wright, from the Committee on Energy and Telecommunications, reports the following bill direct to third reading:

Senate Print 7094, by Senator Velella, an act prohibiting the recovery of costs.

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

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President. There will be an immediate meeting of the Majority in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Majority in Room 332.

The Senate stands at ease.

SENATOR PATERSON: Madam President. Madam President, there will similarly be a meeting of the Minority in the Minority Conference Room, Room 314.

Room 332? That's next year. We'll meet there next year. Right now, 314, the Minority Conference Room.

THE PRESIDENT: Excuse me, Senator Paterson. There's a Minority conference in -- what room did you say?

SENATOR PATERSON: Room 314.

THE PRESIDENT: In Room 314. The Senate continues to stand at ease.

SENATOR HOFFMANN: Thank you.

(Whereupon, the Senate stood at ease at 4:24 p.m.)

(Whereupon, the Senate reconvened at 4:55 p.m.)

THE PRESIDENT: The Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Madam President,

is there any housekeeping at the desk that we may take up at this time?

THE PRESIDENT: Yes, there is, Senator.

Senator Farley.

SENATOR FARLEY: On the charge of housekeeping, Madam President, I wish to recommit the -- strike the enacting clause of this calendar bill on behalf of Senator Johnson. I move to recommit Senate Print 7003, Calendar Number 465, which is on the order of third reading, and recommit it to the Committee on Environmental Conservation, with instructions to that committee to strike the enacting clause.

THE PRESIDENT: So ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe that there is a motion to discharge at the desk by Senator Duane.

THE PRESIDENT: That's correct, Senator.

SENATOR BRUNO: I would ask that he be recognized at this time.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. I'd like to waive the reading on the motion and to be heard on the bill.

THE PRESIDENT: The Secretary will read to bring the bill before the house, Senator Duane.

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

THE PRESIDENT: Senator Duane, to explain the motion.

SENATOR DUANE: Thank you. Yes. Thank you, Madam President.

I would first like our body to pause for a moment of silence for those who have been murdered because of hatred. Matthew Shepard. James Byrd. Joseph Ileto, a Filipino-American postal worker who was killed by the hatred of Buford Furrow, who was the very same hate-filled person who terrified the Jewish children and teachers in a Los Angeles daycare center. Henry Edward Northington, who was beheaded in Virginia for being gay. Billy Jack Gaither, killed because he was gay.

James Zappalorti, killed because he was gay. Ricky Birdsong, a victim of Benjamin's Smith's hatred -- Benjamin Smith who shot his way across the Midwest because of his hatred for African-Americans, Asians, Jewish people, gay people, people of Latino descent. And a moment of silence for the continued recovery of Sonya Thompson, who was shot here in the Capital District because she's African-American.

And for the recovery of all those people who have been murdered and injured and traumatized because of hatred, could I have a moment of silence, please.

Thank you. I want to speak to the hate crimes bill, Madam President. This bill would make hate-related violence and intimidation a criminal offense. This bill protects everybody. Not just the protected categories of race, creed, color, national origin, sex, disability, age or sexual orientation. This bill protects everybody, because the bill specifically states that the attack must be based on the attacker's real or perceived motives for attacking the victim.

A heterosexual person who is viciously attacked because they're perceived to be something they are not, or if they're perceived to be straight and are beaten because of that, would receive the exact same protections under this bill.

Critics of the bill say "a crime is a crime," and that we already have laws on the books making actions of the attackers illegal. But this logic doesn't make sense, and it's really just an easy way to get out of addressing a very serious problem. If that's true that a crime is just a crime, then we should just get rid of the Codes Committee, because we don't have to vote on any other penal law, because everything is already covered by the laws that we have.

And we know that that's not true. Our society has evolved, and we recognize other terrible damaging things that happen to our society and that happen to individuals who live in our state.

If a crime is just a crime, then why do I constantly vote on very good bills that provide extra protections for crimes

against specific categories of people - crimes committed against the elderly, the mentally disabled, corrections officers, police officers -- even, one time in committee, sports officials?

We vote on new crimes all the time. We just voted on a crime that had to do with someone FOIAs information and then commits a crime. So in addition to the crime, there was another bill that had to do with actions leading up to the crime, even though the result would be the same: the victim would be dead.

Now remember, this bill does more than increase penalties. It has stringent reporting requirements. This bill will allow us to keep track of crimes and to try to fix problems of hate through education and sensitivity and through better work by law enforcement -- district attorneys, police departments, and others.

This will help us to prevent these crimes from happening in the future, and someday in this body we will be able to repeal hate crimes if the legislation -- if the goal

of this bill is actually attained. It's about reducing hate and bias. It's about reducing hate crimes.

Now, last year I told you about my own experience as the victim of a hate crime. But maybe what I didn't tell you about is the trauma that is caused to the victims of hate crimes. Even after I was viciously assaulted in 1983, when the issue of hate crimes would come up I did not always identify as a victim. It took me years to recognize that I too had been the victim of a hate crime.

And that happens to victims all the time. Why? Because when I reported to the police what had happened to me, what did I get? Nothing. Nothing. No support, none. No opportunity to confront the people who had perpetrated the crime against me. No way to appear in court and talk about what had happened.

The police were not sensitive to what had happened to me at all. In fact, they did not even contact me before the case went to court. And I certainly got no counseling on it.

And maybe that is what accounts for some of the anger I show here today, because of the way I was treated and victims in New York State continue to be treated when they are victimized by hate crimes.

What about the people who perpetrated the crime against me? Where are they now? We don't know. We don't know where they are. We don't whether they went on to assault other people. We don't know whether they killed other people.

Why don't we know? Because there is no reporting. There is no tracking. They could have done anything to anyone and we would not know, because nobody documented what happened to me and nobody documented what they did to me.

Why can we let that go on? It is a disgrace. It is the shame of New York State that we do not have hate crimes. It's wrong that we do not have legislation which would protect people. It's wrong that we do not document when hate crimes occur. Because some of you will not vote for this legislation no matter what. But if we had reporting, you

would see the problem it had in our state and you would eventually come around and realize that hate crimes legislation is good for the state of New York, that we need hate crimes legislation.

The time for this is now. It's already too late. How many people have to be attacked, how many people have to be attacked before we pass this legislation? Let's do the right thing. Let this come to the floor.

Some will say it's just procedural, it doesn't really matter. Well, there is one thing that I agree on with others, the Catholic Conference and others. This is not just a procedural vote. This is a vote of conscience. This vote on the motion to discharge is about the merits of the bill. We can't make believe it's not about that.

So let's hurry up and get through the motion to discharge. Let's get it on the floor. Let's pass this. Let's protect all New Yorkers.

Thank you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam

President.

Senator Duane, colleagues, this issue is a very emotional issue. It's emotional for you, it's emotional for me, it's emotional for everyone in this chamber. And we have heard you, and there isn't a person in this room that doesn't sympathize with you.

And, Madam President, this is a procedural motion. I did not stand and object to a discussion of the bill that is not before us, because I thought it was important that Senator Duane have an opportunity to voice his description and his opinions.

And I thank you for that. You know, we've talked about this privately, and we have talked about it publicly.

I am standing to really share that I am going to vote against this procedural motion to bring this bill to the floor. But I am again stating, Madam President, that this is an issue that we feel is an important issue, it's one that should be addressed in some way here in this chamber, discussed, and voted on.

And we intend to do that in this

session. But the way to get there is not in any emotional way, with motions to discharge, but by negotiating with sponsors who feel very, very strongly -- just as strongly as you do, Senator -- who have personal experiences of people who have been injured and seriously injured and killed, with relatives and with friends.

So I don't want you or anyone else in this chamber to feel that we are unsympathetic. We're very sympathetic.

But there is a procedure, and we're conscious of that procedure. And I'm asking my colleagues to reject a motion to discharge and to recognize that this important issue will be discussed in this chamber and brought to some conclusion.

Thank you, Madam President.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, may I ask the sponsor to yield for a quick question?

THE PRESIDENT: Senator Duane, would you yield to a question for Senator Goodman?

SENATOR DUANE: Yes.

SENATOR GOODMAN: Senator Duane, would you just clarify, please, where you got the wording for your bill?

SENATOR DUANE: Through you, Madam President, to respond to the question.

Through the Governor's bill, the good offices of Senator Goodman's bill, through the Assembly Bill, through the advocates and my colleagues on both sides of the aisle in general.

SENATOR GOODMAN: Senator Duane, may I ask you to respond to a further question through the chair, please?

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

SENATOR DUANE: Yes.

THE PRESIDENT: Go ahead, Senator Goodman.

SENATOR GOODMAN: Madam President, the question I'd simply like to clarify, if I may, is that this is a bill identical to the bill which carries my name as the prime sponsor which has been before the house for some time. And it's absolutely

identical in every respect, right down to the last comma.

Senator, it's not the Governor's bill, it is a bill that we drafted up in my office by my counsel. Are you aware of that, sir?

SENATOR DUANE: Through you, Madam President. I just want to clarify.

Then the Senator believes that it's his bill that we're voting on the motion to discharge?

SENATOR GOODMAN: No, I simply wanted to clarify where the bill originated, Senator.

If I may just continue on the bill itself, Madam President.

SENATOR DUANE: Through you, Madam President -

THE PRESIDENT: Senator Goodman, do you wish to be heard on the bill at this time?

SENATOR GOODMAN: If I may, Madam President.

SENATOR DUANE: I thought he was asking me a question.

THE PRESIDENT: I think he wants to be heard on it.

Go ahead, Senator Goodman.

SENATOR GOODMAN: On the motion.

Madam President, this is a matter of great gravity. And I would just like to say to you that after a careful discussion with the Majority Leader, I'm absolutely convinced that what you've just heard from him will be a binding pledge. He has done this before, and he has stuck to every word of his -- every bit of his commitment on anything that he's ever pledged to me personally.

And I do have his pledge, as does our entire conference, that this matter will be taken up in due course this year. And I'm also informed that it will involve the use of the sexual orientation with specificity, and not just a vague language to becloud the issue.

It's a critically important issue. I sympathize deeply with the personal angst which you've suffered, and would point out obviously that it's very widespread and it has increased to an alarming degree in the state

of New York.

As you are well aware, I've endeavored, through the offices of the Catholic Church, and in particular His Eminence the Cardinal, Cardinal O'Connor in New York, to try to come up with a satisfactory bill last session. The arrangement was made for us to address the Council of Bishops. That unfortunately did not come to pass, because of the Cardinal's grave illness, so it was not feasible for us to carry out the pledge that I made to you and others with respect to that procedure.

Nonetheless, it's -- the motivation behind our desire to be helpful in this matter to all of those who suffer in these circumstances is keen and deep, and something will be done. You have my word of honor on that, Senator.

THE PRESIDENT: On the motion. All in favor of accepting the motion to discharge -

Senator Connor.

SENATOR CONNOR: Yes, Madam President, just on the motion.

And I appreciate what Senator Bruno said and what Senator Goodman said. Obviously the reason to go forward with this motion is the Assembly has passed this legislation I believe 11 times.

And in the Assembly, the overwhelming majority of the Republican members have been voting for it for years. For years. It's a bipartisan bill in the Assembly. I don't think there are two or three nos when it comes to the floor, year after year after year.

And of course it's Senator Goodman's bill. And he has had it for years. And it's never once moved to the floor of the Senate for all the years that he's had it. And I don't doubt for a moment his conviction that the bill is the right thing and ought to pass. But this is about legislative procedure.

Because isn't that procedure too? Madam President, isn't a procedure when a member has a bill for eight or ten years and never gets it to the floor out of committees? It's a procedure of failure. Of failure of

this house on the floor to take action on this.

Just as Senator Duane's motion is the -- really the only thing that a member in Senator Duane's position who cares very, very much about this legislation -- the only thing he can do today to advance this bill is this motion to discharge.

And, Madam President, you know, once upon a time many, many years ago, this kind of legislation was, I guess, considered somewhat avant-garde. Well, you know, my notes, my little bullet notes prepared by my staff today said New York is one of only ten states that doesn't have a hate crimes bill. And I learned an hour or two later, wrong. Georgia passed a hate crimes bill just a week or two ago.

In fact, Madam President, on the entire East Coast there are only two states that have failed to adopt a hate crimes bill: New York and South Carolina, where they still fly the Confederate flag over the statehouse.

Madam President, New York has had in the past a long tradition of being at the

forefront, of protecting its citizens, of addressing these kind of concerns. We've fallen far, far behind because of the inaction of this Senate and the failure of the Majority to bring this kind of legislation to the floor.

You know, all the arguments against hate crimes legislation that we've heard in the past pale because I have heard, I have heard at least half of the Majority members of this house, in explaining and defending their legislation, say "We have to send a message to these people who would hurt our senior citizens" or "We have to send a message to those who would vandalize cemeteries" or "We need to send a message to the people who would harm children."

I agree. Legislation is, one, about concrete protections for people. But, number two, it's about sending messages about what we think about those who commit violent crimes when motivated by hatred.

Sure, murdering, assaulting, shooting people is already a crime. Just as it was already a crime to assault senior

citizen or children or whatever. But we've passed special legislation because, in the words of my colleagues in the Majority, we have to send a message to the perpetrators of those crimes.

Well, Madam President, we have failed in these past years to send the appropriate message, the message that virtually every other state has sent or every other state with which we would identify New York's traditions and then some.

The message is hate crimes are a special offense to our society, to our values, to our moral principles. And that's why I'm supporting this motion to discharge, because it really is the only procedure that we can use to get this bill before the house right now.

And the regular procedure in all these past years has failed. Hopefully, in the future in this session, something will come of it.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I appreciate the comments made by our colleagues here today, Senator Bruno and Senator Goodman. I hope that I'm hearing you right, because it sounded a lot like what we heard last year from you, that we were going to address this issue. And I know it is an important issue to Senator Goodman.

Because at a certain point in time, you have to say when are we going to get something done. This is not just a matter of us falling out of step with other states. This is a matter of people being hurt while we're waiting.

And it is not true -- and we have some advocates here with us today -- that emotion and motions and agitation are not the way to get something done. Apparently in this house that's what we have to do to get something done. Eleven years is too long to wait for a bill to pass the Assembly over and over again and for us to fail to respond.

And I would urge all of you, if you are going to vote against this, whatever your

rationale is -- it's procedural -- the only way bills come to the floor is through procedures. Every day, all we do is procedure. Third reading. You know, unanimous consent. Messages of necessity from the Governor. Those are the procedures through which bills move forward.

If you're going to vote against this, whatever your rationale, you'd better be prepared to come back and get this done this year. Because this is way too long. The advocates are tired. Everyone in the state of New York, with a few very narrow exceptions, supports this legislation. We understand that it's a different kind of crime to commit a hate crime than to commit another type of crime.

We've been over this and over this and over this. The arguments just don't hold up. And I would urge you to take a lead from the Mayor of the City of New York. Because it's not just Mrs. Clinton who's supporting it this year, it's Mayor Giuliani, who some say will be the Republican candidate for the U.S. Senate. And he has responded to the acts of

hate, of violence, and of -- particularly he called attention this week to the anti-Catholic acts in Brooklyn and other parts of New York City, the defacing of statues of saints.

And there's not one member of this body who can stand up and tell me that if some kid spray-paints a statue of a Civil War soldier, it's the same crime as someone writing anti-Catholic graffiti and chopping off the hands of a statue of a saint. It is a different crime, but in the state of New York today they're punished the same way.

This is a law that makes sense, this is a law that made sense last year, this is a law that made sense ten years ago. If you're not voting for it today, tell us when we're going to get it done and then we can feel like this house can hold its head up and not slink out of another legislative session ashamed that we've failed to match the Assembly on this important piece of legislation.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I yield the floor to Senator Lachman.

THE PRESIDENT: Senator Hevesi is next.

SENATOR HEVESI: Madam President, I'll yield to Senator Lachman.

THE PRESIDENT: Excuse me.

Senator Bruno, why do you rise?

SENATOR CONNOR: Point of order.

SENATOR BRUNO: We're being very patient, very, very patient. This is a procedural motion. And I've been listening to a discussion of the bill, Senator Connor, and this is not the format to discuss this legislation. Now, if you want to politicize -

SENATOR CONNOR: Point of order, Madam President.

What's the Senator's point for interrupting the members? Is this a point of order?

SENATOR BRUNO: Yes, it is. And the point of order is that we are discussing a procedural motion and not the legislation.

And we have been very patient listening to you breaking all the rules of the Senate, and we are not going to continue with you -- with member after member breaking the rules of this Senate. We are on a procedural motion.

And, Madam President, I am asking you to make sure the members address this motion and do not discuss the merits of this legislation. That will happen when this bill is on the floor.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Bruno, your point of order is well taken. The members should keep your comments germane to the procedural aspect of this motion alone.

Senator Connor, why do you rise?

SENATOR CONNOR: Madam President, my point of order is, and I've been here twenty -- this is my 24th session -- when you take up a procedural motion, you obviously explain the purpose of it. And the purpose of it is to move certain legislation.

And it would be rather meaningless for someone to stand up and say -- talk about

a motion to discharge and not tell anybody what's in the bill. And I think people are entitled to discuss what's in the bill they wish to move before the house.

And I know of no rule in the written rules of this house that has ever precluded a member's remarks. Motions must be germane. I know of nothing that restricts a member's ability to discuss, analogize or debate anything that they wish to debate in the course of explaining.

THE PRESIDENT: Senator Connor, my ruling stands.

Senator Duane, why do you rise?

SENATOR DUANE: Madam President, I'd like to have a vote on -- appeal the ruling of the chamber.

THE PRESIDENT: All right. We'll have an appeal of the ruling.

The Secretary will call the roll, Senator Duane.

All members in favor of overruling the ruling -- the ruling of the chair signify by saying aye.

SENATOR CONNOR: Slow roll call,

Madam President. There are five members standing.

THE PRESIDENT: The Secretary will call the roll. There are at least five members standing.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Support the chair.

THE PRESIDENT: He will be recorded in the negative.

THE SECRETARY: Senator Balboni.

(No response.)

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: Thank you, Madam President. To explain my vote.

THE PRESIDENT: Senator Connor, to explain your vote.

SENATOR CONNOR: I know these rules after 24 years, Madam President. And

aside from the chair keeping proceedings germane, I know of absolutely no precedent in this house, nor is it anywhere in the written rules that it says a member on a procedural motion can't discuss the underlying substance for which the motion is brought.

And the motion is clearly debatable. I know of no muzzle on members' debates that's ever been imposed in this house. It may be politically inconvenient for the Majority to have the members point out what the underlying substance of the bill is that would be brought to the floor by a motion to discharge.

But there is absolutely no precedent in this house, that no presiding officer that I know of has ever, ever ruled that members can't discuss the underlying bill for which their motion is brought.

Else how could one possibly explain a motion to discharge if you didn't tell the members what the bill was about and why it was important, why it was important to bring the bill to the floor today, now, without saying what's in the bill?

Madam President, I vote aye.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Coppola.

SENATOR COPPOLA: Yes. Aye.

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Madam President, to explain my vote.

I agree with Senator Bruno on one thing. This is an exceptional procedure. Whenever you make a motion to discharge, what we are doing, Senator Connor is correct, we are bypassing the committee process. We are taking it out of committee and not allowing the committee that has jurisdiction over this legislation to vote on it before it comes to

the floor.

It is an extraordinary step. There's no question it's extraordinary. That's why detailing the merits of why we ought to do something extraordinary is what the motion to discharge should be about. It's an opportunity to describe why we need to take this extraordinary step.

And I would suggest that you can't do that without describing why the nature of the bill requires us to take an extraordinary step. It's all part of the logic of what a motion to discharge is, that the member would talk about the merits of the bill in order to encourage his colleagues or her colleagues to take an extraordinary step.

This is very much germane. It's clearly in order. With all due respect to the chair, I vote aye.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: No.

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

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: No.

THE SECRETARY: Senator Fuschillo.

(No response.)

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi, to explain your vote.

SENATOR HEVESI: Madam President, I rise to request that the members be informed specifically what rule precludes members of the Senate from speaking on the substance of a motion.

THE PRESIDENT: Senator, you're out of order. We are on a roll call.

The Secretary will continue to call

the roll. You may explain your vote if you choose.

SENATOR HEVESI: I vote yes, Madam President, in this highly irregular -

THE PRESIDENT: You will be so recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: No.

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.

(No response.)

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: No.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: No.

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: No.

THE SECRETARY: Senator Marcellino.

(No response.)

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: To explain my vote.

THE PRESIDENT: Senator Markowitz, to explain your vote.

SENATOR MARKOWITZ: It seems to me, Senator Bruno -- and Senator Goodman, I'm sorry he's not in the chamber at the moment, but hopefully he'll be coming in in a short period of time. It seems to me that from what I heard, it sounds like if in fact -- and I know you're a man of honor, and certainly Senator Goodman is, that in fact we will be taking up this issue before the end of

legislative session this year.

And listening to the words of Senator Goodman, it seems to me that the bill that will pass probably is remarkably similar to the motion to discharge that we're trying to move forward at this moment.

So why just don't we say, let's just take this bill up and get it over with? Just get it over with. Let's just vote on the legislation that we are trying to discharge and get it over with. Because -

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: -- it's going to be very, very similar.

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: I'll vote yes.

Thank you so very, very much.

THE PRESIDENT: Senator Markowitz, when I hit that gavel, I expect you to stop and to please listen to what I am saying.

SENATOR CONNOR: Point of order,

Madam President.

It is unprecedented for a presiding officer of this house to speak to a member that way. You're not -

THE PRESIDENT: Senator Connor, you are out of order. Please be seated.

SENATOR CONNOR: Point of order. Point of order.

THE PRESIDENT: You are out of order.

SENATOR CONNOR: I am a member of this body. I'm an elected member. I've never -

THE PRESIDENT: You are out of order.

SENATOR CONNOR: -- heard a presiding officer, not one, who's ever talked like that to a member.

THE PRESIDENT: Senator Connor, I'm going to -

SENATOR CONNOR: I've had four lieutenant governors, and not one ever spoke to a member that way.

THE PRESIDENT: And if I'd been allowed to finish my sentence, Senator Connor,

I was clarifying to Senator Markowitz that he was given the floor to explain his vote and that his explanation of his vote should be directed to me, as President of the Senate.

Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

Maybe it's time that we take a little break here, since it appears that people would rather posture in this chamber than go on with the order of business in this chamber.

Madam President, thank you for your presence and for your parliamentary procedures here in keeping order in this house.

And, Senator Connor, we will have order in this house.

SENATOR CONNOR: I agree.

SENATOR BRUNO: And we're going to maintain order in this house. And we are not going to have outbursts in a very unbecoming way by anyone this chamber while this Senate is in session.

And this is not a time, with an issue like this, to posture, to be political,

but for the Senate to be able to do its business in an orderly way.

And you have been a gentleman in this chamber for all the 24 years that I've known, since I've been here the same length of time. And I expect that you will continue to handle yourself accordingly, and I and all the others in this chamber appreciate that.

And, Madam President, I think if we can, in an orderly way, conclude this motion to discharge, we should do it. And if we can't, I will move that we adjourn and we'll return tomorrow.

THE PRESIDENT: Thank you, Senator Bruno.

And an explanation of a vote on an appeal should be germane to the merits of the appeal and nothing else.

And the Secretary will continue to call the roll with that order.

Senator Paterson, why do you rise?

SENATOR PATERSON: Point of order, Madam President.

THE PRESIDENT: You may proceed and state your point of order, Senator.

SENATOR PATERSON: The explanation of a vote, according to the rules of the Senate, is at the discretion of the member. That is not related to the issue being discussed. The member has two minutes to explain his or her vote, regardless. A member can talk about anything in those two minutes.

So the reason Senator Connor was standing up was to make that point of order of your admonishment of Senator Markowitz. There was no reason why Senator Markowitz ever should have been interrupted. That, Madam President, is a rule of the house.

THE PRESIDENT: Senator Paterson, I appreciate your input.

When I have a point of order and I have input from a member regarding the germaneness of the remarks of the member, I will continue, if necessary, to gavel. And I expect any member to show respect for me as President of the Senate and to stop and listen to what I have to say.

Thank you, Senator Paterson, for your continuing politeness.

SENATOR PATERSON: Madam President, point of order.

THE PRESIDENT: Go ahead. What's your point of order, Senator?

SENATOR PATERSON: My point of order is that the reason that Senator Markowitz didn't stop is that no Senator in this chamber had ever been stopped before while explaining their vote on a slow roll call. Because the explanation of the vote has no germaneness limitations.

So it wasn't that Senator Markowitz was being disrespectful of you, Madam President. Senator Markowitz would never have expected to have been interrupted at all, because he had two minutes -- which had not expired at that point -- he had two minutes to explain his vote.

So I'm just trying to advise the chair of the rules of the house, which were that Senator Markowitz should not have been interrupted. I can understand during a debate your banging the gavel to try to get order. And all of our members should respect Your Honor's ruling.

THE PRESIDENT: Thank you, Senator.

SENATOR PATERSON: But in this particular case, the member had two minutes and could talk about any subject he chose.

And that's the reason why Senator Markowitz, who's never disrespected you, Madam President, or anyone else that sat in that chair, did not have to stop and should not have.

THE PRESIDENT: All right. Thank you, Senator.

I will clarify again that Senator Markowitz was out of order because he ignored the fact that I had something to say. I gaveled at that point, and I will continue to clarify my ruling that on an appeal, when a Senator rises to explain, it should be germane to the issue of the appeal.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

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: Yes.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: No.

THE SECRETARY: Senator Onorato.

THE PRESIDENT: Senator Onorato, to explain your vote.

SENATOR ONORATO: Madam President, to explain my vote.

We've been hearing quite a bit about the procedural mechanisms that are going on here. And we are now -- we are frustrated that we cannot get bills that were actually voted out of committee. Because this particular bill was voted out on several occasions from Senator Goodman's committee, of which I am a member.

And now to have a motion to discharge that bill on the floor and then to be told that we cannot even discuss it -- we

can't get a bill out of the committee and when a motion to discharge it comes on the floor, we are being denied our civil right as an elected official to debate the bill that we want to bring to the floor, is a very, very sad day in this house.

I vote aye.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye -- no. 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.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

SENATOR ADA SMITH: Aye.

THE SECRETARY: Mr. Smith.

SENATOR MALCOLM SMITH: Yes.

THE SECRETARY: Senator Spano.

(No response.)

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Trunzo.

(No response.)

THE SECRETARY: Senator Velella.

SENATOR VELELLA: No.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Wright.

(No response.)

THE PRESIDENT: The Secretary will call the absentees.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator Fuschillo.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Marcellino.

(No response.)

THE SECRETARY: Senator Spano.

(No response.)

THE SECRETARY: Senator Trunzo.

(No response.)

THE SECRETARY: Senator Wright.

(No response.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 25. Nays, 24.

THE PRESIDENT: The ruling of the President is sustained.

Senator Connor.

SENATOR CONNOR: I'm sorry, I didn't hear the vote. May I hear it again?

THE PRESIDENT: The Secretary

will announce the vote.

THE SECRETARY: Ayes, 25. Nays, 24.

SENATOR CONNOR: So, Madam President, the sentiment of the members who are here is clear, but the motion failed?

THE PRESIDENT: The appeal -

SENATOR CONNOR: No, the sentiment of those who are here is clear, but the motion nonetheless failed.

THE PRESIDENT: It requires an affirmative vote of 31 members, Senator. That failed.

SENATOR CONNOR: Thank you.

THE PRESIDENT: On the motion to discharge, all those accepting the motion to discharge signify by saying aye.

SENATOR DOLLINGER: Madam President. Madam President.

THE PRESIDENT: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Madam President, I believe before we went through this, I had the floor. I yielded to Senator Lachman, I'd asked that Senator Lachman be

heard, and then I asked for the floor back.

And Senator Lachman will yield it back to me, which I believe is the proper procedure. Thank you.

THE PRESIDENT: Senator Dollinger.

Senator Lachman.

SENATOR LACHMAN: Madam Chair, I believe that in a discussion of this issue, we all have to be civil towards each other. I also believe that no one in this chamber, Senator Bruno, wants to politicize this issue. It's much, much too important.

One of my colleagues mentioned the destruction of sacred statues of the Catholic faith. In my diocese in Brooklyn, a statue of Pope Pius X was thrown into the gutter, hacked up, and the words written on it "Pope John Paul II Satan."

One more thing that I want to say. About three weeks ago I visited the New York Historical Museum that had a special exhibition on lynchings through the 20th century. There were over 100 lynchings. Who were those who were being lynched? There were

two Italian Catholic immigrants who couldn't speak English and didn't do the right thing, according to those in their community. There were several union organizers, including a Latino. There was one Jew called Leo Frank. And as a result of his lynching for a crime he did not commit, the Anti-Defamation League was formed; the year after, the NAACP.

But the vast majority of these lynchings involved American blacks. The African-American people of this country have been lynched physically in decades and generations past and are now being lynched in another way in this decade and this generation.

That is why I wanted this motion to be discharged. We've been debating this not for 11 years but 13, 13 years. And I commend Senator Paterson for bringing this to our attention 13 years ago, as Senator Duane did today. And I also commend my leader for his forcefulness, and I commend the Majority Leader and Senator Goodman for their statements.

I hope that eventually justice will

be done and we will discharge this motion and vote according to our individual consciences.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I'll be very brief. My colleagues have said most of what I wanted to say.

I described this as an extraordinary step. We are bypassing our committee process, we are taking an extraordinary step. We are moving to discharge a bill that does not have a committee vote. That is an extraordinary step.

I would suggest, Madam President, that there's an extraordinary need. Senator Duane, Senator Schneiderman, Senator Lachman have spoken about the personal injury side. I just want to remind everyone in this chamber that there's an extraordinary need because of the damage to property. Hacking up the statue of Pius XII, Giuseppe Sarto -

SENATOR LACHMAN: Pius X.

SENATOR DOLLINGER: -- Pius X, Giuseppe Sarto, a saint, is not simply an act of vandalism. Putting a swastika on a wall of a temple is not simple disorderly conduct. Burning a cross on someone's front lawn is not simply a trespass. Those are crimes, those are actions driven by hate.

And I would suggest, Madam President, as much as those who perpetrate those crimes are trying to send a message to parts of our society -- be they black, be they white, be they straight, be they gay, be they Catholic, be they Jewish -- they're sending a message. And the point of that message is if you are part of one of those groups, you have something to fear.

I would suggest that the extraordinary step of discharging this bill from committee should occur today because we should tell those fearmongers and those hatemongers that they have something to fear -- the power of government which will punish them for their hate.

We should take that extraordinary step today. We should take this bill out of

committee. And we should not even let simple vandals start their hateful acts by putting images on property or desecrating statues. Before they start killing, before they injure people, let's send a message to them that if they even commit a simple violation against property that we will not tolerate their hate.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

I was going to rise to explain why we need hate crimes legislation in New York State, but I don't believe I'm able to do that. Am I allowed to do that, Madam President?

THE PRESIDENT: Senator, you may proceed. This is a motion to discharge. You may comment, and your remarks should be pertinent to the motion to discharge.

SENATOR HEVESI: I understand.

But point of order, I'm going to be voting to discharge this bill from committee for a reason. The reason is I believe this bill should become the law of the land.

Can I discuss that, Madam

President?

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I don't believe the debate is supposed to be between Senator Hevesi and the chair. If he wants to discuss the motion to discharge, that's fine. But I don't think we are looking -

SENATOR HEVESI: Senator, I'm trying to get a clarification from the chair as to whether I can speak about the legislation before us.

THE PRESIDENT: Senator, I've given a clarification. You may proceed. Please proceed.

SENATOR HEVESI: Well, I guess I'm explaining my vote to discharge from committee, which is yes.

The reason is because it's disgraceful that we haven't done it in 11 years. It's disgraceful today that we can't even have a debate and a discussion about it.

The reason the procedure is necessary is because Democratic bills can't get passed out of this house. The proof? The

evidence? In 1999, last session, there were 1,199 bills passed by this house. Twenty of them were sponsored by Democrats, none of them with an impact more global than their own Senate district.

So we're here to try and foster some motion on something that is absolutely essential to the voters of New York, and I can't talk about it because of a ruling of the chair on a rule that I asked which is the rule, and I received no answer. Because I don't think it exists.

THE PRESIDENT: Senator Hevesi, for further clarification, there has been an appeal on my ruling. The appeal has been overcome. And you should stand and abide by that ruling in -

SENATOR HEVESI: Well, I abide by the rule for the purpose of this session. I'm going to research now the specific rule that has led to your ruling, which I don't agree with. I don't understand it.

So, Madam President, I'm voting yes on a motion to discharge. But in my very frustrating days in this house, this is by far

the most frustrating, by far the most sad and undemocratic. This is really a disgrace today. I don't know what's next.

I vote yes on the motion to discharge.

THE PRESIDENT: Senator Paterson.

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

The issue of motions for discharge is covered in the rules of the Senate under Rule 11. These relate to the rules for the suspension of the rules of the Senate. It's covered in Section 1 that covers the entire rule.

And to simplify it, it talks about what the timeliness of the motion should be. And apparently the drafters of the rules of the Senate did not want anyone to just get up and ask for a motion to discharge because they had some bill and they wanted to bring it to the floor that particular day. There's a seasonable period of three days, which this conference complied with and filed our motion for discharge.

Section 1 of Rule 11 goes on to say

that there should be no motions after the second week of April. Now, why did the formulators of the rules of the Senate want the second week of April to be the deadline for the suspension of the rules of the Senate?

Well, I think that would be very clear. If you wanted to bring a bill before the floor, you wanted to make sure that there was ample time to give the members a chance to vote on it. Because by passing the motion to discharge, which I hope we will do today, that would then give us time to bring the bill to the floor and debate the bill. So you would want to do that at some point in the session that's early enough so that there would be time to schedule a debate to vote on this particular bill.

So therefore, we're down to only one issue, which is how would a motion for discharge pass. Well, under Rule 11 it says by a majority of the Senators. Therefore, it opens the door for debate.

Now, it's clear that you can bring a motion for discharge, under the rules of the Senate, you can bring the motion for discharge

to the floor if you do it in the right amount of time and in the right time of the year. All that was complied with. And now the only question is, is the motion going to pass?

So that begs the question, what would be the subject of a discussion on a motion for discharge? What else could the subject be? It has to be the bill. It can't be the motion, because that's stated right here in the rules of the Senate.

That makes it very clear that it may be procedural, but it is part of the rules of the Senate. If there was something wrong with it, it wouldn't be part of the rules of the Senate. And it has been part of the rules of the Senate for as long as the Senate has existed.

So what has caused motions for discharge to fail? Not the rules of the Senate. The vote of the house. It's been a custom -

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Perhaps, Senator Paterson, if you'd look at Rule 9, Section 3,

where it says "Debate," debate shall be in order when it is germane to the question under discussion. And the question under discussion right now is whether it should be discharged from committee.

So we can discuss whether the bill should be discharged and about motions to discharge, but not the substance of the bill.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, did you hear me discuss the substance of the bill?

THE PRESIDENT: Senator Paterson, do you wish to be heard?

SENATOR PATERSON: Yes.

THE PRESIDENT: Please proceed.

SENATOR PATERSON: Well, since you can't answer, maybe someone else here can tell me if they heard me discuss the subject of the bill. I'm talking about the motion for discharge.

Now, a minute ago, believe me, I wanted to talk about the bias bill. Senator Goodman said that Senator Duane got it from his office. They must have got it from mine.

I'm the first one to ever write a hate crimes bill in this state.

But I thought I would discuss the procedural issue, and I can't get halfway through it without -- did the Senator want me to yield for a question about Section 9.3? Yeah, if we were talking about a tax bill, maybe that would be in order. The subject of the bill would have been the genesis of the discussion.

We have all kinds of motions around here that we discuss all the time. And they are based on the actual substance. So when I raise the issue of what would be the basis of the discussion, I'm raising how you would pass a motion for discharge in the Senate. How would you pass one? By stating that there is such a thing as a motion for discharge? You don't have to do it, it's already there. Anybody can read it.

Now, the germaneness, that's a simple question. The germaneness relates specifically to what would be the subject of the bill. Well, we know what the subject of the bill is. That's in Senator Duane's

motion.

The question about motions for discharge relate to the need for urgency, the need to pass the legislation. How important is it that we bring this to the floor right now, this moment? Why do we have to do it now rather than waiting for the bill to grind its way through committees and through the procedures of the Senate?

And the only way to explain what the urgency is, why we're bypassing the committee system, would be because there's an emergency. In this case, Senator Duane feels that violence committed by people based on hate is an emergency. And he's cited examples of why he thought that was the case.

If anyone thinks that it's not an emergency, then they can vote against the motion to discharge. They can be responsible for the fact that we can't deal with this problem today -- even though in 1989, 11 years ago, 57 of the 61 members of this house answered a poll by the New York Post that said that they thought it was urgent, they thought a hate crimes bill should be passed and they

thought it should be passed immediately.

But nonetheless, that would be an issue that would relate directly to the reason why we would table the rules of the Senate, suspend the rules of the Senate under Rule 11, and go right to the heart of the issue, whether or not we should discuss this bill forthwith.

And so there's no section of that rule that precludes a member of the Senate from discussing what would be the nature of the urgency that brings this bill to the floor.

And so on that basis, I recommend to all of my colleagues that we vote to pass this motion for discharge, to demonstrate that we think that this is urgent. The majority of the public feels that way. That's why people are getting so upset around here. They know they're going against the grain. The majority of legislators, when asked off the record - or even on the record -- individually to answer polls, feel that way. And that's the way I feel.

And so, Madam President, under the

rules of the Senate, I recommend an affirmative vote on this motion for discharge so that we can provide some relief to the families of people who unfortunately couldn't live long enough to see the Senate act on this because they were victimized by the violence and the hatred of others.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: At this point I'm sort of confused. I wanted to speak briefly on something that had occurred a few years ago, but it pertains to the substance. If I may continue, I would like to discuss that.

This happened, I think, about four years ago. And it was a very personal issue, in that the peninsula on which I live in Mamaroneck was -- the whole peninsula was affected by a hate crime. And that crime was some person who was never found -- we believe it was one person -- that person was painting swastikas and hate words -- "Kill all the Jews," "Jews are pigs," "Pigs shouldn't live amongst us," really very hateful things -- on

nine houses in our peninsula, which is not very big.

And as was described a little earlier, it made the entire community very fearful. And it is -- was not an act against one house or even eight houses or nine houses, it was an act against our community. And it was not even just an act against Jewish people. It was felt by the community to be an act against everybody in that community.

At that time, a little bit subsequent to that time -- oh, several months later -- Governor Pataki came down to a college, Manhattanville College in Westchester, only a few minutes from where this incident happened. Oh, and by the way, it happened over a series of months.

And at that time he said to all of us there -- and there were several hundred people -- that this bill was a priority for him and that we would have this hate crimes bill. And that really made us feel a whole lot better, that it wasn't just our community that was under siege but that it was being perceived as something that affected all the

people of this state.

And so we were very comforted by that. But that has been, oh, a number of years. And we are still waiting.

I would like to give a happier ending to this, because this is sort of a dismal story. The community did come together. And what happened is we had a march of two or three thousand people of our community, and we marched from church to synagogue to church to where some of our Koreans meet, to where some of our Moslems meet. And it was a march of several hours, and we ended up in our high school auditorium. And everybody participated, saying this was an affront to every person that community.

So it's a hopeful note. I hope that we can continue to pursue this, because it is a very hateful thing that occurs to a community when something like this happens.

THE PRESIDENT: Senator Markowitz.

SENATOR MARKOWITZ: Thank you very, very much.

Obviously we all feel very, very

strongly about this issue. Some of us have witnessed hate towards Hassidic Jews in parts of New York City, certainly gays and lesbians, Latinos, Muslims, to our Muslim population in New York.

But I want to talk specifically why right now, right now, it's burning. Because those 11 incidents against Roman Catholic churches this year are all in my Senate district, every one of them. Maybe except for one. Excuse me, 10 out of the 11. Forgive me.

This is serious. There are mutants in this society that feel that they can get away with anything. And I have to tell you, I visited some of those churches. And the disbelief on the face of the parishioners of these Roman Catholic churches in my area -- to see the horror, the fear, the emotions reinforced what we already knew about other hate crimes.

You're right, Senator, we can't wait another year. And I take Senator Bruno at his -- at what he said today, because I do believe that he is a man of honor. I do

believe that. We may differ on certain issues, but he is a man of honor. And so is Senator Goodman.

And so I hope that while this motion to discharge I hope will succeed this afternoon -- it should succeed. Because unfortunately, the one thing I've learned about hate, it's much like cancer. If you don't pay attention to cancer when it happens, when it's first detected, it grows. Unfortunately, it grows like -- and then it reaches a point, regrettably, that it can't be controlled any longer.

So this is true with hate, the same exact thing. There are people unfortunately that are so unstable in our society that they watch others and when they see them getting away with it, they want the action, they want the attention. I don't understand the craziness in the minds of these people. I don't understand it.

But I do know that as the Legislature, we're the ones, we're the ones that are charged with the responsibility of indicating to those in our society, to those

throughout the state, that this is right and this is wrong. And when you do these acts of crime, of hate, this society will properly mete out its punishment, due punishment, to put them away and to make sure others are dissuaded from taking that type of action.

And that's why I'm supporting this motion to discharge.

THE PRESIDENT: Senator Coppola.

SENATOR COPPOLA: Madam President, I thought when they knocked down the Berlin Wall that Communism was dead and ruined. And I go back to some of the things that have happened in the history of the United States, in the wars, in the Vietnam War where men and women died.

And then I looked at this today, the chamber and everybody very sincere, talking about issues that they were concerned about -- environmental, guns, whatever. But if we don't get by -- if we don't kill racism in this country, we're going nowhere fast.

And believe me, there's a lot of racism out there and a lot of hate out there. And why can't we get together in a room of

grown men and women and talk about love, talk about showing what we can do as leaders of New York State? Why do we debate something that we were taught all of our lives, to love and honor your neighbor?

When I was a little boy in Catholic school, Father Gambino said, "You're always going to go someplace, son, as long as you treat your neighbors the right way."

Well, today we're here to send the kids of New York State a message, to show them that we're leaders and we can pass this bill. There are no sides to this issue. We're taught every Sunday to love thy neighbor. Are we hypocrites in this room today? Are we not going to do something because we have all these egos out here? That's wrong.

This is about life, quality of life. This is about sincerity. And I hope we all come on the same page today.

Thank you, Madam Chair.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: We've had a problem in northern Queens with hate stickers, stickers of different colors against

African-Americans, immigrants, a whole host of people.

And a number of us got together to offer a reward system, with the Anti-Defamation League, for information leading to the arrest and conviction of those people who were putting them up.

But the interesting part of the stickers is who's printing them. It's a group called the National Alliance based in West Virginia. And the National Alliance was made famous by a fellow named Pierce, the Turner Diaries. And they were implicated in the Oklahoma City bombing.

But interestingly, last Thursday, someone was caught on a parole violation. And they got a search warrant. And what did they find in his apartment? In College Point, I regret to say. What did they find? They found a loaded AK-47, they found information on how to make bombs, they found ammunition for the assault weapons, they found a whole host -- they found Nazi uniforms. They found music. They found all sorts of things that would fall under the hate crimes bill.

The man's name was Michael Sagianara [ph]. And the most appalling part to me is that he's 20 years old. He had been convicted five years ago for trying to blow up a tower at Flushing Airport that controls the wind-shear information for LaGuardia and Kennedy, and apparently was paroled. And five years later, we go from arson and bombing to Nazi memorabilia.

Madam President, I think this illustrates it's not just for gays, it's not just for African-Americans or Latinos, it's for all of us. And that's why I plan to vote yes.

Thank you.

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

SENATOR ADA SMITH: Slow roll call.

THE PRESIDENT: There are five members standing.

The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: On the procedural

motion, I vote no.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Nay.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: No.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the negative.)

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Aye.

THE SECRETARY: Senator Coppola.

SENATOR COPPOLA: Aye.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: I vote no on this procedural motion.

And we heard a lot of heartrending stories today, very serious matters, for all of which there is currently a crime by which

an individual can be charged. I vote no on the procedural motion.

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

And, Senator DeFrancisco, you will be so recorded as voting no on the motion.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just to explain my vote briefly.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: How much more urgent, how much more demanding, how much more extraordinary does the debate have to be before we look past the procedure and do the right thing? I don't know of a better example. We've got an opportunity to do the right thing today, to make law, to make the right law. Forget the procedure. Forget the process. Do the right thing.

I vote aye, Madam President.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Thank you, Madam President. I rise to thank -

THE PRESIDENT: Senator Duane, to explain your vote?

SENATOR DUANE: Yes, Madam President.

I rise to thank my colleagues for their -- on this side of the aisle for their terrific words on this issue, which I think is very, very important not just to me but to each and every citizen in the State of New York.

And I sadly have skepticism about the future of this legislation. I still have hopes that we'll win the motion today, but I remain skeptical. And I think that that is a tragedy. And frankly, the lives and the ability for citizens of our state to live free of intimidation and bias and hatred really hangs in the balance of what we do in this body this session.

Thank you, Madam President.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Farley.

THE PRESIDENT: Senator Farley, to explain your vote.

SENATOR FARLEY: Thank you, Madam President.

This is a procedural motion. In the 24 years I've been here, I've never seen a motion to discharge pass. I don't think one has ever passed in the other house. And that's what this is, is a motion to discharge. It hasn't gone through the proper or the usual way that a bill becomes a law.

Senator Bruno said it all. This issue will be addressed.

I vote no.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: No.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzales.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann.

(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.

(No response.)

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: No.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: No.

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: No.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Nay.

THE SECRETARY: Senator Marcellino.

(No response.)

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator McGee.

SENATOR McGEE: No.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, to explain my vote.

My experience and relationship to bigotry is sometimes so painful that I can't discuss it objectively. But -- and it's - there have been so many and so pervasive, and for basically all of my life.

But the one that I remember most vividly, that is like a recurring dream to me or recurring nightmare, is when I was on a bus in Texas, going someplace, and there was a busload of us, all white students and myself. And we got off the bus at this particular little place that supposedly was selling whatever they were selling, and supposedly there would be a restroom for us to use. And I got off with the other students, and I went into this place with them.

And there was a big, burly white man with a huge gun on his -- in his belt.

And he turned me around and physically threw me out the door. And the reason that he did that was because of my color.

So I have a very, very emotional and personal experience with bigotry. And therefore, Senator Duane's comments on this motion are certainly not unfamiliar to me. And I certainly fully and completely empathize. It is quite amazing to me that here in the state of New York, in this new century, new millennium and whatever we're calling it, we are still debating what we should do about expressions of bigotry on the part of citizens in this state. I'm quite ashamed of it and quite upset about it.

But certainly I want to thank Senator Duane for bringing this to the attention of us in this way. It is painful for all of us, those who want to vote yes and can't, those who may not want to vote because they don't understand, but certainly for those of us who fully understand what bigotry means.

I am in favor of this. I vote yes for this motion. Thank you.

THE PRESIDENT: Senator

Montgomery, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: No on the motion to discharge.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: To explain my vote.

THE PRESIDENT: Senator Onorato, to explain your vote.

SENATOR ONORATO: We've heard a lot of discussions here again about the procedural -- that this being procedural.

And they also forgot to mention again during this procedural motion that this bill was voted out of committee, the usual procedure to get it onto the floor. Now, what happened to it when it got out of committee that it was voted on to be presented to the floor? It made its way to the Rules Committee and then to the shredding machine.

We have an opportunity here today to bring this out on to the floor and to vote on the merits of the bill, whether you're for it or against it. But at least give everybody in this chamber an equal opportunity to have their voices expressed on this very, very monumental piece of legislation.

I vote aye.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Oppenheimer.

THE PRESIDENT: Senator Oppenheimer, to explain your vote.

SENATOR OPPENHEIMER: I think Senator Montgomery's words jogged a lot of our memories.

Because I remember when I was about 9 years old and I was living in Durham, North Carolina. And I was there because my father was a colonel in the Army and we were traveling behind him during the Second World War, and he was teaching.

At any rate, I remember my classmates had never met anyone of my religion. And they kept trying to pick up my skirt to see if I had a tail, because they had been told that Jews had tails.

So, I mean, there's so much -- it's hard to believe that people don't believe that all people are the same people and that we're constructed the same. And we may have different minds or different-color skins, but we are constructed the same.

At any rate, I have a feeling. I have a sneaking suspicion that were this ever to come to the floor in this house, that we would have a unanimous vote in favor of it. And so I hope the day will come very soon, within this year, when this will happen.

I vote aye.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, generalizations often err in the direction of oversimplification. To state that this is a procedural motion is really in effect to deny the axiom that the whole is equal to the sum of its parts.

Of course it's a procedural motion. It's a motion. That means it's inherently procedural. Why would we wonder or even worry about whether or not these motions have passed previously? There are people who have been write-in candidates for President of the United States. None of them has ever won, and I don't know that any of them ever will. But it's because it's the President of the United States of America.

Now, maybe if we were in Bosnia it might be a more apt place for today's discussion. Because then when we don't like what people are saying, we can just tell them

to sit down. When we don't feel the necessity to debate a bill, we can duck behind a lot of procedural remedies and claim that the rules are actually being suspended and that someone is doing us a favor by allowing us to participate in a democracy.

The fact is that in 1989, the first time the Assembly passed this legislation, the Senate Majority Leader at the time -- and I'm certainly not going to visit the sins of the previous Majority Leader on the present Majority Leader, who got up today and I think was speaking as sincerely as he could at that particular moment. But the fact is the Majority Leader in 1989 said that they were going to address the issue of hate crimes legislation.

And in 1990, they did. On May 29, 1990, there was a bill that they called a bias bill that was really to prevent crimes committed by youth gangs. It mocked the procedure. It had nothing to do with the issue of hate crimes.

The issue of hate crimes has arisen in all communities and to all different types

of people. The fact is that we need effective legislation that will increase the penalties and the punishments for those who would commit crimes on other people for reasons of race, religion, national origin, sex or sexual orientation, age or disability. And we need it right now.

This is an urgent matter. It needs to be addressed urgently. It would be the first time that we'd ever passed a motion for discharge, and I can't think of a more apt time to do it, for all those who are crying out all over this state for effective legislation that would cure this malady.

It's not only an issue in this state, but it is all over this country. We are living in not only in the only state on the Eastern seaboard that doesn't have hate crimes legislation, we haven't even passed a state statute to accompany the federal Civil Rights Act of 1964, passed by the House and Senate, which at that time included Senator Jesse Helms and Senator Eastland. We haven't even passed that bill.

So I think that this body needs to

do some reflecting, and we can do it right now by passing this motion for discharge. I vote aye, Madam President.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Rath.

SENATOR RATH: 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.

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This has been a good debate. I'm

sorry we had to do it again. I'd like to commend all those colleagues of mine who have shown leadership on this over the years - Senator Duane, Senator Paterson, and so many others.

I disagree, though, with Senator Duane on something important. He said before he was pessimistic about this bill's likelihood of success this year. I am optimistic.

Because I think that the Senator Majority may at times not do what we want them to do, but no one will ever accuse you of not being smart. And you're smart enough to know that the people of the State of New York overwhelmingly support us on this issue, and you're smart enough to know there's an election in November and you don't want this on the table.

So I think, Senator Duane, we're going to get this bill done, thanks to your agitation over the years, thanks to Senator Paterson's agitation, thanks to the advocates who are with us here today. I'm sorry it's taken 11 years to get this house to do the

right thing, but I think this year we're going to get it done.

Thank you. I vote yes.

THE PRESIDENT: You will be so recorded, Senator Schneiderman.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Madam President.

THE PRESIDENT: Senator Seward, to explain your vote.

SENATOR SEWARD: Yes, Madam President.

As one who has consistently over the years supported measures that have come before this house that have increased penalties for assaults and other crimes, I for one would have no problem in supporting legislation that would increase penalties for additional crimes that may involve bias and bigotry.

And I commend Senator Bruno for his leadership here today in stating on this floor

that this house will in fact deal with this issue in a meaningful and responsible way.

On this procedural matter that's before us at this time, I vote no.

THE PRESIDENT: Senator Seward, you will be recorded as voting in the negative on this motion.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Madam President, to explain my vote.

THE PRESIDENT: Go ahead, Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR SKELOS: This is a procedural motion, and I intend to vote no.

And just -- we talked about historical perspectives. I look around this chamber and I see Senator Saland, Senator Morahan, and I were elected in 1980 to the Assembly together, and Senator Leibell, Senator Spano served in the Assembly. Senator

Volker, Senator Balboni. And I remember when I first -- Senator McGee -- when I first arrived in the Assembly, there were motions to discharge, there were amendments.

And members of the Majority there, some of us may know them. Senator Hevesi, we seek fatherly advice from him at times.

(Laughter.)

SENATOR SKELOS: Never once - never once did they support a motion to discharge or an amendment that was offered by the Minority in the Assembly.

And we would have discussions. And I remember that fine individual, who I was very fond of, would put his arm around me and give me fatherly advice and say, "Assemblyman Skelos" at that time, "it is procedural and it is not a vote against my conscience by supporting the Majority and the procedures of the house."

So I am going to vote no on this procedural motion, Madam President.

THE PRESIDENT: Senator Skelos, you will be recorded as voting in the negative on this motion.

The Secretary will continue to call the roll.

THE SECRETARY: Senator A. Smith.

THE PRESIDENT: Senator Smith, to explain your vote.

SENATOR ADA SMITH: Thank you, Madam President. To be black or African-American in this great state, it's too often that we encounter this kind of behavior and these kinds of crimes.

Therefore, I vote no -- I mean yes. Yes.

THE PRESIDENT: I was ready to record you, Senator.

(Laughter.)

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

The Secretary will -

(Laughter.)

THE PRESIDENT: In the affirmative. Please excuse me. I had a mind-set there.

You will be recorded as voting in the affirmative on this motion.

The Secretary will continue to call

the roll.

SENATOR HEVESI: Madam President, may I be recognized?

THE PRESIDENT: Senator Hevesi, why do you rise?

SENATOR HEVESI: Very briefly, with your permission, I'd like to respond to Senator Skelos.

THE PRESIDENT: Senator, we're in the middle of a roll call and we must proceed with the roll call.

The Secretary will continue to call the roll.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

(No response.)

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: No.

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Madam President, to explain my vote.

THE PRESIDENT: Senator Volker, to explain your vote.

SENATOR VOLKER: Madam President, I've made it a kind of a policy not to respond to motions of discharge out of my committee. This is my committee, by the way.

And let me say to Senator Onorato, you were thinking of another bill. I understand when you said that the bill was reported out of committee. This particular bill, this type of bill which has been around for a few years, has never actually been reported out of committee. The bill that you were talking about was another one, and that came out of Senator Goodman's committee. I understand that.

Let me just say that Senator Paterson, who talked about the Majority saying that they were in favor of a hate crimes bill,

that was because we passed hate crime bills in this house, and we did it for a number of years. And it was quite similar to this bill, but with certain differences. And this bill -- but that bill was voted on by most of the members of this chamber -- in fact, just about all. It went over to the Assembly, where of course the Assembly, for political reasons, decided they did not want a bill that included all groups in it, essentially. And it would have provided hate crimes legislation for all groups.

We also, by the way -- and there was a discussion here about graffiti. You will be happy to know that this house has passed increases, over the years in this last decade, of the penalties for graffiti on a regular basis. Some pretty severe penalties for graffiti which would have covered many of the kinds of issues that were discussed in this house today, and the Assembly has refused to do it.

One of the things we've said on many occasions -- and I only point that out - is that we have passed upgrades in general to

some of these crimes, in fact most of these crimes you're talking about. In fact, a major piece of our bias crime bill, we used to call it, was the gang violence. We pulled that out of that bill, and that is now law. And in fact, many of the so-called bias crimes you're talking about are now being charged under gang violence. I only point that out.

The final thing is we have something here called the death penalty. And when people commit these heinous crimes, they're subject to the death penalty. It's hard to find a crime that has a penalty more severe than that one. I only point that out.

Now, I have said to Senator Gentile, who is the ranking member of my committee, that we'll be happy to discuss this type of legislation this year. And we will. But I point that this house has in the last decade passed legislation, so-called hate crime legislation, and the other house has not passed it.

I vote no.

THE PRESIDENT: Senator Volker, you will be recorded as voting in the

negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: No.

THE PRESIDENT: The Secretary will call the absentees.

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hoffmann.

(No response.)

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: No.

THE SECRETARY: Senator Marcellino.

(No response.)

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Stafford.

(No response.)

THE SECRETARY: Senator Velella.

(No response.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 25. Nays, 29.

THE PRESIDENT: The motion is defeated.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we adjourn until Tuesday, April 4th, at 3:00 p.m.

THE PRESIDENT: The Senate stands adjourned until Tuesday, April 4th, 3:00 p.m.

(Whereupon, at 6:30 p.m., the Senate adjourned.)