NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 14, 2001

11:07 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 13, the Senate met pursuant to adjournment. The Journal of Monday, March 12, 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 Farley.

SENATOR FARLEY: Thank you, Madam President. On behalf of Senator Rath, would you please place a sponsor's star on Calendar Number 136.

THE PRESIDENT: So ordered.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

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

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Saland, Legislative Resolution Number 842, congratulating Marion Mann upon the occasion of her 100th Birthday.

THE PRESIDENT: The question is 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, there's a privileged resolution at the desk by Senator Smith. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator A. Smith, Legislative Resolution Number 843, memorializing Governor George E. Pataki to proclaim March 15, 2001, as Hunger Awareness

Day in the State of New York.

THE PRESIDENT: The question is on -- Senator Smith, do you wish to be heard?

Senator Skelos.

SENATOR SKELOS: Why don't we have a vote on the resolution, and then if you would recognize Senator Smith.

THE PRESIDENT: I'd be happy to.

The question is 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 Smith.

SENATOR ADA SMITH: Thank you, Madam President.

I would like to take this time to encourage all of my colleagues to participate in Hunger Awareness Day and, if they have the opportunity, to please contribute to the food drive.

There will be cans downstairs in the Legislative Office Building. And I know

that some of the other members, as well as my office, will be a receptacle for canned goods.

If you have not received the flyers, some of the suggested items would be canned meats, fish, soups, fruits and vegetables; infant formula, baby food and cereal; dry pasta and rice, cereal, spaghetti sauce, dry and canned milk, and peanut butter.

All of us are blessed to be able to have a full-course meal three or four times a day. Others are not so blessed. And I think that we should think of those who may not be capable of feeding themselves.

Also, some of our colleagues are attempting to live on a food-stamp budget this week. Maybe we should pass them a candy bar.

But I thank you for taking the time, and hopefully you will donate. And I open the resolution for anyone else who would like to be a part of it.

Thank you.

THE PRESIDENT: Senator Skelos, would you like to open up this resolution?

SENATOR SKELOS: Yes, Madam President. If anybody wishes not to be on the

resolution, they should notify the desk.

THE PRESIDENT: Any member who does not want their name on this resolution, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Hoffmann. Could we have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Hoffmann, Legislative Resolution Number 820, paying tribute to the life of Luther F. "Gus" Bliven, dean of New York State's political correspondents, distinguished citizen, and devoted member of his community.

"WHEREAS, It is the custom of this Assembled Body to pay tribute to citizens of the State of New York whose life work and civic endeavor served to enhance the quality of life in their communities and in the great State of New York; and

"WHEREAS, With deep regret, this

Assembled Body records the passing of a reporter whose memory will remain etched in the minds of many who worked within the walls of the New York State Capitol and had the pleasure of knowing him. Luther 'Gus' Bliven of Baldwinsville, New York, died on February 25, 2001, at the age of 85; and

"WHEREAS, Luther 'Gus' Bliven will be remembered by politicians and colleagues as a no-nonsense reporter who was tough but fair and whose institutional knowledge of local politics and state government was unmatched; and

"WHEREAS, The passing of the dean of New York State's political correspondents represents the end of a journalistic era. His writing style was representative of a time in journalism before the electronic age, when the focus of journalism was not concerned primarily with one-line reporting, as it is today; and

"WHEREAS, Luther 'Gus' Bliven grew up on a farm in Ithaca, New York. He was a legislative correspondent and political columnist for The Post-Standard and the Herald

American.

"Gus Bliven began his career with The Post-Standard on May 1, 1930, while still a student at Ithaca High School. During World War II, Gus's career was put on hold while he served three years in the United States Army. Following his service to our country, Gus returned to head the Oneida bureau for The Post-Standard.

"In 1948, Gus Bliven began covering the political scene in the State Capitol. By the time he left, at the end of 1997, his tenure had taken him through the administrations of seven Governors, including Thomas E. Dewey, W. Averell Harriman, Nelson A. Rockefeller, Malcolm Wilson, Hugh L. Carey, Mario M. Cuomo, and George E. Pataki; and

"WHEREAS, While the Legislature was in session, Gus Bliven would commute by train from his home in Baldwinsville to Albany. He was always the first reporter in the press room and the last to leave. He was the last of the Capitol reporters who would sit through the Senate and Assembly sessions from start to finish.

"Gus Bliven was a lifetime member of the Legislative Correspondents' Association and a member of the Syracuse Press Club; and

"WHEREAS, Even though he avoided the spotlight, Gus Bliven received many honors and accolades during his lifetime for his outstanding career. In 1990, he was awarded the Lifetime Achievement Award by the Syracuse Press Club. In 1995, he was honored by the New York State Assembly for his 65 years of service to The Post-Standard. In November 2000, he was named to the Syracuse Press Club's Wall of Distinction; and

"WHEREAS, Luther 'Gus' Bliven was married to his beloved wife, Rita Ellen, who passed away in 1992. He is survived by two sons, Francis, of Baldwinsville, and Stephen, of Philadelphia, and a granddaughter.

"The journalistic career of Luther 'Gus' Bliven was a living estuary to the political heart of the State of New York, as he so clearly labored for the positive and salutary definition of the political life of this Empire State; and

"WHEREAS, Through his long and

sustained commitment to excellence in Journalism, Luther 'Gus' Bliven so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation of our American experience; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay tribute to the life of Luther 'Gus' Bliven, dean of New York State's political correspondents, distinguished citizen, and devoted member of his community; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Luther 'Gus' Bliven."

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR HOFFMANN: It is with great pride and a little bit of sadness that I rise today to speak in favor of this wonderful resolution. And I commend our Journal Clerk for reading it so eloquently.

I hope that all of the reporters

listening understand that there are times where we have admiration and deep respect for people who perform in the capacity of journalism as well as Gus Bliven performed. And it's not necessary to perform in that capacity for 65 years to earn our respect. But, by golly, Gus Bliven did it, and did it to the nth degree, all the way through to the time that he retired from his active reporting in the State Capitol.

It was in 1990 that we did a resolution in this chamber -- it was sponsored at that time by Senator Lombardi. I was a cosponsor, and I believe most of the members of this chamber joined in sponsoring it - when we recognized Gus, while he was seated in one of the chairs at the front, for his 60 years of wonderful coverage of this Legislature and state government in general.

Let me just read one of the excerpts from that floor speech on the day that we recognized Gus for 60 years. That was in July of 1990. Senator Lombardi said: "I don't know in my history of any reporter that I admire more than this particular reporter.

Because although he has a very sharp pen and will write what he feels in the record is the truth of the events, he probably is the most thorough in terms of researching, the most honest in terms of reporting, and the most diligent in terms of making sure that he has the facts and the information that truthfully and honestly reflects the situation, of any reporter I have ever had the privilege of knowing.

"I think that his years of service stand as a beacon and an example for anyone who wishes to be part of the press corps of this country. Without a doubt, with this type of talent he could have gone anywhere in the nation, or worked with a publication in any field, because of his talents and his abilities."

And yet, as Senator Lombardi went on to point out, Gus Bliven chose to stay here in Albany, New York, and Syracuse, New York, covering the New York state government.

Some time ago, several members of the Cuomo administration were asked to recount an incident that they had with Gus Bliven.

And Mr. Mario Cuomo, now in private citizenship, commented upon Gus Bliven's death that he remembered having a private, confidential conversation with a staff member at a restaurant just after he had arrived in Albany as Secretary of State in 1975. Former Governor Cuomo said when he finished the conversation, Gus Bliven, who had overheard the conversation from the next table, came over, introduced himself, and asked for more information.

Governor Cuomo says: "I was shocked and irritated. I said, 'How could you do that?' Gus said, 'I didn't do anything. I overheard it.'" Governor Cuomo said: "I gave him the story. There really wasn't much choice, actually."

And he went on to characterize Gus Bliven by saying "I don't think if you promised him sainthood in return, he would have dropped a line from a story. Gus was a great gentleman, but a reporter, from the minute he woke up until the minute he went to bed."

And although Gus Bliven never

pulled any punches with the facts, he was not a mean-spirited reporter, politicians across both sides of the aisle said in memorializing him upon his death.

Governor Hugh Carey said: "In a certain sense, Gus Bliven broke me in." He remembered, when he was Governor from 1975 through '82, after representing Brooklyn in Congress, how he first came to know Gus. "I emerged on the scene in Syracuse one day with very little knowledge of that city, and Gus was kind enough to point me in the right direction. I look at Gus as a one-man truth squad. I never had any complaints about what Gus wrote. You couldn't con him even if you tried. That's just what makes a great journalist."

Virtually everyone who ever had any encounter with Gus Bliven knew that he was a stickler for facts, he was determined to get the details straight, and that he was often the person who could give the most objective analysis of a new policy when other people hadn't quite sorted it out yet, including those of us who were elected to determine what

that policy would do to the State of New York and to the taxpayers.

My experience with Gus was a little bit different, because I was a member of the Minority through all the years that he covered the Senate. And as everybody knows, members of the Minority don't have quite the same responsibilities that members of the Majority do.

So I would frequently sit next to Gus in the front of the chamber, and we would talk about a variety of things that were of interest to us. Sometimes we would talk about the activities around us in the chamber. But more often than not, Gus would reminisce about his life growing up on a farm in Ithaca, New York.

Gus Bliven was born in 1915 in Ithaca. He had remarkable career as a high school athlete.

It was never reported well outside of Ithaca, and it's been difficult for me to research what actually took place that day, but there was one football game in which Gus Bliven was the quarterback and, playing for

Ithaca Free Academy against Elmira Free Academy, Gus Bliven alone scored 49 points.

And I would ask anybody who is capable of researching such a record if you can help me determine whether or not that stands as a state record.

But I can't imagine too many other games, in this state or any other, where a quarterback alone scored 49 points. And it may well be that Gus stands to hold a record for which he was never accurately recognized.

During the same time that he was in high school, he began reporting for The Post-Standard and the Ithaca Journal. But he would work on the farm with his family, and he used to tell me stories about how his father managed the animals.

Well, I was the ranking Minority member of the Agriculture Committee and do some farming myself. He was always worried about the way livestock would sometimes act in a surprising manner and startle or even injure farmers.

I told him about a bull that I had had for some time I was thinking of selling.

But I liked the bull so much I didn't want to part with the bull. And I told him how well-behaved the bull was. And we would have a conversation virtually every week about what that bull was doing, how he had behaved the previous week, whether I had moved him recently from pasture to pasture, whether he ever lowered his head, whether he even looked like he might want to paw the ground.

And Gus told me repeatedly a story about his own father and a bull that was on his farm.

Every day his father would take the bull and lead him from a pen or from his pasture over to a stream where the bull would drink. And the bull was so docile that Gus's father, Bion [ph] Bliven, would just walk ahead of the bull and the bull would gently follow, the same way my bull would follow me.

And Gus said: "It worked perfectly until that one day the bull just snapped and he threw my father up in the air, and he injured him pretty badly. And that's when we turned him into hamburg."

I was very cautious about my own

bull, and I was especially comforted by the fact that somebody here in Albany would be concerned about my personal well-being when I was back on my own farm.

Gus was concerned about all of us. He used to care about our families. He would ask how we were doing. I used to see him ask people on both sides of the aisle if everything was okay when he could even discern that somebody looked a little bit tired or if they had had a recent news story describing something in their personal life. He was always very circumspect -- would never write, unless ordered by his editors, about something that was personal or invasive, and then would try to do it in the most genteel way possible.

He did respect us. He respected the institution. And he was a tremendous credit to the journalistic field.

One of the people who had the privilege of working with him through the years is Gerry McLaughlin, known very well to people in this chamber. And Gerry sent a beautiful letter in tribute to Gus to The Post-Standard upon Gus's death last week. And

I would just like to read a couple of Gerry's comments in closing.

Gerry McLaughlin describes the 1954 novel Come Fill the Cup, which he says is a gem of a book about the news business. And it describes people in that book who fit the definition of terrible men, because they were formidable and they had a standard of excellence that would sometimes be overbearing to younger reporters.

Gerry says: "They were feared and respected by young reporters who faced their withering vocal fire whenever they handed in anything less than thoroughly reported, well-written stories. Their demands for high-standard work made their papers reliable, accurate, and a pleasure to read." And this, my friends, was a time long before the electronic media, where all news came from print media.

Gerry says: "When I heard last week that Luther F. 'Gus' Bliven had died, I thought of the 'terrible men' epithet because he fit that mold -- a solid pro who demanded a lot of himself and of those functioning in his

world.

"Luther 'Gus' Bliven's world encompassed Syracuse, Central New York, Upstate New York, and Albany.

It included the cops, the firemen, the judges, the criminals, the teachers, industrial workers, and the countless other people he covered during his half century in Syracuse and in Albany.

"Gus Bliven's world, one in which he made a true difference, also included generations of politicians, local and state, who came under his sharp analytical gaze as he covered local governments, city halls, and ultimately the Capitol in Albany.

"Gus put them all under the jeweler's eye, measuring their strengths and weaknesses, and he told his readers about them in terse, readable prose.

That's why Governors from Tom Dewey to George Pataki looked to Gus Bliven's stories and columns both for accurate reporting and the honest performance grades he handed out.

"When Nelson Rockefeller proposed

Medicaid for New York in 1965, Gus told his readers that the program, whatever its merits, was going to be very expensive. His prediction, which proved to be accurate, rankled the Governor, and he turned loose a cadre of advocates to persuade Gus that he'd read it wrong. Gus just listened, smiled, and kept on reporting that the administration was low-balling the numbers.

"Gus was one of a handful of Albany correspondents who could read the state budget -- then and now a Manhattan phone book-sized document -- and see through the cryptographic prose so popular with budget wizards. Gus made his own astute translations; then he told his readership what was really involved. Hugh Morrow, Rockefeller's talented and decent communications director, said five years after that initial Medicaid reporting: 'Gus had it right, and the Governor knew it. He never backed off. Finally, we gave up trying to convert him.'

"Generations of Syracuse, Central New York, and statewide politicos knew and

admired Gus Bliven for these traits.

Recalling Gus now," Gerry McLaughlin said, "I see in the far corner of the Capitol's gray, raffish press room a man of medium height, balding and erect, wearing a sports jacket, a short-sleeved sweater, and a necktie. He's sitting at his computer, peering through rimless glasses at his keyboard, and tugging occasionally at his green eyeshade. That eyeshade on anyone else would have been a ridiculous anachronism. On Gus Bliven, it was a mark of authority, well-earned."

I thank Gerry for sending this beautiful tribute to The Post-Standard, and I thank all of you for indulging me while I reminisced for a few minutes about Gus. And I compliment our Journal Clerk again for his eloquent reading.

And I just hope, as we reflect upon Gus's 65-year career in state government, in reporting what it is that we do and what we attempt to do, that we can all strive to measure some of his level of excellence in our own activities.

Thank you, Madam President.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President. Senator Hoffmann, that was a very moving tribute.

Let me just say that one of the saddest things I think that particularly the new Senators might feel is not knowing of Gus Bliven. He was one remarkable person and one remarkable journalist.

You know, this front row here is for the press. We don't see too many of them in there very often these days. But Gus Bliven used to be seated there, and he was there at 2:00 and 3:00 in the morning, back when we used to have the all-night sessions, listening and writing and listening to everything that was happening. And he'd be about the only one that was awake that was outside of the Senate chamber. And he was a remarkable man, to say the least.

I can recall, I think it was about -- I've been here 25 years -- 24 years ago, they did a tribute to him retiring. It went on for hours, and everybody saying nice things about Gus. Then I saw him sitting here

for the next twenty years. So he kept working and working.

And I'll tell you, so interesting today among reporters and the print media, because they really look behind something besides the sound bite that the electronic media uses. He really could get the nub of the story.

He really could find out what was happening. I think Medicaid was a perfect example. He was kind of alone in that, and not many people took on Governor Rockefeller in those days. But Gus Bliven didn't mind who it was, he wrote it as he saw it. And he was truly an idol for anybody that wants to enter the journalistic field.

Gus Bliven was an icon in Central New York. And he just didn't cover Central New York. He wrote about me, he wrote about a lot of Senators from all over the State of New York. And he'd put vignettes about different Senators and what they were doing or how they were behaving or many, many other things.

Gus Bliven, he was always on duty. That doesn't surprise me a bit about the story

that Governor Cuomo told, because he was after a story and listening to everything that was being said. And he reported it accurately. And he wasn't a bit afraid to report on anything.

He was truly a remarkable icon in the press. And I would just hope that many of the reporters today could model themselves after Gus Bliven. Because I'll tell you, we'll never see one like him again.

And I know that his son Francis who lives in Baldwinsville, I think, and still is in Central New York, has got to take a great deal of pride in how his father is so deeply remembered by so many people.

And I certainly -- I know that if I know Gus Bliven, he's taking notes upstairs on this one too. And he was -- I liked him and loved him, and he's going to be sorely missed around this Capitol. Because I think even after he left here, he was still writing. He was still writing for The Post-Standard, and they couldn't take the pen away from him, even though he couldn't see and a few other things.

But Gus Bliven was one remarkable

guy, and we're going to miss him.

Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I couldn't agree more with Senator Farley about the classification of Gus Bliven as an icon.

I also remember him sitting here in the chamber, seemingly irreverently, hour after hour, through the entire session, but always taking a few notes from time to time and somehow putting it together in a very comprehensive and balanced story.

I first became acquainted with Gus Bliven through Senator Hoffmann. It was interesting, if Senator Hoffmann had not gotten up to make a valuable presentation, I wouldn't have actually remembered this incident. It was also a time when Senator Hoffmann was in the Minority and was sitting next to me. And we had a bill where there was an attempt to stop school boards from having more than one election per year over the school budget. Sometimes a budget would get voted down and the budget would get voted

down, and they'd keep bringing it back until the budget got passed.

And this particular piece of legislation that was presented by one of our colleagues wasn't getting much support from the members of this house. And at a point when it didn't appear that the member had enough votes to pass the bill, they actually laid the bill aside. So I thought it was kind of interesting that they were now practicing the exact same conduct that they were trying to stop through the legislation, and pointed it out to Senator Hoffmann, who told me that she thought that Gus Bliven would be interested.

And even though I'd been here about five years at the time, I had never become familiar with Mr. Bliven. So I went to talk to him, and I gave him this whole treatise on how we should actually talk about this issue.

And he asked me if I had had a conflict with the Governor's office involving a very highly publicized case at that particular time, and that there were some issues between the Governor's office and a

group of legislators. And he actually wound up writing about that, which was an issue that I really didn't want to talk about anymore - I wanted to talk about the school board bill -- but was the issue probably that was far more interesting to the public.

And I wasn't particularly pleased when I saw this article the next day. But in retrospect, and with the distinct advantage of hindsight, I can see that there was some valuable information that could be obtained from me, and that was exactly what he did.

And that is the standard I think that we all come to appreciate from those members of the media, and particularly the print media, that the agendas are often different. We obviously look at the world subjectively. They try, as much as they can, to look at the world objectively. And I think that that's what the members of the press do here today.

Sometimes in the shadow of someone as great and as well-read as a Gus Bliven, I think someone starting out these days can feel almost a little bit overwhelmed. But you do

recognize that when he started at The Post-Standard in 1930, it was probably something that he faced as well, the difficulty of mastering the elements of the profession.

But what I think his colleagues revered so much about him, and I think what all of us who are not in that profession also regaled about him, was the fact that he kept working. His steadfast discipline, criticism, and honesty was something that came from dedication and a lot of very hard work. He didn't take shortcuts, he didn't write things that were not researched, he didn't quote sources that apparently he was not feeling comfortable that that was actually what the source meant.

And it's something that's greatly appreciated and a standard to be emulated, not to overwhelm people in today's journalism. This is a difficult task for all of us, whether we be in the print media or here as elected officials. I don't see any difference in our responsibilities.

Sometimes we confuse the definition

of power and the definition of responsibility, power being the capacity to influence people, responsibility being the capacity to earn the public's trust. We're 61 Senators; we're all coequally responsible. Those members of the media have that same charge. They have that same issue before them every day. And I think that they perform very admirably.

The institutional knowledge that a person like Gus Bliven had, the ability to weigh situations against other issues that had happened over seven Executive administrations, and what things actually mean, was something that came as a result not just of the time that he devoted and the number of years that he spent here, but what was really a dedication to the principle of researching and writing and continuing to research and write until you can get it right.

I can't really think of too many people that not only served as long but served as well. And it is a pleasure on behalf of Senator Connor to get up and to applaud and celebrate the life and the accomplishments of someone as dynamic and as perceptive as Gus

Bliven.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Yes, I want to express my appreciation and compliments to Senator Hoffmann and Senator Farley and Senator Paterson for speaking on this resolution, because they mirrored with total fidelity the measure of this great journalist.

He was a gifted individual at a time when the exigencies of the profession itself required that immediacy that we experienced at that time. And he used to sit not too far from you, Senator, just across the way there, and you probably remember him just for a brief period, Senator Lachman.

But he was -- he covered us, and I would say he gave us 90 percent of the time. He went to the Assembly occasionally, but his place was here in the Senate. And he harkened back to an era when that whole press row was populated. And they're all fine journalists, even today. But as I say, we're in different times.

But it did, and I -- I'm saddened by the fact that we don't have that anymore,

because the presence that Gus Bliven exemplified really bounced back on us, and we on those who were conducting the reportage. Because they could give a hands-on personal interaction which tended to elevate, I think, performance, irrespective of party or the issue that was involved, as long as it was honestly exercised with dignity and respect.

So I do hope that it may be opened up, Senator, for all the Senators -- you've had bipartisan explanation here -- and others that may speak to it. But those who knew him would like -- I'm sure would appreciate the fact that this is mirrored in the resolution.

And to the family, the survivors, and the people back home and around the state that have great esteem for Gus Bliven, that this is the patrimony of the Senate, and that the entire Senate is in concurrence with the honor that's been extended and manifested here.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, very quickly.

And I've already, on this floor, on

about three or four occasions, I believe, extolled Gus Bliven. Because if I'm not mistaken, he retired about four times. I mean, it seemed like he was retiring -- the problem Gus had was that he couldn't stay away. In all honesty.

And I have known Gus Bliven, I hesitate to admit this, probably other than John Marchi -- because I was around here with my father when Dewey was Governor, and Rockefeller. My father was in the State Assembly for 22 years. He actually was a close personal friend of Gus's.

And in those days, as John would tell you, the press relationship with the Legislature, although they could be pretty tough, and they were pretty tough -- in fact, that's what happened with Nelson Rockefeller. He got very angry because the Syracuse press bitterly turned on Nelson over Medicaid.

The Governor got really angry at my father too. And my father's argument on Medicaid was that they went too far, that it would break the state eventually. And he was absolutely right. I mean, the state was on

the verge of breaking. His prediction that it would happen in the early '80s was a bit maybe -- or the late '70s, rather, was a little premature. But he certainly, I think, was on target.

And my father had an alternative, if I remember right. And I think John would probably remember. But we won't get into that.

But Gus was the kind of fellow who loved the institution. Not -- you know, he was different from many of the media today. That, as opposed to beltway legislators from years ago, beltway media people who for the most part don't have any connection of the city that they write for, Gus was a devotee of Syracuse, the Syracuse region. He loved Albany, too. But I think, you know, his whole gear was toward helping Albany.

And I remember when Tarky Lombardi announced his retirement, Gus was in tears. He went to Tarky and -- as did, by the way, the people who ran his paper, who had just castigated Tarky unmercifully, and said: "You can't retire."

And he said: "What do you mean? You've been spearing me for two" -- and he said, "Yeah, but that's politics. That's government. But you just can't retire, we need you." He said, "You're a little too late. It's time for me to go."

I only mention that because Gus was the kind of fellow, he could get pretty tough. And he got tough on me a couple of times. And then he always would then come over and say, "I just had to tell the truth," or whatever, and we'd laugh.

He was a good man, a good reporter. And he will certainly be missed. And I think that he is a part of this institution in many ways. And one thing that's different, I think, about Gus than a lot of others, most of the media -- and I understand the big stories are over at the Assembly these days, because they fight a lot more than we do and all that. Although lately we're having some problems.

But Gus Bliven really loved the Senate -- and I don't say that he didn't go to the Assembly -- because I think he felt more comfortable here and felt that in many ways

that we were the ones that tended to drive more of the issues that this state needs to deal with.

And he certainly will be missed. I have no doubt that right now he's probably in heaven advising some of the people that are in charge there as to how they should deal with some issues. He was a good man.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Yes, Madam President. I'd like to join with the voices speaking about Gus Bliven.

I sat in that seat that Senator Lachman has for quite a long time. And Gus did sit right there. And he'd make little remarks during the session. And when Senator Hoffmann wasn't talking to him, he'd be making comments about some of the bills or some of the debates. And it was always interesting.

And Gus was very dedicated. And I think that although the reporters can listen on the squawk box, and most of them do, it was kind of refreshing when I first got here that all the reporters used to be up in front and

they cared enough to walk in the chamber and write the articles and listen to the debate and watch what was going on. And Gus was always here. He was like part of the chamber while he worked here.

I think that was a work ethic that we all admired. Whether you agreed with his articles or not, you admired the fact that he was here, he paid attention, he followed up. And I think that was the way we all thought journalists should do it. And there's nothing wrong with the idea of having squawk boxes and doing it that way, but it just added a little something, that personal touch, that I think is missing now in some of the stuff that goes on.

But Gus was a true professional and, when you got to know him, he was an enjoyable man. And we all miss him. And it's maybe something more of the new writers should emulate.

THE PRESIDENT: Senator Smith.

SENATOR MALCOLM SMITH: Thank you, Madam President. I chose to wait this time.

As one of the newer members, I have absolutely no experience with Gus, nor have I ever met him. However, I can tell you, from my experience, it's been very difficult for individuals and individual bodies to honor those that are in the press. They seem to often get a raw deal, they seem to have a very difficult time at enduring friendships and being honored, because from time to time they choose to portray stories obviously a little bit different than those who are the subject matter of that story.

I sat here listening to the distinguished Senator Marchi, who I just enjoy listening to. I think he has a wealth of history to offer. And Senator Brown and I were sitting here and as we were talking to Senator Smith, when you began to speak, we thought it was time to just stop and listen because of all that you tend to offer.

And I can tell you, from what I heard, I am just simply honored to be a part of a body that is going to honor a gentleman such as Gus. And I just thought it was fitting to, while we did not have the

experience with Gus, just to be on the record as indicating that, Gus, wherever you are, that you continue to write, that you have been writing. And I'm sure that there are others who will offer the same kind of sentiment and honor to you.

And again, I just am glad to be a part of this body. And, Senator Hoffmann, kudos to you for the recognition that I'm sure he so rightly deserves.

THE PRESIDENT: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President. It's certainly a pleasure to be able to stand and speak about a man who certainly exemplifies what I believe the press should be about.

It was always a pleasure to sit here and hear Gus's remarks about certain bills or for him to come across with a wry remark every now and then. And having sat next to Senator Hoffmann, I often benefited from some of his comments.

And even though I may not have agreed with what he wrote at times, he

certainly had a clear understanding of this body and of the people who have been elected to represent the people of the State of New York. And I believe that he took the time to know something about each and every one of us, because he would not write something about us that he did not believe, and he would not write something that he did not believe in.

And that truly is the merit of a man who cared about what he did, and it was shown in his work. He will be truly missed. And I too believe that he's up there writing those articles and advising others about things that we haven't even decided upon yet.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, Gus was a consummate newspaperman. I knew him through the '70s and through the '80s. And at that time, as the executive director of a so-called minor party, I sometimes felt that we were neglected or ignored. But not by Gus Bliven, and not by the newspapers in Onondaga.

Gus, as Senator Smith and others have said, was the most informed,

well-informed newspaper man in the state of New York. There's absolutely no question. His columns, his regular columns contained what some of us would term political minutiae, government minutiae that nobody else was aware of. And yet he made it interesting and he made it something that was pertinent to the business of government.

I don't know -- and when I came to the Legislature, I knew that if there was a session that, whether it contained something that was of earthshaking importance or something that perhaps was regular legislative business, Gus Bliven would be there, present and reporting on it and seeking you out afterwards to get the inside story.

He's somebody of who it can be truly said his kind will not come this way again. He will be sorely missed.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I rise to join my former Democratic colleague and my classmate, Senator Hoffmann, who came in.

There were three women who came into this body in the same year. She was one of them. And I sat next to her on the other side. I suppose the three women, the three Democratic women, sat together that year. And we had interesting conversations with Senator Hoffmann.

But the one thing that I always was a little bit envious of was that as far as I -- my experience went, the only time that Gus would smile was when Senator Hoffmann would go and sit next to him and whisper in his ear. And so I thought that was interesting.

But nonetheless, even with that, he was -- he remained a fair and nonbiased reporter in the way that he talked about the proceedings here and the discussions that went on. And so I respected him. And I really miss him, because he was a fixture. He was always there. So when there was no other press that was interested remotely in what we were doing in our house, Gus Bliven would be there to report for us and on us.

So I join Senator Hoffmann even

though she is on the other side of the aisle. I certainly appreciate the fact that she was very close to him. And he did very often want to know how she was doing. So I thought that was a special kind of sensitivity, even though he was a reporter.

And, Senator Hoffmann, I appreciate the fact that you've made a wonderful tribute to him. And I think he was so worthy of it and would be pleased to know that you've made a tremendous statement on his behalf and in his honor.

Thank you very much.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Thank you, Madam President. I too remember when Gus Bliven would walk out of the chamber with Senator Hoffmann and his face would light up, as Senator Montgomery said.

I remember him when he was a little younger, only in his sixties or seventies. We used to see him at night when the session would be over, particularly during the time when he might be covering the Assembly during one of their all-night sessions. And he would

be crossing the street in the middle of the night. And I remember once my husband offered him a lift, and he said no. And at 2 o'clock in the morning or 3 o'clock in the morning, after a lengthy session, he would continue on his way.

In many ways, Gus Bliven was a - could have stepped out of the movie or the play "The Front Page." He was that kind of newsman. And I know that -- I suspect that if he were sitting here listening to the accolades, he would go off in his curmudgeonly old face. But deep inside, I'm sure that he's very delighted with everything that everyone said.

So I'm happy to make it a bipartisan resolution. Thank you.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

SENATOR HOFFMANN: Madam President.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: If the resolution could be opened up for all members of the Senate, I'm sure that Gus Bliven would be most pleased.

THE PRESIDENT: We'll adopt it first, Senator Hoffmann.

The resolution is adopted.

All members who do not wish to be on this resolution, please notify the desk.

Thank you, Senator Hoffmann.

Senator Velella.

SENATOR VELELLA: Madam President, can we go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 68, by Senator Marcellino, Senate Print 487, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

SENATOR HEVESI: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 89, by Senator Seward, Senate Print 1575, an act to amend the Insurance Law, in relation to expanding.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 92, by Senator Balboni, Senate Print 860, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

SENATOR HEVESI: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 146, by Senator Saland, Senate Print 587, an act to amend the Family Court Act, in relation to extensions.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 147, by Senator Saland, Senate Print 588, an act to amend the Family Court Act, in relation

to procedures.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 158, by Senator Wright, Senate Print 1087, an act to direct the Department of Public Service to prepare.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 162, by Senator Meier, Senate Print 1449, an act to amend the Social Services Law and others, in relation to penalties.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 163, by Senator Morahan, Senate Print 833, an act to amend the Education Law, in relation to certain BOCES programs.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 195, by Senator LaValle, Senate Print 2082, an act authorizing the Office of Real Property Services.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 200, by Senator Trunzo, Senate Print 2032, an act to amend Chapter 672 of the Laws of 1993.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 220, Senate Budget Bill, Senate Print 3456, an act to amend Chapters 50, 53, and 55.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

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

SENATOR VELELLA: Can we proceed to the reading of the controversial calendar, in order, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 68, by Senator Marcellino, Senate Print 487, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation of a motor.

SENATOR HEVESI: Explanation, please.

THE PRESIDENT: Senator Marcellino, Senator Hevesi has requested an explanation.

SENATOR MARCELLINO: Thank you, Madam President. It would be my pleasure to give him one.

This particular bill changes one word in the law, that word being "three" to "two." It amends the Vehicle and Traffic Law to require -- let me start it again.

This bill amends Section 511 of the Vehicle and Traffic Law. It changes one word in the law, which is an element of aggravated unlicensed motor vehicle operation in the second degree, to require two or more separate suspensions for failure to answer, appear, or pay a fine, rather than three or more separate suspensions.

This bill has passed the Senate in '99, 59 to nothing, and in 2000, 58 to nothing. It passed prior to that on many occasions. It has an Assembly sponsor. The Assembly for some reason has never seen fit to move this bill. We in the Senate pass it each and every year.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Would the sponsor yield, please.

THE PRESIDENT: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Madam President, if the sponsor would differentiate, if he could, between aggravated unlicensed operation and unlicensed operation, just for clarification purposes. Is aggravated unlicensed operating a motor vehicle if your license has been suspended or revoked and the nonaggravated category if you are just operating a motor vehicle without a license?

SENATOR MARCELLINO: Yes.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Just for clarification purposes, the bill that's before us right now reduces from three to two the number of prior suspensions or revocations that would then elevate the offense to aggravated unlicensed operation in the second degree from the first degree; is that accurate?

SENATOR MARCELLINO: From the third degree to the second degree, Senator.

SENATOR HEVESI: I'm sorry, from the third degree to the second degree.

SENATOR MARCELLINO: Yes.

SENATOR HEVESI: Okay. So, Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, will you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Just to be clear on how this functions or would function if this legislation was to be adopted, if I have two license suspensions under the third degree, aggravated unlicensed operation in the third degree, if I've got two of them right now and I get a third, I'm still only eligible for the penalties under the third-degree unlicensed operation, and passage of this legislation and subsequent signing by this Governor, if this were to become law, on the third charge of aggravated unlicensed operation in the third degree, I would then be

subject to the penalties of aggravated unlicensed operation in the second degree?

SENATOR MARCELLINO: There's an old saying, Senator: Fool me once, shame on you; fool me twice, shame on me.

What we're doing here is saying if you are caught twice knowingly operating a motor vehicle without a license and you are caught or you fail to appear to pay your fine, you have -- a second time, a judge can issue the fine. Rather than waiting for you to do it a third time.

SENATOR HEVESI: Madam President, will the sponsor continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

I understand that that's the intention of the bill, and I certainly support that intention.

I'm just trying to nail down specifically what this change means. That on the third offense for aggravated unlicensed

operation in the third degree, if I committed that offense for a third time, I become eligible for the penalties under aggravated unlicensed operation in the second degree?

SENATOR MARCELLINO: Senator, the bill reads, starting from line 4, such person has in effect -- it used to be three, it will be now two or more -- suspensions imposed on at least -- now, two separate dates for failure to answer, appear, or pay a fine pursuant to subdivision 3, Section 226 of subdivision 4A of Section 510 of this chapter.

We change -- we reduce the number of times you get caught before the act comes into effect. We don't feel we should be allowing people to drive knowingly without a license and get -- and have the privilege of being caught three times before they get nailed for it. We think if they get caught - frankly, I think the first time would be enough, but we'll give them the first time as a warning. The second time, they're going to pay a heavy fine.

SENATOR HEVESI: Madam President, will the sponsor continue to yield.

THE PRESIDENT: Senator -

SENATOR MARCELLINO: Yes.

THE PRESIDENT: Proceed.

SENATOR HEVESI: I believe that that's a yes -- and I -- I hope it is, that on the third, the third time, then you can be eligible -- you would be made eligible for the penalties under aggravated unlicensed operation in the second degree, for which I assume the penalties are higher.

But it's not -- my question to the sponsor, Madam President, is the following. My understanding of this legislation is that it requires the third suspension or revocation to kick the penalties into the higher classification. And my question is, why aren't we providing for a higher classification of penalty, aggravated unlicensed operation in the second degree, after the second offense?

In other words, I believe that this legislation may not go far enough, and I'd like the sponsor to comment on that.

SENATOR MARCELLINO: I believe at this point in time the legislation goes far

enough.

SENATOR HEVESI: Okay, thank you.

Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

Madam President, if the sponsor could inform us as to what the penalties are for aggravated unlicensed operation in the third degree.

SENATOR MARCELLINO: When a person is convicted of -- a fine of $200 to $500 or jail up to 30 days, or both.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor

please tell us what the penalties are for aggravated unlicensed operation in the second degree, the penalties which would under this legislation take effect after the third offense.

SENATOR MARCELLINO: When a person is convicted of such a crime, which is a misdemeanor, the court imposes a fine of not less than $500, not more than a thousand, and a term of imprisonment between 7 and 180 days, where appropriate, or a sentence of probation.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: My understanding is that there is also an aggravated unlicensed operation in the first degree offense. And my question to the sponsor is, is there a similar trigger in the number of infractions under aggravated unlicensed operation in the second degree that would then make an individual

eligible for penalties under aggravated unlicensed operation in the first degree?

The implication, of course, being that the change we're making today in aggravated unlicensed operation in the third degree could have an implication of kicking somebody who's committed an offense in the second degree up to the first degree.

SENATOR MARCELLINO: I believe it's ten or more, in the case that you cite. And I believe it's a Class E felony at this particular time.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Do I understand correctly that it takes ten offenses, ten convictions of aggravated unlicensed operation in the second degree before the offense is elevated to the first degree?

SENATOR MARCELLINO: Ten suspensions of your license.

SENATOR HEVESI: Ten suspensions of your license.

SENATOR MARCELLINO: That's right.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

SENATOR MARCELLINO: Sure.

THE PRESIDENT: Senator, you may proceed.

SENATOR HEVESI: I'm curious if the sponsor can -- I didn't know this. And I'm curious as to why it is more pressing to elevate somebody who's committed two infractions under the third degree than it is to reduce the number of infractions under the second degree for somebody who has egregiously flaunted the law for making the more serious penalties that would take effect under aggravated unlicensed operation in the first degree.

SENATOR MARCELLINO: Well, I'm no expert at it, and I probably cannot give you specific numbers. My guess is because there are far more of this particular level than get to the tenth, the first degree. And hopefully

by increasing the penalties on people who have a -- you know, with a lesser fine, we might prevent them from ever dealing with the first degree.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: My pleasure. I'm having fun.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

I'm not sure that this legislation is efficacious in light of what we've just heard, since if you had two convictions under the third degree, you get the third conviction, it means you're eligible for penalties under aggravated unlicensed operation in the second degree. And the law is clearly lenient, excessively lenient under the second degree, allowing for up to ten violations before you have a felony offense that you're looking at.

So my question to the sponsor, would he consider amending this legislation to

reduce the number of infractions under the second degree before the first-degree penalties would kick in.

SENATOR MARCELLINO: We think the legislation is perfectly appropriate. We are not willing to amend this particular legislation.

We certainly will look into another piece of legislation dealing with the aggravated operation of a motor vehicle in the first degree, after we do some research on it. But this bill right now deals with a situation we think is fine, and we're going to move ahead with it.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you. And thank you for your patience, Senator Marcellino. I do appreciate you taking the time with this important matter.

Is there any difference in the

offense that would have to be committed to be charged initially with the different -- with one of the different degrees? In other words, the first offense is always a charge of aggravated unlicensed operation in the third degree, and the only thing that elevates it to a higher degree is the extent to which the individual was engaging in recidivist behavior?

SENATOR MARCELLINO: Not a conviction, I'm told by learned counsel. It is a suspension.

SENATOR HEVESI: Understood. But then let me just clarify on that point.

The number of suspensions is the only factor which determines whether or not you will be charged with third degree, second degree, or first degree?

SENATOR MARCELLINO: My guess - not my guess, I believe you're absolutely correct. If you knowingly operate the motor vehicle after your license has been suspended, you have committed aggravated operation of a motor vehicle.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you. So there is no additional infraction which would in any way impact the penalties that an individual could be charged with, such as driving while intoxicated, reckless endangerment, some other type of activity?

This is -- aggravated unlicensed operation is in and of itself its own offense, and only changed in degree by the number of infractions the person has committed?

SENATOR MARCELLINO: Yes.

SENATOR HEVESI: Thank you.

Madam President, on the bill.

Thank you. And I want to thank the sponsor for taking the time to go through the situation surrounding this bill, because it's important. I just learned something here that I think many of my other colleagues just learned, which is that though this legislation

is well-intentioned, we have now exposed a tremendous problem.

I think it's outrageous that somebody could flaunt the law so egregiously and ten times -- it's actually not ten times, Madam President, it's more than that. Because it's, under current law, three offenses under the third degree before you're kicked into the second degree, and then you're allowed an additional ten offenses.

So if my math is correct, it's only on the 14th offense, the 14th offense of driving with a revoked or suspended license that you are eligible for felony punishment. That's ridiculous.

And while I commend Senator Marcellino for bringing this bill to our attention, I think we just took a look at a bigger problem in the law. And we hear all the time about individuals who have, in concert with this offense -- because often driving without a valid license is not the offense for which the person has been stopped, it's the fact that they were driving recklessly or they were driving while under

the influence of alcohol or driving under the influence of drugs or some other offense. And then it turns out -- and we hear this in press reports all the time -- that this individual had had his license suspended, or her license suspended, a whole slew of times.

This is outrageous. Really outrageous. I would even suggest that the legislation that we have in front of us doesn't go far enough in even addressing the escalating penalties in the third degree. I don't know why we have to wait till somebody commits three offenses of the same kind, meaning that they're driving, they get their license suspended, they drive again, they get their license suspended, they drive again - and then and only then, under this bill, would they be allowed to have an additional penalty, which is still a misdemeanor offense.

Why are we permitting that? I would suggest that this bill, only addressing aggravated unlicensed operation in the third degree, would be a better bill if somebody, the second time they committed an infraction, had their penalties escalated by kicking it

into the second degree.

I'm a lenient person, particularly with nonviolent offenses. But if you commit the same crime a second time, I think leniency should go out the window. And so this legislation falls short in its intended mark, and I believe that its intended mark is way too narrow in scope. It's ridiculous that somebody can drive with a suspended license 13 times before they can get a felony conviction against them or have a felony charge brought against them. It's ridiculous. We're sending the wrong message.

So I commend Senator Marcellino on his pursuit in this area, but I suggest that we are being way too lenient on people who are so egregiously flaunting the law and jeopardizing the lives of thousands of New Yorkers with their continued recidivist behavior in this very serious area, understanding that in many, many circumstances driving with a suspended or revoked license is not the only offense that the individuals are committing.

We catch these people more often

than not, not because we knew somehow that they were driving with a suspended license. You're not pulled over because some police officer suspected it. That would be illegal. The individual was pulled over for some other infraction, and then we found out that they had a license that was not valid, for whatever reason.

So we are -- by not addressing this problem, we are really doing ourselves a great disservice, and we are compromising people's lives. I suggest -- I'm going to vote for this bill, although I do believe it's a flawed bill. It's one of these frequent occasions that I find myself here in the Senate voting in favor of something that I don't think is perfect. But I'm not going to let the perfect be the enemy of the good.

So I'm going to support this, but I really would request that Senator Marcellino, who I know is caring and passionate about this issue and really wants to make a positive difference, to please go back and let's amend the section of law that pertains to this legislation, which is going to pass today, to

make it more restrictive. And certainly look at aggravated harassment in the second degree, where now it takes ten offenses -- ten offenses. Which boggles my mind.

Because if that's what it says in the law, it means, Madam President, that at some point somebody actually said -- it wasn't that the law was silent on this, somebody said: It shall take ten offenses before this is elevated to a felony offense. That's ridiculous. I want to know who did that.

And I'm surprised that my colleagues on the other side of the aisle, who are very conservative in their approach to criminal justice, as am I, allowed that to happen. I don't know the genesis of that, but I'm surprised that that was allowed to happen. That's soft on crime. I'm surprised with my colleagues on the other side of the aisle that put on a bill here that's soft on crime. I think it's a big mistake, and I hope we see some remedial action on this soon.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, Madam

President, through you, will the sponsor yield to a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Surely.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: I invariably appreciate short bills that are concise and spelled out. But I have a question or two about the spelling out of this legislation, which I think is good as far as it goes.

Do the local police as well as the Bureau of Motor Vehicles have a record of each individual's suspension or revocation of license?

SENATOR MARCELLINO: My guess is yes.

SENATOR LACHMAN: Pardon?

SENATOR MARCELLINO: My guess is yes.

SENATOR LACHMAN: Your guess is yes.

SENATOR MARCELLINO: Yes.

SENATOR LACHMAN: But you don't know for sure.

SENATOR MARCELLINO: No, I haven't looked at it personally.

SENATOR LACHMAN: Okay. Second question. Since many people drive for 30 or 40 years, do they have information relating to this if they might have had a suspension 40 years ago and might not recall it today at the age of 85 or 83 while they're still driving?

SENATOR MARCELLINO: You wouldn't have been able to renew your license if you hadn't been told that your license had previously been suspended.

SENATOR LACHMAN: So they would not have been able to renew their license at the end of the year. So they are given annual information about their -

SENATOR MARCELLINO: Not annual information, Senator. It's whenever you get the license renewal form. You've got to go into the Department of Motor Vehicles, you either mail it in or go in in person, and you have to renew your license.

If your license had been suspended and you had never done it the first time, then they would have brought that to your

attention: Your license is suspended, get in here and get it done. You're usually notified by the Department of Motor Vehicles that your license is or has been suspended. It's usually done in writing.

SENATOR LACHMAN: Madam President, will the Senator continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Sure.

SENATOR LACHMAN: Do you believe that this was the case 20, 30, 40 years ago?

SENATOR MARCELLINO: Yes, absolutely.

SENATOR LACHMAN: Okay, there was no change.

Okay, Madam President, will the Senator continue to yield.

THE PRESIDENT: Senator?

SENATOR MARCELLINO: Certainly.

SENATOR LACHMAN: Is driving while intoxicated an element of aggravated unlicensed operation of a car in the second degree or the first degree?

SENATOR MARCELLINO: As I

answered to Senator -

SENATOR LACHMAN: And why?

SENATOR MARCELLINO: -- Hevesi when he asked me the very same question, Senator, they're two separate acts. You could be driving while intoxicated and have a perfectly valid driving license. You would get ticketed for driving while intoxicated. You could be driving while intoxicated and caught and you have no driving license because it was suspended, revoked or whatever, and then you would get a ticket for DWI and you would get a ticket for the driving without a license. So you'd get two tickets.

SENATOR LACHMAN: Now, Madam President, is that standard applicable throughout the State of New York? Or is it based upon individual counties?

SENATOR MARCELLINO: It's the law in the state. To my knowledge, yes.

SENATOR LACHMAN: Thank you very much.

THE PRESIDENT: Read the last section.

Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would yield for a few questions.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: Go ahead.

SENATOR PATERSON: Senator, I concur with Senator Hevesi's frustration and feel it myself, even though it's not specifically what this bill addresses -

SENATOR MARCELLINO: Madam President, would Senator Paterson yield to a question?

THE PRESIDENT: Senator Paterson, will you yield?

SENATOR PATERSON: Is it germane, Madam President?

SENATOR MARCELLINO: I believe it's germane, Madam President.

SENATOR PATERSON: I'd be happy to.

THE PRESIDENT: Go ahead, Senator.

SENATOR MARCELLINO: Senator

Paterson, I believe you have been in the Senate a lot longer than I have and you personally have been present on the floor when my colleague and former -- all of our colleague and former Senator Norman Levy carried this particular piece of legislation for many years.

Are you familiar with the fact that this bill has never, never been brought to the floor in the other chamber?

SENATOR PATERSON: I wasn't familiar with that until today, Senator. Until yesterday, actually.

SENATOR MARCELLINO: Senator, let me bring it to you. The fact is that it has never -- although it has had an Assembly sponsor. Assemblyman Englebright carried it with my predecessor, Norman Levy, for a number of years. He has never been able to get onto the floor, get it even out of committee in the other house.

If you want to talk about frustration, Senator, to my mind, that's frustrating, that while we will do it here, the other chamber sees fit to disregard even

this bill. If you think this bill isn't -- or doesn't go forward enough, what could you possibly think of the other chamber's inaction on a bill such as this?

SENATOR PATERSON: Madam President, I have -- I don't know why this bill wouldn't have come out of committee. I voted for this bill.

And it just brings to mind a frustration I guess that Senator Marcellino and I both feel about legislation that would be valid or effective and would change the quality of life or, in this case, hinder the danger to life perpetrated by people whose licenses were suspended and didn't even have regard enough for the law to cease and desist from operating their motor vehicles until the time that this suspension had ended.

I understand how Senator Marcellino feels. I've had a couple of bills that don't seem to come out of committee -

SENATOR DUANE: Madam President.

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR MARCELLINO: I'm the

chair, and I believe I still have the floor.

THE PRESIDENT: Senator Marcellino has the floor now.

Senator Paterson did yield.

SENATOR MARCELLINO: However, I thank the Senator for his comments, and I'll be glad to give back the floor.

THE PRESIDENT: Senator Marcellino, you do still have the floor. You may proceed.

SENATOR MARCELLINO: I just want to thank him for his comments and yield back the floor.

THE PRESIDENT: Senator Paterson, you have the floor now.

And, Senator Duane, why do you rise?

SENATOR DUANE: I was just hoping that Senator Paterson would yield for a question.

THE PRESIDENT: Senator, will you yield?

SENATOR PATERSON: I'd be most delighted to.

THE PRESIDENT: You may proceed,

Senator Duane.

SENATOR DUANE: Thank you.

I'm wondering if Senator Paterson is feeling Senator Marcellino's pain on what's happening with this bill.

(Laughter.)

SENATOR PATERSON: Well, Senator Duane -

THE PRESIDENT: Senator, please keep your remarks germane.

SENATOR PATERSON: -- I too have an office on 125th Street. And I do understand what Senator Marcellino is saying.

When I look at this bill, I'm trying to think of why the bill wouldn't necessarily pass. And I have some questions that perhaps when I get some answers, I might be able to be of some assistance.

I've always felt that there was a valid reason why legislation doesn't come out of committee. But maybe that's something that in both houses we need to really start examining, because if that's not the case, then we're just having a recitation of legislation over and over again without any

real resolution.

I know we -- Senator Duane, we brought in conference committees to try to help this along at a certain point. But I guess they wouldn't apply, because we haven't had passage of the legislation in the other house.

I could cite a couple of reasons for why that might be the case. Section 607 of the Laws of 1993 upgraded this from a traffic violation to a misdemeanor. And perhaps there's a feeling in the other house that we are addressing this legislation on the front end and perhaps not where Senator Hevesi wants to go, which is unlicensed operation of a motor vehicle in the second degree, what - how many violations we allow before it goes to a first degree, which is an E felony. That's the change from a misdemeanor to an E felony.

So I'm just kind of searching. I don't -- I don't really know the answer to that question. But I do understand what Senator Marcellino is saying, and I take it very seriously.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If Senator Paterson would yield for another question.

THE PRESIDENT: Senator Paterson, will you yield?

SENATOR PATERSON: Most assuredly, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you. I'm wondering if Senator Paterson might agree with the assertion that there is dysfunction in the legislative process here in Albany and that perhaps that's what most needs to be addressed.

SENATOR PATERSON: Well, most specifically to this legislation, I think this would be a prima facie case of it. I don't understand -- well, one of the problems that I think has been a situation in vehicular violations, not having driven a vehicle myself in a while, I would say that there is a -

SENATOR OPPENHEIMER: Thank God.

(Laughter.)

SENATOR PATERSON: There is a

problem with the issuance of a lot of these suspensions and whether or not the operator of the vehicle is aware that the license is actually suspended. In other times, in other aspects of the law, we find that people say they didn't get notice, particularly with removals from property and that type of thing.

But with the Department of Motor Vehicles -- not to in any way impugn the people that work there -- there does seem to be an issue of service. And one of the questions I'm going to ask Senator Marcellino before I'm done is just what really constitutes valid evidence that there was or was not service.

But the legislative process does seem to be, as I have always felt, driven in a fashion that the individual legislator doesn't have as much of an opportunity to pass laws and to change the course of events in the state as one should. Sometimes I think that -

THE PRESIDENT: Senator Paterson, I'd like to ask, are you speaking on the bill, or do you have a question?

SENATOR PATERSON: I'm answering Senator Duane's question, I thought.

THE PRESIDENT: All right. As long as you keep your response germane to the substance of the bill, I'll allow you to continue.

SENATOR PATERSON: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR PATERSON: What I would say is that related to this bill, perhaps we as legislators are kind of drowning in an orgy of self-compromise.

We keep allowing these pieces of legislation to be administered singularly rather than through our committee system. Some of the discussions that we've had here on this bill and other bills, to add to the point that I'm making with this bill, are specifically decisions that I think were more apt in the committee process and were in that process 15 years ago when I came to the Senate.

Because they are not, I think that you have a situation like we have with Senator

Marcellino's bill, where it is not really seeing the light of day perhaps in the other house because no one understands that it is probably a precursor -- and at some point I'm going to inquire of Senator Marcellino whether or not this is the case -- it is probably a precursor of Senator Marcellino's willingness to a look at unlicensed operation of a motor vehicle in the second degree as much as in the one that's before us at this time.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Madam President, if Senator Marcellino would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes, I yield to Senator Paterson.

SENATOR PATERSON: Senator, are you aware as to whether or not the police department keeps records of suspended licenses?

SENATOR MARCELLINO: I guess they do.

SENATOR LACHMAN: That was the question I had asked.

SENATOR PATERSON: If the question would continue to yield.

SENATOR MARCELLINO: I yield.

SENATOR PATERSON: I apologize. I knew the answer to that question. What I really meant to ask you, Senator, Madam President, was whether or not the police department keeps records of the number of times that a person operated one of these vehicles at a time when they did not have a license.

SENATOR MARCELLINO: Senator, it's my understanding that they would have access to the Department of Motor Vehicles' files.

SENATOR PATERSON: If the Senator would continue to yield.

SENATOR MARCELLINO: I yield.

SENATOR PATERSON: Has there been a problem with an inability to significantly identify, where operators of vehicles are stopped and it's concluded that they don't have a license -- in other words, how many

times this has been the case? Is this a statistic that's been difficult for the Department of Motor Vehicles to keep?

SENATOR MARCELLINO: I don't know for a fact even if they keep that, Senator, quite frankly.

SENATOR PATERSON: If the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Surely.

SENATOR PATERSON: Senator, the point I was making before in response to the question from Senator Duane, that being the issue of service or what constitutes evidence that the person who is being charged was aware that their license was suspended, how do we accomplish that right now?

SENATOR MARCELLINO: It's my understanding -- as you know, Senator, I'm not a lawyer. I'm but a humble schoolteacher. A very compassionate one, I might add. Thank you.

But it's my understanding that the law creates a presumption that if you've been

notified that you've been served or that you've had your license suspended, that you know it.

SENATOR PATERSON: Thank you, Madam President. If the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes, I yield, of course.

SENATOR PATERSON: Senator, this is not the specific bill that you're addressing, but I think it is germane to the actual topic.

Is the reason that you are trying to truncate the number of opportunities that an individual operating an unlicensed vehicle can be stopped before we meet the threshold of committing a misdemeanor, is that a prelude to your willingness to address what seems to be a more serious problem that Senator Hevesi addressed, which was that time after time, people are stopped and have unlicensed vehicles in the second degree and we never get to that point where they recognize that

they've broken the law and would possibly incur jail time?

SENATOR MARCELLINO: Frankly, Senator, no, that wasn't the case.

SENATOR PATERSON: Thank you.

THE PRESIDENT: Senator, I'm going to remind you to keep your remarks germane and to ask substantive questions, please. And I will give you one more opportunity.

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

And I will take that under advisement.

THE PRESIDENT: Senator Marcellino, do you continue to yield to these questions?

SENATOR MARCELLINO: Sure. Absolutely.

THE PRESIDENT: You may proceed with a germane question on the substance of the bill.

SENATOR PATERSON: Senator Marcellino, on this specific piece of

legislation -- and I apologize if I was trying to determine what direction you were going. But we upgraded this from a traffic violation in 1993 to become a misdemeanor, this bill, this particular germane piece of legislation. And now, here in 2001, we're going to eliminate the number of times that a person who is caught operating a vehicle in this fashion is -- that it accrues to become an actual misdemeanor.

Is it not a valid argument that we are continuing to tinker with what is really the least punishable violation of the law on a subject that has far more serious ramifications when you look at it down the line? That's why I'm asking this question.

Because perhaps the reason that the other house is not passing the legislation is because they just don't think that we're addressing the part of the motor vehicle law that really needs to be addressed. We've addressed this only eight years ago. We worked on Section 214 of the motor vehicle law.

SENATOR MARCELLINO: The answer

is no, Senator, I don't believe we're tinkering.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: One more question.

THE PRESIDENT: Senator Paterson, you have the floor for a final question.

SENATOR PATERSON: Then my question is, what information do you have or what evidence can you bring before this body that demonstrates that between 1993 and 2001 that there have been a significant number of issues that have arisen from the fact that we are not removing people's licenses and charging them with a misdemeanor after the second violation rather than the third?

SENATOR MARCELLINO: Senator, the district attorneys of the state have contacted us and asked us to make this change.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: I pass.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson, on the bill.

SENATOR PATERSON: On the bill, yes.

Madam President, I don't know and unfortunately was not made aware of what it is that the District Attorneys Association would present that would make us know that at this particular time that we have to make this change in the law. I am pretty sure, though, that Senator Marcellino, in addition to being a humble, compassionate, former schoolteacher, is a pretty dynamic and effective legislator and that he did have a reason.

But at this time, since my allotment of questions has been used up, I guess I won't know that answer but will listen comprehensively to this discussion, because I think that that would actually be not only a prelude to me voting for the bill, but dropping by the Assembly -- where we all know I have great influence -- and talking to them about this legislation as well.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: I pass.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield, please.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes, I yield.

THE PRESIDENT: You may proceed.

SENATOR DUANE: Thank you. Does the motorist have to have constructive notice that their license has been suspended?

SENATOR MARCELLINO: I've answered that question already about four times, Senator.

SENATOR DUANE: Through you, Madam President, if the sponsor would just indulge me again, because I don't remember hearing the answer.

THE PRESIDENT: Senator -

SENATOR MARCELLINO: Madam President, I really don't feel like going back over again what I've already answered in

response.

THE PRESIDENT: Senator, that has already been asked and answered, Senator Duane.

SENATOR DUANE: Well, let me - maybe this will elicit the response. Later today -

THE PRESIDENT: Senator, you have a new question?

SENATOR DUANE: Yes, I do, Madam President. So would the sponsor continue to yield for it?

THE PRESIDENT: Do you yield, Senator Marcellino?

SENATOR MARCELLINO: Yes, I yield.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR MARCELLINO: I must admit, Madam President, I will yield, but my patience on a bill that is quite frankly relatively simple and should not require all this great discussion -- we are simply trying to remove dangerous people from the road a little sooner.

But I will yield to one or two more questions from the Senator.

THE PRESIDENT: Senator, you may proceed with one or two questions, and that is it.

SENATOR DUANE: Madam President, I'm confident the sponsor will be pleasantly surprised with the importance of my question.

THE PRESIDENT: Could you please ask it, Senator.

SENATOR DUANE: Certainly.

SENATOR MARCELLINO: I look forward to it.

SENATOR DUANE: Senator Balboni had a bill on later today, Calendar Number 92, which would state it is presumed a driver with three suspensions will be presumed to have knowledge of the suspensions. Your bill says two. Can you describe what the impact of your legislation would have on that legislation?

SENATOR MARCELLINO: I haven't the slightest idea, Senator. I don't know, Senator.

THE PRESIDENT: This is your last question, Senator Duane?

SENATOR DUANE: I just wanted to clarify what -- I didn't hear what the Senator said.

THE PRESIDENT: Senator Marcellino, could you repeat your response?

SENATOR MARCELLINO: The answer is I don't know.

SENATOR DUANE: Oh, okay.

THE PRESIDENT: Senator Duane, do you have another question?

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

I don't know, then, why we're passing this bill if we don't know what the impact of Calendar Number 92 is going to be on this bill. So I guess I'll wait till we get up to Calendar 92 and ask the sponsor of that bill if he knows what the impact of Calendar Number 68 is on that bill.

Though, frankly, I don't think we should pass this bill till we find out what the impact of that bill is. That's why we have debates here on the floor. That's why we ask questions, so that we can see how one piece of legislation impacts on another piece

of legislation. That's why we are called legislators, so that we can actually comprehensively pass legislation and not pass each one in a vacuum.

So I'm looking forward to finding out what the impact of one is on the other. Maybe that bill will have to be recommitted until we discover how it is that Senator Balboni's piece of legislation will impact on Senator Marcellino's legislation.

Thank you, Madam President.

THE PRESIDENT: Senator Brown.

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

Just from listening to the debate -- and I want to thank Senator Marcellino for answering all of the questions -- it is a little surprising to me that we don't know what impact one piece of legislation that is related will have on another piece of legislation, and ultimately the impact that it will have on the citizens of the State of New York.

As Senator Hevesi and Senator Paterson indicated, the committee process

here -- which I'm not aware of, because I haven't had the opportunity to participate in such a committee process -- I am told used to be much different.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Madam President, one or two quick questions.

SENATOR BROWN: Yes, certainly, Senator.

THE PRESIDENT: You may proceed, Senator Marcellino.

SENATOR MARCELLINO: Senator, do you have the annotated calendar in front of you?

SENATOR BROWN: Yes, I do, sir.

SENATOR MARCELLINO: If you would indulge me and would read -- you don't have to read it aloud. But the bill and my bill - maybe Senator Duane would have been better served if he'd stayed. But what this bill says is an act to amend Vehicle and Traffic Law, blah, blah, blah, in relation to operating a motor vehicle in the second degree. My bill.

Senator Balboni's bill, operating a motor vehicle in the third degree. These are two different sections of the law, two different bills, two different issues. It's apples and potato chips.

Thank you, Madam President.

SENATOR BROWN: Okay. Again, on the bill.

As I was indicating, the committee process, as I understand it, used to give members of the State Legislature the ability to discuss pieces of legislation and their impact on various sections of law that are related in totality. And through that process now, I don't believe that we have much of an opportunity to be able to do that.

Since I've been here in the Senate, the longest committee meeting that I have had an opportunity to sit through has been about 15 minutes. Generally we come into committee, the process is moved very quickly, and it seems like people want to get out of committee meetings as quickly as they possibly can.

And I thought, when I ran for the Senate and made the decision to run for the

Senate, the reason that I was coming here was to really be able to comprehensively look at legislation and to be able to research legislation and to be able to work on the passage of legislation that in a comprehensive fashion would really have an impact on the citizens of the State of New York.

And I certainly appreciate what Senator Marcellino said about this bill being different than Senator Balboni's bill. But there certainly is a relationship between the two pieces of legislation. And they certainly will have an impact on people driving with suspended licenses.

So I just lament the fact that we haven't been able to look at this issue in a more comprehensive fashion, we haven't been able to look at this issue in a way that would probably, as Senator Hevesi has indicated, deal with the problem a little bit more efficiently.

I don't know why, after one instance of driving with a suspended license, that we don't get tougher on this issue. As Senator Hevesi said, I think we give people

too many opportunities, based on this piece of legislation and the other piece of legislation that will come before us, to drive with suspended licenses in the state of New York. And I think if we looked at the issue more comprehensively, we would come up with a more efficient way of addressing this serious problem.

But I will be voting in the affirmative on this bill.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will Senator Marcellino yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed.

SENATOR ONORATO: I appreciate your efforts in here. And you have been given some very, very difficult questions, and your answers to them have been right on target.

My concern is that we're dealing here now with -

SENATOR MARCELLINO: Senator,

excuse me, but I am having trouble hearing you.

SENATOR ONORATO: Okay. My question is we're dealing with a suspended license. What happens to the individual who drives who has never been issued a license and continues driving without ever having been issued a license? How does it apply, does this apply in any way, shape or form?

SENATOR MARCELLINO: No, this bill would not apply to that, Senator. That's a whole different section of law.

SENATOR ONORATO: 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, 57.

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, I was -- I'm going to vote for this

bill. But I would rather have had a clear understanding of why the District Attorneys Association wanted this legislation.

And I preface my remarks by saying I'm going to vote for this bill because I think it is a good bill, and I was somewhat taken with Senator Marcellino's, well, disappointment that this bill is not a law, that he's worked on this bill a long time and it's not a law. And it probably should be a law.

But there are times legislators do this -- I've done it, we've all done it - where we know that there are issues, that there are phrases that you use but you don't really know what they mean, like getting dangerous people off the road. Well, that could be keeping them from crossing when they shouldn't, keeping dangerous people from operating a motor vehicle.

And, yes, that is what we want to do. But to pass the legislation and to get the Assembly interested, I think we have to be a little bit more specific than that.

And Senator Marcellino accomplished

something here today, which is that he got us to talk about this legislation. And perhaps that conversation will inure to the benefit of the legislation and it will get passed in the Assembly if some of those questions can be answered to their satisfaction.

And I think that that's one of the things that's somewhat lost around here, is the opportunity to really understand and to experience what another lawmaker is trying to project through legislation, and to distinguish it from just something that would be somewhat puerile or just saying that we want to accomplish something.

I think Senator Marcellino was specific enough to convince me that we should vote for the legislation. But I do think that those questions will get asked again. And I hope that the requisite information will be transferred so that perhaps one day this will be a law.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, briefly, to explain my vote.

ACTING PRESIDENT MEIER: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: I too am going to support this legislation. I believe that the give-and-take on this floor in this debate was informational to me. I think that there's always some cases that come to your office, or people call complaining about somebody that's driving with a suspended license that maybe they had a collision with, or some kind of situation with, and they say: How can you keep letting these people drive with suspended licenses and you don't do anything about it?

And now at least I'll be able to reference that we're trying to pass this law that -- on increasing violations, that we're trying to get these people off the road in various ways.

And by listening to the debate and the enlightening conversation that went along with it, I have now more information about the motor vehicle law, which I don't know all about. Because not being a lawyer, I don't know all the laws that are on the books. And

by listening to some debates on ways we want to change those laws, I get to learn more about it and become more informed. And therefore, when I get a question, I might have a better answer for the people that call me and ask me different questions.

I vote aye.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, to explain my vote.

ACTING PRESIDENT MEIER: Go ahead.

SENATOR STAVISKY: I too am -- I listened intently to the debate and to the questions.

When I first read the bill this morning, I was going to vote against it or at least listen carefully, because I wondered whether it was fair for an 18-year-old and a person 30 or 40 years later to be responsible for indiscretions of youthful inattention to these details, so to speak.

Senator Marcellino has convinced me that this is a very good piece of legislation,

and the only way that we are able to understand the legislation is by the discourse that goes on in this chamber.

And I am voting for this bill for another very important reason. And that is, anything that will alleviate the carnage on Queens Boulevard makes it a worthwhile effort. We have a very serious problem in Queens County with pedestrians being hit, some of them by unlicensed motorists. And anything that will help this serious situation -- part of it is in my district. The Woodside, Elmhurst sections of Queens Boulevard are in my district. Northern Boulevard is another problem area in Queens. And if we can help promote the safety of the pedestrian traffic, then I'm for it.

And I commend Senator Marcellino.

ACTING PRESIDENT MEIER: Senator Stavisky will be recorded in the affirmative.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President, to explain my vote.

I learned a long time ago that just because a sponsor defines a bill to be simple

and flawless doesn't make it so. And I think that as a result of the debate today, we found out that this legislation is neither flawless nor simple. And I'm very much looking forward to seeing what its impact is going to be on legislation which we are soon -- I guess soon -- going to take up.

I'm going to vote yes on this, but I am going to be very interested in the impact of Calendar Number 92 when it comes before us.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the affirmative.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I think I can appreciate Senator Marcellino's expressed frustration about not getting this bill to the floor of the Assembly. And I think a number of my colleagues have alluded to a frustration of not getting bills that we have worked on to the floor of this house. And we understand that frustration.

But I think, Senator Marcellino,

the course of this debate may help you alleviate that frustration. Why? Because you now have fully informed members of the Senate Democratic conference who could be your allies in going to our Democratic colleagues in the Assembly and explaining to them, Gee, we had a debate with Senator Marcellino. He explained a bill that seems to do a good thing, it attacks a problem that has been difficult in the City of New York, has created tragedies in the City of New York, we have too many people who are operating motor vehicles without proper authority.

And I think the members of this conference can go to our Democratic colleagues in the other house and suggest to them: Gee, we had a full debate, we explored all the issues. Senator Marcellino's bill may not be perfect, but it certainly does something or tends to a problem that we all recognize.

And so I think that this debate has produced a better-informed Democratic conference, so in our discussions with our Democratic colleagues in the other house, we may be able to help Senator Marcellino

overcome his frustration. I think that's one of the benefits of a debate like this. We're better informed. We can be better advocates for this bill.

My hope is that this debate will perhaps enlighten this house to bring more bills that have Democratic names on them to the floor, so that the frustration that perhaps at times we've felt, an unfortunate by-product of some other circumstances, that those bills can come here, the frustrations can be reduced on this side of the aisle and on that side of the aisle, and we'll do the job that the people of the State of New York elected us all to do, which is to make these bills into laws and into chapters.

I'll be voting in the affirmative, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the affirmative.

Senator Gentile.

SENATOR GENTILE: Yes, just to explain my vote, Mr. President.

Also kudos to Senator Marcellino, who I believe has left the chamber -- no, he

hasn't. There is he. Okay. My kudos also to Senator Marcellino for this bill and for the debate that we had here today. Because this debate brought up many issues that I think many members, many of my colleagues were very concerned about.

And certainly I think you're right, Senator Marcellino, in that this needs to come to the floor of the Assembly. And I believe Senator Dollinger is right also, in that we can help with that effort to bring this case -- this bill to the floor of the Assembly.

You mentioned, though, that your frustration may be tied to an issue that has not been mentioned here before, and that is the fact that in many cases, DMV records are notoriously unreliable. And certainly from my experience as a prosecutor, I have seen that over and over and over again, where DMV records are not correct, DMV records sometimes skip suspensions and sometimes impose suspensions without notification.

Indeed, in one case there was a suspension for someone that did not pay a

surcharge on a fine. And that surcharge was never paid, the person did not know and was driving with a suspended license. An otherwise law-abiding citizen who did not know there was a surcharge imposed on a fine for a late payment and was driving with a suspended license.

In those instances, I think what we need to do is address the issue of the reliability of the DMV records. Because that, in effect, may be some of the hesitancy in which the Assembly has not taken up this bill. I believe this is a good bill, this is a good measure, but we also have to make sure that we can rely on the DMV records that we're looking to impose here in this legislation.

That having been said, Mr. President, I vote aye.

ACTING PRESIDENT MEIER: Senator Gentile will be recorded in the affirmative.

Senator Onorato.

SENATOR ONORATO: Mr. President, I too rise -- I'm certainly going to the vote for the bill. I think Senator Marcellino did a good deal of homework on it.

And I would also like to offer my cosponsorship as an incentive to get it passed in the Assembly.

I vote aye.

ACTING PRESIDENT MEIER: Senator Onorato will be recorded in the affirmative.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Just briefly, to explain my vote.

Again, I'm going to support this bill, although I don't think it goes nearly far enough. But the discourse was helpful.

I just wanted to reiterate the comments of Senator Duane, who alluded to something that I find very troubling. And it's not the first time that this has happened, where there are two bills on a calendar that amend the same section of law in a way that is fundamentally troubling or potentially conflicting.

And I remember last session Senator Padavan had a piece of legislation that increased penalties for gambling offenses, and there was a similar bill on the calendar that day that amended the exact same section of law

in a fundamentally different way. And similar to Senator Marcellino, when questioned about it, Senator Padavan didn't want to discuss the way they were in conflict.

Which forced me to turn to the attorneys that we have here and inquire as to what would happen in the eventuality that both bills passed both houses and became law. And the answer was the legislation that was first signed by the Governor would be the bill that actually changed the law in the fundamental way that was intended by that sponsor.

And so this is a real problem here. And I'm sure Senator Balboni is going to explain to us the merits of his legislation. But from a cursory look at Calendar 92, it seems to be in fundamental conflict with the legislation we're voting on right now. Not in a way that is going to prevent us likely from voting yes on Senator Balboni's bill, but certainly it raises questions.

So I find that troubling. And I would just request that those who are responsible for making the calendar and those who are sitting on the committee that deals

with these issues should have some better communication with each other. Because the purpose of everyone here, we're not trying to nitpick, we're trying to make law in the best way possible. And so if we're doing things that conflict with each other, we're cutting off our nose to spite our face.

So my suggestion will be that we don't have this situation in the future and we make sure by the time the calendar gets to the floor that the bills are consistent and that the bills do what they're designed to do, and then we'll debate the merits of them and vote accordingly.

But again on this bill, I support it. It doesn't go nearly far enough, doesn't address this issue at all. And if the Assembly has a similar bill, they should pass it immediately. Though I would not recommend that the Assembly pass this bill, and instead the Assembly should go ahead and pass a bill that's much more stringent. And I may even draft that legislation and offer it to Senator Marcellino, because I may have trouble getting it passed here.

But the Assembly passing this version to make it law, that will do something, but it doesn't nearly go far enough. And we're really not addressing the problem here today. So I support this, with the slew of reservations that I have articulated, both in these comments and my earlier comments.

I vote aye.

ACTING PRESIDENT MEIER: Senator Hevesi will be recorded in the affirmative.

The results having previously been announced, the bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 89, by Senator Seward, Senate Print 1575, an act to amend the Insurance Law, in relation to expanding the eligible groups for annuity contracts.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MEIER: Senator Seward, an explanation has been requested of Calendar 89 by Senator Stachowski.

SENATOR SEWARD: Certainly, Mr.

President. This bill would amend the Insurance Law to expand the eligible groups to which group annuity contracts may be sold in New York State.

Specifically, the bill would authorize group annuity contracts to be sold to membership associations, financial affinity groups, and other groups with a common enterprise or relationships that would be approved by the Superintendent of Insurance.

Now, the changes that would occur under this legislation are mere existing statutes that provide for similar eligibility standards for group life policies as well as group accident and health policies which are currently available to New Yorkers.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: If the Senator would yield for a couple of questions.

ACTING PRESIDENT MEIER: Senator Seward, do you yield for a question?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: Would these financially similar groups, would that be like people with the same credit card? Or does it have to be more specific and more tightly bound than something like that?

SENATOR SEWARD: Yeah, the - actually, Senator, through you, Mr. President, the bill itself outlines the various groups and I think defines financial affinity as, you know, credit card holders of the same card, through the same retailer. I mean, those kind of affinity groups. Certainly credit card is one.

SENATOR STACHOWSKI: If the Senator would yield.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: On a credit card question, would that mean like everybody with a certain's bank's credit card or everybody with a Visa card or everybody with, for example, a GM Visa card? And now I think

they have everybody with a Yankee credit card. You know, they have all these different kinds of credit cards.

So I'm just trying to get a tighter idea of what exactly that means.

SENATOR SEWARD: The answer is yes.

SENATOR STACHOWSKI: All of those groups?

SENATOR SEWARD: Well, people who have same credit card would be considered part of a group that has that financial affinity.

SENATOR STACHOWSKI: Thank you, Senator.

ACTING PRESIDENT MEIER: Read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Would you recognize Senator Duane, please. I'll yield to Senator Duane.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: I'm sorry. I'm wondering if the sponsor would yield.

ACTING PRESIDENT MEIER: Senator

Seward, Senator Duane is wondering if you would yield.

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: Senator Seward yields.

SENATOR DUANE: Thank you. And I apologize, I had just momentarily stepped outside the chamber. So it's possible I'll go over a brief area that had already gone over.

Why are the groups that are being added to this legislation, why weren't they included in the past? Do you know what the history is of that?

SENATOR SEWARD: Well, Mr. President, the time that the group life policies were allowed under statute, as well as the group accident and health policies - in contracts, I should say -- were allowed here in New York State goes back to the, you know, the early 1980s.

And I -- upon looking at this legislation, I raised the same question in my mind. And as near as I can determine through my research is that it simply was not sought at that time, didn't seem to be an issue,

nobody was asking. Group life contracts were being sought, as well as the group accident and health contracts were being sought, so they were included in legislation at that time.

So that is the answer.

SENATOR DUANE: Thank you.

Mr. President, would the sponsor continue to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: Senator Seward yields.

SENATOR DUANE: Thank you.

Now, the bill is specific relating to associations eligible for a group annuity contract. It permits the associations that have a minimum of 200 covered members at the contract's date of issue that have been active for at least two years. Which strikes me as being fairly specific, in a way.

So I'm wondering if the bill was crafted to give -- I hesitate to use the word "favoritism," but will -- is it more likely

that some groups will use this more than others? Is it more favorable to the situation of certain groups?

SENATOR SEWARD: Well, Mr. President, I can assure Senator Duane that there is no intent here to favor one group or another.

Where the 200 comes from simply is for a couple of reasons. Number one, to mirror exactly what is currently in the law when it comes to group life contracts and the accident and health contracts. And it seemed appropriate to use the same criteria for the group annuity contracts.

And also the number 200 is, I think, a number which allows for the economies of scale, shall we say, in terms of having a size -- a group large enough so that the economies of scale would enter into the contracts to the benefit of those who sought this type of product.

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

ACTING PRESIDENT MEIER: Senator

Seward, do you continue to yield?

SENATOR SEWARD: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I have some concerns about the vagueness of the legislation in its relation to the organizations eligible for group annuity contracts. For instance, any issuer of a credit card. And we know that lot of different groups now issue credit cards; colleges, you know, sport teams. You know, various kinds of not-for-profits issue them. Perhaps, you know, a brokerage house.

Was that the intention, to make it that broad that really it would capture any conceivable group?

SENATOR SEWARD: Well, Mr. President, as I've stated, the language in this legislation mirrors that of the group life and accident and health contracts. And I am aware of no problem whatsoever in those contracts utilizing this language.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to

yield.

ACTING PRESIDENT MEIER: Does the sponsor continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I mean, I feel as if I should know this already, but I don't. And I was wondering if the group or association would have to apply first to the Insurance Department.

SENATOR SEWARD: If the group meets the criteria under the law, the only relationship to the Department of Insurance would come through the regulation on the part of the company offering the group annuity. Certainly the Insurance Department is involved in oversight in that regard.

As well as the form of the policy and the contract. All of that is preapproved through the regulatory process, through the entity that's offering the product.

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

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: He yields.

SENATOR DUANE: I know that there has to be some sort of dues to the association. Is there a minimum amount of dues that must be collected?

SENATOR SEWARD: No.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: Senator Seward yields.

SENATOR DUANE: What about a scenario when an association, say, is just charging one cent or something, or five cents as their dues as a way to sort of get around it and get into the business? Is there a remedy for that?

SENATOR SEWARD: Well, Mr. President, if Senator Duane would refer to the bill, there are several sets of criteria there

defining the association, making sure that it is not just a group of people coming together simply for the purpose of purchasing a group annuity.

And the matter of the amount of dues charged is really just one of several criteria that frankly I'm not interested in micromanaging to that extent.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Mr. President, if the sponsor would yield to a question or two.

ACTING PRESIDENT MEIER: Senator Seward, do you yield to a question from Senator Gentile?

SENATOR SEWARD: Yes, a question.

SENATOR GENTILE: No, a question or two.

SENATOR SEWARD: Or two.

SENATOR GENTILE: Through you, Mr. President. I'm just confused at this point, based on questions put forth by Senator

Stachowski and Senator Duane.

Are you saying, then, Senator, that the New York Yankees can issue annuity contracts because of the credit cards that they have -- I suppose have issued?

SENATOR SEWARD: Well, the -- Mr. President, the New York Yankees wouldn't be issuing the group annuity or the credit card. They -- if -- the company that actually issues the credit card, if -- that would form this financial affinity.

SENATOR GENTILE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: So, Senator, there would be a defined group of all holders of New York Yankee credit cards that would constitute this group that -- by which a financial institution could qualify under this section?

SENATOR SEWARD: That's -- Mr. President, that's a reasonable scenario.

SENATOR GENTILE: And therefore -- through you, Mr. President, if the sponsor would yield.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

SENATOR GENTILE: And therefore -

ACTING PRESIDENT MEIER: Whoa, whoa -

SENATOR GENTILE: He said yes.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: And therefore this contract could be sold to the individuals holding that credit card?

SENATOR SEWARD: That is correct.

SENATOR GENTILE: I'm sorry, you said that is correct?

SENATOR SEWARD: That is correct.

SENATOR GENTILE: Then if the Senator would continue to yield, Mr. President.

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: That being the case then, Senator, you seem in the legislation to have a catch-all section, the last section of the bill, where it said despite all the regulations and conditions previously stated, any group -- a contract can be issued to any other group that is approved by the Superintendent of Insurance if -- and it gives some conditions. And one of them would be -- one condition is that it would not be contrary to the best interests of the public.

I'm curious, Senator, what would be an example of an interest that would not be in the best interests of the public?

SENATOR SEWARD: Well, Mr. President, as I stated earlier, that -- the language to which the Senator refers has been in the law covering the other types of group

contracts. And it is merely language to provide the Superintendent with some guidance in terms of approving these so-called, you know, discretionary groups that may wish to purchase this group annuity product.

In terms of an example, you could come up with some as well as I could. I mean, it's -- if it's -- I guess the not being in the best interests of the public is in the eye of the beholder.

In this case, we provide that authority to the Superintendent of Insurance to make that judgment. And this language has been in the law covering other contracts for nearly twenty years now, and I am aware of absolutely no problem with that language.

SENATOR GENTILE: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

SENATOR GENTILE: I would assume, Senator, though, that when that phrase was drafted, whether now or twenty years ago, there was some thought given to what might not

be in the best interests of the public. And certainly we're putting it in this legislation. Is there any -- even a vague notion of what might not be in the best interests of the public, based on the language in this bill?

SENATOR SEWARD: Mr. President, I really haven't given that a lot of thought.

SENATOR GENTILE: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: Certainly the Senator puts forth a bill that I don't think many of us have problems with, except the fact that in this legislation we're essentially giving the Superintendent of Insurance the authority to decide what is in the best interests of public.

I believe that the legislation as written is vague in that regard. And in questioning the sponsor, I believe that it lays the basis for maybe reviewing this legislation and indicating certain instances

where we as a Legislature feel that certain associations would not be in the best interests of the public to issue -- to allow annuity contracts to be issued.

So I believe in this case we are abdicating the Legislature's responsibility and handing it over to the Superintendent of Insurance to have him or her decide on their own what is in the best interests of the public. I think that's our responsibility as the Legislature. And although this bill - certainly the Senator has indicated his intentions on the bill, I think that's something that we cannot too easily gloss over.

So I would suggest, Senator, even though I will vote in the affirmative here, that maybe we take a look at that phrase and not abdicate our responsibility in determining what might be, at least in the broader sense, might not be in the best interests of the public. I think that's our responsibility, not the responsibility of the Superintendent of Insurance.

ACTING PRESIDENT MEIER: Senator

Paterson.

SENATOR PATERSON: Mr. President, I have a couple of questions for Senator Seward if he is willing to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, this legislation is going to give groups the opportunity to sponsor group annuity policies. My question relates to the issuance of single annuity policies. Would we need special legislation to accomplish that? Is it inclusive in this legislation? Or is there a difference?

SENATOR SEWARD: Well, Mr. President, the single annuity contracts are marketable currently.

SENATOR PATERSON: They are? I'm sorry, I didn't hear that.

SENATOR SEWARD: The single annuity contracts are marketable currently.

There's no need for new legislation to accomplish that.

SENATOR PATERSON: So just for a point of clarification, Mr. President.

ACTING PRESIDENT MEIER: Senator Seward, do you yield for a point of clarification?

SENATOR SEWARD: Yes. Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Then there's no need even for these additional groups that we're adding to be part of the legislation where it comes to single annuity contracts, because they're already covered? In other words, they already have the authority to issue them.

SENATOR SEWARD: Well, precisely. I mean, there's no -- this legislation doesn't deem with the single annuity contract.

SENATOR PATERSON: Okay. I have one last question, if the Senator would yield.

ACTING PRESIDENT MEIER: Senator, will you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: I'm just a little confused by the terms, and I thought if you gave an example it might make it clear to me.

Right now we have groups that have what is considered a common interest, associations with a common interest. That's how it's defined in the law now. And you have it where it's membership associations. Now, there's a difference in the words. I just wonder if there's a difference in the meaning.

SENATOR SEWARD: The difference is, Senator, that as -- an example of an association group could very well be the members of AAA, the auto club. That would be the only thing that they would have in common, is being members of that -- of, let's say, of a membership association such as that. That's an example that comes to mind.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I was just trying to distinguish, because I think this legislation does address what really is a changing marketplace, particularly in terms of annuities and contracts and investments and so forth.

But we do have a number of groups now that are putting themselves in the position where they are issuing these types of credit cards and that type of thing. We have athletic organizations issuing it. And I just wanted to make sure that we still have some understanding on the part of these groups what's expected of them under the law. And I'm satisfied that it does.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gonzalez.

SENATOR GONZALEZ: Thank you, Mr. President. Would the sponsor yield for a question.

ACTING PRESIDENT MEIER: Senator Seward, do you yield for a question?

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GONZALEZ: Senator, this bill kind of gives a trend to expand the eligibility for financial institutions to get into writing group annuity policies. My question is the insurance companies that's before us, as far as the Legislature, of them being able to get into financial services. Can you elaborate a little bit on that?

SENATOR SEWARD: Well, Mr. President, that whole issue of the division between the insurance companies and the banks and financial institutions and the fact that those walls between the two are crumbling goes, that's being done at a much higher level, through federal legislation and so on.

This legislation does not really enter into that discussion or debate or that issue. Because, Mr. President, the bank itself would not be issuing the annuity. That would be, you know, the financial entity currently offering annuities to be able to,

through the bank and their customers, would provide the -- the group would be able to market this group annuity contract.

ACTING PRESIDENT MEIER: Senator Gonzalez.

SENATOR GONZALEZ: Would the sponsor still yield.

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GONZALEZ: So is there any way that the insurance companies, have they applied or want the same kind of application into being able to, in the financial situations, whether they can write -- they can get into the finances? Has that come before us, before you?

SENATOR SEWARD: Mr. President, that specific point has not, you know, come before us. I would anticipate that if this legislation became law that obviously New York insurance companies that offer the annuity contracts certainly would be doing so on a

group basis, marketing to these groups.

SENATOR GONZALEZ: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Gonzalez, on the bill.

SENATOR GONZALEZ: I think that I have concerns that, although I like groups to have opportunity and to continue to expand, but I also think that before us that everybody wants to get into -- whether they want to get into insurances and whether insurance wants to get into financial situations. And I think that that is before us, and there should be some equitable parlay to how that's done.

And so that's one of my concerns, Mr. President. And, you know, I will be voting in the negative.

ACTING PRESIDENT MEIER: I'm sorry, Senator Malcolm Smith.

SENATOR MALCOLM SMITH: That's quite all right, Mr. President. Thank you.

Will the sponsor yield for a question?

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: Is there -- and forgive me if the question is a little naive. But is there any geographical restriction to this particular piece of legislation; i.e., a company incorporated outside the state of New York doing business within the state of New York?

SENATOR SEWARD: No.

SENATOR MALCOLM SMITH: And is there -

ACTING PRESIDENT MEIER: Do you wish the sponsor to continue to yield?

SENATOR MALCOLM SMITH: I'm sorry, Mr. President. Would the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: With

regard to the Superintendent of Insurance, as it relates to, I guess, him promulgating regulations for these particular entities, will the Superintendent of Insurance have the ability to continue to offer new regulatory procedures for this -- these particular annuities?

SENATOR SEWARD: Certainly, Mr. President, nothing in this legislation would preclude that.

SENATOR MALCOLM SMITH: Mr. President, no further questions. Just on the bill.

ACTING PRESIDENT MEIER: Senator Malcolm Smith, on the bill.

SENATOR MALCOLM SMITH: As an observation, Mr. President, I am -- while I do not oppose the legislation, there is one concern that I do have. And that relates to opening this particular market. Simply because there is a new proliferation of identity crime that is going on, and part of it has to do with the market itself as it relates to the issuing of credit cards and the different entities that are doing so.

I think by offering the opportunity for different groups to get involved in this particular area, what it does do is offer and open up a potential for different particular crime elements, such as the identity crime market that is growing at a rapid rate.

I would hope that while this piece of legislation I believe will pass, that that is an area which we pay some close attention to. And just as we use the foresight in sort of preemptive strikes of different situations that have come before us, I would hope that this one in particular, while I believe it is a fairly decent piece of legislation, I think it does open up another market, and that is the identity crime market, which I think is growing at a rapid rate.

I just want us to be very careful about that.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator will yield for a question.

ACTING PRESIDENT MEIER: Senator

Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Through you, Mr. President, was it your intent to exclude small businesses when you wrote this legislation? If I'm correct, the SBA's definition of a small business is a 50 employees or less.

SENATOR SEWARD: Mr. President, in the other subsections of Section 4238 of the Insurance Law, it does list -- I believe there are nine groups currently that are eligible to become involved with this group annuity. And employers currently are among that group. So we're certainly not precluding them under this legislation.

SENATOR HASSELL-THOMPSON: If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes. Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR HASSELL-THOMPSON: That doesn't answer my question in terms of small businesses as employers. Small business is defined by the SBA as 50 employees or less. This has a minimum of 200 members in order to qualify to become a part of this annuity.

SENATOR SEWARD: Mr. President, the small businesses to which the Senator refers are currently eligible to have these group annuities so that -- for their employees.

And so the 200 membership figure does not pertain to them. It merely pertains to the specific groups that are covered under this legislation, as a means of defining and setting parameters for these various new groups that we are adding to the list of those who are eligible to offer a group annuity contract.

SENATOR HASSELL-THOMPSON: If the Senator will yield for a final question.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you. Through you, Mr. President.

Just to be very clear, then, by putting this language in for new groups, is it does not affect or preclude any existing group that has a number that's less than?

SENATOR SEWARD: Mr. President, the Senator is correct.

SENATOR HASSELL-THOMPSON: Thank you. Thank you.

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Will the sponsor yield for one brief question?

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President, just for clarity's sake. I was

listening to Senator Hassell-Thompson's comments, and if the sponsor would just elaborate for me.

According to Senator Hassell-Thompson, small business is defined as 50 employees or less. This legislation enables annuity contracts for organizations in excess of 200. What happens to organizations who employ individuals between the number of 50 and 200? Are they eligible?

SENATOR SEWARD: Well, Mr. President, I think we are talking about two different situations and circumstances. The employers of any size are currently eligible to have group annuities marketed to them and -- through them to any of their employees. Employers of any size. The current law does not distinguish between those under or any number, for that matter.

This legislation, as we add additional groups by talking about associations, financial affinity groups, and that type of definition, we are citing the 200 figure frankly to mirror what's existing law when it comes to group life contracts and

group accident and health contracts.

And I must say, that's been in the statutes now for nearly twenty years. And as I've said earlier, I am not aware of any complaints or problems associated with the definitions that we're using in this legislation that are currently in the law.

SENATOR HEVESI: Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: Thank you, Madam President.

I commend Senator Seward. With the breakdown federally of the differences between financial institutions, insurance and banking, in order for insurance companies to remain competitive in New York State, these expansions are critically necessary.

And they're particularly necessary as it relates to the other areas of banks and

financial institutions as well as competition from without the state.

So for those reasons, I vote in the affirmative.

THE PRESIDENT: I'm going to call the roll.

And Senator Paterson, to explain your vote.

SENATOR PATERSON: Yes, Madam President.

As Senator Seward is keenly aware, the federal government has addressed this issue as well, with the Gramm-Leach-Bliley legislation that really is expanding the marketplace and basically says that a lot of those institutions are not separate, they're pretty much doing the same work and they're having access to some of the variables of business that were not applicable earlier. And this legislation basically furthers that.

I just had a little question about the classification of what a member association is as compared with an association of common interest. I think that's really negligible when it comes to the expansion that

can be created in this legislation.

So I vote in the affirmative.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 92, by Senator Balboni, Senate Print 860, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

SENATOR LACHMAN: Explanation.

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

SENATOR BALBONI: Yes, thank you, Madam President.

This particular measure would seek to amend Section 511(1)(a) of the Vehicle and Traffic Law as it relates to the ability of the prosecutor to prove that the violator had intent that their license was in fact

suspended at the time in which they are brought before the judge.

This has passed this house previously, unanimously. And last year I think there was one no vote.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, will the Senator from Long Island yield to a question or two.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, Madam President.

SENATOR LACHMAN: Though I admit there are differences between your bill and Senator Marcellino's bill, and both are good bills, there are also nuances of similarity. Would you consider amending the three-year to two-year term now or in the future?

SENATOR BALBONI: What three-year or two-year term?

SENATOR LACHMAN: Well, since Senator Marcellino's bill speaks about -

SENATOR BALBONI: I'm sorry, I'm

unfamiliar with Senator Marcellino's bill.

SENATOR LACHMAN: -- speaks about three events over a period of time.

SENATOR BALBONI: I'm sorry, I'm unfamiliar.

SENATOR LACHMAN: Senator Marcellino's bill speaks about revocation or suspension of one's license. But there would have to be -- he's cutting it down from three suspensions to two suspensions.

SENATOR BALBONI: I don't know, what do you think? How did you vote last time?

SENATOR LACHMAN: I voted in favor of it.

SENATOR BALBONI: I think I did too. So why don't we go -- well, I guess -

SENATOR LACHMAN: Well, the question is why should one have three suspensions and revocations and the other one two.

SENATOR BALBONI: I'm not following you.

SENATOR LACHMAN: The basis of your bill is, if I read it correctly, that it

does not come into focus unless there are three suspensions or revocations.

SENATOR BALBONI: I think we're in a different place here. Madam President, through you.

Senator, my bill relates to the requirement of the mens rea; that is, that the individual make an allocution or an acknowledgment or that the prosecution is able to prove that at the time the individual was pulled over and stopped, that the individual was operating a motor vehicle on a public highway while their license was in fact suspended.

I would direct -- for more information on this, I would direct you to the commentaries located in the McKinney's, Section 511, which details the difficulty that a prosecutor has when trying to prove that an individual in fact knew that their license was suspended.

With the two or three or four or five, all that is is a demarcation when it should be reasonable to shift the burden of proving that the individual received the

notice and make it a rebuttable presumption from an evidentiary standpoint for the purposes of prosecution on the violator.

And as you know -- and I refer you to McCormick on evidence. It talks about this very appropriate shift when the individual has information that is in their possession and their possession only. I think that these - that's where the bill is going.

And so whatever the other bill was referring to, my bill refers to the prosecutor's burden of proof and how they actually reach the ability to prosecute.

I hope that is of some help to your question.

SENATOR LACHMAN: Madam President, on this issue and another issue, if the Senator would yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: I'm not an attorney, Senator Balboni. I can quote trivia from history, but not legal precedent. And I

respect your knowledge of the law.

But since the basis of Senator Marcellino's bill has been changed from three to two suspensions before the trigger goes into effect, you're saying you would still maintain the three suspensions or revocations?

SENATOR BALBONI: Senator, I think we're mixing apples and oranges. I believe, as you've described it, Senator Marcellino's particular measure refers to a penalty phase or the crime in which someone could be charged against, predicated upon the number of times of violation.

My bill refers to unlicensed -- I'm sorry, aggravated unlicensed driving in the first degree, and therefore only talks about the ability to prove that element of the offense as it relates to the individual's knowledge that their license was revoked or suspended.

SENATOR LACHMAN: Will the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Okay, on your bill, Senator Balboni, there is no mention here of the knowledge of the police in the county to these revocations or suspensions. In response to a question that Senator Marcellino was asked, he said he guessed that the police as well as the Department of Motor Vehicles are aware of these suspensions. And we have been told by our learned counsel that is not necessarily the fact.

If it is not necessarily the fact, then how will this bill be implemented without checking with Albany first?

SENATOR BALBONI: I'm sorry, and your question is? Do I disagree or agree with Senator Marcellino's statement?

SENATOR LACHMAN: No, do you - do the police actually have a record of these suspensions and revocations of license?

SENATOR BALBONI: No, they don't.

SENATOR LACHMAN: Pardon?

SENATOR BALBONI: No, they do not.

SENATOR LACHMAN: All right.

Would it therefore not be a better bill if the police were included in here? Because if the police were not included in here, how in the world would they know unless they checked with Albany, which would take several days or a week?

SENATOR BALBONI: Senator, in response to your question, that would be an appropriate inquiry should we not have the age of computers. The police are not authorized to maintain a separate database in regard to DMV suspensions or revocations. That is maintained by the Department of Motor Vehicles. That is easily accessible from the patrol car. Well, it's -- I shouldn't speak for every police department in the state, but I assume everybody has access to DMV records.

SENATOR LACHMAN: So every patrol car would have access to this?

SENATOR BALBONI: You could call the station -

SENATOR LACHMAN: Not in my district in Brooklyn.

SENATOR BALBONI: You can call the station on the radio, you can ask them to

do a check. You can check right there.

You know, there -- these -- the - I'm trying to find the exact reference, Senator. I believe -- I believe it's in the case of People versus Parsons, out of Monroe, where they talk about the procedure by which the police follow and whether or not the DMV records constitutes a hearsay statement and whether or not it falls under the business record exception and the accessibility and reliability of the DMV records.

You would be accurate to question the veracity or the ability to maintain accurate records that reflect the current status of a particular driver in the State of New York. That's a valid concern of any major municipality. However, that is precisely why the number of times that I have chosen to make this effective is three as opposed to two or one.

And remember, to further -

SENATOR LACHMAN: So what you're saying is you're giving the driver the benefit of the doubt until this is checked.

SENATOR BALBONI: That's correct.

Well, no, I'm giving the driver the benefit of the doubt that there may be facts and circumstances that don't always line up in the same way -- that they may live in different addresses, they may not actually have gotten notice, the records of the DMV may not have been updated in a particular instance.

But these are things that -- would I give -- you know what I'd do? I'd give a -

SENATOR LACHMAN: But wouldn't it be easier if the police received this -

THE PRESIDENT: Senator Balboni has the floor.

You may proceed, Senator Balboni.

SENATOR BALBONI: Senator Lachman.

SENATOR LACHMAN: Wouldn't it be easier if the police have this information, rather than -

SENATOR BALBONI: No.

THE PRESIDENT: Gentlemen, as I said, Senator Balboni has the floor.

SENATOR BALBONI: Thank you, Madam President.

THE PRESIDENT: If you would like

to yield, if you'd like to let me know, Senator, I'll give Senator Lachman the floor.

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

THE PRESIDENT: Do you yield, Senator Balboni?

SENATOR BALBONI: No, I don't. I'm making a comment now.

THE PRESIDENT: All right. You may proceed, then.

SENATOR BALBONI: Thank you.

The police have no business keeping the records, and there's no reason that can be articulated as to why they would have a better job of keeping records than the DMV. I mean, DMV is authorized, we fund them, they maintain the database. There would be no practical effect that would inure to the benefit of a driver or a law enforcement officer of transferring the responsibility of maintaining the records or having the database within the police department.

SENATOR LACHMAN: Through you, Madam Chair, to Senator Balboni. I happen to differ with him in his answer to the last

question. But I have one question further to ask him, with his permission.

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: What are the other outcomes for a motorist being stopped for AOU? Does the motorist get a ticket? Does the motorist get arrested on the spot? Will the vehicle be towed? Or is this dependent upon local police authority, who might not have the necessary information at the time this occurs?

SENATOR BALBONI: I would refer you to Section 511 of McKinney's, page 364. I will quote. This is the commentary, and the commentary is provided by Joseph Terriari [ph]. "The reality of the situation is that when a police officer stops the operator of a motor vehicle for a traffic infraction, the police officer either calls into his police headquarters for a computer check of the

operator's license or, where available, may check the operator's record of conviction by using the computer located in the police car. In either event, the police officer will ascertain, either from a desk sergeant or other police official or from the computer check, if the defendant's privilege of operating a motor vehicle in the state of New York has been suspended. It should be noted that it has been held that a police officer who conducted a computer check and determined that the driving privilege of the owner of a motor vehicle has been suspended provided a factual basis for a legal stop of the vehicle and was based upon reasonable suspicion. People v. Selebis [ph]."

SENATOR LACHMAN: Madam Chair, if Senator Balboni will accept another question.

THE PRESIDENT: Senator, do you yield for a question?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Senator Balboni, that would respond to my second question and not my third question, or my last

question. What you're saying basically is if the police -- or McKinney's is saying if the polices have this data, then they would know what to do.

But what will they do? What will be the penalty to the individual driver? Will his car be towed? Will he be arrested on the spot? Will he receive a revocation again of the license? That you haven't responded to.

SENATOR BALBONI: Madam President, through you, that's because there is no response. Anybody in this chamber has as much information as I would about that. It depends upon the circumstances.

We're not into the hypothetical here, but if there was a driving while intoxicated, it could be an immediate arrest. In fact, the President, the -- Madam President would probably know a lot more about this situation than I certainly do, having been a judge of the Supreme Court.

SENATOR LACHMAN: I thought you meant the President of the United States, but I'll accept Madam President as well. Go ahead.

SENATOR BALBONI: And therefore, you know, I -- if after the debate we wish to get the real facts, then perhaps we can sit down with the Lieutenant Governor and we can get her take on this.

But it would depend upon the facts of the situation that presents to the police officer. As it does with every stop. If there is a threat to public safety, I would assume and I would expect that there would be an immediate arrest. If there was no public safety problem, they could issue an appearance ticket. They could stop the individual until a further check is done. They could administer a Breathalyzer.

There is a whole host of different steps that a police officer can and should take, depending on what situation is presented to him or her.

SENATOR LACHMAN: Madam Chair, on the bill.

THE PRESIDENT: As President, not chair, I will give you time and the floor to speak on the bill, Senator Lachman.

SENATOR LACHMAN: In my eyes

you're both the President and the chair, and a very effective one. Thank you.

As is Senator Balboni a very effective Senator, even though all my questions have not been totally answered. I look upon this somewhat as an imperfect bill, as much legislation we vote upon is imperfect. However, I will vote for the bill. But I would like to know the answers to some of the questions I have raised.

And as the members of the chamber realize, I seldom take this amount of time to raise questions and expect answers. The final question has not really been answered. And we hope in the future we can discuss this with you, Senator Balboni, and others, and perhaps have another bill that focuses on the answers.

Thank you, Madam President and chair.

THE PRESIDENT: Thank you, Senator.

Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, to clarify, would it be fair to say that there's a general understanding that when a person is stopped for operating a vehicle at a time that they are unlicensed that if there isn't a significant public danger exacerbated by intoxication or something, there probably would be an issuance of a ticket or summons and at the same time the individual would not be allowed to operate that vehicle anymore? That would be the general conclusion of a situation.

SENATOR BALBONI: Senator Paterson, I'm -- I'm sorry, Madam President, through you. Senator Paterson, I'm ill-equipped to comment as to what the possible actions of a police officer are in this state.

SENATOR PATERSON: Okay. Thank you, Senator.

Madam President, if the Senator

would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: In the memorandum that explains this piece of legislation, you say that its purpose is to stop the flagrant operation of vehicles by people that are unlicensed. What is a flagrant operation of a vehicle?

In other words, do you mean that they are openly and notoriously driving around without a license, in a sense almost scoffing at the way the law is?

SENATOR BALBONI: Madam President, through you, I am pleased to respond to the gentleman's question, because I actually have some information that might be relevant to the members of this chamber.

This is a very serious issue. That's why this bill has had the tremendous support it has had in the last two years.

This issue came to a head in 1993, as a result of a ridiculous number of fatal accidents. And I say ridiculous because the number of people who were driving unlicensed or with suspended licenses correlated in such a way as to defy logic with fatal accidents. Allow me to give you a couple of examples, Senator.

May 3, 1994, in Howard Beach, Queens, a family of three was killed by a driver with a license that was suspended 28 times. In Staten Island, on September 28, 1998, a Staten Island man was killed while riding with a driver who had a license suspended eight times. On July 9, 1994, an 18-month-old girl from the Bronx was killed by a driver who had four suspensions on his license. July 9 of 1994, a 6-year-old boy in the Bronx was struck by a driver who had his license suspended nine times. On July 14, 1994, a 66-year-old woman from the Bronx was struck and killed by a driver who had his license suspended six times. And on April 13 of 1992, a 26-year-old woman and her 4-year-old daughter were killed in East New York by a driver who had three suspensions

on their license.

When I say flagrant, perhaps flagrant is not the right word. The fact is that there seems to be some unexplainable correlation between an individual who would take to the streets with a suspended license, or without a license at all, and fatalities, pedestrian fatalities.

This is an attempt to respond to that tragedy, which is ongoing. And what we're trying to do here is give prosecutors an easier way of proving that someone is in fact driving knowing that they have a suspended license.

In all the cases I read to you, if my bill were law, that individual who caused those fatalities in the Senate districts among this house may not have been able to have been driving. That's the reality of this piece of legislation.

SENATOR PATERSON: Madam President, on the bill.

I think that Senator Balboni referred to one instance that I remember just from hearing about it in the media, that

actually one of the victims in the car accident in Staten Island was a police officer. And that just furthers the contention that Senator Balboni is making about how severe the operation of an unlicensed vehicle is.

If the Senator would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I would Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: Senator, the reason I asked you the question is that I wondered if the legislation, the lack of which does lead to these rather severe and tragic circumstances, but that the legislation itself speaks to, as you said before, the mens rea of the operator, and that actually we're talking about the presumption of what the operator should know or should have known.

And my question is, is the presumption really rebuttable? Is there any

information that the operator can demonstrate that they did not know that their license was suspended or anything that rebuts the presumption carried in this legislation?

SENATOR BALBONI: Through you, Madam President. I have never worked in a district attorney's office, but I've spoken to about four or five different prosecutors on this very point. And there's two perspectives that should be considered.

First is the general evidentiary consideration that is throughout all of the texts that says it is an appropriate burden to be placed upon an individual who has information that nobody else has to bring that information forth to establish a point in law. That's the basic foundation of burdens of proof.

The individual says that they have not received notice of the suspension. The prosecutor is unable to truly prove that. And remember the burden under which the prosecutor operates. They must prove it by beyond a reasonable doubt. Not by preponderance, but beyond a reasonable doubt, the hardest level

of proof that we have in our judicial system, our justice system.

What we do here is we shift the burden after three times to the individual. After three times, Senator. Not after the first time, not after the second time, three times. And we say: Prove it. Show us an affidavit that says you were living someplace else. Show us another affidavit where you swear that you reviewed your mail and you never received it. Show us an affidavit that says you haven't been living in the state for a period of time.

And now you know what happens after you bring proof. The burden now comes back -

SENATOR PATERSON: Right.

SENATOR BALBONI: -- to the prosecutor, who now must prove that your affidavit is false.

Now put yourself in the prosecutor's shoes. And remember what we're trying to do here. We're trying to prevent people who've had three or more suspensions from operating a vehicle. I mean, the proof is in the stories that I've read to you.

Do you know in 1993 they did a study of the number of individuals who were arrested for unlicensed operation? It was 8200 people in 1993, statewide. Think of that for a second. 8200 people operating a car with either a suspended license or a revoked license. You know, it's -- at that proportion, I would argue that's an epidemic.

So what we're trying to do here is we're trying to allow the prosecutor to perhaps place some of the responsibility for proving what happened upon the defendant. Let them say what they were doing and why they didn't respond, after the third time.

SENATOR PATERSON: Madam President, on the bill. If the Senator would continue to yield.

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

SENATOR PATERSON: I have not been as aware until today of the interest that the District Attorneys Association has had in this problem. We've heard on two separate pieces of legislation, two different ideas that the association has to try to remedy this

problem. We have a third area that came up in the discussion that was never actually addressed in any of the legislation today but seems to be even more flagrant than the attempts by Senators Marcellino and Senator Balboni in this particular bill to address.

If Senator Balboni would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

SENATOR PATERSON: It would be proper, then, to summarize by saying that as it stands now, the burden of proof on the district attorney is really to prove a negative; in other words, to prove -

SENATOR BALBONI: That you did not receive it, that is correct.

SENATOR PATERSON: Right, okay.

SENATOR BALBONI: In fact, if I may, Madam President, through you, there is a presumption that once something is mailed, it's presumed to have been received.

SENATOR PATERSON: Right. And, Madam President, moreover, that if something

is mailed, you somehow have to prove that it was received when the defendant says it wasn't, and it's as easy as the defendant throwing it out. The fact that it doesn't exist creates reasonable doubt. Is that correct, Senator?

SENATOR BALBONI: Yes.

SENATOR PATERSON: Thank you.

A final question for Senator Balboni, if he is willing to yield.

SENATOR BALBONI: Yes, Madam President.

SENATOR PATERSON: Then, Senator, I guess my last question, relating again to burden of proof, is just simply if we switch this burden, as you would like -- and I think I will vote for it; I agree with you -- then is there anything left to those cases where the defendant honestly did not know the license was suspended? How does that defendant overcome the burden of proof?

If you can answer that question, I think we'll be perfectly fine.

SENATOR BALBONI: Well, I can answer that -- Madam President, through you, I

can answer that by saying to you that we've - we can't anticipate every defense, we can't anticipate every factual situation, we can't anticipate the response of the defendant.

However, we -- if you're voting for this measure, you're making a decision. And the public policy decision is that we're going to provide a rebuttable presumption, as opposed to strict liability.

That's the other way we could have done this. We could have enacted a statute that says upon the third suspension you are not presumed, you are in fact liable. We have chosen not to do that route even in the - against the backdrop of these tragic circumstances, because we're trying to prevent a miscarriage of justice.

Would we be able to have everything so that it will guarantee all of this? No. But again, public policy always has a portion that is based upon common sense. Through all the lawyer rigmarole, it always comes down to what is reasonable. And that is often the standard under the law.

It is my belief that -- and if you

vote for the bill and support this measure, you will join me in that belief -- that three suspensions is a reasonable point in time in which to say you're responsible.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Actually, Madam President, if Senator Balboni would yield for one more question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, you may not be familiar with a piece of legislation that came before us today, but I would assume -- and I just wanted to ask you about this -- that if we lowered the number of events that occur to two, that that would still basically meet the threshold of switching the burden of proof to the defendant.

SENATOR BALBONI: I'm sorry, Senator, I don't understand your question.

SENATOR PATERSON: In other

words, if we lower the number of times that a person is stopped to two rather than three, you don't have any problem, that doesn't change your desire to still pass this legislation and transfer the burden of proof to the defendant, does it?

SENATOR BALBONI: As I said in response to Senator Lachman's question, it's two different issues. One is a trigger as to what you could be charged with. Another is what you could be deemed to have knowledge of. It's two separate pieces of the law.

SENATOR PATERSON: Madam President, I'm aware that it's two separate pieces of the law.

I'm just saying that if it became one piece of the law -- in other words, I would assume that the reason that you used three instances is because that's what the law is today. And I'm just saying to you if the law changed -

SENATOR BALBONI: No, I'm sorry, Senator, let me stop you. That's not the reason why I chose that.

My choosing of three is

independent. It has nothing to do with the fact that it's three for aggravated, for the -- for two. It has nothing to do with that. And it's my belief that if you were to change, it would have no impact.

SENATOR PATERSON: Okay. All right, Madam President, I'll accept that.

And on the bill, it's interesting, the reason that I was questioning Senator Balboni is because I wanted to make sure that there was a rebuttable presumption. Because the way I read his legislation, it sounded like an irrebuttable presumption. It really did sound to me like there wasn't any evidence that the defendant could produce that would influence the court that there wasn't proper service.

But the more Senator Balboni illustrated the ridiculousness of the situation, one that he termed an epidemic, 8200 people operating vehicles with licenses that were either suspended or revoked, and the tragic consequences therein -- which is the reason that the licenses were removed from the operator for some period of time in the first

place -- almost persuades me that a strict liability standard is actually the standard we should actually use.

Perhaps I'm just reacting to hearing those dramatic instances and illustrations of death and injury caused by people who knew that their license was suspended or revoked and went out and just operated a vehicle anyway, as if it was something that couldn't have serious consequences.

So assuming that Senator Balboni wrote the legislation at a time when he could be more reasonable than perhaps I can be at this moment, I'll support the legislation as it stands now and make it a rebuttable presumption.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Would the sponsor yield, Madam President?

THE PRESIDENT: Does the sponsor yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed,

Senator Hevesi.

SENATOR HEVESI: Thank you.

Senator Balboni, I believe I fully understand what you're intending to do here, and I think it's certainly worthy. I just have a question for you as to -- well, let me lay out the situation.

An individual is driving, he has his license suspended one time. Presumably he may not have been notified. Okay? The next time he drives with a suspended license, he by definition knows he was driving with a suspended license. He was pulled over, an officer indicated that he was driving with a suspended license, and so he's notified then.

So why is it three in your bill instead of two?

SENATOR BALBONI: Madam President, through you. Senator Hevesi, would you -- to fill out your fact pattern, would you tell me how the license was suspended in the first place?

SENATOR HEVESI: How was the license suspended?

SENATOR BALBONI: How was the

license suspended.

SENATOR HEVESI: For whatever offense, additional offense the individual committed.

SENATOR BALBONI: Well, you - sorry. Madam President, through you. Senator, you're of course aware that there are a number of ways that you can have your license suspended. One of the ways in which you can have your license suspended is you miss a court date. In other words, you fail -- you get a speeding ticket, you don't show up in court.

Now, you may not have gotten the notice. You know you were speeding, you know you got stopped, but you don't know when the date is, so you don't show up in court. Your license is suspended automatically.

Now, at that point in time, they may have absolutely no notice that their license is suspended. And now, if there's a problem in notifying the individual, the same as it was about the original court date - let's say they moved and the mail is not forwarded. Now you get to the second case.

You may not know on the second circumstance that you're not driving.

However, the law of probabilities suggests, again in a background of reasonableness, that upon the three, you're going to know. They're going to catch up to you. And if you don't know, then what my bill says is you get a rebuttable presumption to prove that you have in fact been moving around and the mail has not been forwarded to you or someone else has taken the mail or there's been a problem in delivery.

SENATOR HEVESI: Madam President, will the sponsor continue to yield.

SENATOR BALBONI: Yes. Yes, I do, Madam President. Thank you.

THE PRESIDENT: Senator, you may proceed.

SENATOR HEVESI: Senator Balboni, I fully understand that on the initial suspension the individual may have had his license suspended for failure to pay a fine or what have you, and therefore may not have been notified.

But, you know, we've used the

terminology here had their license suspended seven times. That's not actually accurate. It's just that you were -- you had an additional offense where you were caught after the first time driving without a license. Isn't that accurate?

SENATOR BALBONI: No, it depends upon the -- Madam President, through you, it depends upon the circumstances. Circumstances are as varied as the people who get stopped.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: Go ahead, Senator.

SENATOR HEVESI: Thank you. Through you, Madam President, I understand how the first time an individual gets an aggravated unlicensed operation. Okay? I understand that, without -- I'm sorry, the license is suspended the first time.

The first time they are charged with aggravated unlicensed operation is while they're driving their vehicle; isn't that correct?

SENATOR BALBONI: That's correct.

SENATOR HEVESI: Okay. Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Is there any circumstance where an individual can get an aggravated unlicensed operation without having driven their vehicle?

SENATOR BALBONI: No.

SENATOR HEVESI: Thank you. Madam President, would the sponsor continue to yield?

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

SENATOR BALBONI: Yes, Madam President, I'm sorry.

THE PRESIDENT: That's all right. You may proceed.

SENATOR BALBONI: I'm concentrating on his questions.

SENATOR HEVESI: Thank you.

Madam President, through you. So I don't understand how the first time that an individual is stopped and is notified after the police run a check that he is driving with a suspended license that that individual doesn't now have the knowledge that he's driving with a suspended license.

And if that's true, then I don't know why we have to do three times before the individual knows. Why can't we do it on the second or actually on the first?

Because as we're talking through this, your situation where the individual's license was suspended, that happened. But the first time you get a charge of aggravated unlicensed operation, you can only get it while you're driving. And so you're notified that very first time that your license was suspended. So I don't know why we have to do three, I don't know why we have to do two, I think we could do one.

SENATOR BALBONI: Madam President, in order to respond to the gentleman, I believe I understand what your - I don't want to use the word "confusion," but

your lack of understanding on this particular point.

And by the way, Senator Hevesi, this is kind of a fine point of law. And if you don't do this stuff in the Vehicle and Traffic Law every day, it's not that easy to understand. I certainly have had a ton of problems with it, and I actually have done practice in this area.

As a predicate for being charged with aggravated unlicensed operation, you need to be stopped. But your suspensions can be multiple prior to the time that you're stopped. Senator Sampson is shaking his head, and so is Senator Hassell-Thompson. So I know I'm right.

(Laughter.)

SENATOR BALBONI: This is a - don't just sit there, help me with this.

What we have here is that -- you know, I can give you circumstances right now. You have a traffic ticket, a speeding ticket, you miss the court date. The day you miss the court date, you're stopped for suspicion of DWI. You refuse the Breathalyzer. Well,

you're suspended on the date you failed to make it, you're suspended on the mere refusal, which is in Section 511, it's 511(2)(i)(i). And then you take another one in that area, a mandatory surcharge pending a prosecution of violation of Section 1192.

Three suspensions, boom, right there. Now you're caught. Now we're saying that person, if they're stopped, they should know that they're in a heap of trouble and they should get themselves to court, that that's reasonable.

But you see the truncated time period that that can occur in? And that's why we give some leeway.

The other comment is a political comment. I am thrilled to hear Senator Paterson say that he'd like to adopt a strict liability standard. That's terrific. I am thrilled that you don't want to go to three. You think one is enough, why give them three.

Folks, let's join a chorus and direct it down the hall, because we can't even get this bill on an agenda. I'm not saying get it to the floor, I'm saying on an agenda.

So the Assembly of the State of New York has absolutely no interest in affecting this area of law.

And so what -- the reason why I've done this is I've tried to reach a reasonable approach that is predicated upon fairness. You may want to go more conservative. Fine. Senator Paterson might want to be more conservative. Terrific. My suggestion is that we all take this support, put it into this particular bill, and then work on the Assembly to get them to at least have a hearing on this, bring it to the floor and debate it.

Because I don't want to sound too dramatic, but people are dying. This is not a frivolous measure. This is something that deserves our attention.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I would.

SENATOR HEVESI: Thank you. Through you, Madam President, I believe we all

share the concerns expressed here, and in the debate on Senator Marcellino's bill before. And I understand your explanation.

My question to you is, in light of what you have just elaborated, why don't we provide prosecutors with the tool that you are talking about by saying that if you've been convicted once of aggravated unlicensed operation, that that should be sufficient that you knew your license was suspended? Why not go that approach, and that way we'd eliminate all the questions here in terms of your time frame and suspensions from different offenses. Wouldn't that achieve what you're looking to achieve?

SENATOR BALBONI: Well, Madam President, through you. That also -- and, Senator, I think you're presuming or perhaps not taking into account that there is a period of time between arrest and trial, sometimes a year. I know it sounds like a long period of time, but that can happen in terms of adjournments, court congestion. You might not actually get to a conviction.

Now, there's a period of time in

which you may continue to have violations. That's where this would kick in. That's what I really want to focus on. That's what the relevance of this section is.

And the other thing is this. I don't do this for a living. But the men and women who do tell me that this is a good idea, that this is a fair idea. And you know what? AAA thinks it's a great idea too. I've got a memo in support. They said go with the bill.

So again, the folks who are experts in this area think this is a good, balanced approach.

SENATOR HEVESI: Thank you.

Madam President, will the sponsor continue to yield?

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, Madam President.

SENATOR HEVESI: Senator Balboni, right now prosecutors who don't have this tool that you are proposing to provide to them, are you suggesting that with great frequency they are not prosecuting because they are unable to

make the case, and as a result they are not deterring individuals from driving without valid licenses?

And the reason I ask that, Senator Balboni -- why don't I not be coy about this -- you suggested that the lack of this legislation was related to the number of deaths. And my question to you is, if the individuals who you discussed before who had been involved in fatal accidents had nine revocations -- you know, a whole slew of revocations -- doesn't that indicate, in some fashion, aren't we assuming that some of those were convictions for aggravated unlicensed operation, and so we got the conviction?

And so it's not the fact that prosecutors don't have the tools, but it's the fact that the law is exceedingly lenient on individuals who are convicted of these offenses.

SENATOR BALBONI: Not, Senator - I'm sorry, Madam President, through you. Not according, again, to the commentary provided in the McKinney's section.

This details the fact that as a

result of this far heavier burden of having to prove that someone else had knowledge, without their admission that they had knowledge, and prove that by beyond a reasonable doubt, prosecutors are pleading these cases down every day.

That is the reality of the practitioner in these courts. You go in and you don't get a conviction on unlicensed aggravated operation. What you get is a plea bargain. Because the prosecutor doesn't want to have to try to leap the hurdle associated with getting a defendant to admit that they knew they were driving with a suspended license.

SENATOR HEVESI: Okay. Thank you.

Madam President, on the bill.

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

SENATOR HEVESI: Thank you, Madam President.

I applaud Senator Balboni for this legislation and for his lengthy explanation. I would again suggest that at the same time

that we're -- undeniably, this bill should pass. The Assembly should pass this legislation also so it should become law. Prosecutors should have the appropriate tools.

And if what Senator Balboni just suggested is true, that a great majority of the cases are being pled out, that's a tremendous problem. And on the ground level, it's even more of a problem than the problem which I've articulated, which is that we're lenient upon conviction. Okay?

So now, if this is accurate and we pass this legislation, we can start racking up the number of aggravated unlicensed operation convictions that hopefully will result in individuals getting additional penalties.

So this was educational for me today. Now -- see, before, I was under the mistaken presumption that when we said somebody's license has been suspended seven or eight times, I was only mentally conceptualizing the fact that they had been convicted and prosecuted successfully for aggravated unlicensed operation, where nine suspensions could have resulted from three or

four different incidents.

We need to tighten up here regardless. This is a good bill. But I think it also highlights the fact that even if we do give prosecutors the tools that Senator Balboni proposes to do, to give additional convictions for aggravated unlicensed operation, you still have 13 opportunities to be successfully prosecuted for aggravated unlicensed operation before felony penalties kick in.

I submit to you that that is the real problem. It doesn't diminish in any way the problem that Senator Balboni brings up today. And in many ways, Senator, knowing what I now know, your legislation is going to be more efficacious in combating this problem than the bill we passed earlier today, though both were steps in the right direction.

And the Assembly should act on this. And I don't -- you know, let's be bipartisan here. We've got to do something about this. You know, when you have individuals who are driving around, especially with the correlation that Senator Balboni laid

out for us between license suspensions or revocations and fatal accidents, I mean, the numbers are blindingly clear. I don't know why we haven't acted any sooner.

So today with this action, hopefully we'll give prosecutors the tools we need. But we've got to go the additional step.

And I was asked the question before what would I propose. I would propose the following. That given the tools that Senator Balboni's legislation gives to prosecutors, after the first conviction for aggravated unlicensed operation in the third degree, you have the penalties that you have. The next offense should automatically be unlicensed operation, aggravated unlicensed operation in the second degree. A misdemeanor, but of a higher degree.

And with the third -- because these are not suspensions from the failure to pay fines, these are the consequence of you having been stopped in your automobile without a valid license. And on the third one, it's an E felony. One, two, three. Not that you have

to wait until the 14th offense where you were stopped driving for there to be felony penalties. I mean, let's get serious already on this issue. This is outrageous.

So I support Senator Balboni's bill. And let it be a call out to everybody, in this chamber and in the other chamber and to the Governor and to the press, to get active on this issue, that we're going to be completely intolerant of individuals who flagrantly flaunt the law and drive with license suspensions and revocations. And particularly those who have done it after they've already been convicted of aggravated unlicensed operation. I mean, enough is enough already.

Madam President, I support this legislation. I commend Senator Balboni. And let a call go out to everybody, we've got to take action on this and save people's lives.

THE PRESIDENT: Senator Duane.

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

I know that today the sponsor of this legislation, you know, has put forward

his bill, and I certainly appreciate what it is that he's trying to achieve. But I still think that because his bill presumes that a driver with three suspensions would be presumed to have knowledge of the suspensions, and I find that troubling.

Senator Marcellino's legislation says two as opposed to three suspensions will cause someone to be charged with aggravated unlicensed operation. I voted for Senator Marcellino's bill. I'm not going to vote for Senator Balboni's bill.

I think that there is something terribly wrong, though, in that the sponsors of each of the legislation, as I heard it, were indicating that they didn't really know enough about the other legislation to comment on it. And I think maybe that's the flaw of our committee system, that both of these bills were not fully explored in the committee, or whatever happened there, because in fact I think that's where this should have occurred.

For both of those bills to have arrived on the floor at the same time I just think is wrong and, frankly, embarrassing to

this chamber. I think that we would need to know precisely how those two bills would work together or find a way to combine those two bills into one bill, or perhaps put these together with other pieces of legislation on these issues and make a package of legislation that we could have more fully explored in committee and then here on the floor.

I don't think it's any big deal that, you know, we made an error or there's something wrong in the way these came to the floor or that it's, you know, a terrible thing that two authors of legislation didn't really know that much about each other's legislation. Mistakes happen. Confusions sometimes happen. I don't think we should be afraid to admit that that's happened. I think one of the most generous things that a person can do, and most gentlemanly or ladylike things that a person can go is to acknowledge that there's a mistake and try to use that to benefit all of us, and in this case to benefit the State of New York legislatively.

I am just going to add a little bit as to why I think that Senator Balboni's

legislation about the expectation or just the flat-out fact that someone is supposed to have knowledge of suspensions. Yesterday's Newsday, which I don't always read, but I did happen to read it yesterday, has a very lengthy article about a DMV making horrendous mistakes about license suspensions.

Granted, it's about Suffolk County and not Nassau County. But still, I think that this should be happening throughout the state. Senator Lachman questioned what would happen if someone was pulled over. And in fact, something terrible and wrong would happen due to mistakes that would be made by the DMV.

So again, while I voted in favor of Senator Marcellino's bill, I am disturbed about this presumption that someone would know about their suspensions and other charges. Because people move, and the DMV makes mistakes. And I think that we need to factor that in when we look at what's happening with the legislation on the floor today.

I don't think that there's a perfect remedy for how it is that we can

address the issues or the discrepancies between pieces of legislation which come to the floor. I do think we could all work a little bit harder and look at the legislation, especially when they come to us on the same day, to see how they impact on each other, and certainly to try to address that. I mean, it's so obvious if they arrive here on the floor at the same day and just one calendar number apart.

But that being said, that didn't happen today. But we can acknowledge that we should have seen their impact on each other and try to remedy that, and I hope that we'll be able to do that in the future.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield to a question, Senator Balboni?

SENATOR BALBONI: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator

Balboni, we've been hearing on both of these bills regarding suspended licenses, operating a vehicle aggravated with a suspended license.

SENATOR BALBONI: Right.

SENATOR ONORATO: How does it differentiate -- there's two parts to this - with an unlicensed driver who had never been issued a license? Because we know we have so many of these people. What is the difference from the penalties between an unlicensed driver who had never received a license committing these very same acts?

And the second part of the question is you made a mention before that you wouldn't be so presumptuous as to know how a police officer would act if they stopped an individual motorist that had a great many suspensions or revocations or whatever.

What could they be authorized to do? Could they be authorized not only to issue a summons, could they arrest him on the spot? Tow their vehicle? What would the police officer have the authorization to do under these circumstances?

SENATOR BALBONI: Senator

Onorato, you are giving me way too much credit. You're asking about several different sections of the law that I am unaware of.

SENATOR ONORATO: They're all under 511.

SENATOR BALBONI: No, they're not. And if you read them, you'd see that they aren't.

And therefore, since it's outside the purview of this particular bill, I am unable to answer these questions.

But if you want to get together later for a cup of coffee, that's fine too.

SEMATOR ESPADA: Mr. President.

ACTING PRESIDENT MEIER: Senator Espada.

SEMATOR ESPADA: Thank you very much. On the bill.

I'm not a lawyer, I'm a layperson. But one of the tragedies that was attached to the explanation or the need for this bill took place in my district. Not too long ago a constituent, Ms. Chambers, came to me, and essentially her only daughter was waiting at a bus stop when someone who subsequently was

found out to have been driving with a suspended license ran her over, killed her only daughter.

I'm sitting here and I'm trying to crystallize my thoughts and my feelings as to how I would vote on this bill. And I keep coming back to the district attorney did not charge, for reasons that have to do with facts and evidence in the case, manslaughter or even a higher crime. The bottom line was that at the end of the day, there was indeed a plea, and the woman lost her only daughter to someone who was driving an unlicensed vehicle.

And as I try to remove my feelings from this matter, I keep coming back to the core of any individual's presumption of innocence. Because once we start, because of emotional reasons, because of tragedies that are essentially irrelevant to the issue at hand, we strip away at a very fundamental right that anyone charged with a crime must count on.

And so it is because of the principles of law that I must vote against this. Because with the current law, if the

district attorneys were given more resources, certainly the present law -- and people in my community, I could speculate -- would certainly find reason to impose the highest penalties on someone that would do such a thing if given the opportunity to hear all of the evidence.

But for the state to walk in with that kind of presumption and for citizens in this state to be stripped of their presumption of innocence I think is a big mistake.

Therefore, I will be voting in the negative.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I'm going to vote in favor of this bill, with just a suggestion to the sponsor who cited some pretty grave circumstances that came as a result of this bill's perhaps failure to pass in the past or the fact that we didn't think of it in the past.

A family of three being killed by a person who had 28 suspensions on their license is outrageous. I just felt that Senator

Hevesi, who certainly can speak for himself, and I offered some suggestions about the people in good faith, some suggestions that may have even gone further than what the bill intended.

I don't think that we were intending to in any way belittle the Assembly and why the Assembly is taking the actions that it does -- that's not either of our intent -- but just to point out what the value of the bill is.

The reason why bills get passed or don't get passed or why issues don't come out of committee or aren't heard on the floors I think are a responsibility that all of us, 211 legislators, had better think about and better take seriously. And maybe the reason that there have been so many discussions about rules and so some disagreement about procedure are as a result of the fact that we have blithely blamed everything on each other rather than trying to find a common ground.

And this would be one of the pieces of legislation that we could do that on. There were some that just passed last year

that we had introduced in this house, couldn't get the light of day, and had passed in the other house time after time, and only last year did we actually only address them.

So I don't think we should piously look at ourselves at having all the answers when we can work together to find a common answer.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

Earlier today we paid tribute to a gentleman named Gus Bliven, who I did not know. But we paid tribute to him, as I listened, because of the fairness with which he wrote the stories that he wrote and the way he reported what happened in these chambers.

And it would be very unfortunate for me that Gus Bliven is not here today so that on a nine byte the papers will not record that I voted against this bill in an arbitrary way. Because the papers will never indicate the kind of debate and discussion that occurs when these bills are put on the floor.

I certainly understand very clearly, at least in part, the attempt of my colleague Senator Balboni to pass this bill. And there are certainly aspects of it that make it more than worthy. But there is a portion of this bill that makes me very disturbed. And while, as it is my responsibility, obviously, to not make it more difficult for the DA to do his job, I have a constituency for whom I also have a responsibility.

And that constituency should not go into court with me having voted for a presumption, as opposed to proof, when in fact they have come before the courts for a criminal act. There is nothing in the discussion today that makes me believe that giving the DA the tool of presumption will not take away the constitutional rights of the people that I fight very hard to protect in this state.

And so therefore, Senator Balboni, I cannot vote for your bill. I can be very understanding of the attempt that we all are trying to create here. But I have this

sensation that there are attempts and there are acts that happen in this place that whittle away at the constitutionality of the people that I serve.

And so under those circumstances, I think that the bill is flawed from that perspective, and therefore I cannot support you.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I'm going to explain my vote.

I'm going to vote for the legislation. I understand the intent. I do have some reservations with regard to the possibility that this bill is one of those kinds of bills, like the safety belt law, that the full intent is to protect lives but, on

the other hand, it has led to or it has fed into the problem of racial profiling as it relates to traffic stops on highways and roads in our state and across the nation.

So with that reservation, I'm voting yes on this legislation. And I certainly hope that we're not doing something that supports the problem or that feeds into the problem of racial profiling.

Thank you. I'm voting yes.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the affirmative.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I'm going to vote yes on this bill, as I did on my own bill earlier. The debate that we've had in this house, it's a good debate. Perhaps somewhat lengthy, but a good debate. It brought out a lot of interesting areas for discussion.

I point to the other chamber. And I welcome, my colleagues across the aisle, your support. The other chamber has not engaged at all in this debate. The other

chamber has not brought up this very, very, very serious topic in committee, on calendar, and in debate on the floor. They will not give it a chance.

You cannot say it's even because it was sponsored by a Minority member over there, because it's not. It's sponsored by a Majority member in the other house, and they still do not see fit to debate this measure or anything like it.

I welcome and urge you to join us, speak to your colleagues on the other side in the other chamber, and please let's bring this bill out. Because I think this is important. Senator Balboni's statistics of people who are being killed and maimed by people who drive with suspended licenses is a disgrace that must be attended to and must be talked about and must be ended once and for all.

So I welcome your help. I vote aye.

ACTING PRESIDENT MEIER: Senator Marcellino will be recorded in the affirmative.

Senator Espada, to explain his

vote.

SEMATOR ESPADA: Indeed, to explain my vote. Thank you, Mr. President.

I just wanted, by way of explanation, to respond to this institutional paralysis. And we keep pointing fingers of blame this way and that way.

You know, I must tell you, and I'm dead serious, I think that perhaps one of the ways is for us to lead from this chamber together. And the way that, to us, what that would mean, to translate it to something practical, is to have someone as knowledgeable as Senator Hevesi or others that have spoken eloquently on this bill be the sponsors of the bill.

I think that we need to break through that logjam, by not pointing to the other side, but we're really taking leadership and having democracy rein supreme here in very practical ways. Clearly the knowledge is there, clearly the intent is shared, the purposes are clear. Even though I disagree, as I will vote no on this bill, disagree with it, I think as to process and other things of

substance that we could come together on, I think that's what we have to do.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Espada will be recorded in the affirmative.

Senator Balboni, to explain his vote.

SENATOR BALBONI: To explain my vote.

You know, I hate when this happens. We have this great debate, and I lose more votes on the bill than I had the year when it just went through on noncontroversial. And that always works that way.

But I just must rise and thank everybody for their concern. But it's always amazing to me, I have one Senator who laments we didn't bring these two bills together even though they're completely different and it's two different sections of the law -- and if he took the time to read it, he might see that. Another Senator says, well, I'm not the right sponsor because I don't know enough about the issue.

But, you know, notwithstanding

that, here is the reality. We can sit and talk about freedom in this chamber, freedom in that chamber. An idea is an idea. A constituency is a constituency. And the people who we represent deserve the best we can do.

So notwithstanding the protestations that we don't have to point to the other house when we don't move on an issue in the house, the Assembly is the first one who points the finger here and says that we are not doing our job.

Well, baloney, ladies and gentlemen. You've seen fit to support this. Take -- all of us together take the idea, the idea not for us but for the people we represent, and let's make it a reality.

I vote aye, Mr. President, thank you.

ACTING PRESIDENT MEIER: Senator Balboni will be recorded in the affirmative.

With regard to Senator Espada, Senator Espada will be recorded in the negative.

SEMATOR ESPADA: If you could,

please, in the negative.

ACTING PRESIDENT MEIER: Yes, Senator, thank you. In the negative.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, to explain my vote.

Being rather full from these two debates, having baloney, potato chips, and apples, I'm going to vote for this bill also, even though it's led Senator Balboni to drink way too much coffee.

(Laughter.)

SENATOR STACHOWSKI: But I think it's a good bill. I think it helps to get at some of the problems we have with people driving with suspended licenses.

And hopefully this year, rather than all the previous times, hopefully it will be taken up in the other house and we'll have a law to start addressing this problem in reality and not just in proposed legislation.

I vote aye.

ACTING PRESIDENT MEIER: Senator Stachowski will be recorded in the affirmative.

The Secretary has asked if I could ask the negative votes to please raise your hands and be counted.

THE SECRETARY: Those recorded in the negative on Calendar Number 92 are Senators Duane, Espada, Gonzalez, and Hassell-Thompson. Also Senator A. Smith. Ayes, 52. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Gonzalez, why do you rise?

SENATOR GONZALEZ: Mr. President, I'm requesting unanimous consent to be recorded in the negative on Calendar Number 89.

ACTING PRESIDENT MEIER: Without objection, Senator Gonzalez will be recorded in the negative on Calendar 89.

Senator Morahan.

SENATOR MORAHAN: Mr. President, I move that we adjourn until Monday, March 19th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until

Monday, March 19th, 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 2:40 p.m., the Senate adjourned.)