NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order, please.

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: With us this afternoon to give the invocation is Rabbi Shmuel M. Butman, from Lubavitch Youth Organization, in Brooklyn.

RABBI BUTMAN: Thank you very much, Madam Chairman.

Let us pray together.

We're here every year around this time. It's to celebrate the 100th birthday, or the beginning of the centennial year of the Rebbe Menachem M. Schneerson, the leader of the Chabad Lubavitch movement.

It is customary to see the chapter and psalm that corresponds to the year in which a person enters. Which means when a person becomes 99 years, he says Psalm Number 100. And Psalm Number 100 is called, in

Hebrew, Mizmor L'Todah, which means the Psalm of Thanks, of giving thanks to Almighty God.

And in this psalm King David speaks to each and every one of us and tells us about the importance of thanksgiving, of giving thanks to God on a steady basis, on a daily basis. As a matter of fact, in our liturgy we do this three times a year.

I know in America there's a great day called Thanksgiving, but that's only once a year. And also many of us, when it comes to that day, many times we're more busy with the turkey and with the trimmings than with the actual giving of thanks.

Thanksgiving has to be every single day. We thank God for all the good things that He has done for us, we thank Him for the constant miracles, we thank Him for the life that He is giving us, we thank Him for the sustenance, we thank Him for all the good things. And that, the thanks that we offer God, brings about that Almighty God bestows His blessings on us in an ever-greater measure. This is why the thanksgiving is so important on a daily, daily basis.

I want you to know, friends, that every Saturday in our synagogues we say a special prayer for each and every one of you. We say a special prayer of [in Hebrew] for all those who are occupied with public service, as each and every one of you is. And Divine Providence has designated you as the custodians of justice and of peace and of honesty and decency for all the great people in the State of New York, and through the State of New York, to all the people in the Union, and through the United States by extension, as an example, as a superpower, to all the people of the universe.

So each and every one of you has a special mission that is very, very dear and very cherished. And every Saturday in our synagogues we offer a special prayer for you, for your health, for your sustenance, for your constant success, and for the fact that you should pass your budget immediately and you should once and for all start getting paid. Because it's very difficult to talk to people who haven't gotten paid in a while.

What I want to do, the Rebbe tells

us that we should -- this is the last generation of exile, the first generation of the redemption, and we can bring about the great redemption by doing more acts of goodness and kindness. And he instructed me when I come here many years ago that I should offer one dollar to tzedakah, in a tzedakah box, and this is exactly what I'm doing. I'm happy to do what the Rebbe told us to do.

And every member who wants to join us -- not that this is going to make your budget much easier, but if you want to join us by contributing something to -- it's not going to make a big fundraising effort. However, each one will have a chance to be an act, an additional act of goodness and kindness.

On behalf of the Lubavitch Youth Organization and the Lubavitch movement, we thank you for your constant support and for recognizing one hundred years of the Rebbe, and we pray for your continuous health and sustenance, both in your private lives and in your communal endeavors.

And let us all together say amen.

THE PRESIDENT: Reading of the

Journal.

THE SECRETARY: In Senate, April 22, the Senate met pursuant to adjournment. The Journal of Saturday, April 21, 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 Balboni.

SENATOR BALBONI: Thank you, Madam President.

On page 31, I offer the following amendments to Calendar Number 373, Senate Print Number 3720, and ask that the bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments

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

SENATOR BALBONI: Thank you. And also, Madam President, on behalf of Senator Marchi, please place a sponsor's star on Calendar Number 372.

THE PRESIDENT: The bill is starred.

SENATOR BALBONI: Thank you very much.

THE PRESIDENT: You're welcome.

Senator Skelos, we have some substitutions to do now.

SENATOR SKELOS: Can we make the substitutions, please.

THE PRESIDENT: The Secretary will read the substitutions.

THE SECRETARY: On page 6, Senator Farley moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 4248 and substitute it for the identical Senate Bill Number 2308, First Report Calendar 434.

On page 7, Senator Leibell moves to discharge, from the Committee on Civil Service

and Pensions, Assembly Bill Number 6612 and substitute it for the identical Senate Bill Number 3321, First Report Calendar 437.

On page 7, Senator Leibell moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 6614 and substitute it for the identical Senate Bill Number 3322, First Report Calendar 438.

On page 7, Senator Leibell moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 5733 and substitute it for the identical Senate Bill Number 4259, First Report Calendar 439.

And on page 7, Senator Leibell moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 5734 and substitute it for the identical Senate Bill Number 4260, First Report Calendar 440.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I hereby give notice,

pursuant to Rule XI, that I will move to amend -- to add a new rule, XV, to the rules of the New York State Senate that will set ethical standards for officers, employees, and members of the New York State Senate.

THE PRESIDENT: The notice has been received, Senator Dollinger, and will be filed in the chamber.

Senator Skelos.

SENATOR SKELOS: Madam President, unless anyone objects, could you please recognize Senator Lachman, who would like to make a short statement.

THE PRESIDENT: Hearing no objection, Senator Lachman, you have the floor.

SENATOR LACHMAN: A very short statement.

Usually after Rabbi Butman speaks, Senator Marchi and I usually say a few words about the Lubavitch movement. It's a movement that is all over the world, not only in North America but in Europe and Latin America, Asia, Africa, throughout the continent and all continents.

And it has achieved a measure of recognition because it is not afraid to go where others fear to tread. You can find Lubavitcher representatives in Alaska or Hawaii or any small areas in the country, because they are supposed to, and they do, provide educational resources and religious resources to all communities around the world.

And I know that they have been very much involved in many of our communities. In fact, Rabbi Butman, a few weeks ago we were discussing variances regarding the Lubavitcher movement in certain Long Island communities. And the reason we were discussing variances is because they were there doing things that are noble and wise.

They're also at the -- I know that they have played a key role at the SUNY Binghamton campus, where there's recently been a major outpouring of anti-Semitism and the Jewish community has been very concerned, and the Lubavitcher rabbi, I believe Rabbi Slonim there, has been one of the leaders in the situation in terms of getting to the perpetrators and to allow the students and

faculty a certain amount of protection within that area.

So this is all done. And as Rabbi Butman said, this is the 99th anniversary of the birth of the late Lubavitcher Rabbi, of blessed memory. And may the Lubavitch community continue for many more years to do the good deeds and the noble deeds that they do throughout America, North America, and the world.

Thank you.

RABBI BUTMAN: Thank you very much.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I would just like to add to some of the remarks of Senator Lachman.

I first became familiar with the Lubavitcher movement in New York City in the mid-1980s, when I was working for the Queens District Attorney's office and their -- the Lubavitcher Youth Movement and the National Conference for the Furtherance of Jewish Education, and a lot of the work that they did deprogramming individuals of all faiths who

had sometimes fallen into the hands of sort of cult theories and myths which perpetuated really the attack and devaluation of one religion to enhance another. Something that we've read about in the past few days in the newspapers happens, that people who for some reason cannot observe their faith without having completely misguided views about the faith of others.

And so it's people like Rabbi Butman and many of his colleagues who are stationed all around the world that try to sanitize the minds and souls of people and try to bring them more into grips of what it's really like to live on this planet in harmony with each other.

And I wanted to just add my voice to that of Senator Lachman and Senator Marchi, who are traditionally very moved and well spirited by the work that they do.

I hope that this hundredth anniversary, really the 99th year and the hundredth anniversary of Rabbi Schneerson's life on this planet will be in a sense a rebirth and a beginning for those of us who do

believe that, rather than bringing our people together, that we recognize that we really are one people.

Thank you, Madam President.

RABBI BUTMAN: David, thank you very much.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, it's -- I don't know if this is your first experience or, but I hope it augurs well for the future. Oh, your third. Well, then you've enjoyed

RABBI BUTMAN: Madam President is doing very nicely.

SENATOR MARCHI: -- the treat that we all value, and that's the -- you've heard him heralded.

And I just got in here a little late, but not too late to join with my colleagues in expressing pleasure at your presence, representing, as is represented here today, a wonderful tradition, historical tradition. The formulation of the Torah, the oral -- from oral law into something that we can see goes back into the history of this

gentleman who graces us with his presence.

And it led to the scholastic philosophy that was later joined in by Thomas Aquinas, by the leading Arab of this world at that time. In fact, you paved the way for a general acceptance and recognition what you made so palpably clear through your ancestors.

So it's a great pleasure to be here with my colleagues and to do something which I've been doing annually, I guess, for the past -- oh, no, I won't say the number of years, because he's younger than that.

RABBI BUTMAN: Not much.

SENATOR MARCHI: Not much. Very good. God bless you. So good to see you.

RABBI BUTMAN: Thank you, Senator. Thank you, Madam President.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, I too would like to add warm words of welcome to Rabbi Butman and to tell him how delighted we are that he could be with us today.

As one who has actually visited the Lubavitcher Rebbe at his headquarters location

in Brooklyn, I just wanted to say that it's a particular delight to reflect upon that occasion, in which there were thousands of people literally gathered outside of his residence, and I had the privilege of being escorted in to see him and to share a small libation with him, which is the custom of visitors who are so beautifully received by the Lubavitcher Rebbe.

I just want this rabbi to know that as an ambassador from the Rebbe he is warmly welcomed in this chamber, we're delighted to have him here. And we're very pleased indeed to welcome you.

RABBI BUTMAN: Thank you very much, Senator.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President. If we could go to the noncontroversial calendar.

THE PRESIDENT: Thank you, Senator.

The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Volker, Senate Print 1694, an

act to amend the Criminal Procedure Law, in relation to expanding.

THE PRESIDENT: Read the last section.

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

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 229, by Senator Wright, Senate Print 2198, an act to amend the Penal Law, in relation to assault.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 293, by Senator Maziarz, Senate Print 1897, an act to amend the Vehicle and Traffic Law, in relation to increasing.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 311, by Senator Saland, Senate Print 2200, an act to amend the Insurance Law and the General Obligations Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 316, by Senator LaValle, Senate Print 1368, an act to amend the Domestic Relations Law and the Family Court Act.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 324, by Senator Stafford, Senate Print 3438A, an act to amend the Highway Law.

SENATOR ONORATO: Lay the bill aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

337, by Senator Nozzolio, Senate Print 225, an act to amend the Executive Law

SENATOR SKELOS: Lay it aside, please, for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 359, by Senator Wright, Senate Print 2970, an act to amend the Judiciary Law.

SENATOR ONORATO: Lay the bill aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 364, by Senator Rath, Senate Print 2618, an act to amend the Civil Practice Law

SENATOR SKELOS: Lay it aside for the day, please.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 374, by Senator Seward, Senate Print 2406, an act to amend the Parks, Recreation and Historic Preservation

SENATOR SKELOS: Lay it aside for

the day.

THE PRESIDENT: The bill is laid aside for the day.

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

SENATOR SKELOS: Madam President, can we please go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Volker, Senate Print 1694, an act to amend the Criminal Procedure Law, in relation to expanding.

SENATOR ONORATO: Explanation.

THE PRESIDENT: Senator Skelos, an explanation has been requested of Senator Volker's bill.

SENATOR SKELOS: Madam President, if you could lay that aside temporarily and go to Senator Wright's bill, Number 229.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will read Calendar 229.

THE SECRETARY: Calendar Number 229, by Senator Wright, Senate Print 2198, an act to amend the Penal Law, in relation to assault.

SENATOR ONORATO: Explanation, please.

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

SENATOR WRIGHT: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR WRIGHT: The bill before us this afternoon amends the Penal Law by adding two sections to increase the penalties for assault of a police officer, peace officer, correction officer, or court officer with a noxious material.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield for a question, please.

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR ONORATO: Senator, would you mind telling us what actually constitutes a noxious substance, material? Do we have it defined?

SENATOR WRIGHT: Actually, Senator, it is defined in law. And I would refer you to the appropriate section of law in Article 265 and Section -- let's see. Under Section 270.05, it defines noxious material.

SENATOR ONORATO: Madam President, will he continue to yield for another question?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: What other examples are there, besides Mace, of self-defense sprays that you know of?

SENATOR WRIGHT: Well, Mace is the most commonly referred to one, Senator.

There are other like products. I don't know their particular names or brand names.

But the definition of noxious material is rather broad. For example, it means container which contains any drug or other substance capable of generating offensive, noxious or suffocating fumes, gases, or vapors, or capable of immobilizing a person.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Yes, Senator.

SENATOR PATERSON: If Senator Wright would yield for a question.

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

SENATOR WRIGHT: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I'm just curious. Are all self-defense sprays considered to be noxious? Are they all -- do they all possess the chemical elements that

meet the threshold for which they'd be considered noxious?

SENATOR WRIGHT: Frankly, I don't know that, unless you were able to define the specific item that was -- you were referring to.

SENATOR PATERSON: Madam President, the Senator's point is well-taken. If I might ask him to yield for another question.

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

SENATOR WRIGHT: Yes, I will, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR PATERSON: Then, Senator, I think that what I'm driving at is, are you aware of any types of spray that don't possess the chemicals that allow it to be designated as noxious? Because I don't know of any, and I wondered if there are any.

SENATOR WRIGHT: Well, I'm not specifically aware of any. But the law specifically -- a previous section of the

statute specifically makes reference to self-defense spray devices that are not prohibited. So I assume that that provides that are certain products. I'm simply not aware of what they are.

SENATOR PATERSON: Madam President, if the Senator would yield for one last question.

THE PRESIDENT: Senator Wright

SENATOR WRIGHT: Yes, I will, Madam President.

THE PRESIDENT: You may proceed with a final question, Senator Paterson.

SENATOR PATERSON: Senator, the reason I'm raising this is that I just have a concern about the specific definition of the type of spray that would qualify, to the extent that if somebody sprayed a deodorant or some type of household cleaning spray in the direction of a police officer or a peace officer at some point, if the spray itself is not as harmful

THE PRESIDENT: Excuse me, Senator Paterson.

I'm going to ask the members, if

you are conversing, to please take your conversations out of the chambers. Thank you.

You may proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

And so what I'm saying is that are you assured that the designation that you have used to apply this legislation is not one that something less harmful could be included in the offense?

SENATOR WRIGHT: Yes, Senator, I'm convinced of that. I believe that perhaps others are, since the definition we are utilizing has been on the books since 1996, and I'm not aware of any particular problem with that definition during that time frame. Nor have we amended that definition in any way, shape or fashion.

SENATOR PATERSON: Thank you.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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, 56. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Senator Wright's bill, Calendar Number 359.

THE PRESIDENT: The Secretary will read Calendar Number 359.

THE SECRETARY: Calendar Number 359, by Senator Wright, Senate Print 2970, an act to amend the Judiciary Law, in relation to appointment.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Wright, Senator Paterson has requested an explanation.

SENATOR WRIGHT: Thank you, Madam President.

The act before us this afternoon

amends the Judiciary Law in relation to the appointment of a grand jury stenographer by the district attorney in the County of Oswego.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield for a question?

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

SENATOR WRIGHT: Glad to, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President. There was a time, obviously, in this state where the State Legislature in its wisdom determined that stenographers should only come from the county in which the grand jury is sitting.

What has changed -- other than the practical circumstances, that it may be difficult to find them, is there any policy shift embodied in this bill?

SENATOR WRIGHT: None that I'm

aware of, Senator. I believe it's simply a change in direction and careers and career opportunities, and therefore the ability to recruit, retain, and attract stenographers from a given geographic area.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed with a question, Senator Dollinger.

SENATOR DOLLINGER: To your knowledge, Senator, is the pay that's made the payments that are made to a stenographer a factor in attracting those kinds of court reporters?

SENATOR WRIGHT: Not to my knowledge.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Wright,

will you

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: Thank you. You may proceed.

SENATOR DOLLINGER: Do you know what the approximate fees are paid for a grand jury transcription in Oswego County?

SENATOR WRIGHT: I do not.

SENATOR DOLLINGER: Final question, Madam President, if Senator Wright will continue to yield.

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

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Current law gives the district attorney the ability to appoint the stenographer. And my question is, I assume that one of the reasons for keeping it inside the county is that they could negotiate favorable rates, given the fact that these were people in the local communities.

Is there any switch in this bill with respect to the unfettered discretion of the district attorney in making that appointment? He'd have the ability to appoint anyone; is that correct?

SENATOR WRIGHT: Well, first of all, I don't accept the assumption that you made in articulating why that authority is granted to the district attorney.

But that aside, there's nothing here that would amend or modify the authority of the district attorney other than by expanding the parameters of the selection area so that it's expanded beyond the county per se, but to include the judicial district.

SENATOR DOLLINGER: Through you, Madam President, just one final question that occurs to me in reading this bill, if Senator Wright will continue to yield.

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Does this bill require that the individual be appointed from the same judicial district in which Oswego County is located, or could

SENATOR WRIGHT: That is correct, Madam President. It remains within the Fifth Judicial District, of which Oswego is a member county.

SENATOR DOLLINGER: Thank you, Madam President. Just briefly on the bill.

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

SENATOR DOLLINGER: Madam President, the drafting of our laws, probably in the dawn of the last century or, frankly, the century before that obviously made a provision that was referenced in the first line of Senator Wright's bill, in his amendment, which says that every stenographer appointed under the provision of this title shall be a citizen and resident of the county in which -- of course it says "he," I assume in a different time when only "hes" qualified as court reporters. That has obviously changed, thank heaven.

But, Madam President, there was obviously a policy here at one point that the county should -- the county district attorney should only appoint someone from their own county. And it seems to me, as this bill text indicates, we've now created more exceptions than there are rules with respect to that. I would just suggest that Senator Wright's proposed bill amending this portion of the statute should, quite frankly, become the law in this state rather than the exception.

The old notion that stenographers for grand juries had to come from the same county doesn't seem to make a lot of sense in this world of court reporting that happens from many, many different communities. Certainly in the Rochester area, from Rochester, Syracuse, and Buffalo, there are court reporters that do a lot of traveling.

And I would suggest that the notion that court reporters come from the county in which the grand jury sits is an anachronism that ought to be consigned to the dust heap of a different time in New York.

What we ought to do is not only

pass Senator Wright's bill, but we ought to change the entire language of subdivision 1 of Section 322 of the Judiciary Law and simply permit district attorneys to appoint any competent court reporter in the state in order to transcribe grand jury proceedings. They're critically important to the criminal justice system, and it's important that we have accurate and dutiful court reporters. But it seems to me the way to do it is just recognize we live in the 21st century and just get rid of this ridiculous restriction on where the court reporters come from when they transcribe grand jury proceedings.

I'll be voting in the affirmative.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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, 58.

THE PRESIDENT: The bill is

passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 107, by Senator Volker.

THE PRESIDENT: The Secretary will read Calendar 107.

THE SECRETARY: Calendar Number 107, by Senator Volker, Senate Print 1694, an act to amend the Criminal Procedure Law, in relation to expanding.

SENATOR PATERSON: Explanation, please.

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

SENATOR VOLKER: Madam President, this is a bill in relation to expanding the rights of victims and their families to speak at the sentencing of the defendant.

This bill resulted from the murder of a police officer, I believe in New York City, Officer Anthony Sanchez. And what had happened was that he was murdered while a holdup man was fleeing from him, and in the shootout he was killed. And his parents had

requested the opportunity to speak at the sentencing phase of his trial and were unable to see because the judge ruled that only one person, which was the victim's widow, Elizabeth, was able to testify.

So this bill, which was proposed to us by a number of groups, including the Metropolitan Police Association and a number of other victims' rights groups, is a bill that I have sponsored and I hope one day we'll be able to get the Assembly to do also.

THE PRESIDENT: Senator Paterson.

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Yes, I will. Certainly.

THE PRESIDENT: You may proceed with a question.

SENATOR PATERSON: Senator, am I clear on this, that we're doing two things with this bill? We're expanding the pool of family members that would be allowed to

speak

SENATOR VOLKER: Yes.

SENATOR PATERSON: -- and we're also expanding the number of participants that might speak at a sentencing?

SENATOR VOLKER: Yes, that might speak.

I think the thing about it is here that we're not -- as you'll notice in the legislation, it doesn't name a specific amount. The reason for that is that we are just citing certain members that could speak and saying that more than one person can speak. We're not saying that they all have to speak or that they can. It would be up to the judge, in effect, to decide on how many would speak.

But this would give the opportunity for more than one person to speak, and then we set out in the legislation exactly who that could be. And the judge, for instance, could say, All right, the wife can speak and one of the grandparents, or whatever. We don't say that it has to be all of them. We're saying that they could speak.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Volker is willing to yield, I want to

SENATOR VOLKER: Yes, I yield.

THE PRESIDENT: You may proceed, Senator Paterson, with a question.

SENATOR PATERSON: Senator, currently is it within the discretion of the court to allow more than one person to speak at the sentencing?

SENATOR VOLKER: Apparently the decision has been, under the present legislation, that judges have decided that only one person should be allowed to speak. And although I would argue that our legislation does not necessarily restrict it to one person, apparently most judges have taken the attitude that it does, and that's what precipitated this legislation that we have before us today.

SENATOR PATERSON: Madam President, if Senator Volker is willing to continue.

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator Volker does yield.

You may proceed, Senator Paterson.

SENATOR PATERSON: So, Senator, the tragic circumstances that in a sense generated the idea for this legislation were that we needed to clarify the legislation such that the judge in that particular case could not make the ruling that he made -- assuming that it was a male -- in which it was determined that only one person could speak, so the widow spoke, rather than the parents. But under the legislation now, it would be possible for all three parties to have spoken; is that correct?

SENATOR VOLKER: That is exactly right.

And as I'm sure you know, Senator Paterson, judges are tending lately to be very restrictive in the way they interpret our legislation. So as a result, we've had to in a number of cases be a lot more specific, which is not probably all bad, because in the past, we have given a lot more, I think, discretion maybe than we should have.

But what we're trying to do here is give the opportunity, in the appropriate cases, for more than one person to speak at a sentencing phase of a trial.

SENATOR PATERSON: Now, Madam President, I'd like to turn to the issue of those who are eligible to speak, if Senator Volker is willing to yield.

THE PRESIDENT: Senator Volker, would you yield to a question?

SENATOR VOLKER: Sure.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Senator Volker, under the present law, and comparing it to the legislation we are deliberating on at this moment, in which ways have we expanded the number or the type of family members that can speak at the sentencing?

SENATOR VOLKER: Well, I think the present law says that a member of the family can speak. What we're doing here is we're saying that members of the family, and

we're -- of the victim. These are families of the victim, obviously.

SENATOR PATERSON: Right.

SENATOR VOLKER: And then we specifically say who those people are. And I think the reason is to give, you know, guidance to the judge as to who should be allowed to make any statements. So that we don't get down, for instance, to second cousins and all the rest of the things.

The idea is to give sort of a designation of who those people would be that the judge could allow to speak, in addition, for instance, obviously to the husband or wife or -- and so forth. So I think it's as much for guidance as anything else.

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

SENATOR VOLKER: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, it's just a thought -- and I can anticipate the answer to my own question, because it can

become, as in many memorial-type situations, almost a carnival of the desires of the living rather than respect for the dead, where everybody wants to be involved and everybody wants to speak.

But because of the different natures in which people live and the preferences that they've made in life, would it be necessary that we put actual classifications of which family members speak? Would it not be an idea to just say "family members" or just "concerned parties"? Because we have domestic partners, we have people who may not have a legal relationship yet have a very strong relationship -- perhaps a friend of an elderly person who was murdered in the park or something like that. Certainly stepparents, and those relationships where perhaps the stepfather is the one strong enough to speak and the biological mother doesn't choose to speak and the victim is deceased.

Would it be a possibility in the future of visiting the opportunity to just not have a classification but at the same time

making sure that the court has the discretion to make sure that it doesn't turn into a parade of individuals speaking about their lost victim?

SENATOR VOLKER: I think that certainly is a possibility.

I think the thought here is that what is trying to be done here is to suggest the people who would be most likely to speak or be allowed to speak. And since the judge in these cases seems to want some specific guidance, we're giving that judge specific guidance and listing those people.

And there's nothing in this legislation, by the way, that says that some of the people that you just suggested would necessarily -- or could not necessarily be allowed to speak also.

But what this legislation says is that if more than one, members, and we're suggesting who these people should be.

THE PRESIDENT: Senator Paterson.

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

THE PRESIDENT: You may proceed.

SENATOR PATERSON: I think this is really an excellent bill and very sensitive to the grieving period that families undergo or that victims are put through and that it gives them an opportunity to feel a sense of recapturing their lives to actually address the perpetrator at certain times. And I think that the expansions that Senator Volker has asked for are in order.

And, Madam President, I believe Senator Dollinger has a couple of questions.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will Senator Volker yield to two questions?

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

SENATOR VOLKER: Sure.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Senator, the way this bill is drafted now, it's a conditional statement by members of the family. It's only if the victim is unwilling to speak, unable to speak, dead or otherwise

incapacitated.

My question is, did you consider just dropping all the prefatory language and allowing the family members as described to speak regardless of whether the victim speaks themselves?

SENATOR VOLKER: We could do that, I suppose. But the assumption is if the victim is actually there to speak, that the victim should be the best person to speak in the situation like this and it wouldn't really be that necessary for someone else besides the victim to speak.

This, I think, assumes the problem where the victim is either unable or -- unable to speak, that we would allow someone else to speak for him or her. But I don't, you know, I don't know if -- if -- in fact, that might almost be too indefinite. If we have the victim, then I think some would argue that that's enough for the time being.

SENATOR DOLLINGER: Thank you, Madam President. Just briefly on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: I understand Senator Volker's conclusion that the victim is probably the best person to offer evidence to a sentencing judge about the effect of crime.

I would just suggest, however and I also agree with one other thing that Senator Volker said, and that is that our judges is generally reluctant to allow large numbers of the people to testify at the sentencing hearing.

I think that reluctance is ill-founded by members of our judiciary, and I think we ought to tell them very specifically that the victim gets the opportunity to talk and so do a certain number -- and it shouldn't be an unlimited number -- but relatives, family, and friends.

I know -- Senator Volker, I hope you won't mind if I take the liberty, but I would suggest that your friend and colleague from Suffolk County knows you as well as anyone. And I would suggest that if something happened to you and there were an issue of the effect on your character, on your personality, on your family, Senator LaValle would

certainly be, in my mind, apart from your family members would certainly be an eminent witness to testify as to the impact of a crime on you.

And my concern here, Madam President, is that this is a bill where I think what we ought to do is say that the victim gets to testify, the victim's family members get to testify. I agree with Senator Paterson, the definition of who's in that family could be expanded to include friends.

And lastly, Madam President, this is another one of those bills that we've approved twice by unanimous margins in this house and we can't seem to get the other house to move. I would suggest, Senator Volker, if you wanted to propose a message to the Assembly that says convene a conference committee on this issue to define and clarify who gets to talk at the sentencing phase of criminal proceedings, and say to them that this is a bill that has twice passed with unanimous support from this house, it should be considered by the Assembly, there should be a conference committee on criminal justice or

public protection, whatever we call it, that deals with this issue and this bill ought to be right at the top of the list.

I think it's a good idea. I think it would be better if we eliminated all that prefatory language and did as Senator Paterson suggested, increase the definition to recognize relationships in our community, in our state. But I would strongly suggest this is just the kind of thing that we should send a message to the Assembly about and tell them that this bill ought to become law.

Instead of simply passing it year after year, 60 to nothing, 59 to nothing, 61 to nothing, let's send them a message, a formal message from this house to the Assembly that says we think this bill ought to be part of a conference committee deliberation. Then there's much better chance it will become law.

I'll vote aye.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would you suggest to Senator Volker that in spite of his great friendship with Senator LaValle that if he were ever

victimized by a crime and couldn't speak for himself at the sentencing, that he have Senator Dollinger speak for him, to ensure that the perpetrator receive the greatest suffering that he would ever have known.

(Laughter.)

THE PRESIDENT: Senator Volker, do you yield to that question?

SENATOR VOLKER: I yield to that question. I would say that is absolutely correct. Since one of the former Senators is in fact up here, I think he would probably agree that since Senator Franz Leichter is gone, you're the best pick I could think of.

(Laughter.)

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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, 58.

THE PRESIDENT: The bill is

passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 293, by Senator Maziarz.

THE PRESIDENT: The Secretary will read Calendar 293.

THE SECRETARY: Calendar Number 293, by Senator Maziarz, Senate Print 1897, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

SENATOR HEVESI: Explanation, please.

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

SENATOR MAZIARZ: Thank you, Madam President.

This bill amends the Vehicle and Traffic Law in order to increase penalties for certain alcohol-related driving convictions. This bill would make it a Class E felony offense if you are convicted of a fourth, a fourth DWAI within ten years in the State of New York. It would also increase the fines, a minimum fine of at least $1,000, a maximum of

$5,000, and it would require a one-year license revocation.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor yield?

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

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you. Through you, Madam President.

I very much appreciate this type of legislation being brought to our attention, because it moves in the right direction to address a problem that we all know exists, which are the inadequacies of the current law as they pertain to DWI and DWAI offenses, but they also highlight some of the problems which I've got to get into here with you.

My first question to you is, a DWAI offense is a Breathalyzer which reveals what range of scores on the Breathalyzer to qualify

for a DWAI offense?

SENATOR MAZIARZ: I'm sorry, what range?

SENATOR HEVESI: Yeah, Madam President, if I can clarify, through you. My understanding is a DWI, to receive a DWI conviction, you must have a Breathalyzer which reads 0.1 or higher. My understanding is that the threshold for a DWAI is a lower threshold. Can you tell us what that threshold is for the DWAI?

SENATOR MAZIARZ: No, I understand it's lower, but I'm not sure of the exact alcohol content, Senator.

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

THE PRESIDENT: Senator Maziarz, will you yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: One of the major concerns I have here -- and I understand that for a DWI conviction the first offense is a

misdemeanor offense, the second DWI conviction, there is an eligible penalty for a felony, it's a felony offense with possible incarceration.

My question to you is, on the DWAI offenses, we are waiting till the fourth offense, under your legislation, before we even make the individual eligible for felony-level penalties. My question to you is, why would we wait until the fourth time that somebody that committed an offense before we move to take a serious step to curb this type of activity?

SENATOR MAZIARZ: Quite frankly, Senator, I would like to see it much earlier myself, in my opinion, but we've had some trouble getting a sponsor in the other house of the Legislature.

And this year we have been able to basically get a sponsor and to negotiate with them, and we think that we can get did passed in both houses this year with the fourth conviction.

SENATOR HEVESI: Okay. Thank you.

Madam President, would the sponsor continue to yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: Senator Maziarz, you do yield.

You may proceed, Senator Hevesi.

SENATOR HEVESI: I'll address the inadequacies of the current law and the fact that this is a good piece of legislation but it doesn't go far enough, I'll address that when I speak on the bill.

But I have a question for you in terms of whether or not your legislation or whether any current provision of law provides either a treatment option or a required treatment based on someone's DWI or DWAI convictions. And the reason I ask that, Senator Maziarz, is that there are a number of studies which show that rates of recidivism are decreased dramatically when treatment is undertaken by the individual who has committed the offense.

SENATOR MAZIARZ: This legislation, no, does not require any treatment. Now, that may be part of a plea

bargain, which in most cases for the DWI that is a part of the it, and sometimes for the DWAI. But it's not a part of this legislation, no.

SENATOR HEVESI: Thank you.

Madam President, on the bill.

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

SENATOR HEVESI: Thank you.

Madam President, my problems with this legislation extend far beyond what Senator Maziarz is trying to do. And I very much appreciate what Senator Maziarz is trying to do here. But even this piece of legislation -- and I'm not looking to ascribe blame as to who is responsible for this. But even this bill, it really -- I don't believe this is going to have a major impact.

We've got a serious problem here in the law that nobody seems to want to address. The fact that someone can reoffend on a DWAI -- and I have some information. I believe that it's between .05 and 0.1, which would qualify somebody for a DWAI offense. The fact that we wait till the fourth offense

before there is an eligibility for felony-level penalties is most unfortunate.

In fact, I would probably elevate to a felony-level offense the third DWAI conviction and probably have a mandatory incarceration of some moderate extent, 15 to 30 days, perhaps on the second or third conviction.

Nobody should drink and drive the first time out of the box. But I have absolutely no tolerance for those who reoffend on these types of offenses. And we hear all too often the terrible tragedies that happen, and they're very often punctuated by stories which are just inexplicable. And if I can relate one to you, on the "Today" show this morning, there was a very poignant story, a tragic, heart-wrenching story about a woman in Las Vegas who a few months back won a $35 million jackpot in the slot machines in Las Vegas and several weeks after this wonderful stroke of luck, she's driving in her car with her sister and a drunk driver comes by, kills the sister, and renders the woman who won the $35 million a quadriplegic.

Tragic enough except that when you examine what actually occurred in this type of incident, the gentleman who drove drunk and caused the deaths was on his 16th conviction, 16th conviction, for a drunk-driving-related conviction. I mean, 16th conviction.

So we have to be intolerant of people who commit the offense the first time, but there will be some leniency there the first time in recognition of the fact that people who have too much to drink and get in their car are not hardened criminals. But that sympathy, that feeling goes out the window when we see people who reoffend.

And this past weekend, Madam President, in Albany there was the highest number of arrests for DWI-related offenses of any weekend in the past year. There were 600 cars that were stopped at Albany police checkpoints, and 31 individuals were arrested for DWI or DWI-related offenses. That's 5 percent.

And what's really scary about this whole subject is for the amount of times that somebody is caught driving while intoxicated

or ability-impaired or under of influence of drugs, the number of times that they probably drove under those conditions is multiplied exponentially, because nobody would logically suggest that we're catching everybody the only time they do it. So we've got a tremendous problem here.

And one other point to really highlight this. There have been studies done in California, in Texas, Delaware, and New York that show that individuals who receive treatment after having arrested for drunk-driving-related offenses were 25 percent -- 25 percent of them were reoffending within the first year or year and a half. Which sounds high in and of itself, except you compare that 25 percent who are reoffending within the first year or year and a half, of those who got treatment, to 70 percent of people who did not receive alcohol rehabilitation, 70 percent of those folk who is got no treatment reoffended within the first year or year and a half.

And so how we don't have a treatment option -- and I know that Senator

Duane has spoken on the floor of this house on numerous occasions about the fact that we only combat this problem by increasing penalties for these offenses and we don't have a similar energy to dedicate ourselves to preventing individuals from reoffending by providing them with the treatment they need.

And it's not just the moral issue, it's not just that it's the right thing to do, it's going to save people's lives. So we have to make a commitment of money, because these drunk driving arrests, there were 1.4 million drunk driving arrests in the United States last year. And that cost us $5.2 billion in an economic assessment.

So forget the morality and even forget the aspect of it that says that if we don't do this we're going to have higher recidivism. We're draining our police resources and costing the taxpayers even more money. So for those who suggest that to spend additional money on treatment is not a worthy public policy goal, that is the ultimate example of cutting off your nose to spite your face.

So I would take a two-tack approach here. One is to adopt what Senator Duane has been calling for for a long time and have mandatory treatment upon the first conviction for a DWI and DWAI offense, and of course for all subsequent offenses, and make that a condition of whatever agreement is reached between the district attorney and the person who is convicted. And, on the second front, tighten up penalties much further than what Senator Maziarz's well-intentioned bill tries to do so.

And until we do this, until we say to somebody, If you reoffend, you're going to have severe, severe consequences then society is going to continue to live in the constant danger that people are going to thumb their nose at the system, not take what we're trying to do here seriously, and possibly -- and this happens with frightening regularity -- kill or maim other people because they just don't care.

Well, we care. And let's show we care by doing a treatment option, let's show we care by adopting Senator Maziarz's bill as

a good first step and then tightening it up afterwards. Let's stop this problem. This is not rocket science or brain surgery, how to do this. This is one of those things where we know if we take Step A and Step B that we will achieve Result C, and Result C is too important a goal not to address.

I vote for this bill. Thank you, Madam President.

THE PRESIDENT: Senator Espada.

SENATOR ESPADA: Thank you, Madam President. Will the sponsor yield to a question, please.

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: Senator Maziarz yields.

You may proceed, Senator Espada.

SENATOR ESPADA: I thank Senator Maziarz.

The question is really we've heard some -- again, some excellent comments. And my question would be, why not have a balanced approach? I took it from one of your answers that you're not against treatment, clearly.

Why not have a balanced approach with a mandatory treatment upon the first conviction? Why only deal with the penalty phase or the increased penalty phase first and only in your bill?

SENATOR MAZIARZ: Well, as I said, Senator, most of the plea bargains that come about do have some sort of a treatment option within them. But I thought this, quite frankly, was a bill that we could get passed through both houses of the Legislature.

SENATOR ESPADA: But through you, Madam President, if I may just, as a follow-up question

SENATOR MAZIARZ: Yes.

THE PRESIDENT: Senator Maziarz, you do yield.

You may proceed, Senator.

SENATOR ESPADA: My recommendation would only be that we talk about mandatory again, that mandatory treatment upon the first conviction. In that it appears through the comments that I have heard that it costs about $32,000 or so to incarcerate and about $18,000, or half the

price of incarceration, to treat.

So wouldn't it be more cost-effective, wouldn't it be more effective and prudent to make it mandatory? Increase the penalties, yes. Perhaps have even a more escalated, accelerated pace, as Senator Hevesi has indicated. But as pertains to the immediate bill at hand, why not amend it to include mandatory upon the conviction of a Class E felony?

SENATOR MAZIARZ: I'm sorry, Senator, I didn't quite

SENATOR ESPADA: In other words, I think that logically I would agree with every argument that has been proffered by Senator Hevesi. And my question to you would be, why not amend the bill to include a mandatory treatment provision to coincide with the increase in penalties?

SENATOR MAZIARZ: Because I think that that would attach a huge fiscal implication to this bill, and I'm not sure that we could get it passed in both houses and signed by the Governor.

This bill I think we can get passed

and signed into law. And I agree with Senator Hevesi also. I think it's long overdue. And, quite frankly, I don't think it does enough early enough. But I think it's a compromise that we have to make to get it signed into law.

SENATOR ESPADA: If I may, Madam President, the response just begs another question.

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

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR ESPADA: That is, is your bill fiscally neutral? Would your bill have no increased fiscal implications?

SENATOR MAZIARZ: I don't think it would have any major -- I'm sure it has some, Senator, but I don't think there would be any major fiscal implications.

SENATOR ESPADA: And lastly, Madam President, through you.

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR ESPADA: Have increased penalties on their own been more effective in reducing the number of offenders, Senator?

SENATOR MAZIARZ: Have increased penalties reduced the number of

SENATOR ESPADA: On their own, have increased penalties reduced the number of repeat offenders?

SENATOR MAZIARZ: I don't have any statistical data at my fingertips here, Senator. But if an individual certainly is incarcerated, they're not out committing additional crimes.

SENATOR ESPADA: And as to the incarceration, under the bill, how long would a person, upon being convicted, be incarcerated? The penal code is referenced, but perhaps can you clarify that for me.

SENATOR MAZIARZ: I believe, Senator, that the maximum jail term would be one year. Yes, one year.

SENATOR ESPADA: Madam President, we thank the sponsor. We thank you.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 316, by Senator LaValle.

THE PRESIDENT: The Secretary will read Calendar Number 316.

THE SECRETARY: Calendar Number 316, by Senator LaValle, Senate Print 1368, an act to amend the Domestic Relations Law and the Family Court Act, in relation to visitation rights.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator LaValle,

Senator Paterson has requested an explanation.

SENATOR LAVALLE: Thank you very much, Madam President.

This legislation would add, to grandparents, would add great-grandparents that would allow them visitation rights under certain circumstances. When the initial law was drafted, we in this Legislature codified case law that allowed for two situations, one being an absolute right of a grandparent. And by adding great-grandparent, we are allowing great-grandparents that absolute right in the case where the parents are deceased.

The second situation, the courts indicated, would exist as a matter of equity. And in both cases, the grandparent would have to go before the court and the court would use the best interest of the child as the standard in making a decision whether visitation rights would be granted.

Madam President, that's the sum and substance of the legislation.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, did Senator Montgomery want to

ask

SENATOR MONTGOMERY: I'll defer to you, Senator.

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

SENATOR LAVALLE: Yes, Madam President.

THE PRESIDENT: You do yield, Senator LaValle.

You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I was reading that there are 40,000 people in the United States who are over 100 years of age, and ten years ago, in 1991, there were 20,000 people. So just the time period in which people are living certainly creates the opportunity for there to be a much larger pool of great-grandparents and even great-great-grandparents.

And my question is, does the issue of the restricted rights of the grandparents vis-a-vis the right of the parents -- in other words, that most of the state courts have held that the grandparents don't have visitation

over the objections of the parents. That isn't changed at all by your attempt at this legislation, is it?

SENATOR LAVALLE: No.

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

THE PRESIDENT: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Has it been the case that great-grandparents have been restricted, even though it would seem kind of a technicality, since grandparents are granted visitation? Have there been cases where relying strict on the black-letter law that judges have denied great-grandparents the right to visitation?

SENATOR LAVALLE: Yes. That's why this bill is before us.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam

President, I would like to have Senator -- ask a question of the sponsor.

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

SENATOR LAVALLE: Yes, I will.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: All right. Senator LaValle, there was recently a U.S. Supreme Court case which seemed to rule out the right of grandparents and, I would presume, great-grandparents in cases of visitation disputes of their grandchildren.

Does your bill address -- or how do we get around that Supreme Court ruling with your legislation?

SENATOR LAVALLE: Senator, I remember at the time reading that decision and saying that the New York law -- and even articles that were written at the time seemed to indicate that the New York law would meet a challenge.

And one of the reasons is the explanation of the bill, which I said what we did was to codify it. We actually have case

law in both situations in which grandparents have an absolute right and where the courts ruled that they can, as a matter of equity, intervene.

And so what we have taken is our own case law here in New York State, and we actually, consistently with those decisions, formulated our grandparent law. And as I said in my legislation, by amending the law to add great-grandparents, we are just taking that one step further.

SENATOR MONTGOMERY: Madam President, if -- I just have a couple of

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

SENATOR LAVALLE: Yes, I will.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Okay, thank you.

Well, Senator LaValle, why do we find it necessary to have our state enact legislation for this purpose? Is there a particular interest that we need to address with this legislation?

SENATOR LAVALLE: Yes. Yes,

Senator.

I think in the dialogue I had with Senator Paterson, I think that once we define in a law and we create groups of individuals that we are empowering or giving specific rights, then in strict interpretation and reading, the law applies only to that one group.

And in our law we say grandparents. And so if we are to broaden that group beyond grandparents, then we as a Legislature and a matter of policy must specifically cite great-grandparents.

And if next year or two years from now we felt it was siblings, we would have to statutorily add to the list of parents and grandparents, because we are now specifically prescribing who has the benefits to go before the court of law for visitation rights.

SENATOR MONTGOMERY: Madam President, just one last question.

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

SENATOR LAVALLE: Yes, I will, Madam President.

THE PRESIDENT: You may proceed with a final question.

SENATOR MONTGOMERY: Senator LaValle, in cases where there is a very contentious divorce and visitation becomes part of the contention or the, you know, the difficulty with the proceedings, do you still want to give the right to great-grandparents, grandparents or great-grandparents the ability to intervene in this process and become part of what would already be a contentious situation? Or how does your bill prevent them from becoming an even greater burden?

SENATOR LAVALLE: Senator, one of the things in our law, and the courts have held that the rights of the biological parents are preeminent over all others except in certain situations, which we have again prescribed, where parents would be in jeopardy of losing custody over their children. Those would be in situations where there was abuse or drug abuse on the part of the parents. Very extreme, extreme situations.

There is one case where the court ruled for the grandparents where a parent

had -- the wife was dying, the husband, who had been rarely a parent to his children, gave up his own rights to -- after the wife passed away, of custody of the children. And the courts very carefully said that the grandparents had always -- in this case, it happened to be the maternal grandparents had always been part of the children's life.

In other words, the court said it was in the best interests of the children to continue having the interaction of the grandparents in terms of not only visitation but custody, but also that the father in this case gave up his rights, said, I was never really there, I don't want to be there. And so that was very, very easy.

So the courts are reluctant in the case of biological parents to intervene only in the most egregious situations of abuse or neglect of the children.

SENATOR MONTGOMERY: Okay. Thank you, Senator LaValle.

Madam President, just briefly on the bill.

THE PRESIDENT: You may proceed

on the bill, Senator.

SENATOR MONTGOMERY: Yes. I know that I have tended to oppose this legislation.

And one of the reasons is that I caution the state's involvement in these situations that are often extremely difficult. And it is usually the children that are used by one parent or another or one side of the argument against the other, and the children are caught in the middle without really much in terms of protection.

So I'm reluctant to support our allowing or encouraging or making it possible for not only grandparents but now great-grandparents to be able to come into a situation where a family may be dissolving, for one reason or another, and become part of the configuration of what happens to the children and who has the rights or who does not have the rights to visit or to have custody of those children.

So I certainly understand Senator LaValle's intent. I think he wants to do the positive thing and have great-grandparents be able to intervene. But I still am a little

reluctant, and I will vote no simply because I don't feel totally convinced and comfortable that this is the right thing for us to be doing as a state.

So I'll vote no, Madam President.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, I'm glad that we debate these bills, because Senator Montgomery has convinced me. I think I'm going to vote no, even though this is extremely well-intended legislation.

But the problem is that it really does not cure the constitutional defect that has already been judged by the courts to exist, in that the grandparents -- e.g., the

great-grandparents -- don't have any better rights than the parents do. And that what we would have to do is really change the notion of the entire law. We can't add on new protective classes to the existing law, which in many respects has already been overruled by the courts.

Now, I don't think Senator LaValle was considering the issue of a battle between the parents and the grandparents. He was thinking more of situations where the parents are somewhat incapacitated. But because of the way I think that the courts have spoken recently, I want to vote against this and hope that Senator LaValle will go back and address the broader issue to allow for grandparents and great-grandparents to have the visitation that they properly deserve.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Montgomery and Paterson recorded

in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 324, by Senator Stafford.

THE PRESIDENT: The Secretary will read Calendar 324.

THE SECRETARY: Calendar Number 324, by Senator Stafford, Senate Print 3438A, an act to amend the Highway Law, in relation to the New York State Scenic Byways System.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Stafford, Senator Paterson, I believe, requested an explanation.

SENATOR STAFFORD: Thank you, Madam President. It gives me a great deal of pleasure to stand here and be a protagonist for a bill that will cost no money whatsoever but will be a most worthwhile endeavor.

And what this bill does, it creates the Champlain Canal Byway as a component of

the New York State Scenic Byways System, which consists of Route U.S. 4 from the Waterford-Cohoes Bridge in Waterford to the Canal Lock 12 in Whitehall.

It's a beautiful area. We all know how important tourism is. We all know how important the historical aspect of New York State is. And it is a real, real step in the right direction and will also make it possible to receive federal funding. So we of course are most supportive of the bill.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the Senator would yield.

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

SENATOR STAFFORD: I certainly will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR OPPENHEIMER: I just have a few questions, which don't -- they are not against the bill, which I support, but just trying to define a little more information, if

that's okay with you.

Are there other areas that are designated as components of this New York State Scenic Byway System? It's something I'm not familiar with.

SENATOR STAFFORD: Madam President, I of course feel very positive that you're supporting the bill. Now we can have, I'm sure, a dialogue that's relaxed and constructive, sensitive, and, you know, informative.

The answer is yes.

SENATOR OPPENHEIMER: Yes?

SENATOR STAFFORD: Yes.

SENATOR OPPENHEIMER: If you will, Senator.

THE PRESIDENT: Senator, will you yield for another question?

You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: It seems to me that was like a Yogi Berra answer about when you come to a crossroads in the highway, take it. What were you saying? Yes to what?

SENATOR STAFFORD: Yes to your

answer.

SENATOR OPPENHEIMER: There are other areas. Do you know what they are?

SENATOR STAFFORD: I see, Madam President. You want to know what are the other components. That's the question.

SENATOR OPPENHEIMER: That's it.

SENATOR STAFFORD: Well, we're really making headway here.

Madam President, this is throughout the state that we have the components. And in 1992, we passed a bill whereby areas could apply to become part of the scenic byway system.

I will get you the exact other areas in the state. Because my counsels always have information at their fingertips, but I think we're -- maybe right here we don't have the information. But we will certainly get it for you, and there are a number.

I believe -- now, I'm just giving you this off the top of my head, but I believe the Leatherstocking area is an area. I believe the Seaway Trail, that's an area. And I believe in the Mid-Hudson area you will find

that there are a number of these scenic highways, byways.

SENATOR OPPENHEIMER: Is there if you'll yield for one more question.

SENATOR STAFFORD: Sure. Yes, Madam President.

SENATOR OPPENHEIMER: Is there a fiscal implication to these scenic highways, byways?

SENATOR STAFFORD: This is why, Madam President, we're so excited about this program. The fiscal implications are not there, but you're able to apply for federal funding for this program when you are a -- let me get the exact wording here -- New York State Scenic Byways System. Passed in 1992.

SENATOR OPPENHEIMER: Well, then, just to clarify, the monies are coming from the federal Scenic Byways Program, or is

SENATOR STAFFORD: Yup. Exactly, Madam President. It's the National Scenic Byway Program.

SENATOR OPPENHEIMER: But we have a state law which was passed in the early '90s?

SENATOR STAFFORD: 1992.

SENATOR OPPENHEIMER: I see. And that's the pass-through.

Thank you very much.

SENATOR STAFFORD: Thank you.

SENATOR OPPENHEIMER: And I willable very curious to see what other areas are scenic byways.

This sounds like an excellent bill, and I'm happy to support it. And I think the more areas that we can get into the scenic byways system, the better off we are, because the funding isn't coming from us, it's coming from the feds. And anything we can do to promote our tourism and to keep our scenic areas thriving, through maybe this infusion of funds, can only benefit us.

So I think this is a fine bill. I'll be voting yes.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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, 59.

THE PRESIDENT: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Will you now call up Calendar Number 311, please.

THE PRESIDENT: The Secretary will read Calendar 311.

THE SECRETARY: Calendar Number 311, by Senator Saland, Senate Print 2200, an act to amend the Insurance Law and the General Obligations Law, in relation to the use of lands.

SENATOR DOLLINGER: Explanation.

THE PRESIDENT: Senator Saland, Senator Dollinger, I believe, asked for an explanation.

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill is an effort to accomplish a couple of items, one of which would be to expand the existing

categories under General Obligations Law 9103, under which a landowner who permits the use of his property for certain specifically enumerated items -- and there's a laundry list of them there, probably anywhere from a dozen to twenty of them -- is effectively free from liability, other than malicious or gross liability on his or her part.

And it also provides that the Superintendent of Insurance shall make a recommendation to the Governor and to the Legislature dealing with the issues of property and liability insurance for landowners who permit the public to use their lands for recreational or conservation purposes, and that report is to be submitted within 18 months after this legislation will have become law.

This bill is, I believe, identical in form to a prior version of this bill that we considered in this house I believe during the 1999-2000 session.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam

President, will the sponsor yield for a question?

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: This bill as it deals with the problem of property and casualty coverage on vacant land, can you tell us what impact the prior version of this section of the General Obligations Law has had on premiums paid by landowners? Has there been an impact?

SENATOR SALAND: Let me suggest to you -- and perhaps I was remiss in my opening remarks -- the intention of this bill is basically to encourage owners of land and privately owned water areas to permit the use of the land for recreational and conservation purposes.

Clearly, with the expanding desire of people to access recreational opportunities, government in and of itself

can't accomplish that end. And we believe and have reason to believe that land is consistently becoming more frequently posted.

In terms of your -- going to your question, what we do know is that this, we believe, has encouraged the use -- and this is anecdotal -- of lands for the sundry purposes that are enumerated in the bill. And I'm not going to bother to read them. You have them there as well.

I can't tell you, however, what the impact that has had on current liability rates of property owners, and the purpose of this legislation is in part to be able to make some definitive -- come to some definitive conclusion as to what that might be.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will again yield to another question.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed with a question.

SENATOR DOLLINGER: Senator Saland, to cut sort of right to the chase of this, we enacted the provision that provided an incentive for landowners to open up their land for public use. And it's my understanding that there have been a number of cases which have somewhat narrowly -- we in essence said we want to reduce the duty to the landowner to the potential person who is on their property, and that what the courts have done is interpreted that more narrowly than we intended and therefore left liabilities in the landowner that we had thought we had somewhat removed. Is that a fair statement? And, if so

SENATOR SALAND: I don't know if I could be as general as you. I've read some of the cases. And certainly the courts have made distinctions between those situations in which there was a municipality, perhaps operating a park, and those in which there were private owners who had opened their property for any one of, again, the enumerated items.

And, I mean, there's four or five

lines from camping to -- I'm sorry, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, et cetera, et cetera, et cetera. My understanding is that cases continue, from what I've seen and cases that I've read, continue to uphold the legislative intent.

What we're attempting to do here is to expand that intent to make it clear and to encourage people to open their property for all recreational uses. We're effectively saying what we want to accomplish with this is to give more opportunity for people to recreate on property that is currently being posted by people who are concerned about liability consequences.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: I just want to make sure I understand. I mean, we have, under the Basso doctrine from the court of Appeals, a very broad definition of landowner liability and the circumstances under which the people coming into the property are now required -- or the landowner is required, if he's aware of some defect in that property, he has an obligation to put up some reasonable form of notice which will be fact-specific in each case.

Is it your intention in this legislation to lower the duty of the landowner with respect to defects, either latent or otherwise?

SENATOR SALAND: There is nothing -- if you read this bill, there is nothing in this bill that deals whatsoever with changing whatever the existing law is with regard to the determination of liability. Absolutely nothing.

What this does, however, is to expand and make it clear that whatever the enumerated recreational uses are in this particular bill, they are not exclusive. That

by adding the term "any recreational use, including but not limited," we are expanding the number of uses for which 9103 would be applicable, under whatever the existing liability standards are today as determined by the Court of Appeals or any other court that has ruled on the issue of liability.

SENATOR DOLLINGER: Again through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Just so I make sure I understand it, if there's a posted trespass sign, then there's a series of rules that -- liability that flows from the posting of that sign. In essence, that they become uninvited guests or they are no -- and the duty is somewhat minimized because of the notice.

Does this suggest that if you

remove that sign, your duty is less for the

SENATOR SALAND: This has absolutely nothing to do with the issue of what flows from posting. It's totally irrelevant.

What this does is merely say that we are encouraging you to not post your property so that more people will have the opportunity to use your property for recreational or conservation purposes.

We do nothing to impact whatever the existing law is. We're merely seeking to expand opportunities to give people greater access to properties, keeping full well in mind that it's impossible for the state to reach into its treasury and fund by itself all of the recreational and conservational opportunities that we would like.

SENATOR DOLLINGER: Through you, Madam President. With that in mind, Senator, I just want to make sure I understand this. If he will continue to yield, Madam President, just

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: He does continue to yield. You may proceed with a question, Senator.

SENATOR DOLLINGER: On page 2 of the bill where it talks about -- lines 20 through to 24, where it talks about an owner, lessee, or occupant of the premises who gives permission to another to pursue any of the activities upon such premises does not thereby -- and it's Section 2 that you've amended. It used to read "constitute the person to whom permission is granted, an invitee to whom a duty of care is owed."

And your new language would say, if you go back to the prior section "does not therefore enter into any relationship with the recreational user that could serve as a basis for imposing any duty of care on the owner."

Doesn't the use of those two phrases "any" mean in essence that there's no duty of care owed by the owner of the land to the invitee, trespasser, or permissive recreational participant?

SENATOR SALAND: No. That if you go back to the language that prefaces it, it

says "any owner, lessee, or occupant who gives permission to another," is giving permission to someone to come upon their property. That effectively is a change that is semantic and not substantive.

SENATOR DOLLINGER: Okay. Madam President, on the bill, please.

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

SENATOR DOLLINGER: Thank you, Senator Saland, for your explanation.

I have to acknowledge, Madam President, that reading for it and focusing for it on the first time, I'm not quite sure what this is intended to achieve. And I appreciate Senator Saland's comment.

But the way I read it, it says any owner who gives permission to pursue any such activities upon such premises does not thereby. In other words, merely by the permission, by the fact they're allowed to come in, he does not create -- or he does not enter into any relationship with the recreational user that could serve as a basis for imposing any duty of care on the owner.

And, Senator Saland, I understand the intention of this bill. But that use of the phrase "any duty" on the part of the owner seems to suggest that we're creating no basis for any liability to flow from the owner to the person who is given permission to enter the property. Which would mean even with respect to latent defects.

I think we've talked about this, Senator Saland, before when we did this bill, about the bridge with the -- you know, the wooden bridge in the middle of the forest that covers the small creek that has wooden slats in it that, you know, several of the slats are out or you know that they might be weak and rotted.

What liability or what obligation, what duty does the landowner have if he knows that the slats in the bridge are defective, what duty does he have to post some notice to anyone who enters onto the property?

And at least as I read that section, and I would be the first to acknowledge that having looked at it in detail for the first time, that what it seems to

suggest is that by giving -- if you give them permission, if they're an invitee, under the old common law doctrine then and they enter into the property, then they -- that fact does not create a relationship with the recreational user that could serve as a basis for imposing any duty of care on the owner. That seems to me to carry the language as another way of stating an absolute immunity from possible action under those circumstances.

I've debated this bill before, I've talked against it, I've voted against it. I appreciate what Senator Saland is doing. I know that there are large tracts of land in private hands. I know that in the Adirondacks the Governor has purchased land from major paper companies, that those lands are largely used by the public for just the kind of recreational programs that Senator Saland has talked about that I think we'd like to encourage.

But it seems to me that we shouldn't approve a bill that creates, in language, in essence an absolute immunity for

the landowner under those circumstances. Exactly for the example I cited, which is that the rotting bridge over the small stream in the forest, if the landowner knows that there's a risk of liability and a risk of danger and an unreasonable risk of danger, it seems to me that the landowner has some obligation to the unwary person on the property, whether they're there by permission or whether they're there by circumstance, or even if they're trespassers, had the landowner known that there was trespassing occurring, it seems to me that there's some continuing obligation to post that defect and give the person upon the property some notice of that defect.

Madam President, I'm all for increasing the use of nonpublic lands and trying to make them more available. But I do believe that in balancing in the interests, if the landowner knows and if it's reasonably foreseeable that an invitee, a trespasser, anyone with or without permission may expose themself to an unnecessary harm, I think it's contrary to the long common-law history of

this state to enact a statute that grants a form of immunity from those kinds of lawsuits.

Under those circumstances, Madam President, I've voted against this bill in the past, I will vote against it in the future. I think that we'd like to have more and more people out on semipublic lands or on wide open lands and encourage them to use nonpublic lands. But we shouldn't tell those landowners that they are going to be free from liability if the harm that eventually causes damage to someone is one that was reasonably foreseeable to the landowner.

I believe that that common-law doctrine has held us in very good stead, Madam President, in the course of the last 150 years. There's no reason why we should change it in this instance.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm very supportive of this bill. I was listening to my colleague, and I guess I would need some explanation. So if he would -- if my colleague Senator Dollinger would yield for a

question, Senator Dollinger. Senator Dollinger, I'm asking you to yield.

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

SENATOR DOLLINGER: Yes, Madam President, I will. Be glad to.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator Dollinger would explain the common-law piece to me.

SENATOR DOLLINGER: Through you, Madam President, the common-law piece is very simple. The doctrine is that foreseeability -- that is, the chance that something might happen and the circumstances under which you must exercise reasonable care to prevent it. That's the common-law theory of torts. And foreseeability -- that is, the chance that something will happen, that a harm will occur -- is a combination of two things: The gravity of the harm, how much it could hurt you if it happened, and the likelihood that it would occur.

The best example is to use the

foreseeability of a nuclear weapon going off. What's the chance that it would happen? Very, very small. What's the consequence when it happens? Very, very dire.

So under those circumstances, you take the foreseeability, which is a combination of those two factors, and then you determine what reasonable care is necessary to prevent it.

In this case with respect to Senator Saland, the question for a landowner is what's the chance that someone will walk across the bridge with defective slats. The answer to that question depends on how much the landowner knows, whether it's happened in the past, whether the landowner knows it's happened in the past, whether the landowner knows that there are people walking in that section of the woods. That's the chance that it will happen.

What's the consequence if they do? If they're falling a foot and a half into a small stream, well then he doesn't have a big obligation to go out and give them lots of notice. If they're falling 150 feet into a

gorge, then he's got an obligation to post a big, huge sign that says, Don't use this bridge, because you could fall and kill yourself.

That's the common-law theory of the public liability. It's a combination of the gravity of harm, how much you could get hurt, and you balance that against the likelihood that it would occur. And when you conduct that balance, you then determine what reasonable conduct is required to prevent it from happening.

SENATOR OPPENHEIMER: I thank Senator Dollinger very much. That's sort of fascinating. Maybe we all are getting a legal education in the last few weeks.

If I may speak from a layman's point of view on the bill, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR OPPENHEIMER: This is very pragmatic and very close to me, and this is my experience. My experience is that I have land where part of it is forest and part of is a ten-acre meadow with a pond. The land

was posted for many years. I felt comfortable not having hunting going on on the property, and I felt comfortable not having people I didn't know on the property.

Then I was approached by a Boy Scout leader, troop leader, asking if they could ice skate on my pond. And I decided that was something that I wanted to promote, and I gave them permission. And now that pond seems to be in constant action, having constant action on it, and I feel good about that. I feel if I had to bear some liability because one of the young men fell through the ice, I feel I would not be comfortable with having granted this permission.

So from a very pragmatic point of view, I think if we want people to open up tracts of land to hikers and hunters in season and other people who are coming just to enjoy the property, that we should not be liable for any accidents -- a gunshot wound, a broken leg, a sprained ankle, a youngster falling through the ice. I don't think that's going to encourage people to open their private property for the common good.

And so I feel very strongly that this issue of liability to the property owner should not be. And I would think a reasonable person, applying a reasonable person's standard, if a reasonable person had a very weakened wooden bridge on the property, I think there would be some kind of notification that this was a weakened wooden bridge and that people should stay off it.

So I strongly support it and think it's a fine bill and encourages public usage of private land.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. If the Senator would yield to a question.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

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

Senator, in this discussion one of the things that occurs to me is that in reading the language you talk about the landowners willful or malicious failure. Would not after this discussion the language negligent failure also be something that you might want to consider inclusion in the bill?

SENATOR SALAND: Senator, no, I would not, because that would basically gut the bill.

In my opinion, the example given by Senator Dollinger in which he referred to this bridge with defective planks that the owner would be aware of, I think that would be certainly, at the very least, gross negligence on his or her part not to let anybody who he might be permitting the use of his property know of. And I think the example that he cited would have been covered in the existing law.

This is an attempt to eliminate issues of liability, to place some -- which is the existing law. I mean, if you look at existing 9103, General Obligations Law, it basically lists a series of outdoor activities

for which an individual who permits their property to be used is in effect free from liability unless their conduct is willful or malicious or unless he or she charges a fee.

And this -- what we're attempting to do here is to continue that idea, to encourage people to let others use their property, only we're attempting to get beyond the boundaries of what's specifically enumerated and make it all recreational uses.

SENATOR HASSELL-THOMPSON: Madam President, through you, if the Senator would continue to yield.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Senator, then would you entertain with me a different example? Several years ago, Baby Jessica fell into a well.

THE PRESIDENT: I'm sorry, would you repeat that?

SENATOR HASSELL-THOMPSON: There was the case of Baby Jessica who fell into a well.

There are many pieces of private property where a well, having been dug many, many, many years ago, might inadvertently not have been filled on that same stretch of property. Should someone in the performance of an event, an activity, fall into that well, would you not consider that that forgotten well might fall under the category of negligent failure as opposed to gross malicious and willful failure as you define it?

SENATOR SALAND: That would be a question of fact. That would be a question of fact.

And in this particular case if the law today permitted that child or someone on behalf of that child to sue, the law as I'm proposing to change it would similarly permit that child to sue. If the law did not permit that child to sue, as exists under 9103 currently, then it certainly is not going to change under the language that I've proposed.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Then I too have to join my colleague Senator Dollinger. Because until that last statement, I was comfortable in thinking that the nature of the law would in fact allow for a greater expansion and use of properties for recreational activities.

As in the case of Senator Oppenheimer, I'm very clear. I know her area as I do mine. And as we lose open space to different needs for economic development activities, we have to always look for ways to create other open space. And so that I had the feeling that your bill had a lot going for it, and I could be very supportive of it.

But I would be very, very uncomfortable if such an incident should occur and we had passed this bill without giving our own opportunity to consider those activities that might not be willful or malicious but

still would fall under the category of negligent failure, which I think we should not hold anyone harmless for their negligence anymore than we should for willful and for malicious failure.

So, Senator, under those circumstances, back in the district, we may have to discuss this, but I will have to vote no.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, if Senator Saland will answer a couple of questions.

THE PRESIDENT: Senator Saland?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: In the situation that Senator Oppenheimer described, what if the Boy Scouts came on to her property without her knowledge? Would she then be subject to liability?

SENATOR SALAND: Well, first let me suggest to you that you have to be coming

onto the property for recreational purposes. That's the start. So the situation that was just described by Senator Hassell-Thompson, really, if that toddler wandered onto the property, fell into the well, this law would not apply. If that was a toddler. If he or she came on the property for recreational purposes, that changes the entire format.

The Boy Scouts would have to be coming on for recreational purposes and there would have to be some permission granted by whomever the property owner is -- in this case, Senator Oppenheimer -- before they could come upon the property in order for them to be protected.

But being mindful of the specific language that's in here, I mean, that would not be applicable to the situation that Senator Oppenheimer described.

SENATOR STAVISKY: Well, if she were to put a fence around the property -- if the Senator would continue to yield.

SENATOR SALAND: Yes, Madam President.

SENATOR STAVISKY: If she were to

put a fence around her property

THE PRESIDENT: You may proceed, Senator. Thank you.

SENATOR STAVISKY: -- would that come under the provisions of your legislation?

SENATOR SALAND: The question again goes to the issue of permission. So if she puts a fence and someone scales it, I mean, you know, it's still clearly

SENATOR STAVISKY: For the purpose of ice skating. Someone scales the fence for the purpose of ice skating.

SENATOR SALAND: She still would not have given her permission.

SENATOR STAVISKY: A couple of other questions, Madam President.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Stavisky, with a question.

SENATOR STAVISKY: I thank you. And I thank, incidentally, Senator Dollinger for his lessons. I suspect at the end we may

all take the bar exam after.

Is she responsible for maintaining the fence that she would put up to keep out people who do not have permission to engage in recreational activities on her property?

SENATOR SALAND: I'm sorry, would you say that again?

SENATOR STAVISKY: She presumably would have to maintain the fence if she so decides to put up a fence to limit the number of people who are going to come ice skating on her property.

SENATOR SALAND: The law makes distinctions between invitees and trespassers.

What this attempts to say is if you give permission, in effect, as long as you're not -- and again, I'll tell you to take a look at Section 3 -- if you're not willful or grossly negligent, if you're not charging a fee, you effectively are permitting others to use your property. There's a certain assumption of risk for the use of the property. And you're not going to be concerned if you have, quote, unquote, mere negligence.

If she has a fence and she doesn't give her permission, there's nothing that this does one way or the other. Whatever the law would be today would be the law under this bill. Absolutely zero impact.

SENATOR STAVISKY: That's what I would assume.

And my last question, if the Senator would yield.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: On page 2, line 8, you add the phrase "whether or not a farm." I was curious as to why you're inserting the phrase "whether or not a farm."

SENATOR SALAND: Merely to make it clear that farmland would be treated similarly as any other land that would be the subject of this bill.

SENATOR STAVISKY: Thank you.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

Please read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Thank you, Madam President, to explain my vote.

I think that the definitions that exist in the law now are pretty broad and pretty wide, and I can't even think of the definitions that were left out that would make for such a broad definition as exists in this legislation.

I'm just imagining suburban property like a pool and someone giving permission to children to play in their pool, and then some kind of accident. I don't know if that limits liability in those situations.

But I think that this opens the door for a lot of really misfeasances on the part of landowners. Although we don't want them sued for actions that were not their

fault, we certainly want them taking responsibility for circumstances that should have been in their contemplation at the time that they left their property in the condition that it was.

And what this does is apply such a strict standard that it doesn't give the courts any jurisdiction to make the final decision. So regretfully, Madam President, I'm going to vote no.

Thank you.

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

Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: I'm going to vote no as well. I think the whole concept of limiting liability to malicious and willful only I think has gone a little bit too far.

There was some discussion about gross negligence. Well, it doesn't say in this bill gross negligence. In order for someone to be liable, it's either got to be willful -- that means you intend to do it

or malicious, which means you have some evil intent.

Gross negligence is even a standard below that. And people could get away with being grossly negligence just because they gave permission to avoid liability, the way I read the bill.

And, secondly, the concept is protection of people. And 99 percent of these people have insurance for a very simple reason, to have a risk taken care of. And a risk is covered by the insurance because we want to make sure people are compensated if they're in some way wronged.

So I guess -- and one other point, and then I'll just vote my no -- that I think is important. If you give permission under this bill and somebody gets hurt, you may not be liable. If you don't give permission, you may very well be liable. There's something that doesn't make any sense to me with that kind of distinction. Under existing law, you could still be liable.

So I guess my point is I hate these exceptions. We have a general theory of law

that we should follow. And I therefore vote no on this bill.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 311 are Senators Brown, Connor, DeFrancisco, Dollinger, Duane, Espada, Hassell-Thompson, Markowitz, Montgomery, Onorato, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, and Stavisky.

Ayes, 42. Nays, 17. Also Senator Morahan in the negative. Ayes, 41. Nays, 18.

THE PRESIDENT: The bill is passed.

Senator Kuhl.

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

THE PRESIDENT: No, there is not, Senator.

SENATOR KUHL: There being no

further business to come before the Senate at this time, I move we stand adjourned until tomorrow

THE PRESIDENT: Senator Santiago.

SENATOR SANTIAGO: Madam President, I would like to be -- with unanimous consent, I would like would be recorded in the negative on Calendar 316, please.

SENATOR KUHL: No objection.

THE PRESIDENT: You will be so recorded as voting in the negative on Calendar 316.

Senator Kuhl.

SENATOR KUHL: Now, there being no further business to come before the Senate at this time, I move we stand adjourned until tomorrow, Tuesday, April 24th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, April 24th, at 11:00 a.m.

(Whereupon, at 5:06 p.m., the Senate adjourned.)