NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:38 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will please come to order.

I ask everyone present to please join with me in reciting the Pledge of Allegiance.

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

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

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

ACTING PRESIDENT McGEE: Thank you.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 10, the Senate met pursuant to adjournment. The Journal of Saturday, February 8, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following bills:

Senate Print 759, by Senator Velella, an act to amend the New York City Civil Court Act;

975, by Senator Farley, an act to amend the General Construction Law;

1332, by Senator Leibell, an act to amend the Eminent Domain Procedure Law;

1484, by Senator DeFrancisco, an act to amend the Judiciary Law;

And Senate Print 1485, by Senator DeFrancisco, an act to amend the Surrogate's Court Procedure Act.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: All bills reported direct to third reading.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Seward, on page number 5 I offer the following amendments to Calendar Number 55, Senate Print Number 683, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT McGEE: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolution 316.

ACTING PRESIDENT McGEE: All in favor of adopting Resolution Calendar, with the exception of Resolution 316, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution, 316, at the desk by Senator Libous. May we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 316, paying tribute to the life and accomplishments of former Senator Edwyn E. Mason.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Senator Libous would like to open the resolution for sponsorship.

With the consent of the Minority, if we can put all members on it. And if somebody wishes not to be on the resolution, they should notify the desk.

ACTING PRESIDENT McGEE: This resolution is open for cosponsorship. If you do not wish to be cosponsor, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Senator Hoffmann, Senate Print 180, an act to amend the Penal Law, in relation to creating the crime of agri-bioterrorism.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 85, by Senator Skelos, Senate Print 1021, an act to amend the Criminal Procedure Law, in

relation to the period of limitation.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

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

SENATOR SKELOS: Madam President, if we could go to the controversial reading of the calendar and begin with Calendar Number 85.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 85, by Senator Skelos, Senate Print 1021, an act to amend the Criminal Procedure Law, in relation to the period of limitation.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Skelos, will you yield for a question?

SENATOR SKELOS: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Is this bill an attempt to deal with the issue of clergy abuse and the statute of limitations?

SENATOR SKELOS: It has to do with increasing the statute of limitations for incest and other sex offenses committed against minors, increases the statute of limitations from 15 years from the age of majority. So it would be 18 to age 33 rather than age 18 to age 23.

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

ACTING PRESIDENT McGEE: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Thank you.

But more specifically, I know the Times-Union and the New York Times and I

believe the Long Island newspapers, in light of a recent report on what happened in the Rockville Centre diocese, have been talking about some of the issues and -- including payment to victims and other things.

But I'm wondering if this bill is also intended to capture those who wish to raise the issue of their abuse on the part of clergy members.

SENATOR SKELOS: This strictly extends the statute of limitations for the crimes enumerated, as I mentioned. If that crime fell within the enumerated crimes of this bill, then the statute of limitations would be extended to the age of 33.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Are there plans contemplated to hear in this body other pieces of legislation which would deal with the issue

of abuse on the part of members of the clergy? Or is this it?

SENATOR SKELOS: Madam President, it's sort of moving away from the context of this legislation. But I'm sure there are many criminal justice matters that are being considered by both the Senate and the Assembly in many areas, including terrorism, many of the bills which will be voted upon later.

But right now, this legislation strictly deals with the statute of limitations.

SENATOR DUANE: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: I have some concerns, of course, about extending the statute of limitations for everything.

But I guess what has colored my point of view on the issue is the revelations in the press that when -- specifically in the case of those that have been victimized by clergy abuse, when the victims tried to report it to high-ranking members of the clergy, they

were asked not to report it to anyone else and oftentimes, as has been reported in the press and which is in some cases part of the public record, then provided with money to remain silent.

And in some cases, that has made it so that in addition to those who made agreements to keep silent in other cases, because the statute -- while they may -- while a victim may have reported to the clergy what had happened to them by another clergy member, the abuse was never reported and now the statute of limitations has run out.

And so what I'm trying to figure out is whether or not, in addition to the other areas that might be covered in this legislation, abuse in a family or other areas, whether or not this legislation is also intended to remedy that issue of buying the silence of victims, or in other ways a remedy to try to address this problem which has been so recently and I think appropriately raised in the press.

So that was what my line of questioning is. And now as I've been speaking

on the bill, you've sort of heard what my thinking is on it.

So thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Duane.

Is there any other Senator who wishes to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Veterans, Homeland Security and Military Affairs Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE:

Immediate meeting of the Homeland Security Committee in the Majority Conference Room.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: If you could call up Senator Hoffmann's bill, Calendar Number 8.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Senator Hoffmann, Senate Print 180, an act to amend the Penal Law, in relation to creating the crime of agri-bioterrorism.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Hoffmann, an explanation has been requested.

SENATOR HOFFMANN: Thank you, Madam President. I would be delighted to explain in some detail the importance of this bill and some of the specifics contained within it.

Let me first state for the record that this is the same bill that we passed last

year, and this also deals with a subject area that we've been working on since 1999. It is not a new issue before this house. And last year the vote on this piece of legislation was unanimous in the Senate, and I certainly look forward to a similar vote again today.

But I think it behooves us to take a moment to reflect on the very sweeping changes that have taken place in our world and indeed our state over the last two years that now changes our focus on this issue. We probably would have been passing such a piece of legislation with or without September 11th, but the urgency for us to do it has never been more clear.

And in fact, I think it's somewhat of an interesting coincidence that as we speak today in this chamber, in Washington, in the halls of Congress, there is at this very moment a hearing going on at which all of those individuals charged with public safety and antiterrorism, national security, are addressing Congress and speaking about the magnitude of this problem and asking for the help of the United States Congress in

addressing this issue, on a somewhat different level. As I last saw CNN, the director of the CIA was testifying, following the director of the FBI, and Tom Ridge was scheduled to be on deck.

The reality for us in New York State covers several key areas. Number one, we are one of the foremost agricultural states in the nation. And I know that sometimes shocks people when we say it. Even New York State residents find it hard to believe that we are the number three producer of milk, that we are number two and number one in some categories of cheese production, including cream cheese, that we are number two in sweet corn in the nation. We are number two in apples. We are a major supply of food products not only for the United States but for other countries as well.

And while we should all be very proud of this, I think it's also important to remember that we sometimes take for granted that people in agriculture do their work with little or no outside interference and that they need little or no outside assistance.

The simple fact of the matter is that they are vulnerable at the farm level and at the transportation level to interference of the very worst kind, that there is a not very difficult opportunity for people who want to tamper with the food supply to do so.

And we have now learned that unimaginable crimes can be committed against large populations by the introduction of pathogens or genetically modified substances that can affect the food supply during the course of production and its movement from the farm to the consumer.

This bill has several provisions, but key among them is the establishment of a Class B felony for anyone who would tamper with the food supply as a means of creating a terrorist act. A Class B felony is punishable by up to 25 years in prison.

Ironically, many of these crimes, which we had never imagined before, would have very difficult to prosecute because we're not simply introducing a new standard of punishment, a new measure of justice for this crime, but because the crimes were so

unimaginable it would have been very, very difficult to assign a consumer product tampering category to something on as grand a scale as affecting the milk supply that affects the product used in virtually every Northeastern state.

So we feel the need to do something that will serve as a deterrent, that will give us the means, should anybody be convicted of this crime, to be sent to a prison where he or she would no longer be a threat for up to 25 years.

A slap on the wrist would not be an adequate deterrent, nor would it serve to put somebody who was guilty of such a crime behind bars for a long enough time. We need teeth in a law that will keep people safe from any kind of tampering with our food supply during the chain of production.

The four key provisions of this bill include a penalty for deliberately altering the genetic structure of plant life; a penalty for introducing an animal pathogen which would be capable of causing death of livestock or rendering the by-product of a

livestock unusable for human consumption; the crime of intentionally defiling, corrupting, or altering a food or farm product with the intent to cause injury or death in human beings; and, finally, anyone who intentionally manufactures, designs, or alters genetic material to cause the production of a pathogen, virus or bacteria capable of disrupting or destroying a farm or a food product.

These very specific categories most of us a decade ago would have never imagined, but they are now a very real possibility for our society and indeed our nation.

I'm proud of the fact that New York State has taken the lead in this area. There are some who would ask for all of this to be done at the federal level and for us to simply wait. I think that it is unreasonable for us to assume that the federal government alone and the federal law enforcement officials alone should be charged with doing the work of protecting our population.

And when it comes to something as critical as the food supply of the

northeastern part of the United States, we have an overriding responsibility to do everything within our power to have New York state law and New York state law enforcement vigorous to protect our population and, obviously, to protect the farmers of this state.

Any kind of economic loss suffered by a farmer through an act of terrorism would have a ripple effect in the economy. Farmers buy locally. Farmers need product, they need supplies. Farmers don't go and order from some distant part of the nation every time something breaks down on the tractor. They don't call some international supplier to replace a high-tech component the way a manufacturer or somebody in the high-tech world would do. They need everything for their farm to be close by.

Therefore, the economy of rural New York State is integrally linked to the activity on each and every farm in New York State.

So we need to protect the people who are involved in food production. We need

to protect the people who are involved in the transport of the product. And we need to ensure that every step of the way that product is safe, and that anyone who would deem to tamper with that product will be punished with the strongest possible punishment available, and that would be a Class B felony.

I thank you, Madam President, for calling this bill today. I'm delighted that it is part number one of a package which will very shortly be introduced in its total by Senator Bruno, with Senator Balboni and Senator Rath. But as New York State's number-one industry's champion in this chamber, I am proud that agriculture bioterrorism is first on our agenda today.

Thank you.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, on the bill very briefly.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I expressed a concern the last time this bill

was brought out with its possible effect on those engaged in research -- scientists, biotech businesses, of which there are several major biotech research facilities in my district.

Because it was not completely clear to me last time, and it remains unclear whether or not this could have a deterrent effect on legitimate research. Because as the bill states, it seeks to criminalize the design, development or utilization of a process to genetically alter plant life, intentionally introduce an animal virus, but, more importantly, intentionally manufacture, design or alter genetic material to result in a pathogen, virus or bacteria.

That may happen for legitimate purposes. I don't think this bill is actually in its final form. I would urge Senator Hoffmann that, as I did last year, we should add some language to this legislation making it clear that researchers involved in developing genetic materials for research purposes, which material might potentially have a harmful usage, should still be sure

that they should not be prosecuted under this legislation.

I think that can be remedied in the drafting, and it is a suggestion I would make before the bill moves forward to a final vote, should we get there this year, which I hope we will.

Thank you.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Senator Hoffmann.

SENATOR HOFFMANN: I think it's important to clarify for Senator Schneiderman that the criminal action would take place should someone be charged with intentionally developing a pathogen that was designed to be deleterious and cause the production capable of disrupting or destroying a food or farm product. It would not be some accidental consequence of other research.

And obviously the United States government is closely involved in discussions with all of the labs that have any kind of research activity of this type. And it's unimaginable that a researcher would be

involved in something that could have a potentially dangerous impact without it having been precleared and closely monitored.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could stand at ease pending the next committee meeting, which will be Rules, called after the Veterans and Homeland Security Committee meets.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, the Senate stood at

ease at 12:00 p.m.)

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: Immediate meeting of the Rules Committee in the Majority Conference Room, please.

(Whereupon, the Senate reconvened at 12:35 p.m.)

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, can we call the Senate to order.

ACTING PRESIDENT McGEE: The Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time return to reports of standing committees.

And I believe there's a report from the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Number 3, by Senator Balboni, an act to amend the Criminal Procedure Law and others;

1627, by Senator Balboni, an act to amend the Penal Law;

1711, by Senator Rath, an act to amend the Penal Law;

And Senate Print 1712, by Senator Rath, an act to amend the Penal Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: I move to accept the report of the Rules Committee.

ACTING PRESIDENT McGEE: All in favor of accepting the report of Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Senate 3.

ACTING PRESIDENT McGEE: The Secretary will read.

SENATOR ADA SMITH: Explanation.

THE SECRETARY: Calendar Number 87, by Senator Balboni, Senate Print Number 3, an act to amend the Criminal Procedure Law and others, in relation to creating the crimes of criminal possession.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: Yes, Senator Bruno, there is a message of necessity.

SENATOR BRUNO: I would move that we accept the message.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Thank you.

Today we are going to be discussing a bill that we have seen before. This bill was passed unanimously in this chamber on June 17th.

And this bill does several things. It takes a three-part approach to addressing the grave threat of terrorism in this state. The impetus for this bill is the conversations that I have had, that Senator Bruno has had, and that the Governor has had with Tom Ridge and Jim Kallstrom, who have asked us to provide them with the tools necessary to conduct the war on terror on the streets in

the communities of this state.

This bill would do several things. It would take away the financial assets of the terrorists. It would create two new crimes, structuring and facilitating.

Structuring would be a crime for anyone to try to convince a financial institution not to report under the requirements of the federal government and the state banking laws.

Facilitating a terrorist act would be providing personal support, harboring a terrorist. In addition to which we raise, for the first time, the penalty for money laundering to an A-I felony.

We are also going to allow for a greater disclosure of tax information for those individuals prosecuted for terrorism. So the first approach is to take away the terrorist's ability to create a financial network.

The next aspect of the approach would be to give law enforcement the ability to aggressively pursue and detect and prevent terrorists from perpetrating terrorist acts in

this state.

The expanded capabilities of roving wiretaps, the crime of conspiracy will allow prosecutors greater flexibility to be able to go out and seek these individuals out and bring them to justice.

And lastly, something that I believe is way overdue in this state, an issue that this chamber has been in the forefront of -- not only for the state of New York, but for the nation -- finally putting into law the harshest penalties we can enact or adopt for the crime of possessing or using a weapon of mass destruction; specifically, chemical or biological weapons.

In 1999, ladies and gentlemen, my colleagues in this chamber and I, we passed a bill for the first time to outlaw weapons of mass destruction. And I can recall standing on the floor of this chamber and people looking at me saying: What are you talking about, weapons of mass destruction? Is that our issue? Is that our fight? It is indeed our fight.

So this bill would create the

penalty of death, of execution, for the use or possession of a weapon of mass destruction.

Madam President, the concept today, and why we're moving today, is that I -- and I believe all of us -- don't want to be here tomorrow or next week or the week after that if, God forbid, something happens. We have done these bills before. The response from the other side of this Legislature has been deafening in its silence. It is time to act now.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you very much, Madam President. If, through you, the sponsor would yield to a question.

ACTING PRESIDENT McGEE: Senator Balboni?

SENATOR BALBONI: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator Balboni.

It's a large bill. It has many different pieces. And I'll start out with a question that perhaps is not addressed to you, but we discussed it in Rules and this can go out to the floor.

Why are we doing this as a message of necessity bill today, rather than having had the opportunity to go through -- in fact, your own chaired committee, there's an announcement of hearings that you are having around the state. We passed a bill -- not the identical bill, but a variation on this bill last year. Nothing seems to have gone forth since then. What is the necessity today to do this with so little notice to the public or to your colleagues?

SENATOR BALBONI: Senator Krueger -- Madam President, through you. Senator Krueger, the development of this particular bill has been a work that has been conducted for over a year and a half. After we passed the bill on June 17th, the Attorney General sought to engage the Assembly and over the fall had discussions. Several provisions in this bill reflect those discussions.

Now, I am not saying that the Assembly majority has embraced any aspect of this bill. I hope they do. But as of right now, they have not.

As we came to this session itself, we had a special session. Senator Bruno made it very clear in the special session our priority was to have bills passed that dealt with biological and chemical terrorism. Nothing happened with the other side.

We have been trying to engage and get into a dialogue, make sure that we have the best bill possible. And again, we have nothing from the other side.

Frankly, if you take a look at the number, Senate 3, there's a story behind that. The story is in the first week of January I wrote to the Majority Leader and requested that in fact he consider taking this measure and putting it with this number. That's why it was reserved.

But the fact is that my shop didn't get its act together. I was trying to develop provisions and get this bill introduced faster. But because of all the bills that

were coming in, Bill Drafting was a little slow, and therefore we weren't able to get it in print earlier. That is the only reason why this is a message of necessity.

The provisions itself, should anybody stand up in this chamber and say that the bill is too long and you don't have enough time to consider it, I would respectfully respond: We've had all year. The provisions are not markedly changed. I could point out to you in five minutes the differences between the June 17th bill that we all voted for and I know we all read at the time -- because members of this chamber, we always read what we pass. If not on the day that we pass it, perhaps sometimes later. And therefore, the differences are not that enormous.

So what I believe we have before us is a timely issue that has been delayed far too long.

SENATOR LIZ KRUEGER: Madam President, through you, if the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

I believe I just heard you say in your explanation that Tom Ridge asked for this bill in New York State. Can you explain the differences, if any, between federal legislation moving forward along this track and the need for parallel -- if it is parallel -- legislation at the state level?

SENATOR BALBONI: Madam President, through you, I did not say that Tom Ridge asked for this specific provision.

But I did say that in a conversation at the White House that I had in December, I spoke with Secretary Ridge, as I have in October and then last June and then in the spring before that. And every time that I've spoken to the secretary, he constantly reminds us that the place where the war on terrorism is going to be fought is in the states.

On any given day, there are 700 federal law enforcements in the State of New York. On any given day, there are 70,000 local and state law enforcement officers. We have the assets. The federal government does not. The same with our first responders.

The World Trade Center was a perfect example of how we are going to respond at the state and local level. The federal government is a key player in that, a key partner in communication, in intelligence, in coordination. But the actual, physical response and the physical work of detecting and ferreting out crime is the job of the state and local police officers. Why not empower them?

The federal government has statutes on biological and chemical terrorism. They've been in effect for several years. But that does not preclude us -- as a matter of fact, it should be a motivation to us to adopt this legislation.

I would refer you back -- and, Senator, I don't recall if you were in the chamber at the time. But for many, many years

there was a huge issue of the assault weapon issue. And how the Assembly, ironically enough, stood and said the fact that there is a federal assault weapons ban should not prevent the State of New York from enacting that same ban. Well, that's the same argument we use today.

Under the powers reserved in the Constitution to the states -- specifically, police power -- this is not only our job, it is our mandate to adopt the provisions of this bill.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

So I started out with process questions, and then I moved to whether this

was a process issue related to homeland security and Tom Ridge. I'll go back to process here.

Why did we have no discussion, either in bipartisan task force or roundtable discussion, here in the Senate since last year on this bill? I learned only now in the Rules Committee that there had been a Majority task force discussing these issues and that you had roundtables, I believe. You weren't in the Rules Committee meeting, but the statement was roundtable discussion, people brought in to discuss this.

Even leaving aside our colleagues in the Assembly and what they have or haven't done, because they're not here to discuss this with us, why didn't we take this up as a full Senate between last year and today?

SENATOR BALBONI: Madam President, through you, I am reluctant to speak on behalf of the Majority Leader.

I do know that his efforts have spoken for him. He has attempted to move this issue along in many ways, by creating the Senate Task Force on Emergency Preparedness,

dealing with that aspect, under Chairman Jim Seward, and involving many of us. That was a way to reach out to our communities and to see what the needs were for the responder communities. We held those hearings. They weren't meant to be partisan in any way; they were meant to be information-gathering.

But what Senator Bruno has done is, just as recently as January, after discussions to create joint committees in the Assembly and the Senate in December that went nowhere, Senator Bruno reconfigured the existing Veterans Committee to be Veterans, Homeland Security and Military Affairs. That is the vehicle by which this house will be considering all of these issues itself.

So during the fall, I would have loved to have seen that committee created by both houses. But we would have needed to be in session to do that.

And, secondly, the practical reality is we were in the middle of an election. Many of our colleagues were involved in those activities, and therefore it was not practical to bring everyone together

to form this committee.

As soon as he could, Senator Bruno took it upon himself and this conference to signal as one of our top priorities the creation of that committee.

Once again, not to harp on it, but in the Assembly there's no companion committee. So not only do we not have a sponsor of any of the legislation that you see here in the State Assembly, we don't even have a committee in the State Assembly to be a repository of the ideas, to hear the concerns of the constituencies on this issue.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you very much, Senator Balboni.

Since we don't have an Assembly

sponsor, we agree on that, I will just reiterate my misunderstanding of the necessity of a message of necessity for all this to be done today in one house. Again, you weren't in the Rules Committee, but I believe that the discussion there was that there weren't hearings held.

So I will ask you the question, although it really should be addressed to Senator Seward: Where were these hearings held? Quite a few of us represent the City of New York, Manhattan Island, Ground Zero for September 11th. I was not aware of any announcements of hearings or in fact any hearings that took place around these issues.

And I would think that for New York City that would be a critical issue, because of course we are extraordinarily sensitive to issues of terrorism and risk to our city and our people.

So you had just mentioned hearings.

SENATOR BALBONI: Madam President, through you. Senator Krueger, I can only speak for myself and my own efforts in regard to the issue itself.

First of all, there were not hearings on this bill. They were not held. It was, I guess, assumed that since the Legislature -- or, I'm sorry, the Senate voted unanimously for the bill last year, that any of the questions that would have been raised would have been in fact raised then, and that if people wanted to suggest alternatives or suggest amendments that since June those would have been forthcoming.

In addition to which, as far as what has been done by various members, I can tell you that not only as far as the Task Force on Emergency Preparedness in the Senate, but also the National Conference of State Legislators has a task force that I happen to be cochair of. We have been around to places like the CDC and to the Port Authority in New York, to the Department of Health in Washington, to the White House. We've had a -- there's been a whole host of activities that any legislator in this state is welcome to participate in.

You know, this is an issue that's not a Democratic issue, it's not a Republican

issue, it's all of us. And what we're frankly asking is we need the ideas. We need the participation. We need the suggestions.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator Balboni, certainly you are right, this is not a Democratic or a Republican issue, this is an issue for all the people of New York State.

You mentioned you're traveling around the country to all of these events and the national state legislative -- I always get the letters wrong, I apologize.

SENATOR BALBONI: NCSL.

SENATOR LIZ KRUEGER: NCSL. I always do it backwards in my mind.

Does the Senate pay for your trips

to these events?

SENATOR BALBONI: I have used both personal and campaign and various things. Also -- actually, NCSL has also helped with that.

SENATOR LIZ KRUEGER: But you would agree that since it isn't a partisan issue, that the Senate should have the same rules for both Republican and Democratic Senators to participate in these national forums and --

SENATOR BALBONI: Senator Krueger, I don't know -- I'm sorry, Madam President, through you.

I apologize, I was prepared to debate the bill before us and I wasn't prepared to talk about individual items of reimbursement. So, you know, I'm not really sure what the Senate policy is.

I will tell you this, though. The importance of this issue itself I would hope would deflect concerns perhaps until a later time as to how we participate. Because each one of us in our own Senate districts I believe value our constituencies as much as

anyone else. And therefore, it's imperative we take our own steps to get involved.

And therefore, I think that -- what I would suggest to you is obviously you have a deep understanding and a deep emotional commitment to this, given your representation of the City of New York. And the fact that I'm sure that many of your constituencies are very frightened right now, that in your role as trying to provide leadership for them, you're seeking to do something positive and move the issue forward. That's obviously why you voted for the bill last year.

And so I would ask you to take that resolve and that commitment and work with us today on this bill, realizing that this is only one part of the dialogue. We don't have a partner to dance with. I think you could play a key role in that, Senator Krueger, particularly yourself, in getting the Speaker to come out and to embrace this measure or at least begin discussing it.

SENATOR LIZ KRUEGER: Thank you.

Madam President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

And to be fair, my plan was not to go down a lot of questioning of distribution of resources for travel around the country either. But I was led down that road because I learned from you that much of the discussion around this bill and discussion with people around the country on antiterrorism bills were actually taking place outside of New York State, not taking place in discussion between the Senate or Assembly.

But to go back --

SENATOR BALBONI: Wait, wait, wait. Let me correct that, please.

SENATOR LIZ KRUEGER: Yes.

SENATOR BALBONI: You asked what we had done and what hearings we had participated in, and I was giving you what I

had done.

Remember who designed this bill. Ladies and gentlemen, this bill was designed by the Attorney General, Eliot Spitzer, and by Governor George Pataki and by DCJS and by the State Police. So that's all within the state of New York.

And that fact was a fact -- is fact today and was a fact on June 17th. And I believe we discussed that in the context of the debate we had in June.

SENATOR LIZ KRUEGER: Thank you.

Madam President, if, through you, I could continue to ask the sponsor to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you. To go back to the bill.

SENATOR BALBONI: Good.

SENATOR LIZ KRUEGER: What are the issues, as you understand them, in

discussions with the Assembly about the specifics in this legislation that stopped them from being comfortable going forward? Since you've explained that there's an Attorney General support for this bill, there's the Governor's support for this bill. Clearly, our friends and colleagues in the Assembly are very aware of concerns about terrorism through the state.

In discussions, even though there has not been a conference committee or a sponsor, what is your understanding of the differences between the two houses on these -- on the issues in this bill? Because it is a complex bill, it has very many pieces. And I have to leap to the assumption that there's agreement with some of the bill in the Assembly and disagreement with other parts of the bill.

SENATOR BALBONI: Madam President, through you. Senator, I wish I could respond. I don't know what their objections are. That is a part of the problem. They have not responded in any way, shape or form.

SENATOR LIZ KRUEGER: So, Madam President, through you, if I could ask the sponsor to continue to yield to one more question.

ACTING PRESIDENT McGEE: Senator Balboni, Senator Krueger would like to ask you one more question.

SENATOR BALBONI: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And thank you, Senator Balboni. Thank you for your patience.

So there's been no discussion between the Senate and the Assembly on this bill since last June?

SENATOR BALBONI: No, I can't answer -- Madam President, through you, I do not know that. I have not personally discussed this matter with the Assembly.

I have in the past, on the weapons of mass destruction legislation, different than this. I discussed it with them in 2001, discussed it in early 2002, in three-way

negotiations with the Governor's office and the State Assembly. It has not moved since then. That I know of.

SENATOR LIZ KRUEGER: Thank you. And you have not had discussions.

Thank you very much, Madam President.

Thank the sponsor.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Thank you, Madam President.

My colleagues, on the bill there are two provisions, as you see, that deal with the first responders and the local governments that are those first responders and need to deal with the issue as it hits the ground, as it were, in their communities.

The two provisions that we're talking about, the first of which adds municipalities and other legal or public entities engaged in providing emergency services to seek restitution if indeed there is a cost to them for the placement of a false weapon of mass destruction or a false -- well,

it started out as a bomb, and now it's hazardous materials.

Sometimes it could be a prankster; you don't know. Could be real. The first responders go out. There's a cost to going out. There's a cost if there is an accident, a vehicular accident. There's a cost if someone is injured in the process of the response.

And so this simply -- and this bill has passed any number of times. It's been around since '97. This bill merely incorporates this into the larger piece of legislation and moves forward with that.

The second provision, as I said, in the last bill it expands on what an item of false placement is, not just a bomb, but a hazardous substance. Someone calls in and says they've placed an envelope of anthrax, someone calls in and says they have placed a suitcase of smallpox vaccine, whatever it might be.

This is expanding on it. It's two small parts of a very large puzzle, that we don't think anyone should think it's a nice

prank or it's something that would be kind of fun to do to pull a prank like this, have it cost local governments.

And then it's almost as if the boy calling wolf over and over again when there was no a wolf. And then when there is a wolf, no one responds. Well, we want first responders to respond each time knowing that it is a serious need for a response.

Thank you.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Madam President, can I have some order, please.

Madam President, I rise in support of this legislation and thank its sponsor for his leadership.

I couldn't help but notice the debate in the questioning by Senator Krueger asking about hearings. Well, I know that Senator Seward, Senator Rath participated in a

number of meetings across the state, heard from responders, heard from all of those who are dedicated law enforcement and emergency medical personnel and how they believed we should be reacting to the terrorist threat. The terrorist threat, it is very real.

Well, Senator Krueger, I'd like to talk to you and my colleagues about a hearing I held as chairman of the Crime Victims, Crime and Corrections Committee. I held that hearing in Manhattan, not too far from Senator Krueger's district. I believe it was in Senator Duane's district, in the shadow of the World Trade Center or where the World Trade Center once was.

And I spent hours, as chairman of the Crime Victims, Crime and Corrections Committee, listening to the victims of the most horrific crime that ever took place on American soil. And I heard from the victims whose -- who lost a husband, who lost a wife, who lost a child in that horrific attack.

And I couldn't help but cringe, when I heard of messages of necessity and process and hearings, about those victims and

about how right now we are on a state of alert second only to a high state of attack. And that that state of alert puts us in New York at the most serious of risk. What's happening across the nation is important, but what is happening in New York is vital to the circumstances relating to not a parlor game but a very, very serious issue.

And the loss of over 3,000 New Yorkers to terrorism to me is message of necessity enough to pass this legislation, to pass it not today but yesterday. I frankly am outraged that we are seeing posturing in this chamber and not attention to public protection.

Public protection is too important an issue to be bargaining with the Assembly over. We are not in the bargaining mode. We are not in a mode of discussion, of negotiation. We should be in a mode of leadership, the type of leadership that Governor Pataki has put forth in requesting this legislation. That is his message of necessity. Governor Pataki's message of necessity is that we are at risk.

And this Legislature better get its head out of the sand and put, for once, partisanship aside and listen to Senator Balboni, Attorney General Spitzer, and the legislative leaders here who are pushing this type of legislation.

It's time that our laws keep pace with technology. The laws need to also keep pace with the type of criminality that exists today. We're not talking about second-story burglaries, we're talking about serious threats to life, serious threats to American lives. And it's time that we act.

This house needs to put partisanship aside, Madam President, and put public protection first. That's the message of necessity that we all have and are all under. I urge the immediate passage of this legislation.

ACTING PRESIDENT McGEE: Thank you, Senator Nozzolio.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I rise in support of this

legislation. You know, much of what is in here has been addressed by this house for years. There's not an awful lot of it that was new. I just want to speak to one part of the legislation.

The Banks Committee held hearings several years ago, long before 9/11, on money laundering. Money laundering is the fuel that drives terrorists. And if there was one common thread during this hearing it was how because it's only a misdemeanor and it's so low on the prosecutorial totem pole that they don't bother with it. And they get away with it. Money laundering is a terrible, terrible problem.

So many issues that are addressed in this legislation are issues that have been before this house, that were passed last year unanimously. This particular legislation, which the Attorney General and the Governor are anxious to have us work on and pass, was offered to your conference to cosponsor, which is an unknown rarity in the other house.

I think it's important that we address this. The immediacy of this is very,

very important. This Legislature is getting ready to recess for Presidents' Week. I think it's important that we pass this, we pass this with bipartisan support. It's a very, very important piece of legislation, one that starts the process moving, that gets it going.

Will this be the final piece of legislation? Probably not. But it will be very close to it. And we have to address these issues.

I speak to money laundering; again, just one facet of this. Very, very significant. Should have been done years ago, but hasn't been. So many of these things are things that are needed to be done if we're to protect your constituents.

I'm going to vote in favor of this, and I would hope that every one of my colleagues would.

ACTING PRESIDENT McGEE: Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

You know, I've listened to this debate for the last couple of years, and I

really sometimes wonder if we in this body or in the body in the other house understand what Americanism is all about.

Just this past weekend, I visited with 125 Marines packing up C130s to go to Kuwait. They'll probably be part of the first line of defense. And one master sergeant said to me: "You know, Senator, when are the legislators like our state legislators, or Washington, going to sit down and think about us? Us, the first line of defense. And the second line of defense, our families."

And then you look at this piece of legislation. We had it last year. We've made a few changes to it. The passionate pleas by Senator Balboni, Senator Nozzolio, were very clear. But then we find people tearing this apart.

I look around this room, and I don't see too many here who have ever been in combat. That's where the shovel hits the ground. And when you start to say about what we're going to do, it makes we wonder do we really care about those people.

And then I heard some people

talking about the bill. They said, Well, you know what, we have a protection problem here, we have this, we have there. What about that man that's in the fighting line? He goes there. We should be doing everything in this country we can, because they're expecting us to do something to protect their families and our own families.

But we seem to be, in this house and the other house, always looking at how we can change it. Not for the betterment, but how we can dilute what the aims and goals are.

You know, you don't have to think about who's in Korea, who's in Kuwait, whether you agree with the war or not. You have to think about America, have to think about our country.

We talk about bioterrorism. Senator Farley talked about the money laundering. The money laundering puts all of that together so they can carry on these other activities.

When I hear people say "I can't vote for this, I can't" -- you know what? Let me just tell you something. The next time I

meet with some of those Marines or someone coming through Stewart, I'll have a list of people who can't support this to protect those Americans that are out there protecting us. And I'll say: Here's one person, here's another, and they're in this district or that district, why don't you write them and ask them why they don't want to protect their own families and your families.

So, you know, we're going to be sitting here again later on. As Senator Farley said, this may not be the way the bill will finally look at it. But why don't we try to find out what makes the bill better? I just think that we're making a very bad mistake. We ought to take a good turnaround.

Maybe we ought to read the paper and see just here, in this area here, 55 members were called to active duty, and they went up to Jim's area up in Drum, and they will be going overseas. Wouldn't it be nice for them to know that there was somebody here in an elected position in leadership in this state that cared about them and want to do everything to protect this great country of

ours.

As a combat veteran, I'm ashamed of us. I'm ashamed because I feel that we're saying to the troops "forget it." I won't forget it. And I won't let you forget it either.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: I don't understand how we can do something as important as this clearly is, the terrorism package that we're voting on today, without the benefit of public hearings.

And, you know, there were no Senate public hearings where we heard from law enforcement officials or civil libertarians or academics or, frankly, average citizens. We don't have on the record, through a public hearing, how they feel about this package of bills. Well, it's actually a package of bills and a bill.

And I can't believe that we're being asked to vote on this piece of legislation after it was just announced last night. I think that's completely irresponsible.

I mean, terrorism is horrific. And it needs to be addressed in the most comprehensive and sensible manner that we can. And we would be neglectful of our duties if we did not give thoughtful consideration to each and every part of this piece of legislation.

Now, I guess I'm pleased that there have been roundtables and that there was a Majority task force that met on this issue. Although, sadly, the person that chaired -- and one of our most able Senators, Senator Seward, who apparently chaired that task force, is not even in the chamber as we debate this bill. So that's of concern to me.

And I do -- I also -- I have to speak in defense of one of my colleagues, who I think she proved in -- particularly in her last election, that she really is on the side of crime victims and in fact probably one of the best advocates we have for crime victims

here. And I resent that her credentials as a crime victim advocate is being questioned in this body. Clearly the voters in her district don't feel that way, and certainly those of us on this side of the aisle don't feel that way either. So I hope that is never raised again as an issue, because it is just not true.

I do want to add that I am happy that Senator Nozzolio had that hearing. And he was very solicitous of me as the ranker on that committee. And it was an excellent hearing. And I think that that should serve as an example to all of us.

However, that just dealt with the crime victims' part of what we're doing here today on terrorism. And the package is far bigger than that and needs to be addressed not just from that point of view, publicly, but in a broader way.

Now, I'm hopeful that this package being done today is not just what I call a press-release package. But I am concerned that that is really why it's being rushed through today. Between September 11th and today there's been an awful lot of time, and

yet I think we've not used that time fruitfully to get as much information as we can on terrorism.

If we look to what happened in Washington, there were a tremendous number and hours and hours of public hearings. And that's why they're called public hearings, because they are on the record and the public can come and testify. Everyone is invited to testify. Anyone who wants to testify should be allowed to testify or submit testimony. And that's why we have public hearings. Well, we don't have public hearings, but that's why other legislatures have public hearings.

I have to raise another issue. Contained in this bill is a section which deals with the death penalty. On page 14, line 32: "A sentence of death when the defendant is also convicted of the crime of murder in the first degree, as defined in Section 125.27 of this chapter." Which means that as a result of this, people can be put to death.

I'm totally opposed to the death penalty. I will not vote for legislation

which includes the death penalty. So from the get-go, from my point of view, this bill is very problematic. Even if there were areas in this bill -- and in fact I have voted yes on some of the pieces of legislation which have now been included in this bill. And I might, if they were separated out, after public hearings. But I can't vote on this bill because it includes the death penalty, and I will not vote for that.

And again, that's something which could have come out more forcefully in a public hearing, and the people who are opposed to the death penalty could speak out on it. And I know that there are lots of people in this body who are going to be conflicted about this, because they may agree with some sections of it very strongly but they're opposed to the death penalty. And you can't be opposed to the death penalty and vote for the death penalty. You just can't.

Now, you know, I have to speak again -- when I'm in my district and I say I'm a senator, somehow people think it's like Washington, D.C. It's nothing like

Washington, D.C. If you watch C-Span, you see Senate hearings, you see people testify, you see people being questioned, law enforcement people, criminal justice people, civil libertarians, people in academic fields. And average citizens, people who are members of organizations that have expertise in areas. We don't know everything about everything. We need to hear from people to craft better legislation.

That doesn't happen here. I have to say: Come to Albany and watch what happens or what doesn't happen. We don't have hearings here. We rarely hearings here. I shouldn't say we don't have hearings, we rarely have hearings here. Yes, you know, Senator Nozzolio did have a hearing, and I applaud that. But that is a unique situation around here, and I think that that is a terrible thing.

You know, the point has been made, well, you pass the legislation and the Assembly passes legislation, then you have conference committees. That's not how it's supposed to work. That's why we are

considered -- even though we don't even have these conference committees. And I hold both houses responsible for that. But that's not how it works. That's why we are called one of the most dysfunctional legislative bodies in the nation. We are an embarrassment.

First you have hearings. Then you pass legislation. Then you have conference committees. But first you have hearings. You don't have hearings after you pass the legislation, you have hearings before the legislation. I just -- you know, I don't know -- it's like we live in a parallel legislative universe here. First hearings, then you pass legislation or you don't, then it goes to conference committees. That's how it works. The way we do it is absurd. And that's why we're a laughingstock.

So let's move out of -- let's do it the way it's supposed to be done. Let's have hearings. Right? First, let's have hearings. Then let's vote on -- then let's debate legislation in the committee. Then let's debate it here on the floor. Then let's vote on it and then let the Assembly do what the

Assembly is going to do, and then let both bodies come together and craft legislation. And then we can come back to it and see if we like what has been -- that version. That's the way it should be done in the Legislature.

I mean, I know I sound like I'm lecturing, and maybe that is what I'm doing. But I just -- that's the way it should be done. And it's time for us to start doing it the way a real legislature passes legislation.

I'm going to vote no on this bill because of the dreadful process which has brought it here, the dreadful process from 9/11 till today. And also because, sadly, though there are pieces of the legislation which in spirit I do support, but I also -- I can't vote for something that has the death penalty shoved into it with other things.

So I encourage my colleagues to vote no on this. Let's go back to the drawing board, let's craft pieces of legislation after real public hearings.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Sabini.

SENATOR SABINI: Thank you, Madam President. A question for the sponsor, through you.

ACTING PRESIDENT McGEE: Senator Balboni?

SENATOR BALBONI: Yes, Madam President.

ACTING PRESIDENT McGEE: The sponsor yields.

SENATOR SABINI: Through you, Madam President. Senator Balboni, this is a very comprehensive piece of legislation and deals with lots of things, including money laundering, which is a crime that is often conducted in neighborhoods like the ones I represent. It deals with different kinds of weaponry, very severe penalties. And your interest in passing it is to be complimented.

You mentioned in response to a question from Senator Krueger about you need the help of all of us in crafting legislation and in getting bills passed and in fact advocating with our colleagues in the Assembly on behalf of bills like this. And I just wonder, there are seven new members in this

body. Three of us, in fact, sat in a legislative body that was spirited out of its chamber as a result of September 11th, had to meet in the New York City Public Library, the main branch in Manhattan.

In response to the questions from Senator Krueger, you said that while there was a Majority task force or a roundtable, this bill this year in this session, which is marked for this session, was put together or introduced last night and passed out of the Rules Committee, not out of the substantive committee that you're chair of now.

And I'm wondering in what way would new members participate or any members participate in the crafting of such legislation if we're going to do it in a manner that even bypasses the appropriate committee.

SENATOR BALBONI: Madam President, to respond to the Senator's question, through you, I'm sorry, Senator, I -- I'm sorry you weren't at the meeting -- the first meeting of the Veterans, Homeland Security and Military Affairs Committee, which

we had immediately before the Rules Committee. And that is the substantive committee that considered this bill. So we did get a chance -- the substantive committee, as you call it -- and I would argue that the Rules Committee is also a substantive committee -- did in fact consider that bill.

As far as your call for participation in the process and the development of this bill, I couldn't welcome that more. And that is why I hope that you do not stand on this floor in future years and sit and say that because the Majority didn't hold hearings or didn't introduce enough legislation or didn't comment enough on these different provisions without having asked yourself could I have done it also.

Because this may come as a shock to some of your colleagues, but they can hold hearings too. They can offer pieces of legislation.

Now, I don't want to lecture the Minority on anything, but I was a member of the minority also. I suffered for seven years in the State Assembly minority. And our role

was to put forward the ideas and put forward changes. And if you talk about dysfunction, my definition of dysfunction is being obstructionist for an obstructionist's sake, because it sounds good in the press. Never offering a thing, never discussing what the provisions are that you object to.

June 17th was a long time ago. I have not heard from one member of the Minority on any of these provisions. Now, maybe that's because everybody voted for it.

And by the way, just to correct the record, the death penalty was in fact in the bill that we voted on on June 17th. So there are members here who have voted for the death penalty against their own objections.

My suggestion, Senator, is that this is a very sincere plea to you, and to all of us. Join us. And if you don't like what we do, that's fine. That is the process, the democratic process. Let us know what you would do instead. This is too important an issue to stand back and say we haven't done it right so we can't do it. Don't stand on hypertechnicalities, stand on principle. Walk

with us.

You know, Senator Nozzolio's furor came as a result of his passion for the issue, because it protects people. But it's also driven by the passions of the people in his district who ask "Are we safe?"

You know, we need to move this forward. I don't want to get into who's done what, who hasn't done this, where are we doing with this. That is not productive. So let's stop, if we can, the usual way of Albany, of saying "You're wrong" and now fold your arms. We need a dialogue, guys. We don't have it.

SENATOR SABINI: If the sponsor would yield for a further question, Madam President.

ACTING PRESIDENT McGEE: Senator Nozzolio, do you continue to yield?

SENATOR BALBONI: Actually, I'm Senator Balboni. He's better-looking.

ACTING PRESIDENT McGEE: Senator Balboni, I'm sorry.

Senator Balboni continues to yield. Sorry.

SENATOR SABINI: That's okay.

All the Italians look alike, I know.

And I'm glad the sponsor, to paraphrase our great former president, feels our pain on the Minority.

But I just wondered, to sort of underline the original question, since the bill came about in this legislative session last night, how that participation would have manifested itself.

SENATOR BALBONI: The participation is what you're doing today. I mean, let us know what your objections are, but also let us know how you're going to help solve those objections, how you're going to join with the Assembly. You know, how are you going to engage them? That's your participation.

Because we all know that there's no bill even in the Assembly. So there's going to be time. I hope we revisit the issue. I hope we get a chance to do that, because we didn't last year. It was the only word on the subject, and it was only from our side of the legislative process.

SENATOR SABINI: Madam

President --

ACTING PRESIDENT McGEE: Senator Sabini.

SENATOR SABINI: -- to the sponsor, I don't prejudge your bill, nor do I object to the things that I've had a chance to read.

My only point in raising the questions were that this deals with lot of different levels of law enforcement -- district attorneys, local law enforcement. Some of these things are covered in the federal code. And it just would be nice to be able to -- not nice, really essential to good lawmaking for us to ask, seek advice -- and I'm sure you have, I'm sure the sponsor has. And I'm sure members of the Majority have. But for others of us who represent parts of New York City who are affected by this, to have that opportunity to speak to our prosecutors and our law enforcement officials and to make legislation better.

I don't disagree with the sponsor's assertion that there are dysfunctionalities in both houses. But I do feel that if we really

want to use the ideas of all of the people of the state of New York, that we should be using input from all the representatives of the state of New York.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Yes, Madam President. I just want to talk on the bill.

ACTING PRESIDENT McGEE: Senator Sampson, on the bill.

SENATOR SAMPSON: I want to say I'm in support of the chairman with respect to this bill, and I understand the importance of this bill. But I take exception to people when they call me un-American or they talk about my head is in the sand. My head is not in the sand. I understand the issues and concerns. My constituents understand these issue and concerns.

And I take exception to that, because it's my constituents who are on the front line in Iraq and in Kuwait. It's my constituents who were affected by what happened at the World Trade Center.

But the only thing we ask is since it involves our constituents, we want to be a part of the process. And that's all. That's all we're asking, nothing else.

But to call me un-American and talk about my head is in the sand, I take exception to that. Because I feel the same pain everyone else feels here in this body.

But if we want to do it the right way, as Senator Balboni said, get us involved and talk about it. But once again, you know, I don't think just because we ask questions that means we are un-American or have our head in the sand.

And as a lawyer, the first thing we look at is loopholes in legislation and laws, to take advantage of it. And the only way to prevent that is to hear all the dialogue and all the criticism possible to make a sound and effective law, ladies and gentlemen.

Once again, I want to commend the sponsor for this legislation. But once again, just because we ask questions, do not question our patriotism.

Thank you very much, ladies and

gentlemen.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, you know, I think that in looking at the history of these types of legislation -- which we've been passing really since 2001. I think the first time that we did terrorist legislation was the fall of 2001, after we were still reeling from the 9/11 attacks. I have to say I tend to agree with Senator Sampson and others who say this Minority -- and I'm talking about you people in the Minority here, has been very responsible.

I wish that the Senate in Washington were as responsible. There's a reason I'm mentioning this. You know, there are many of us who watch this type of thing, terrorists, and are very much involved in the homeland security issue. And I help oversee it, with Senator Balboni. I have to tell you, the biggest problem we have right now, one of the reasons these bills are here, I know that Senator Bruno agonized whether to do this now.

But what's happened is in

Washington the belief is the Senate did not pass a homeland security bill, even though they had all kinds of hearings and they did all the stuff on television. They didn't do it before the election, because they thought it might help George Bush and some of the Republicans. And they didn't pass the budget for homeland security.

And the reason that I mention this -- and this is not any knock on you people. You actually have been very responsible, in my humble opinion. This house, as usual, gets out in front on criminal legislation. We debate, we argue. The question of wiretapping is always important. I'm one of those few people that did wiretaps myself as a police officer and was tapped myself in this very Capitol. Which I won't get into, but I was.

And so I am very sensitive to it, extremely sensitive. And this roving wiretap legislation -- and we could debate it some more -- is weaker than the wiretapping that the federal government has in their legislation. Because we're, I think, more

careful. Is there some risk to it? You bet your life there is.

But the thing I want to tell you is this. We're now looking at the budget. Meaning, well, the Senate, our budget subcommittee is working on it. We're very confused. We don't know exactly what to do because the feds haven't passed their budget yet. We're ready to do better homeland security. We're ready to send more people out there into the streets to deal with terrorism. But we don't have the wherewithal.

Now, I must say that what we're really attempting to do here today -- and let's be perfectly blunt -- this isn't an attempt to one-up the Assembly or anybody. It's an attempt to get the Assembly to deal with this. And God forbid that anything should happen in the next week or so. I can assure you, things will move a lot faster.

Now, I know that there are people here who are reluctant because the Governor obviously is going to -- if this passes, the Governor will take credit for being the most advanced state in the union.

And by the way, contrary -- Senator Duane, we are called dysfunctional here in New York and so forth. Across the country, we're looked at as probably the most democratic, and by "democrat" I'm talking about democracy -- and the most progressive legislature in the country.

I had a friend of mine from Colorado say to me: "Oh, you're part of New York, yes. You're part of that legislature where committee chairmen still talk to each other."

In most of the places in this country, everything is done by leadership people. And the funny thing is, the media thinks that's the way it works, the three men in a room. Which of course is a lot of nonsense. We wouldn't have had leaders the way things have been going lately if that were all true, I can assure you. It's a different world here. It's certainly a different world than when I came here 31 years ago.

But I can only say personally, having been in law enforcement and watching some of the security stuff that's going on,

we've made great strides here, but we need to move on. We need to allow our people -- and I'm talking about law enforcement people -- to have the authority to deal with these terrorists, who have better equipment than we do in many cases. They're doing roving wiretaps. We know that. We know they're doing that. I mean, shouldn't we have the -- people have the ability to at least cope with some of these other people?

And what frightens me is if we don't move, I worry about an overreaction. I've always worried about overreactions. I want to tell you, God forbid that Buffalo or New York City should get hit again. I can assure you we'll pass legislation awfully quick, and it may be even more draconian than what we're doing here.

I hate to say that, but I'm -- it's probably hard to believe, but I'm somewhat of a moderate on this stuff. As I say, I've been through the years, I've seen bad cops, I've seen bad prosecutors. As I said, my own line has been tapped. It was tapped a couple of times, but one in particular I remember very

vividly.

So I think -- and I think I know how Senator Bruno feels and I know how Senator Balboni feels. We agree with you, it's not the best process in the world. But the problem is it's time for all of us to move. It's time to get the Assembly moving. It's time for all of us to understand this is such a serious problem.

One way or another, the Iraq thing I happen to believe is going to be disposed of in the next two to three weeks. I happen to feel there isn't going to be a war, but I think -- I hope to God there's not. And I think that's the intention of the administration. They want to get this resolved without war, I think.

But whatever happens, New York had better be prepared. And it seems to me that the best way to be prepared is to do this sort of legislation, get the Assembly to move on it. If they want, we can have a committee, we can do anything they want. The big thing is to get it done and get it done as right as we can do it. And you could be very helpful,

because you asked a lot of good questions.

But we've got to move on, because -- and I would hope to God that the Congress moves on, gets rid of their partisan stuff, and tells us and gives us the leadership here that so we can move on to take care of New York the way it should be taken care of.

ACTING PRESIDENT McGEE: Senator Parker.

SENATOR PARKER: Madam Chairman, on the bill.

ACTING PRESIDENT McGEE: Senator Parker, on the bill.

SENATOR PARKER: I rise to compliment the sponsor of this legislation, Senator Balboni, on taking a very necessary, courageous, and important part of what needs to happen in this country.

There is no community more affected than those of the Senate districts located in New York City by what has happened with terrorism, both in the context of direct attacks as well as fear around, you know, biological attacks in particular. This is a

scary subject.

And I'm complimenting Senator Balboni because I know that he's spent a lot of time learning about this and gathering information so we can have an informed process. And I'm glad that we're involved in this dialogue and this dialectic to sort out how we should kind of move forward on this.

But it's important that we all look at this with cool heads. It's important that we, before we kind of rush into action in the heat of battle and before we, you know, chase them down and smoke them out, that we look at the situations that have led us here and really understand that what we're trying to do here is protect American citizens.

We're trying to protect those in the North Country, those in Buffalo, those in the Southern Tier, those in the Hudson Valley. We're trying to protect those in Rockland County and New York City and out on the Island. We're trying to protect all of the New Yorkers who we all represent here. And all of us take that responsibility very seriously.

None of us see this as, you know, some kind of thing where, you know, we're just here to kind of play this out, but to kind of be involved in making sure that our communities are safe.

This is very real for me because I lost people in the World Trade Center, as many of us have. I had people who that day were supposed to show up to work who were out campaigning -- because it was Election Day, as many of you remember -- who, you know, stood and cried because they would have been in that building that day.

That day -- many of you don't know me very well. I'm a new member in a new district. And I ran for the City Council that day. And that day I remember vividly standing at a train stop, you know, meeting voters on their way to work, when I got a call from a frantic, teary-eyed young volunteer telling me that there was a fire. And I didn't really understand what she was saying, because she was just kind of hysterical. And I was like, you know, "What's going on?" She was like: "There's a fire at the World Trade Center."

And no one knew at the time that it would wind up being the most devastating thing to ever happen to this nation. That day changed this entire world and the lives of everyone here and in this great state and in this nation. Forever.

But it wasn't over, because after that we then began with the attacks of anthrax. And at the time I was working for Carl McCall, sitting in the offices of the State Comptroller, and I remember right after the first anthrax attack at the U.S. Capitol and us sitting there with a pile of mail and everybody terrified to open up the mail. To open up mail.

Here we are in the greatest state in the greatest nation in the world, and the people in the government are scared to open up the mail. A thing that we've done a million times without even thinking, and here we are afraid to open up the mail.

This is important, ladies and gentlemen. This idea of bioterrorism and the possibilities and the horrors of this are absolutely terrifying. And more so for people

in my district and Senator Sampson's district and Senator Balboni's district who ride the Long Island Railroad and people in my district who ride the Number 2 train as they sit there, crowded, wondering who, you know, on there is, you know, just a citizen going to work or a neighbor and who could be possibly a terrorist. Terrified. Again, of something that we've done every day.

This is what -- this is what terrorism is about. The reaction isn't so much the bombing. It is they have you at the moment of fear. And I'm afraid now that we've fallen into the trap of terrorism, that we've gotten so afraid that we've kind of lost rationality. And I say that in the context of both the speed in which this legislation is being pushed through as well as some of the provisions.

And I am absolutely happy that both Senator Balboni and Senator Larkin have asked us how we can make the bill better, because that's what I like to do, is make some suggestions. I'm a member of the Veteran Affairs and Homeland Security Committee, and

I'm going to make an offer I made there, which is a friendly amendment to simply do two things.

One, there's some significant concerns around the death penalty. Like my colleague Senator Duane, I am ardently and philosophically against the death penalty. Part of why is just simply that we have not shown as a nation or a state that we know how to administer this life-and-death policy with an even hand.

So let's -- we can have a joint committee on that, and I would certainly like to serve on a task force on looking at the death penalty and the characters in which it's being applied around the state and around the country. And so an amendment that would strike the death penalty would be a way to make this, Senator Larkin, a better bill.

Second, I have some concerns around the Constitution. And any time that we start fiddling around, you know, and striking out parts of the Constitution, I get a tickle in my stomach. We start creating what I call and what is called in public policy terms a

slippery slope. We start -- you know, today is the Fourth Amendment, tomorrow it will be the Fifth Amendment, then the Sixth Amendment, then the Thirteenth, Fourteenth, and Fifteenth Amendments, which particularly disturb me.

And it all begins with the terror and the fear that we've had out of this irrational, inhumane act that no one is responsible for.

And so as we're all concerned about this, as we all think that this is of dire importance, nobody wants to hold up the bill. Nobody wants to hold up the dialogue on this. No, just the opposite. We want to protect our communities. In fact, our communities are going to be affected more than anyone's. You know, the districts found in New York City are going to be the epicenter of any attack.

And so we want to work with you, Senator Balboni, to get a better piece of legislation. I am looking forward to some minor changes being made in this bill such that I'm able to vote yes. Until then, I have to vote no on this bill.

Thank you.

ACTING PRESIDENT McGEE: Senator Little.

SENATOR LITTLE: I'd like to comment about the discussion that took place earlier.

Much discussion has centered on the words "message of necessity" that accompany this bill or this package of bills. And in all honesty, I can think of no three words that are more appropriate for this bill than "message of necessity."

My eldest son, who is 34 years old, is a lieutenant commander in the Navy and is a navy pilot. He's been in the Persian Gulf since mid-July. He's serving aboard the carrier the Abraham Lincoln. Before Christmas he had flown 67 missions off the carrier into the no-fly zone over Iraq. And while headed home, with a return date of January 15th, into California, the carrier was turned around and sent back to the Persian Gulf for who knows how long.

I speak of this because it's a very personal issue for me, and I'm becoming much more acquainted with what it means for our

military to be separated from their family and from young children for long periods of time. But we've had men and women doing that for decades. That's part of military life.

But there are serious, serious events going on in this world that involve our young men and women, and they're working very hard to protect our lives and to do what they can for us. This is not a time for us to sit back and say we haven't discussed this enough, we need to have more hearings. This has been discussed since the horrific events of September 11th in every single corner of this state, in just about every room. I know of no one who isn't interested in trying to make our lives safer and trying to make our state safer.

No one could have imagined the events of September 11th. And that doesn't mean that there aren't more unimaginable events that could take place.

I'm very proud to join the Governor, the Attorney General, and my colleagues in the Senate for this call to action, because I believe that that's exactly

what this is. This is a call to action. This is putting these bills on the table. There may be parts you don't like; there may be things in it we need to change. But what we need is the Assembly to come to the table and to make a bill that can then go to the Governor and can then change the laws in New York State.

So we at home are doing our part, as well as our people in the military are doing their part. I intend to vote yes for this bill, and I'm very pleased and proud to be able to do so. And I certainly hope that everyone else in this chamber will do so as well.

Thank you.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. On the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

It's amazing to me how this discussion has shifted off what we should have

been talking about today in relationship to this bill. It seems that this discussion is a test of patriotism. But of course that is not the issue before us.

My district cares very much about antiterrorism measures. My district actually lost more lives than any other district in the September 11th disaster. My own father's office was destroyed when a section of the World Trade Center broke off and landed on his desk. Thank God he was not there.

But it is not, to reference what Senator Sampson said before, un-American to question legislation or the legislative process. And it is certainly not un-American to question the process when we haven't moved forward since last June, we haven't even held any discussions with members of the Assembly since last June.

In fact, I would argue that it is the highest level of Americanism, democracy, to question any serious, significant piece of legislation that would be going through this house or the Assembly. Senator Larkin, it is why we send men and women to war, to protect

democracy. And it is our obligation to argue those issues here on the floor and to move forward rationally and fairly, but to also figure out what is stopping our process from moving forward.

Senator Little just talked about the importance of this issue in every corner of the state. People have been discussing terrorism and their own fears of terrorism since September 11th, and that will not be going away. That makes it inherent on this house and the other house and the Governor and the Attorney General to figure out what are we failing to do in the process to move ourselves forward, rather than to reiterate the same debate of June today when we didn't debate the issues in the bill.

And while I voted last June for this bill, and I always intended to vote for it today despite my opposition to the death penalty, there are very serious ramifications of this legislation, as Kevin Parker -- Senator Kevin Parker said, about the slippery slope of opening up our amendments for interpretation, of questioning whether or not

we need to have roving wiretaps.

I don't know the answer to that. I voted for the bill and will vote for it again, but we haven't had the dialogue in this house, in our communities, or with the Assembly about the ramifications of roving wiretaps. And I appreciate Senator Volker's comments and concerns on that.

We haven't had the discussion with the other house or in our communities about what it means to change the definition of protections under the law of the Fourth Amendment for the police to have greater authorities to take control of situations, to make judgment calls in advance of evidence.

And the truth is in the history of this country it has been in times of threat and in times of war that we have taken the leap to jump over some fundamental constitutional protections for our citizens, and we have revisited those afterwards and wondered whether we made mistakes going down that road.

And so process is important, not just the legislation. And both issues I think

are before us today. So again, this was not a debate on patriotism or who cared more about the people in our community. And it certainly is no parlor game, as Senator Nozzolio defined it. It is really a fundamental issue of how do we move government forward in the State of New York between the two houses and the Governor, how do we make the tough decisions.

And I think that what we've failed to do so far on this piece of legislation is a very good example of what we need to do to make things better. Because in fact we haven't moved forward today, despite a message of necessity, because it does not appear that the Assembly has any plan to move forward now.

We have just spent several hours perhaps attacking each other on the wrong issue, when I think what we do agree on is the importance of addressing the concerns of our constituents about protecting their rights and addressing their fears and also figuring out how we work together to move forward. And so far today we did not accomplish that goal.

But I will be voting yes on this bill. Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

Senator Krueger is absolutely correct. The response from the other house to the legislation that was passed in June, sponsored by my colleague, has been deafening. An absolute silence. You can't negotiate, you can't talk when people don't want to talk back.

So to say that we shouldn't move this bill now because we haven't had discussions with the other house or enough discussions with the other house, it takes two to have a conversation that's meaningful. If the other house refuses to respond, who do you talk to? What do you do?

This chamber passed a budget reform act to try to change a dysfunctional process. We've heard that statement many times. What was the response from the other house? Is there a bill on the table in the other house to deal with the budget process? No. Their response was absolute silence.

This chamber passed legislation to reform insurance policies that lead to, you know, fraud and disruption in our insurance and rising costs to our constituents. What was the response from the other house? Silence.

We passed this legislation in June. What was the response from the other house? Silence. That's the response. Nothing is going on there.

So to say that we can't pass bills here because we're not having discussions with the other house, I think you've got to look at the other house. That's what Senator Balboni was asking, help us get the other house to the table.

I appreciate the fact that this bill will pass in this chamber. I appreciate the fact that most people will vote for it. And I can accept some people who will not vote for it as a matter of conscience on those particular issues they feel constrained to say no to. That's fair. That's part of the process. That is the process. That's what we're here for.

We're trying to move this legislation. It is timely. We don't have a lot of time here. We could have an attack tomorrow. We need responses. We need more eyes and ears.

Senator Balboni gave you a number that's scary. There are 700 federal law enforcement agents working on this issue here, while we have 70,000 law enforcement agents throughout the state that have their hands tied behind their backs and could be part and parcel to the game and could be helping and assisting looking for these terrorists, preventing terrorist attacks, saving and protecting our families and the families of those people who are over there protecting this nation and this world. But they can't be released until we have a legislation that unties their hands.

You mentioned roving wiretaps. There are concerns out there. There are legitimate concerns out there that should be debated and discussed. But it takes a two-way debate. We can't do it alone. The bad guys go out and know full well that wiretap laws

say you've got to be specific to the phone. So what do they do? They take a cellphone and they chuck it, they use it for a week and they throw it away. They get another one, use it for a week, and throw it away. Buy two or three, get four or five. And as they use them, they throw them away.

Law enforcement has to go back each and every time when they get the new number, and then get another court order and get it all in place. And by the time they get it in place, that phone is out of commission already, they're no longer using it.

We need tools. We need tools, ladies and gentlemen, to help our law enforcement people fight the fight. We've got to be as good as they are. We've got to be better than they are. Which means we've got to get ahead of them.

The protection of our liberties? Paramount. We shouldn't sacrifice any of that. Nobody here is suggesting we should. But that doesn't mean we don't move.

Ladies and gentlemen, I suggest to you we are not moving in haste on this

legislation, we're not moving at all. And the prime reason for that is we don't have a partner. And in this house and in this Legislature, in any legislature, you need a partner. It doesn't take two to tango here, it takes three. Well, we've got two. We're trying to get the third leg. If we can get that third leg of the stool, we can make legislation that will move us ahead and put this state in the forefront where it has to be. Not should be, has to be. It's an imperative here.

I urge a yes vote on this bill. I congratulate the Governor, I congratulate the Attorney General for coming to the floor. I congratulate the leadership in this house, led by Senator Bruno and ably assisted by my colleagues who have sponsored this legislation that we're going to pass today. This is major stuff, this is important stuff, but we've got to bring the other house to the table to get them engaged.

I'm going to vote aye on this, and proudly so.

ACTING PRESIDENT McGEE: Senator

Schneiderman, to close for the Minority.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Through you, Madam President, if the sponsor will yield for a few questions.

ACTING PRESIDENT McGEE: Senator Balboni, will you yield for some questions?

SENATOR BALBONI: Yes, Madam President, I yield.

ACTING PRESIDENT McGEE: Senator Balboni yields.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if the sponsor could tell us, when was the bill in its current form, Senate Bill 3, printed?

SENATOR BALBONI: Madam President, I'm not aware.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, we received this bill for the first time late yesterday afternoon. Is the sponsor aware of any effort to distribute it or provide it to members of the Senate prior to the end of the day yesterday?

SENATOR BALBONI: Madam

President, through you, no.

But I would just comment, Senator Schneiderman, that it is ironic that we have spent almost two hours discussing this measure and the most common theme of the objection to this process has been the inability of the Minority to get questions on specific provisions of the bill, and yet we have spent almost the entirety of the two hours spent on process. It seems to be a lost opportunity.

If you have questions about the substance of the bill, let's get to the substance of the bill.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, referring to page 11, Section 20, paragraph 4, which relates to the Fourth Amendment to the Constitution of the United States.

SENATOR BALBONI: Yes, I got it.

SENATOR SCHNEIDERMAN: I will be glad to give the sponsor time to actually read it before I ask him to address it.

SENATOR BALBONI: Madam President, I assume that the Senator is referring to the good-faith exception to the

search and seizure evidentiary rules.

SENATOR SCHNEIDERMAN: Yes, thank you.

Madam President, through you, if I may continue.

SENATOR BALBONI: Yes, Madam President, I continue to yield.

SENATOR SCHNEIDERMAN: The Fourth Amendment to the Constitution of the United States provides for certain critical protections for our citizens. It states "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

This section that we're referring to on page 11 attempts to create an exception to the Fourth Amendment if a court finds after a hearing, even if there was a violation, that the law enforcement officers acted in good faith.

I would request that the sponsor please provide a definition of good faith and how a court would assess it in such a hearing.

SENATOR BALBONI: Madam President, through you. Again, this bill has been developed from law enforcement personnel, including the Attorney General's office. And I don't know specifically what they intended when they decided to put in the clause good-faith exception or good faith of the police officer.

But I will tell you what the Supreme Court has talked about in cases such as the United States versus Pelletier, 422 U.S. at 539. The court in that case discusses the concept behind the Fourth Amendment protections.

As you know, in this nation we sought to protect citizens against unreasonable search and seizure. The way we did that was to provide a deterrent through a doctrine that is commonly referred to, the fruit of the poisonous tree.

And I know I'm right about this, by the way, because Senator Sampson is shaking

his head, and he practices this.

The fruit of the poisonous tree basically means that if you obtain evidence against a criminal defendant unlawfully, illegally, then you are not able to use that evidence in court. Now, that is done as a deterrent.

In speaking about the good-faith exception -- that is, when a police officer goes into a premises and conducts a search and makes either a mistake or has a mistaken belief about the validity of the initial search -- the court says the following: "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful or at the very least negligent conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigation officers or in their future counterparts a greater degree of care towards the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrent rationale loses much of

its force."

That, Senator Schneiderman, is the underlying motivation that I see in this. Remember, for those in the public who are considering the rhetoric that may be talked about or spelled out in this particular chamber that this somehow eviscerates the Fourth Amendment protections, I remind people, number one, it's only for cases of terrorism. Number two, a court must have a hearing to consider the good-faith exception. And, number three, the admission of evidence is not tantamount to conviction.

Juries in this state are able to consider all of the evidence, and defense attorneys are able to cross-examine based upon what they view as in the best interests of their clients. So justice still prevails.

What this does is it allows law enforcement officers to go in and, if they find evidence of a terrorist trying to plant anthrax in a government building, a private home, that they can seize it, that they don't have to have a search warrant, that it is there and it's in a drawer, they find it,

they're able to get the terrorist and take them out and prosecute them.

That's what we're talking about. That's why this is in here. And a lot of people, if they ask why this is in here, at the same time they ask what everybody else is asking: Why don't we do this? Why isn't this a part of our law enforcement? Why haven't we taken the steps necessary to make sure that in the war on terrorism we will do everything possible to make sure that we protect our people?

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President. The case law, the federal case law the sponsor is referring to --

ACTING PRESIDENT McGEE: Are you asking the Senator to yield?

SENATOR SCHNEIDERMAN: Oh, yes. If the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT McGEE: The Senator yields.

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

The federal case law just cited, U.S. v. Pelletier and other cases subsequent to the Illinois v. Gates decision, is it not true that those all involve situations where there were in fact warrants on which police officers relied in good faith and not situations that would be authorized under this legislation, where there was no warrant at all?

SENATOR BALBONI: Madam President, through you. Actually, the legislation doesn't comprehend warrant or nonwarrant. It doesn't refer to that at all.

You are correct that the case that I cited, its fact pattern was involving a warrant. But that doesn't necessarily -- that's not necessarily involved in the legislation before us.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if the sponsor would yield for another question.

ACTING PRESIDENT McGEE: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: Well, given the fact that this legislation goes beyond any U.S. Supreme Court decision as far as authorizing a good-faith exception to the exclusionary rule to the application of the Fourth Amendment through the exclusionary rule for situations that don't even involve a good-faith effort to enforce a warrant that is later found to be defective, how can we pass a piece of state legislation if it does in fact go beyond any decision of the United States Supreme Court, that supersedes the Fourth Amendment to the Constitution of the United States? Would this be a valid act of this Legislature?

SENATOR BALBONI: Madam President, through you. This is going to come as a shock to you, Senator, but I disagree with the premise for your question.

This particular case that I referred to I believe brings the good-faith exception into the ambit of permissible restrictions on the Fourth Amendment by states, because it goes back to the common-sense rationale underlying the Fourth Amendment protections. That is, that if you're a crooked cop and you go in and you do an illegal search, you should be deterred from doing that again.

Well, if you're a good cop and you believe in your heart that the information you have is correct, we shouldn't stand on that technicality when it comes to terrorism.

If we could have done anything in our power to stop the events of September 11, 2001, wouldn't we have done it? Sure we would have. So our citizens are asking us about this, what steps can we take. This is one of them.

SENATOR SCHNEIDERMAN: Thank you. I'd like to thank the sponsor for his responses.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator

Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: There are two issues that have been discussed here today. Unfortunately, we spent a great deal of time talking about the process by which this bill came to the floor for a vote. I think it is important that we discuss it.

I'm sorry that the process by which this bill was rushed forward since it first was printed yesterday afternoon has caused us to take time away from the discussion of a lot of very important substantive issues. But I think the process in this case is tremendously important if we are in fact engaged in a good-faith effort to change the law of this state with regard to defending our citizens against terrorism.

On the issues of substance, I think it is important to be clear that this is a new bill. This has provisions in it that have been taken from several other bills that have been passed, some other provisions that have been added that weren't in any bill before we saw this yesterday afternoon at 4:00 or 5:00 p.m.

Substantively, I would urge my colleague Senator Balboni, who I know is completely sincere in his efforts to move these issues forward, that this exception to the Fourth Amendment which we've just been discussing, this so-called good-faith exception after a hearing, does go beyond anything that has been done under federal law.

It's one thing for a police officer to obtain a warrant, go to execute that warrant, and then later learn that the warrant wasn't issued in good -- to act properly, the officer acted in good faith, there was an effort to go through the judicial process, however, obtain a warrant as required by the Fourth Amendment.

This draft -- and perhaps this could be corrected in a later draft -- goes beyond that. This says that there could be a hearing finding that the law enforcement officer acted in good faith even if they didn't have a warrant, if they're walking down the street and they see someone and they throw them on the ground and frisk them.

This is an open invitation for

police misconduct, I respectfully submit. This is an open invitation for widespread circumvention of the exclusionary rule and the procedure that we have worked out in this country for providing protections for our citizens through the process for obtaining a warrant.

I do think that that's something that can be corrected in the drafting, and I would urge the sponsor to take that under advisement as we move forward on this point.

The Fourth Amendment is not just some procedural nicety. And I respectfully would join with my colleagues in urging anyone who makes this a test of patriotism, whether you're voting for this particular bill or not, or whether you object to the process by which this bill came to the floor. This is not a test of patriotism. This is not a test of patriotism.

In fact, many of us believe that it's the U.S. Constitution, including the Fourth Amendment, that is the reason we are fighting a war against the forces that would have no due process, that would have no

government of laws but rather a government of men. And I think that that is an important thing to bear in mind as we go forward with the national and the state debate on the possibility of war and certainly on homeland security.

Finally, let me come to the issue of process, because that has been a critical element here today. I respectfully, respectfully suggest to our sponsor, who said, "Let's get out of the usual way of Albany in considering this legislation," that the process by which this bill came to the floor today is the worst possible example of the usual way of Albany.

We know this is not going to become a law. We know this is not going to become law. There's not an Assembly bill, there's not an Assembly sponsor. The Assembly has been contacted and said they are not going to pass this bill.

So what's the rush if it's not going to become a law? Well, why do we have to circumvent the rule in the New York State Constitution requiring that a bill age for

three days before it be voted on? Why do we have to circumvent that rule?

Article 3, Section 14 of our constitution states: "No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage." Unless there is a message of necessity, which is apparently what we've obtained here.

"The purpose of this section is to prevent hasty and careless legislation, to prohibit amendments at the last moment, and to secure more publicity than had been required before." That's in the case of Hatch v. Reardon.

Why did we circumvent that rule with a message of necessity? Well, I guess the Governor felt that we had to consider this right away. And I would urge everyone who suggested that the fact that the Attorney General participated in the drafting of this bill gives cover for the process, the Attorney General did not participate in the request for a message of necessity.

Why did we circumvent the rule that requires bills to go to a first, second, and third reading? That's another three days that could have been provided for consideration. Not because we're in such a hurry to change the laws of the State of New York to make it a safer place, because we know the Assembly is not going to pass the bill.

If the goal is to get the Assembly to the table, which is a laudable goal, why couldn't that be accomplished by introducing the bill, holding hearings, building public support, taking the three days necessary to let a bill age, taking the three days after that necessary for a bill to come to third reading? What would have been the difference?

Well, perhaps the difference would have been the fact that the Governor wouldn't have been able to talk about this bill in his speech to the Conservative Party dinner last night. Which seems to be the only reason of which I am aware that the bill has come to the floor in its current form through this process.

It is not questioning the motive of

the sponsor, it is not questioning the necessity of dealing with these issues to say that the process by which this bill came to the floor indicates that it is not today a sincere effort to address the issue of terrorism.

I'm not saying the bill is not a sincere effort. I'm saying the process which brought it the floor today indicates that this is a publicity stunt. This is what Senator Duane referred to as a press release. This is not a sincere attempt to address the critical issues here. And if anything, it's more shameful than ever to suggest that we're really concerned about terrorism and that's why we're going to engage in this futile effort to pretend that we're trying to get this bill on the table for the Assembly, when this is the least inclusive, least-open-possible way to bring a bill to the floor.

If we want to get this bill before the Assembly, the members of our conference will be happy to work with you on this. But not if we're given the bill at 5 o'clock in

the afternoon on a Monday and told we have to vote on it, debate it, ask questions, put our heads together and think of how to get to the Assembly or get to the Governor for changes less than 24 hours later.

So, Madam President, I think on the substance I have problems with this legislation. Many of my colleagues will vote yes; some will vote no. But I do think that it is not an act of un-Americanism to question the process. I think it's essential, if we're to fulfill the mandate of the United States Constitution, the constitution of the State of New York to our constituents, that we do engage in a process that is serious about opening up to ideas, about changing the law, not just passing a one-house bill.

I respectfully submit that this process is fatally flawed. This is the worst example of what Senator Balboni called the usual way of Albany. It's not going to become a law. Next time around, let's take a little time, let's hold some hearings, as Senator Duane has suggested, let's try and get some consensus behind the bill instead of just

throwing it out like throwing the gauntlet on the table to the Assembly, saying: Fine, this is it, what do you want to do?

I'm going to vote no. Many of my colleagues will vote yes. But, Madam President, I cannot object strongly enough to the process by which this bill has come to the floor today. And I request an explanation other than the Governor's speech last night as to why, knowing this is not going to become law, knowing it's a one-house bill, this has been rushed to the floor today after the first time we saw it was at 5 o'clock last night.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: My colleagues, Winston Churchill addressed the Parliament in the face of World War II, when they were essentially isolated, they'd lost their last allies, and they were alone. They faced the greatest challenge the nation ever had, and so he spoke to the nation. And he said: "We have to win. We have to win the world for our children. We have to win it by our

sacrifices. But we have not won it yet. This crisis is upon us. In this strange and terrible world, there is a place for everyone, man and woman, old and young. Service in a thousand forms is open. From the highest to the humblest tasks, all are equal to honor, all have a part to play."

We have a role to play. Reject the cynics. Reject those who say that this is a federal issue. Reject those who say this is partisan politics. Reject that. Realize we have a role. But our role is not to stand here and say this is not good. Offer something else. It is not to stand here and say that this is necessary, this is only politics. Give us a solution.

And this is certainly not the role to play to stand here and say that because the Assembly will not act, then the cause is hopeless. Because I assure you that that was not in the minds of the men and women who went to the site of the World Trade Center and dug with their bare hands into soil to try and find people who were missing or trapped. That wasn't in their head. They didn't stop and

say what's the process. They went and they did it. And we rebuilt the World Trade Center -- we cleared the World Trade Center site so far ahead of schedule. And people said it could never be done, but it was done because we cared, our hearts were there, we continued.

Are we going to let the fact that the other house is not engaged in this stop us? Are we going to let them drive this issue and therefore just make it politics because we don't have anybody else listening to us? Is that what we were elected to do? I hope not. And I believe not. Let's pass this bill, and let's continue the work to try to make us safer.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Paterson, to close for the Minority.

SENATOR PATERSON: Madam President, five of these bills have been brought before us today. I'm going to vote for four of them.

I have a philosophical disagreement with Senator Balboni, who eloquently portrayed

why this is such a serious issue just a moment ago and distinguishes himself every time he does that.

But the issue, I think, does go beyond the substantive, debatable discussion that we're having today. I would just put it this way. How much more foresighted would it have been to have brought these bills to the floor using all of the correct processes? Unless there was an emergency at hand, which is the threshold for why we use an extraordinary process of message of necessity.

I would think at this time, when we're defending our country against terrorism, that we have to remember exactly why we're being attacked in the first place. We're being attacked because of the anger, the hostility, the jealousy, and the abject greed of other countries who want to deprive their own lands of a democracy and really hate the fact that we have one.

What better time to demonstrate the use of such a process than in this particular case. I don't know that we would presume what the Assembly is or is not going to do, but

certainly the process in the Senate is one that provides for an ample opportunity of all of the legislators in this chamber to look at the bills and come to a proper decision.

I don't think it was in that interest that we first heard about these bills at 5 o'clock yesterday. I notified the members of this conference after 5 o'clock that we would have a discussion about it this morning and would try to get up to speed on these bills before we came out here today.

I heard some discussion about the problems that went on in Washington and the problems that those who espouse the same philosophy as the members sitting on this side of the aisle felt that they were treated. If that is true, this was certainly retaliatory rather than example-setting. Because the truest way of demonstrating what would really be the democracy that we're all seeking is to actually engage in that process.

And I think it's extremely important at this time, in a rising climate of fear, in an existing anxious and tense time in our country where the codes of conduct become

more intense every day, where the fear and the realization that terrorism is at our door, that we were attacked on our own soil 17 months ago -- it is incumbent upon us as public servants not to in any way provoke the atmosphere, but to try to temper it, so that we let those constituents that we serve fully understand that not only are we serving the public, but that we are doing it with all deliberate cause.

I don't think that we're doing that, Madam President. I don't think that we are exercising our talents in the best way in this chamber. There is a process we could have followed regardless of what the reason was. There was ample time to put this legislation out in time for anyone to speak wherever they wanted or to discuss their feelings in public in any form that they might choose.

I certainly hope that, if nothing else, this discussion today will provide perhaps maybe some syntax to the process and maybe even give us some enlightening thoughts for the next time in which this may be

accomplished.

It's in that regard that I appeal to the members of this body that of all issues we will discuss in this chamber this year, that the one where we would have to be most scrupulously fair and the one where we must be most sensitive to each other's opinions is the one such as this, that transcends really our differences on the state level and really cites our emblem of our country and our commitment to each other as Americans. We have to listen to each other, we have to disagree without being disagreeable, and we can be unified without being uniform.

And I hope that that will take us into our next debate in a more uplifted manner, because I was a little appalled to hear some of the citing of hardworking colleagues in this chamber in a manner such as to call them un-American. To be un-American would be antagonistic to exactly what it is they were doing. They were expressing the individualism for which this country was founded, and they were speaking out on issues for where they thought their voice could be

heard.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Bruno, to close for the Majority.

SENATOR BRUNO: Thank you, Madam President, and colleagues.

I wasn't in the chamber for all of the debate, but I'm very, very sensitive to the discussion. And I don't believe anyone in their intent was pointing to anyone in this chamber as being un-American in their observations and in their comments.

And I know that this gets passionate in discussion, and we welcome the debate. It's valid. It's warranted. And the Minority is representing a position in that they want full disclosure, open debate, plenty of time. And we agree to that.

Messages of necessity have been used over and over; fortunately, not in extreme emergencies. But this is totally valid and totally warranted. We should be applauding the Governor, congratulating the Governor, commending the Governor for stepping out, standing up, standing at all.

Why? We are in a higher standard of alert, a high standard of alert throughout this state, throughout this country. New York City was the major target in the world for the terrorists. New York City, New York State. So for the Governor to provide the leadership and give us this message and this expansive piece of legislation is very warranted.

And it is necessary. There are people out there who still are intimidated. They won't go into New York. They won't go into your district, Senator Krueger. They won't go into the Lower East End. They won't get on an airplane.

And we here want to debate and deliberate when we can create some additional comfort, we can create some additional protection. But these laws that we are passing -- these bills that hopefully will become law will allow 70,000 law enforcement officers here in New York State to do something more to protect the people of this state.

We have 700 federal law enforcement people here in this state, 700, enforcing the

federal laws. What is wrong with empowering, to the fullest extent possible, those 70,000 people to protect your constituency, my constituency, our constituency?

The Governor is providing the leadership that he is elected as the chief executive of this state. General Spitzer has joined and partnered with him, as you have, our colleagues here in this chamber, partnered with General Spitzer, with the Governor, and with us to pass this legislation. And I applaud that.

And I don't in any way debate or argue your contentiousness as relates to the process, your full right to talk, debate it, resist it. That's the process that governs this state. And you're an integral part of governing this state. And this is what it's all about.

And, yes, for those people that initiated that attack, they were attacking a system of freedom, Americanism, represented here in New York and at the Pentagon and in the fields of Pennsylvania. That doesn't mean because we are a free country and they were

free to board planes, they were free to do what they did here in this country, that doesn't mean that we shouldn't be responsive, that we shouldn't do everything we can to detect, to prevent, to capture and to punish those people that would inflict pain on our citizens in New York and in the United States. That's what this is all about. That's what this legislation is all about, this bill and other bills.

And I know that you join with us in all of those good intentions. I know that the debate doesn't in any way relate to anything other than partnering with us in all of these good things that we are trying to do on behalf of our people here, our mutual constituency here in New York State.

So I thank you for the debate. I thank you for the exchanges. I thank you for our opportunity not to agree with you on everything and for yours not to agree with us on everything. And I have a feeling that as we go forward with this session, we will have further debates on issues and on the process, and we'll disagree and we'll agree.

But, Mr. President, we're getting a vote on this bill. And I would encourage my colleagues here all to be supportive and to deliver the right message.

And for those that comment that this is a one-house bill, I would encourage you to use your good offices and your leadership. When this bill goes to the Assembly, as has happened thousands of times in our lifetime, this bill can appear on the floor of the Assembly and pass, and it will be signed by the Governor immediately.

So, Senator, there is nothing that relates to this being a one-house bill. This is only a one-house bill if the Assembly refuses to accept it when it leaves this chamber and act on it in their house. And with your support, with your partnership with our Attorney General and his great office, who knows? The discussion, the emergency, the necessity may weigh heavily enough on our colleagues so that they take this bill up and they may pass it and the Governor will sign it.

So thank you for your partnership,

for your discussion and your debate.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 34. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, just briefly.

I'm going to vote no on the bill. But I would like to respond, certainly, to the Senator who implied that many people had not been to service. And my husband was in the Army. I had a brother in the Marine Corps. All of the men, basically, in my family served in the military. And so I don't apologize.

Sometimes I wonder what they served for, because pretty soon we won't have freedom to do much more, not even to speak on the floor of this house.

I want to say that I hope that

those young men who are over there fighting for our freedom, I hope that when they come back they can go to City College, SUNY, that they can find a place to live, even in my own district, that they will have some protections as citizens when they return.

And certainly I support them, because I come from a family of military people. And I have absolutely no problem at all saying to you that I stand here as an American, fully committed to the support of those people who have fought throughout the years for us to be able to stand here and debate and to disagree. I hope we will continue to do that. And I support those young people because they are fighting for us to continue to be able to do this.

I vote no on this bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the negative.

Senator Ada Smith, to explain her vote.

SENATOR ADA SMITH: Thank you, Mr. President.

I stand here as a proud American of African descent who believes strongly that we must protect our country and ourselves from any act of terrorism. But I also believe deeply that we cannot continue to diminish the Fourth Amendment. We must be ever vigilant that we do not do away with the rights of people.

We must also continue to fight strongly in this chamber that we have a process that is fair to all. Wouldn't it be nice if you had the opinions of all sides before a bill came to the floor? Wouldn't it be much more effective? Wouldn't it be nice if we no longer went about having legislation by press release? And wouldn't it be nice if we didn't keep reacting to the latest newspaper stories?

Mr. President, I vote no because I vote for the rights of people.

ACTING PRESIDENT MEIER: Senator Ada Smith will be recorded in the negative.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I just have to comment to Senator Balboni that under our rules, only chairs can hold public hearings. And maybe we should change that. But we actually have never had any hearings on our rules, no public hearings on our rules. In fact, we didn't have them before our ability to do motions to discharge and amendments were so severely restricted.

So I mean I think it's ridiculous that we've never had public hearings on our rules, but that's for another day.

And I'm not defending the Assembly. I'm absolutely not defending the other house. But instead of bemoaning the other house, I think we should put our own house in order. And I think that's the point that many of us are trying to make.

And, Senator Larkin, how dare you criticize me for not serving in the military when I'm not allowed to serve in the military, being proud and open about who I am? Don't question my patriotism. I represented the World Trade Center. We all lost people in that terrible, terrible tragedy.

I'm going to vote no on this bill

for reasons of policy which have been raised and for reasons of process which have already been raised. And I do also have to take responsibility. It is true that I voted on this bill last June on the last day of session that afternoon. And it was one of scores or bills we voted on that day. And, you know, maybe I was out of the chamber and maybe I didn't read the bill thoroughly enough. And I'm going to take responsibility for that.

You know, I quickly thought, gee, I voted on this bill in special session, October of 2001, and I thought that was the only time we voted on it. But I was wrong. And I didn't -- I didn't do my job on that one. And, you know, I'm ashamed of myself because I said I would never do that here.

ACTING PRESIDENT MEIER: Senator Duane, the time appointed by the rules to explain your vote has expired. Would you state your vote, please.

SENATOR DUANE: Well, with --

ACTING PRESIDENT MEIER: State your vote, please, Senator.

SENATOR DUANE: With apologies to

the opponents of the death penalty, I'm voting no on this bill.

Thank you, Mr. President.

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

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. Chairman. What is the time that I have?

ACTING PRESIDENT MEIER: You have two minutes, Senator, under the rules.

SENATOR DIAZ: This nation is in a state of high alert. Mayor Bloomberg, in the City of New York, ordered the Police Department to protect the Jewish synagogues. I'm looking at the news, and I'm seeing the police, with all kind of weapons, protecting the Jewish synagogues because they are in danger of being attacked.

I was not here last year, I was not here in June when this bill came through, but I'm here today. And I don't know where I'm going to be in two years from now. But I know I'm here today and I know that I served my country as a volunteer in the Army, and I was persecuted, even with my uniform. I was

abused, discriminated, but also have been abused and discriminated by people that defend the civil rights of people in this city, in my town.

So I understand that they are the laws, and the rules should be changed so, like in the City Council in the City of New York, we could conduct public hearing after public hearing before it comes to the point. But, ladies and gentlemen, I hate to see the Jewish synagogues and those people being protected the way it is because we have been threatened by enemies of this country.

Let me tell you something else. On September 11th I saw something that was disgusting and it was barbarous. I saw people laughing and dancing in the street when the two World Trade Centers were destroyed and people died. I saw people laughing in other countries, in other places, because of what they did to this country.

So ladies and gentlemen, the rules should be changed, yes, so we could too have meeting after meeting. But I never -- I have a month here, one month, and I never heard

that before. So let's change the rules.

But today I am not going to do like Pontius Pilate and wash my hands. I'm voting yes.

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

Senator Marchi, to explain his vote.

SENATOR MARCHI: Mr. President, I go back to the genesis of the legislation that's before us today. It did not stem or arise on the circumstances of September 11. Five years before, those who perpetrated the crime and came in with two planes and crashed into that tower, they had planned their own suicide and lived with it for five years and carried it to perfect execution.

This is the determination that underscores and underlies the repeated taking of life, even to this day, in the Middle East. So that this preceded by a long period, and there's been further threats that we have been responding to. I just regret the fact that I didn't join with this a lot sooner.

I am supporting this legislation.

I wish we had supported it and gone on record earlier, even. But this is the appropriate time in view of the circumstances that have their genesis and have been reinforced by supportive statements by those who don't wish us well to continue in the future.

I vote aye.

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This has been a good debate. I'm sorry that it has been limited to the last couple of hours. I think these are critical issues and they require our full attention and all of the talent and consultation we can possibly apply to getting the laws changed and not just passing bills so that we can berate the other house as they pass bills and berate us.

The question I think we have to address here is are we serious about making our state safer or are we just posturing.

There are things we can do to make our state safer. And I know that the sponsor of this legislation is sincere about this. And I would suggest that in addition to working on passing legislation to change the laws of our state, which I look forward to doing with Senator Balboni and others in this house, let's address other critical issues.

As we stand here today, we are faced with a critical public safety emergency. The subways of the city of New York has been targeted by terrorists, it's been in the newspapers. And yet the MTA is about to close down 177 token booths. Senator Marcellino said we need more eyes and ears. We're about to lose the eyes and ears that protect millions of New Yorkers every day.

There were 60,186 emergency-button activations by station agents in one year. That's because of crimes in process, that's because of emergencies. How, in a time when the Governor says we're going to cut everything except budget items related to public safety, can we, in an effort to save $20 million a year -- just a small item in

terms of the cost of the war on terrorism -- how can we shut down 177 token booths?

And I would suggest that Senator Balboni go with me, when I have my appointment for the Governor, to request that we keep the token booths open -- if anything, we beef up security in the subways. That's something we can do this week, and that's something that will make our state safer.

So let's test ourselves. Are we posturing, or are we serious about fighting terrorism and protecting our citizens? And that is one concrete example I would request that all the members of this house join with me in addressing.

I'm going to vote no because of the due process issues. And I do hope that I will have a chance to vote yes on a bill, corrected, that addresses some of these problems.

ACTING PRESIDENT MEIER: Senator Schneiderman, your two minutes has expired.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: You will

be recorded in the negative.

Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you, Mr. President.

I can't believe that before I came to this house people told me there was actually no debate. It's amazing that people would make those kinds of assertions about what goes on in this house.

I just have a couple of things that I wanted to focus on, and they relate to Senator Balboni and to Senator Bruno. On September 13, 2001, many of us were here in Albany. We had an extraordinary event. We had a session presided over by the Governor in the New York State Assembly, we acted swiftly, we acted certainly, and we acted with clarity in trying to protect all New Yorkers.

Like everybody else, I'm outraged by the things that have happened to our state. And I'm an American citizen, I love this country, it's the greatest place in the world. But I was outraged even more because it was New York. I felt like I didn't care where you

were from, Manhattan or Erie County or Suffolk County, it tore at the heart of New Yorkers. That's the thing that really drove me crazy.

But when we were there, Senator Bruno spoke with great clarity in that extraordinary session. And frankly, I think he was brilliant in what he said. And today the message is similar, that you can't live in freedom if you live in fear.

I believe the call is to do something now, and I'm going to tell you why I think we can get it done right now. He's my pal and he's my friend, and we've served in both houses, but Mike Balboni is a great example of why we can accomplish something right now. All we need is dedication, commitment, perseverance and stick-to-ittiveness, if nothing else. Get people in a room, get things done now.

He's traveled all over the state, he's been all over the country learning about issues that are important to all of us. And the difference is, he's actually doing it. He can help get this issue resolved. That's something we should focus on.

And I'll tell you, finally, my constituents, they're not going to give a tinker's damn about the process. What they're going to worry about is the results. And I don't want to find myself or any of us in a situation where the question becomes why didn't we do something.

It's been 17 months, ladies and gentlemen. There have been hearings, there have been debates, there have been bills. We should act now.

Thank you.

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

Senator Sabini, to explain his vote.

SENATOR SABINI: Thank you, Mr. President.

I'm going to be voting in the affirmative on this piece of legislation. But since the debate in the chamber today or the discussion in the chamber today seemed to revolve around, at least by some of us, issues of process, and by others on issues of questioning motives and why people would bring

these questions to the floor on such a hot-button issue as our security in our state, let me just echo the point I tried to make earlier in asking questions of the sponsor. Which was use the talents of us, make the process more inclusive so that we can come to effective and reasonable solutions to our state's issues.

We're joined today -- my successor in the City Council, my partner in government and politics, Helen Sears, is in the chamber. And I know that she and I have both, as well as all of us, have had to vote on legislation very quickly sometimes. But as Senator Schneiderman points out, this bill is going nowhere today other than this house.

And I can understand the zeal people have for wanting to pass this quickly. But colleagues in the Majority should understand that when we get a bill at 5 o'clock that some of us would have liked to have seen a little earlier and perhaps had some comment on and gone back to our district attorneys and back to our law enforcement officials to get a better piece of

legislation.

So I would like to be marked in the affirmative, but please understand that our comments were made in the spirit of process and not in an unpatriotic manner.

Thank you, Mr. President.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 87 are Senators Dilán, Duane, Hassell-Thompson, Montgomery, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 52. Nays, 8.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Senate 1711.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 89, by Senator Rath, Senate Print 1711, an act to amend the Penal Law, in relation to the

placement of devices and objects.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR BRUNO: I would move that we accept the message.

ACTING PRESIDENT MEIER: All those in favor of accepting the message signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

The Secretary will read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays,

2. Senators Duane and Schneiderman recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Senate 1712.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 90, by Senator Rath, Senate Print 1712, an act to amend the Penal Law, in relation to civil liability.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message.

SENATOR BRUNO: I would move that we accept the message.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

The Secretary will read.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 2003.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, for those members that may have an interest, there will not be a meeting of the Local Government Committee or the Children and Families Committee, as was originally intended. Those meetings are going to be put off until the chairs call them when we return to session after February 24th.

And, Mr. President, can we at this

time take up 1627.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 88, by Senator Balboni, Senate Print 1627, an act to amend the Penal Law, in relation to creating the crime of cyberterrorism.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Mr. President, this bill is a bill that we did last spring. It changes the New York Penal Law so as to provide for a new crime. That would be the crime of cyberterrorism.

Currently in New York state law there is computer tampering, which involves the internal manipulation or degradation of a computer system through the use of a virus, a worm, a logic bomb, a back door. All of these technical jargony phrases to people who hack or people who get involved in computers, they know about these things. It's a new language for us, but nonetheless very significant in its impact on us.

As we know, our society has become more and more involved with computers. And it's not just about financial arrangements, it's not just about how we do business. It's also about our security. Our water facilities, our water treatment plants, our electrical facilities are more and more run by computers.

Well, the cyberterrorism attack that is specifically pointed to in this bill is what is known as a denial of service attack. Basically what happens is a computer hacker will go and take hundreds of computers, say in a computer farm, will go and put in a virus. The virus will then take over those computers for the purpose of attacking a site, another site, and they will go into the Department of Defense, the New York State corrections system, the New York State Police Department, a hospital.

And what they'll do is they'll ping that computer. That is the term, they will ping it. What they will do is they will ask for information, they will request information, and they'll overload the system

with requests for information.

This is a denial of service attack. And in speaking to experts around the country, this is currently not covered in our law. We raised the penalties, I believe it's to a C felony when it's done -- I'm sorry, to a B felony when it is done in connection with a terrorist act.

And I believe that this is one of the first bills of its kind in the nation. And I know that Washington has been looking at this. And I think it's something that we should move on expeditiously.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, Mr. President, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator

Balboni, we passed this bill and I voted for it, and I intend to vote for it again.

SENATOR BALBONI: Thank you.

SENATOR ONORATO: But we seem to have a little bit of a problem when we're talking about computers and cyberspace.

When it's committed outside of the state of New York, how can we implement the enforcement of this law when the act occurs outside the state of New York?

SENATOR BALBONI: Mr. President, Senator Onorato raises a very good question about jurisdiction.

There are several cases that have been considered at the federal level that actually trace the crimes back to someone who has perpetrated the crime in Russia.

It is a very difficult enforcement, but nonetheless we have, through our long-arm statutes and our long-arm jurisprudence, the ability to go after people who injure folks here.

Of course what we would hope for, there would be a concomitant prosecution both from the federal and the state justice

departments or state prosecutors. But nonetheless, we can go after people who are outside of this jurisdiction. It's not easy, but that's part of what this law intends to do.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President.

I'm voting no on this bill, and it's really strictly a protest vote on the process. I am looking forward to having the ability to vote on legislation, and I may very well vote in favor of legislation, but that's after public hearings, after the Assembly has done its work, we have a conference committee

and there's an agreed-upon bill.

I believe my constituents expect me to vote in a responsible manner. I don't think voting in the affirmative on this bill today after the -- well, the lack of process that's happened is appropriate. And I look forward and I'm hopeful but not optimistic that I'll have the ability to vote on real, thoughtful legislation later on in our session.

Again, I'm voting no, Mr. President.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

(Governor Pataki entered the Senate chamber.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President,

there being no further business to come before the Senate, I would move that we stand adjourned until February 24th at 3:00 p.m., intervening days to be legislative days.

And we welcome the Governor back to the chamber, former Senator. We're honored to have him here providing the leadership and joining us as we adjourn for Presidents' Week.

Thank you, Governor.

(Applause.)

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, February 24th, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 2:56 p.m., the Senate adjourned.)