NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 27, 2003

3:21 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 25, the Senate met pursuant to adjournment. The Journal of Saturday, May 24, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR FARLEY: I offer these amendments to the following Third Reading Calendar bills:

Senator LaValle, page 13, Calendar 314, Senate Print 1662;

Senator LaValle, on page 19, Calendar 444, Senate Print 334;

Senator LaValle, on page 20, Calendar Number 473, Senate Print 2063;

Senator Velella, page 23, Calendar Number 525, Senate Print 4380;

Senator Seward, on page 37, Calendar Number 740, Senate Print 2840;

Senator LaValle, on page 43, Calendar Number 811, Senate Print 4428;

Senator Nozzolio, on page 46, Calendar Number 838, Senate Print 437;

For Senator Flanagan, on page 50, Calendar Number 886, Senate Print 3451;

For Senator Wright, page number 58, Calendar Number 972, Senate Print 2426;

And for Senator Little, on page 56, Calendar Number 957, Senate Print 3365.

Madam President, I now move that these bills retain their place on Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a substitution at the desk, if we could make it at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 20, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill Number 3936A and substitute it for the identical Senate

Bill Number 3706, Third Reading Calendar 461.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Mendez, Legislative Resolution Number 1824, commending Citiwide Harm Reduction upon the occasion of its Second Annual Positive Empowerment Awareness of Community Health Fair, on May 29, 2003.

THE PRESIDENT: On the resolution, all those in favor of passing it signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1766, honoring Richard L. Booth, Jr., upon the occasion of his receiving a Community Service Award from the Sweden/Clarkson Community Center.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution by Senator LaValle at the desk. I ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator LaValle, Legislative Resolution Number 1869, celebrating the life of Michael A. Maffetone.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there are two privileged resolutions at the desk by Senator Larkin. Could we have the title read on both and move for their immediate adoption.

THE PRESIDENT: The Secretary will read both resolutions.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 1889, commemorating the 50th Anniversary of the Cease-Fire that ended the Korean War.

And by Senator Larkin, Legislative Resolution Number 1890, commemorating the issuance of a United States Postal stamp honoring Purple Heart recipients at a ceremony in Newburgh, New York, on May 30, 2003.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolutions are adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

SENATOR SKELOS: Oh, excuse me one minute.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Before we do that, would you please recognize Senator Bonacic.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

Two quick things that I would like to share with this illustrious body. First of all, we have a basketball legislative team, and we play Lexington, the School of the Deaf. And last Tuesday, that team won by one point. And we had one member from this Senate, Senator Johnson DeFrancisco was on that team.

So -- and the Speaker played, by the way, on the Assembly side, as well as a group of others.

So we are not only good elected officials, we're good athletes.

The second thing I would like to announce is the Bone Marrow event that we did

last week, where we raised $30,000, and I would like to congratulate all of the members on both sides of the aisle in both houses that participated in that event.

Tomorrow there will be a luncheon award. Our own Serph Maltese is being honored for twelve years' contribution of participating in that event. I thank you all, and congratulations to you, Serph.

Thank you, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Maltese, Senate Print Number 136, an act to amend the Municipal Home Rule Law, in relation to punishment.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 205, by Senator Farley, Senate Print 2265A, an act to amend the Banking Law, in relation to increasing the penalties for certain activities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 337, by Senator LaValle, Senate Print 288B --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 374, by Senator Volker, Senate Print 2773, an act to amend the Criminal Procedure Law, in relation to the authority of police officers.

SENATOR SCHNEIDERMAN: Lay it

aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 411, by Senator Balboni, Senate Print 2775, an act requiring the commissioner of the Office of General Services to modify an existing World War II monument.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 437, by Senator Saland, Senate Print 1573A, an act to authorize the Church of Jesus Christ (Apostolic), Inc.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 455, by Senator Skelos, Senate Print 3344A, an act to amend the Penal Law, in relation to assaults at a sports contest.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 488, by Senator Leibell, Senate Print 2998A, an act to authorize approval of certain transportation contracts.

THE PRESIDENT: There is a local fiscal impact note at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 580, by Senator Libous, Senate Print 3023A, an act to amend the Town Law and the Public Officers Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator Larkin, Senate Print 1222A, an act to amend the Education Law, in relation to requiring institutions.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 666, by Senator Bonacic, Senate Print 4009, an

act to amend Chapter 915 of the Laws of 1982 amending the Public Authorities Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 670, by Senator Bonacic, Senate Print 4798, an act to amend Chapter 555 of the Laws of 1989 amending the Public Authorities Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

671, by Senator Leibell, Senate Print 4837, an act to amend the Public Authorities Law, in relation to the use of videoconferencing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 675, by Senator LaValle, Senate Print 293, an act to amend the Education Law, in relation to allowing students to sit on local school boards.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 677, by Senator Farley, Senate Print 4095, an act in relation to ratifying certain actions of the Board of Education.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 678, by Senator Farley, Senate Print 4163, an act in relation to authorizing the Hamilton Fulton Montgomery Board of Cooperative Educational Services.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 744, by Senator Libous, Senate Print 4346, an act to amend Chapter 420 of the Laws of 2002 amending the Education Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as Chapter 420 of the Laws of 2002.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 759, by Senator Skelos, Senate Print 2633, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 768, by Senator Nozzolio, Senate Print 2745, an act to amend the Public Housing Law, in relation to members of the Geneva Housing Authority setting salaries.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 823, by Senator McGee, Senate Print 4356, an act to amend the General City Law, the Town Law, the Village Law, and the General Municipal Law, in relation to decisions.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the same date and in the same manner as Chapter 662 of the Laws of 2002.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 841, by Senator Robach, Senate Print 684 --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 885, by Senator Fuschillo, Senate Print 32 --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 903, by Senator Flanagan, Senate Print 3582,

an act to amend the Penal Law, in relation to definitions of criminal enterprise.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 961, by Senator Saland, Senate Print 4112, an act to authorize the Commissioner of General Services.

THE PRESIDENT: Read the last section.

SENATOR ROBACH: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 969, by Senator Saland, Senate Print 1927, an act to amend the Town Law and the Public

Officers Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 974, by Senator Skelos, Senate Print 2661, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 997, by Senator Saland, Senate Print 4526, an

act in relation to authorizing the town board of the Town of Fishkill.

THE PRESIDENT: There is a home-rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1027, by Senator Flanagan, Senate Print 3497A, an act in relation to allowing the Long Island Cares, Inc., The Harry Chapin Food Bank, to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is

passed.

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

SENATOR SKELOS: Madam President, if we can go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 337, by Senator LaValle, Senate Print 288B, an act to amend the Education Law --

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR LaVALLE: Thank you, Madam President.

This bill is a very simple bill and actually came about with a discussion I had with Senator Lachman dealing with creation of a separate bill that would deal only with the time of the year that we would vote on the selection of the Board of Regents.

The premise behind this is that during the month of March we are very heavily

involved in budget matters. The position and selection of members of the Board of Regents are very, very, very important positions. And our involvement in this at a time when our mind is on budgetary matters and there's a lot of publicity about the budget really does not do justice to the kind of focus that is needed and the kind of attention that it should get in the media.

And so this bill simply, simply moves the time to -- if it's done by concurrent resolution -- the first week in May, first Tuesday in May. If not, we go into joint session the third Tuesday in May. If there is a religious observance why we can't do it on the third Tuesday in May, it can be -- it will be moved to the second Tuesday in May.

That's all this bill does.

THE PRESIDENT: Senator Krueger.

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

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

SENATOR LaVALLE: Sure, yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

SENATOR LaVALLE: I thought my explanation was --

SENATOR LIZ KRUEGER: Your explanation was excellent, and it was exactly as the memo described.

My question is, I believe the bill also moves the term of a Regent from seven years to five years. And I was wondering if you could explain why the bill does that.

SENATOR LaVALLE: Oh, I don't think --

SENATOR LIZ KRUEGER: I'm sorry, Madam President, if, through you, I could clarify my question to the Senator.

THE PRESIDENT: Yes, you may, Senator Krueger. Of course.

SENATOR LaVALLE: Yes. Yes.

SENATOR LIZ KRUEGER: Thank you.

On line 9, Senator LaValle, it removes the section on a seven-year term, and then on line 1 on the second page it moves it

to five years.

SENATOR LaVALLE: Yes, I see that. It moves it to five-year terms, yes.

SENATOR LIZ KRUEGER: Oh, I'm sorry. So, Madam President, through you, if the sponsor would --

SENATOR LaVALLE: I think you answered your own question, Senator.

THE PRESIDENT: Senator, would you like to ask another question?

SENATOR LIZ KRUEGER: I would like, Madam President. Thank you.

THE PRESIDENT: Senator LaValle, would you yield, please?

SENATOR LIZ KRUEGER: Thank you.

SENATOR LaVALLE: Yes.

SENATOR LIZ KRUEGER: Thank you.

So, Senator, now that we've clarified that it is moving the term from seven years to five years, why would we do that?

SENATOR LaVALLE: There are some members that feel -- as you might have noted, the term was initially 15 years, went to 10 years, went to seven years. And some

people feel that it is very important that members of the Board of Regents should have review at a time earlier than seven years.

SENATOR LIZ KRUEGER: Thank you, Madam President.

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

Senator Stavisky.

SENATOR STAVISKY: Madam President, I plan to vote no on this bill because of the change in the term of the Regents.

However, I hope that if this passes our house and passes the Assembly and is signed into law by the Governor, because the people in this room will be voting for the bill, I sincerely hope they will join us when we meet in joint session come the May period.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, I will be voting yes on the bill.

And I think changing the years from seven to five is positive rather than negative, because it brings it back to the

people. Once you have a person in office 15 years, and all that's trouble, we brought it down to seven years. Five years is better. We review each Regent, and we make a decision.

The only other prominent elected official who I know serves seven years is the president of France, Chirac.

So I vote for the bill, so we can vote for seven years to five years.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I'm just going to speak on the bill.

I certainly do like the fact that Senator LaValle is going to try to change the time that we are engaged in electing Regents. But I'm still going to vote no on this bill, because I believe we started out with a term of 14 years for Regents, and it's been reduced to 10 and to seven.

And the rationale for having longer terms for Regents rather than shorter terms was to hopefully remove, to some extent, the politicizing of such a significant position in

our state as the Regents represent and, furthermore, to hopefully give them a sense of more independence, as we do with our judgeships.

So I'm going to oppose this because I think the Regents, to me, for the children in this state, the positions that they take, many of which are very controversial for us, but that they're able to focus specifically on the outcomes related to children and they make decisions based on that, I think it is important enough to express what I believe to be the wrong direction by reducing their terms.

So I'm going to continue to oppose this, even though I do favor the part of it that changes the time.

Thank you very much.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, I think there is some confusion in the language. And to clarify that, I would ask the sponsor to yield for a question.

THE PRESIDENT: Senator, will you

yield?

SENATOR LaVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: My reading of the statute presently is that while it does refer to seven-year terms, it states that "Commencing on April 1, 1994, Regents shall be elected for a term of five years."

Is it not the case that the term in law now is five years?

SENATOR LaVALLE: Yes. The answer is yes. We got carried away into Senator Krueger's seven years --

THE PRESIDENT: May we please have order.

Senator LaValle, you have the floor. Go ahead.

SENATOR LaVALLE: -- and I think we got a little carried away with the seven years, when the statute is five.

SENATOR SCHNEIDERMAN: Thank you very much.

Madam President, on the bill.

THE PRESIDENT: Go ahead,

Senator.

SENATOR SCHNEIDERMAN: I actually am going to vote against this bill. And I disagree with what some of my colleagues have said about the timing.

From my point of view, having been here for a few years, I think one of the things that we are able to attend to without getting enmeshed in the politics of the budget and the politics of the end of session horse-trading is the Regents. I think the Regents is something we get to before we really are involved in other issues.

And my concern would be that if you move it back into May, it's possible that votes on the Regents can get caught up in some of the other politicking.

The Regents politics such as it is, in my experience the last four years here, operates independently of the rest of the activities we undertake in the session. And I think that we have more time, frankly, to focus on this in March than we do in May when we really are usually, frankly, doing the budget and we're also considering all the

other issues we're trying to resolve before the end of the session.

So I appreciate the arguments that are made on either side of this. But from my point of view, I think that focusing on the Regents early in the session, getting it out of the way, is actually a positive rather than a negative.

So I'm going to vote against this bill.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 337 are Senators Andrews, Connor, Hassell-Thompson, Montgomery, Paterson, Schneiderman, and Stavisky. Ayes, 53. Nays, 7.

THE PRESIDENT: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 374, by Senator Volker, Senate Print 2773, an act to amend --

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 455, by Senator Skelos, Senate Print 3344A, an act to amend the Penal Law, in relation to assaults at a sports contest.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

Today there's a growing epidemic at some sporting events, and it's called sports rage, where people that are observing a sporting event see fit upon themselves to attack participants, referees, first-base coaches, on and on.

So what this legislation would do

would make sports rage a Class E felony.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, if the sponsor would yield for a few questions.

THE PRESIDENT: Senator Skelos, will you yield?

SENATOR SKELOS: Yes, I do.

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

SENATOR SCHNEIDERMAN: Through you, Madam President, just to make it clear, this bill does not relate to assaults by one fan or a sports observer against another observer, does it?

SENATOR SKELOS: No, it does not.

We had a private discussion on that, and we looked at the bill. And, you know, with your able assistance, Senator Schneiderman, we improved upon it.

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

I don't want anyone else to get carried away here today. I know why Balboni

is trying to get my support. I'm not sure about you.

I think that there is a question that has been raised by a lot of people as to whether or not there's a need for additional penalties regarding sports rage as opposed to any other type of rage. Why should an assault on someone at a sporting event be treated differently?

And my inclination is to actually support this legislation as it has now been revised, because, frankly, it is a different type of an assault.

There are different factors that go along with assaults, and we recognized that when we passed the hate crimes bill a few years ago, that the disruption of an event and the intervention in an event to assault a player or a referee really has an additional element of criminal activity to an assault of one person against another person on the street. It affects the game, it affects other participants, and it sends a very bad message.

So while I generally am reluctant to add additional penalties, I do think this

recognizes a difference in the nature of the illegal conduct, and I do intend to vote for the bill.

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

Senator Sabini.

SENATOR SABINI: Thank you, Madam President.

Would the sponsor yield for question, through you?

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

SENATOR SKELOS: Yes, I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR SABINI: Thank you.

In the sponsor's memorandum on this bill you talk about how the bill seeks to protect individuals and families who attend sporting events.

I'm just wondering -- in reading the bill, I didn't notice -- was there any protection in the case of one of the participants assaulting a spectator? Which has happened.

SENATOR SKELOS: This bill speaks for itself. It talks about a spectator attacking a participant.

SENATOR SABINI: Understood. But if, through you, Madam President, the sponsor would yield for an additional question.

THE PRESIDENT: Senator, do you yield?

You may proceed, Senator.

SENATOR SABINI: While the intentions on that are admirable, why would one assault in the same building be treated differently than another assault in the same building?

SENATOR SKELOS: Because we deal with individual issues quite often here in terms of what we want to target and what we want to improve on. And this is what I'm targeting right now.

SENATOR SABINI: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR SABINI: I think the bill is well-intentioned and probably necessary.

I would hope that we would also address the concept that the participants and the players are not -- shouldn't be treated with kid gloves compared to the spectators. And that we would make sure that everyone attending a sporting event has equal protection against assault by anyone at that event, whether they be participant or spectator.

Thank you.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: I'd also

like to explain my vote. I'm voting in the negative. And it has nothing to do with the concept that this is not a very serious problem, because it is a very serious problem.

What I'm voting against is really the concept that for every event that results in some type of violent behavior, we have to have a separate bill or we have to have a separate aggravation of the penalty for that type of conduct.

Tomorrow, if it happens to be somewhere in a courtroom, someone gets assaulted, then there will be a separate bill with an enhanced penalty for a courtroom assault.

I just think assault should be an assault should be an assault and that the penalties should be up to the judge based upon the seriousness of the assault. So I'm going to vote no for that reason and that reason alone.

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

The Secretary will again announce

the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators DeFrancisco and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator Larkin, Senate Print 1222A, an act to amend the Education Law, in relation to requiring.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR LARKIN: Senator Krueger, this bill here is very simple. What it says in plain English, without all of the extras to it, is that if your son or daughter goes away to college and you're paying the bill, you have the opportunity to ask the president of the college, I would like a copy of my son or daughter's scholastic record.

And when you look at the federal legislation, it provides in there that you're entitled to it as long as that student is

declared by you as a dependent.

Thank you.

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: Senator Larkin, will you yield?

SENATOR LARKIN: Yes.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Senator, is it your understanding that simply by being a dependent of the parent, the parent has the right to request the student's grades? Or only if the parent is providing financial assistance for the student? Because those are not necessarily the same thing.

SENATOR LARKIN: The federal Education Rights and Privacy Act provides for it right in there, very clearly.

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

THE PRESIDENT: Senator, do you yield?

Senator Larkin does yield.

SENATOR LARKIN: Because you have to be a dependent. If you're my dependent, I can then write to the university, college, whatever it might be, and say, My son, my daughter is enrolled in your university and is my dependent, and I would like a copy of her last-semester scholastic report.

SENATOR LIZ KRUEGER: Well -- Mr. President, hello. You've changed.

If, through you, the sponsor would yield.

ACTING PRESIDENT MORAHAN: Senator Larkin, will you yield?

SENATOR LARKIN: Yes.

SENATOR LIZ KRUEGER: Thank you. I appreciate the explanation. But I'm still a little confused.

My understanding is there's a difference between being a dependent for tax purposes on your parents' tax forms and the parent actually contributing to tuition or financial assistance for college.

So I just wanted to try to clarify. This is anyone who takes their college-age child as a dependent for tax purposes? Or anyone who actually makes financial contributions to the college for the child?

SENATOR LARKIN: Just the dependent.

SENATOR LIZ KRUEGER: So if they are a dependent for tax purposes, then they could request it?

SENATOR LARKIN: I could -- you could ask for a copy of their scholastic record.

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

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

While it appears on its face reasonable that if someone is contributing to their college-age child's tuition that it seems right that they should be able to ask the college for the information, I have two concerns that I think are going to lead me to

vote against this bill.

One is the concept of legislating a relationship between, quote, unquote, an adult child and their parent. The child goes off to college, one assumes they're over the age of 18 in almost all circumstances. And are we now, the Legislature, supposed to insert ourselves into both the 18-and-up young adult's sort of responsibilities and independence as they go off to college?

Or should we, rather, assume that from a legislative perspective we should have more of a hands-off perspective, that if parents are paying the bills for their children in college and they ask them for the grades, they're going to get it, and if they are not paying the bills -- and perhaps there's not a great relationship, for whatever reason, although they're still taking the child as a dependent for tax purposes -- because it's fairly complicated to separate yourself out and not be a dependent for tax purposes if your parents choose to do that -- that we should not both, one, recognize and respect the potential independence of

18-year-olds-and-up in a college situation to make these judgments for themselves and share this information with parents if they choose and when asked, and separate that out also from the fact that not every college student gets assistance from their parents financially, even though they show up as a dependent for tax purposes, and that there should be some recognition of independence and respect for such independence when young people are in fact paying the bills themselves and are not getting assistance from their parents.

So if you had told me this bill was specifically attached to if you're making financial contributions to college tuition, then you're a partner in this deal somehow and you should have the right to request those grades, I would say okay.

But there's no obligation that you are a partner in your child's education just because they're a dependent. I do think one needs to respect the independence and rights of people 18 and up in college.

And I also worry that while, again,

it doesn't seem to be anything but a well-intended piece of legislation, that you're really asking the State Legislature to be attempting to legislate a relationship of open and trusting information between an 18-year-old-and-up and their parent. And I don't think that's the business we should be in.

So I'm going to actually be voting no on this bill.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger will be recorded in the negative.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MORAHAN: Senator Diaz, on the bill.

SENATOR DIAZ: I am a parent; I am the father of three adults. One is a sergeant in the New York City Police Department, one is a supervisor in the New York City Housing Authority, and one is a state assemblyman.

The three of them are my children. I'm their parent. And I as a parent, I would think that any parent would like to know what is -- what their children are doing when they go to college.

Some parents go to work and they have to kill themselves working to subsidize their children's education. Others, maybe they don't have to pay money to the school but they have to pay the rent and the house, the mortgage, food, and all the required things so that student could have a place to live.

So it is only fair and just for any parent to know what is it that their children are doing in college. I mean, to esasorate [ph] a parent from a children and let that children go to college and do whatever they want to do and waste that time in college while the parents are thinking that the children are doing a great job and getting a good education, and suddenly the parents are faced with the bad news: Your children -- your son, your daughter -- was wasting their time all those years in college.

I think that this is a good bill.

Any parent, any good parent -- and any good children would allow, would want their parent -- any responsible children would want their parent to know their grades in college. And any responsible parent would like to know that their children are doing correct and doing a proper education and doing well while they are in college.

So I am supporting this bill, and I congratulate Senator Larkin for this legislation.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Diaz.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

You know, there was a time about 35 or 40 years ago when I would have probably been against this -- happily against it -- if I were here instead of being a student.

But now, as my boys are fast approaching college age, I'm very much in sympathy with this. Because, Mr. President, it's not just that you want to know how your

children are doing in school, that you want to encourage them to do well.

Very often a sudden change in a student's performance -- you know, a B student who's suddenly getting F's -- is a signal to the parent that there may be some problem there that requires as much intervention as a parent can do for someone who is over 18.

And, Mr. President, while Senator Krueger is correct, these are adults, if you have a single 19-year-old student, I think we all know if there is some serious health problem or mental health problem -- I mean, who else -- they're always your children -- who else do we look for to pay for and take care of it but the parent?

And so I think it's more than just a parent's right to know, am I paying so much money and is that kid goofing off and going to beer parties and getting -- oh, they're adults, I forgot. Worst vote I ever took. They can't go to beer parties till they're 21. But they can go to Iraq.

The fact of the matter, Mr. President, on the subject here is that the

parent -- it's not just that. The parent has a responsibility, particularly if the student is living away from home, to -- and believe me, Mr. President, unfortunately, the concept of in loco parentis in colleges and universities which 30 or 40 years ago -- until 30 or 40 years ago was the doctrine is just not extant anymore, Mr. President.

Eighteen- and 19-year-olds go off to colleges and universities, some of them very, very large institutions, where unfortunately, except for their own immediate social circles, they are very much a number. There is no one watching them, there is no one watching over them, there's no one spotting problems that could develop and require intervention -- sometimes, unfortunately, Mr. President, until it's too late.

One of the little tests a parent can use to see if perhaps their son or daughter is in need of some type of intervention is to watch the consistency of their academic performance and to monitor that. Because believe me, Mr. President, the average college and university would be an

exceptional and certainly small institution of higher education that actually monitored to that level and worried about a young man or young woman who suddenly was in depression or -- from some problem with substance or otherwise. So I think parents need this tool.

With respect to the argument that, well, it's defined as dependent rather than whether you paid the tuition, Mr. President, the guidelines I -- unless they've changed, a dependent on your tax form is a full-time student over the age of 18. To claim as a dependent, they have to be a student or otherwise dependent on the parent, and the parent who is claiming the dependent has to pay more than half of their support.

Mr. President, I went to college and law school and my parents never paid a penny of tuition. They didn't have it, they didn't pay it, they didn't need to because I was fortunate enough to have scholarships.

But what they did do is at the end of all of my summer jobs and whatever, when we added it up and I was short a couple of hundred bucks for room and board, food, they

put in the rest so I could eat while I went to school full-time.

And, yes, they sent me an allowance, I can remember it well: $15 twice a month. It doesn't sound like much now. It's all I had. It's all I had for spending money for bad college-student habits like beer and -- it was legal then -- and cigarettes.

But they supported me. And I could always go home when we weren't in school, and I got all my meals and room. So I was very much dependent, even though they didn't pay any tuition. I don't think the standard is are they paying the tuition. It's are they supporting their child's efforts to get an education, are they supporting their needs, the other things -- I just brushed that off. Of course my parents paid my health insurance and all these other things that when you're 18 or 19 you don't worry about. I just thought of that now, because now you suddenly realize these things. I didn't even count that then as support.

But the fact is without their support, I couldn't have been educated. And

that's true, I think, of many, many, many students who will tell you: Well, I'm paying my own way, I have loans, scholarship, whatever, whatever. You kind of forget that your parents are back there giving you a roof over your head.

If you're not living at home and they're feeding you, they're getting you the money to feed you. They're taking care of many costs that I think people don't think about, like laundry money and all these other necessities that when you're 18 or 19 you just forget about until they're not there, till they're not being provided.

So I think this bill -- and I intend to vote for this. I think this bill -- I don't think we should quarrel over what the definition of a dependent on the tax returns versus who's paying the tuition. It's not about that. It's who is supporting in a significant way that child's educational efforts.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Connor.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of January next succeeding.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you. Just to explain my vote briefly.

Having listened, after the dialogue I have to reiterate my argument before by saying if you're a parent who is supporting your college-age child in school and you ask them for their grades and they won't give them to you, then you do have a problem, a bigger problem than is the role of this Legislature to address.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

THE SECRETARY: Those recorded in the negative on Calendar Number 592 are Senators Breslin, L. Krueger, Parker, and A. Smith. Ayes, 56. Nays, 4.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 841, by Senator Robach, Senate Print 684, an act to amend the Executive Law, in relation to funds of the Gen*NY*sis program.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Robach, an explanation has been requested.

SENATOR ROBACH: Yes, Mr. President.

This bill would clarify the current law, adding language which would state that the Gen*NY*sis funds could not be used for projects which were already completed upon the time of application.

I feel very strongly and I think

the original intent was to make sure that this money was in place, not as a funding mechanism for existing projects, but a mechanism to advance technology, create new jobs through upstate New York.

This bill would codify that language and set that in stone, which was the intention of this legislation, working along with the Dormitory Authority, Senate Finance, and Assembly Ways and Means.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 885, by Senator Fuschillo, Senate Print 3296,

an act to amend Chapter 578 of the Laws of 2002.

SENATOR LIZ KRUEGER: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, an explanation has been asked.

SENATOR FUSCHILLO: Thank you, Mr. President.

This is an amendment to a chapter we passed last year affecting Republic Airport. It's an airport that is in Farmingdale, on Long Island, that is owned by the state, run by the Department of Transportation. There are hangars there and other parcels, storage parcels, that are privately leased through the Department of Transportation.

Last year, as a result of 9/11, or two years ago, the attacks on our state, the Republic Airport was affected by the no-fly zone that was implemented by the federal government.

This would allow for a more ample time for these individuals who lease the state

property to continue the negotiations with the Department of Transportation, who is actively negotiating with them to try to provide some subsidies during a period of time where their businesses were essentially shut down.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would yield, please.

ACTING PRESIDENT MORAHAN: Does the sponsor yield for a question?

SENATOR FUSCHILLO: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator, your explanation seems quite plausible. My question is, is Republic Airport the only airport in the State of New York that finds itself in this situation post-September 11th?

SENATOR FUSCHILLO: I don't know, to answer your question, Senator Krueger. This is in my district. This is the one that

is affected by the legislation, the one that we're dealing with.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would continue to yield, please.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, will you continue to yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Do you know, Senator, whether there are any other airports that are under the same decision from a year ago now that will sunset, because your bill only addresses that one airport?

SENATOR FUSCHILLO: I don't know that.

SENATOR LIZ KRUEGER: Thank you.

And, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, will you continue to yield?

SENATOR FUSCHILLO: Yes, I will, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator, do you have any estimate of what the fiscal cost to the state would be from continuing this, not charging fees and -- what were they, fees and other rate charges and rentals for this airport?

SENATOR FUSCHILLO: The time period, I believe, was just 45 days from September 11th, 45 days out, because of the no-fly zone.

I believe at the time, Senator Krueger, it was estimated to be less than a hundred thousand dollars that the businesses were paying to the state during the shutdown period.

SENATOR LIZ KRUEGER: And, Mr. President, one more question of the sponsor, if he would yield.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, would you yield for one more question?

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

ACTING PRESIDENT MORAHAN: The Senator yields for one more question.

SENATOR LIZ KRUEGER: Thank you.

I'm showing my lack of knowledge about your district and its airport. Is there still a no-fly zone in effect that affects this --

SENATOR FUSCHILLO: As I stated previously, Senator, it was only 45 days from September 11th that the no-fly zone was in effect.

SENATOR LIZ KRUEGER: Thank you, Senator.

On the bill briefly, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I am concerned that we would have a specific law that would exempt one airport from rates and fees and rental costs that other airports don't have the same privileges of.

And I'm also concerned how long we would carry this forward, given the fact that there's no longer a no-fly zone affecting

Republic Airport.

But I will vote for this bill, in the hope that we either look at the situation for other airports or make sure that we continue to evaluate when we extend bills beyond a time that may be appropriate for a specific emergency condition.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Stavisky.

SENATOR STAVISKY: Mr. President, if Senator Fuschillo would yield. I'm a little unclear --

ACTING PRESIDENT MORAHAN: Senator Fuschillo, will you yield for a question?

SENATOR FUSCHILLO: Yes, Mr. President, I'd be happy to.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR STAVISKY: Did I hear you say that the hangars are leased to private interests?

SENATOR FUSCHILLO: Mr. President, through you, there are private

companies, Senator Stavisky, that rent hangars currently on state property, correct.

SENATOR STAVISKY: And are these profit-making companies?

SENATOR FUSCHILLO: Yes.

SENATOR STAVISKY: Mr. President -- thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Stavisky, on the bill.

SENATOR STAVISKY: I guess I will vote for it also, but I have misgivings.

I represent LaGuardia Airport, and they certainly are not getting any fees waived or any help. In fact, they want to sell the airport, or at least sell the ground under the airport, which I think is a disgrace.

We don't seem to know the answer to whether there are other facilities in the State of New York receiving these tax breaks or the waiving of the fees and so on. But if this is a profit-making venture, then it seems to me that we're opening a can of worms here.

And I'm inclined to vote no, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Stavisky, how do you vote?

SENATOR STAVISKY: No.

ACTING PRESIDENT MORAHAN:

Senator Stavisky will be recorded in the negative.

Does any other Senator wish to be heard on the bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 885 are Senators A. Smith and Stavisky. Ayes, 58. Nays, 2.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator Volker, Senate Print 2773, an act to amend the Criminal Procedure Law, in

relation to the authority of police officers.

SENATOR SCHNEIDERMAN:

Explanation.

ACTING PRESIDENT MORAHAN:

Senator Volker, an explanation has been requested.

SENATOR VOLKER: Yes, Mr. President. This bill is known as the Police and Public Protection Act of 2003. It initially came to us back in 1999 as the Police and Public Protection Act of 1999, as a Governor's program bill. It is not a Governor's program bill now, I might add, because we haven't received it yet from Governor.

But what the bill does -- and this is a bill that has received some criticism and some good publicity. Let me point out that the memo is a little old, I'll be honest with you. It talks about heavy violence and crime. Well, thankfully, thanks to this house and the Governor and the other house, we've been able to cut that down rather dramatically.

We still obviously have some major problems. And the memo, which I won't

describe, points out some of the idiotic decisions -- I think they're idiotic -- that have been made by some of the courts in our state relating to issues such as abandonment of evidence and things of that nature.

I guess if you're the defense attorney, and obviously if you're the defendant, they sound great. But in the long haul, what they signal to the street is that, very honestly, this state is not totally serious about dealing with criminal justice.

And I know if you zero in on the police part of this that deals with the police having an objective credible reason not necessarily indicative of criminality, I think we start thinking that somehow this is some huge Fourth Amendment issue.

The trouble is these issues don't revolve what happens in the street as much as they revolve around what happens in the courtroom.

Remember one thing, if I might say. There is no court system in the United States of America, I believe, that is as liberal on rights as ours is. And, I mean, you can argue

all you want that we have tough laws here. And we do, we have tough laws in New York. And under Governor Pataki -- and under Mario Cuomo to a certain extent, too, but I think much improved in the last few years -- we have developed very tough, hard-nosed statutes that have had a major impact on our streets.

And many of the reports you hear from the media say: We don't know why the murder rate has gone down, we don't know why the violent crime rate's going down. It's pretty obvious. We've passed the death penalty. We've passed tough statutes. People say: Well, we haven't executed anybody.

Well, I want to tell you something. If you want to see the record, look at the dive record, I call it. No state has ever had so many people diving for cover as we have in this state. We have people pleading to 90 years to life, 90 years to life. Tough to get out when you're in for 90 years minimum. In fact, if he gets out, we don't care. I mean, I -- well, what I mean by it is I don't think he's going to be any problem.

But the point I'm making is that

there is a whole series of things that we have done that have been favorable. There are several pieces of this bill that we have, by the way, debated on a number of times before. It seems to me the key part of this bill relates to the issue of the courts interpreting Section 1 -- or Article 1, Section 12 of the State Constitution in a more liberal basis, if you can say that, or on a basis that is stronger than the United States Constitution.

The United States Constitution does not allow for suppressing of evidence unless there is a bad faith shown by the people who obtain the evidence. In this state, basically what we say is -- and even though the United States Constitution, which is supposed to be one of the toughest in the world, is tough, we want to make it tougher.

And we want to say that any time that you make a technically deficient obtaining of evidence -- you know, silly situations such as a guy's running down the street with a bag full of drugs and guns, drops it down, runs away, gets arrested, they

go back, pick the bag up, and they say, "Well, he intended to abandon it."

That's fascinating. But on the other hand, it treats situations in a manner in which people say, you know, that's an injustice. That is not just.

When the police officers or the law enforcement people make mistakes that are so critical -- and frankly, especially if they're truly in bad faith, where they set somebody up or something of that nature, this statute will not prevent that from denying the evidence, and the person's prosecution couldn't go forward.

So I think you have to take this bill, it seems to me, in light of what we're dealing with here, in a situation where our rights -- yours, mine, all of us -- are being denied every day because a group of people decided that they wanted to attack us as a nation. They didn't just attack the World Trade Center in New York City, they attacked in Washington and all over this country. And there are some very strong information that they intended to hit Chicago and Los Angeles

on that same day.

So I can only say -- and I know that we've debated this bill on many occasions. The provision in here I know bothers many people, particularly in the City of New York, that says police officers engaged in law enforcement duties approach persons at a public place where the police have an objective, credible reason not necessarily indicative of criminality.

Well, the reason for that is that you don't necessarily have to have somebody that you know is a criminal. But if their actions -- and, by the way, you have to prove that in a case in which you arrest somebody on that basis -- then if that person you can show some very good reason, a reasonable reason is what it is, for stopping that person, you still have to act responsibly after that. And if you do, that you can maintain a prosecution.

There have been some really incredible reasons used by the courts to dodge certain things. A person running from somebody for no reason shouldn't be

suspicious. Well, I don't think that that quite follows, particularly when you find guns and drugs and all sorts of stuff after that.

So I think the major point here lies in the bad-faith piece of this, which is -- says that our constitution should match in effect -- or at least our courts with the national courts, with federal courts.

And the other thing is that the search and seizure rules should be objective enough, should be allowed so that we could at least prosecute people on the same basis as other states prosecute people.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I'm just -- I would just like to speak on the bill.

ACTING PRESIDENT MORAHAN: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I would like to read for the record a couple of sentences from the memo that was given to us from the New York Civil Liberties Union as it relates

to the New York City Police Department.

It says, and I read from this memo, "In the mid-1990s the New York City Police Department implemented a policy of aggressive investigation and prosecution of so-called quality of life infractions. The policy led to well-documented abuses. In 1998, a New York Times study of arrest data showed a dramatic increase in the number of improper arrests made by New York City police.

"According to the Times analysis, district attorneys rejected charges in more than twice as many cases as had been rejected in the prior four years."

There is no question that there is a serious issue and problem as it relates to the arrests that are made by the police department when they are encouraged to make arrests without necessarily there being any criminal activity observed.

The law, Mr. President, as I read it here, already allows a police officer to stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects that

such person is committing, has committed, or is about to commit a crime. That is already in law.

What the author of this legislation seeks to do is extend it to an officer being able to do the exact same thing even when there is not any reasonable suspicion.

The only thing that I can imagine with this legislation is that as I ride through my district and I see all of these especially young black men standing on the corner, having their social life, they look strange -- maybe their pants are not looking right they are just looking weird. They look weird to me. I think they look weird to most everybody. But that's who they are. And those are the ones that police will be able to stop just because they're standing out there on that corner.

And, Mr. President, that defies the Constitution of the United States of America. It defies the constitution of our state, I believe. And we should not be proposing that police can stop and search people, especially like the people in my district who are going

to be most susceptible to this law. We should not be passing legislation which encourages that.

It is the epitome of saying we must allow -- we must put in law the capacity of the police department to do racial profiling, racial arrests, without any cause, without any reasonable suspicion of any criminality.

I object to this. I oppose this legislation. And I understand that Senator Volker has good intentions for some things. But certainly this is not a good-intentioned bill. This is going to hurt people. It is going to especially hurt young African-American men and women, especially those that live in my district, because I see them every day, I know how they're already treated by the police, and this only enhances the capacity of the police to stop and arrest and harass them, including my own son.

So obviously I am adamantly opposed to this legislation.

ACTING PRESIDENT MORAHAN: Thank you, Senator Montgomery.

Senator Parker.

SENATOR PARKER: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Parker, on the bill.

SENATOR PARKER: First, I wanted to just say I really understand, Senator Volker, where you're coming from in terms of what we all are concerned about regarding crime and the criminal justice system.

Oftentimes people are harassed. In fact, in my very community we have a great deal of both gang activity and drug activity that we have not been able to solve because we have people who we pick up and wind up, you know, back on the street.

But as I talk to my neighbors and the residents of those buildings and we continue to work together to deal with these issues of crime, I remind them that the criminal justice is the hallmark of what America is about, that we are Americans and we do -- we want freedom. We want freedom of speech, we want freedom to do what we please to do in our homes. We want the freedom to be able to walk down the street and people not

harass you or bother you based on what you look like or who you are, your race or your religion or your creed or your sexual orientation.

And so when I look at a bill like this, this actually restricts all of the things that we think of as we think of being Americans. What makes us different than anybody else is that we are Americans, that we do -- we value the freedom that we have here and the right to be different.

And despite all the freedoms that we have here, we still have a great deal of abuse by police. This is something that was actually at the forefront of the political agenda in New York City prior to 9/11. And some of us forgot, in the terrorism that took place on 9/11, what was happening prior to that.

Well, prior to that, politically in New York City we were on the verge of a major shakeup of the police department based on harassment of citizens.

And, yes, we do have one of the most lenient systems in the world when it

comes to a court system. And you know what? We should. Because it is better -- as the founders of the United States tell us, it is it is better to let a hundred guilty people go than imprison one innocent man or woman.

And as we've seen time and time again, especially now with the DNA evidence, we're now finding, you know, exorbitant amounts of people who are now spending or who have spent time in our prison system who are innocent. Imagine, when we have the ability to stop people and to arrest them on less evidence than we currently are demanding, the numbers that are going to go up.

I think, Senator Volker, in a perfect world, without racism, without sexism, without ageism, without discrimination against people because of their sexual orientation, I would vote for this bill in a minute. But unfortunately, we don't live in a perfect world. Unfortunately, we live in a place where not only do juries makes mistakes and judges make mistakes, but unfortunately, as brave as good as they are, as good as they are, as well-intentioned as they are, our

police department makes mistakes.

And I think that this legislation unfortunately broadens the margin at which those mistakes can be made. So I'll be voting no, and I'm asking my colleagues on both sides of the aisle to join me in a no vote on this bill.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Briefly on the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger on the bill. Briefly.

SENATOR LIZ KRUEGER: Thank you.

Well, I have to agree -- was that a reference that I'm not briefly usually?

ACTING PRESIDENT MORAHAN: You said briefly on the bill.

SENATOR LIZ KRUEGER: Thank you. With my usual brevity, Mr. President.

My colleagues have already pointed out a number of the issues, and I just want to highlight again how we have a good standard already in this state. We don't need this

bill. This would open up, I believe, our police and our courts and our citizens to a very vague definition that is not in anyone's best interest.

Again, the record is clear. We already have established precedent in New York State from the Court of Appeals about when a police person or other criminal justice official can and should interact with citizens. In order to make an arrest, the police must have probable cause to believe a crime has been committed.

Or to briefly but forcibly stop and detain an individual, the police must have reasonable suspicion to believe a crime has been committed to approach, ask questions, and take other actions they may deem appropriate.

And within constitutional limitations, the police must have an objective, credible reason not necessarily indicative of criminality, or they must have a founded suspicion criminality is afoot.

This law does away with those standards by opening it up to any interpretation by any member of the police on

our streets. And in fact, if there is no even assumption that something possibly might be going awry or might have criminal intent, all you are left with is a judgment by the police rather than clarifying it for them that because I look a certain way -- the color of my skin, whether I'm a man or woman, my ethnicity -- if I come from a country that our own U.S. country may not be at good relations with, that it opens up abuse, assault, and the unconstitutionality of police powers that, as Senator Parker said, we are proud that we have in this country.

I also believe that while this bill predates the terrorism of 9/11 and the Patriot Act, Senator Volker in his own statements referenced that issue. And again, just to highlight that, this whole country is reevaluating how far have we gone and that we shouldn't go further.

There are now over 108 localities in this country who have passed resolutions calling for the reversal of the USA Patriot Act, which in fact opened the door to far broader powers by government to intrude on the

lives of individuals.

The City of Albany itself has passed such a resolution calling on a reversal of the Patriot Act.

When I was doing some research, Senator Volker, about your bill, I found that in addition to cities around the country questioning the country going down this road, conservative think tanks are sharing the same views as my Democratic colleagues. The Cato Institute, the Heritage Foundation are opposed to this opening of powers of our government without justification.

So I think this is a piece of legislation where those of us who define ourselves on the left and those of who define ourselves on the right can actually agree, this goes too far. The harm it can do is too great a risk for us to take with our constitutional protections and with our freedoms.

I will vote no. I urge my colleagues, particularly on the right of the Republican Party, to join me in voting no on this bill.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger. You will be recorded in the negative.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President, just very briefly.

Senator Volker, you talked on this bill about the fact that the State of New York is too liberal, and I think I heard Senator Parker say that it should be. I echo him in saying that, primarily because I think that one of the things that New York has been more successful than most states, based upon its diversity, is to use the longest measure, not the shortest measure, in how it deals with the people in our state.

And because of that, I would not like us to change the definition of justice. As I listen to what you said, I too am very concerned about crime in our streets. I'm certainly concerned about the acceleration of crime against this country.

But I still feel that each of us has the responsibility to look very carefully

and closely at each of the legislative initiatives that we take and ensure that we do not put constitutional rights fifty years back, a hundred years back.

The numbers of people that I feel that will be most greatly affected by this may not be constituents of yours or some others in these chambers. But certainly those who are African-American, particularly those who are men, those who are immigrants of Middle Eastern descent, and those that are unable to enjoy the same civil-liberty protections long established and defended by our judicial system, will have a serious problem with this bill.

Those are the people that live in my district. And maybe I have a disproportionate number in my district. But people come to these shores and certainly people choose to come to New York State and they abide here for the sole purpose of the fact that there is a relaxation and a liberalism.

And I would not want us to define liberalism to be something that is bad, but,

rather, something that says that we take a strong and hard look at how we deal with the people who live in the state of New York and choose to live in the state of New York.

So I must vote no on this bill and just -- I needed to be able to share my concerns, along with some of those that have been expressed by my colleagues.

ACTING PRESIDENT MORAHAN: Senator Hassell-Thompson will be recorded in the negative.

Senator Sabini.

SENATOR SABINI: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MORAHAN: Senator Sabini, on the bill.

SENATOR SABINI: As many know, I was a member of the New York City Council for ten years, and I became a -- got a law signed into the books in New York City against aggressive pan-handling. The ACLU said they would have it overturned and they wound up not even filing suit.

I had another proposal which has not become law which was based on a Chicago

statute that said that where there was a pattern of gang activity and arrests that were coefficients of gang activity -- on prostitution, drug dealing and robberies -- that the police would have broader authority in those geographic areas.

And that that in effect was a geographical probable cause that gangs that had a hegemony of over certain neighborhoods and were, in effect, taking over sections of town. And the police, not having probable cause to stop them, were being frustrated in their takeover activities or to prevent takeover activities of neighborhoods.

But those bills were bills that I thought were thought out and gave a balance of protection. And while there were those that claimed that I was giving the police too much power in both those proposals, I felt very strongly I wasn't.

However, in examining this bill, I get an impression that Senator Volker, in his desire to protect the public safety, goes too far, that the balance really isn't there. And unless I'm missing something, that the

probable-cause relationship that exists in the law is sort of being stepped over like a -- stepping over a puddle of water that you sort of want to avoid because we don't like it.

I think this goes too far. I represent a very multiethnic community of people, both who have come to our shores to seek the American dream, people that have been there a long time, like I have, African-American families who are sending their children to really great schools. And I think that the application of this bill, were it to become law, would be way too broad in pinning back the rights of New Yorkers all over this state -- not just in the area I represent, but everywhere.

Senator Parker said in a perfect world he wouldn't mind voting for this bill. I wouldn't mind voting for this bill in a perfect world, because I think if we needed this bill it would be an imperfect world and not one that I would want to feel was America as we know it today.

I'm all for protecting the police and to give the police new tools in fighting

crime. I just think this tool goes a little too far, and I'll be voting in the negative.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Sabini will be recorded in the negative.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

You know, over the years attitudes change and society's approach to criminal justice and other things changes.

My own attitudes change. I remember sitting here some 25 years ago when the stop and frisk case I guess had made it to the Supreme Court and being kind of appalled at the decision that came down, the standard that evolved of reasonable suspicion on the part of a police officer. Before that, I had been one who believed it should be probable cause, a much more stringent standard. But we've lived with that.

And certainly after 9/11, particularly those of us in New York City and those of us who were in some of the -- worked

and lived near some of the more sensitive security zones and all just willingly tolerated being stopped and "Can you open your trunk?" or "I'm going to look in your car." And, you know, most people would say to the police officers or security personnel involved, Thank you. Thank you, because there was a real perceived threat at the time.

I don't think in this bill we're dealing with those situations. And I don't think anybody questions that in the aftermath of a terrorist attack or when there's real intelligence that shows the imminence of it that we ought to give way, we ought to let the police and the security authorities do things like stop everybody at a roadblock and perhaps do things that on a good day they shouldn't do and we shouldn't want them to do it.

This bill doesn't deal with those exigent circumstances. I don't see anything in this bill that says when the Governor or the appropriate authorities have declared a national emergency or a national security emergency. I think we all understand then.

Heck, you know, pat everybody down

if you've got a reasonable belief that there's going to be some terrorist act in a stadium. Or search all the cars going over a bridge if you have some reasonable belief that somebody is trying to blow up the bridge.

This bill isn't about that. This bill isn't about those kind of emergency situations. This bill is about everyday conduct. And I read this bill, and my first thought is this bill is an unlimited license to profile. That's what it is. It's a license to profile -- the very profiling that we have for these past years been concerned, about been angry about.

We see in a neighboring state the huge struggles, the New Jersey Turnpike experience where people were stopped -- what was the term they used, driving while black? -- and the great trauma and injustices that arose out of that.

I don't think we in New York State want to adopt a license to profile. And that's not a slur on the great majority of our policemen and women and law enforcement personnel. They have a job to do.

But we have a job to do as well. And our job is to define the standards on which we want them to conduct their law enforcement activities.

I remember many, many years ago traveling -- many years ago, 30 some years ago -- joining volunteer efforts put together by the late, great Paul O'Dwyer to provide volunteer legal representation to certain people, most of whom were Irish-Americans, who the federal government was investigating for gun-running, alleged gun-running activities.

While I was doing this great work as a young lawyer, my then wife and I decided we wanted to go to Ireland for a vacation. Long before I was in public office. And lo and behold, there was always that one car that followed us everywhere. And eventually the Garda stopped us, and they had a whole lot of I thought irrelevant questions for me about what I'd done in New York as well as since I'd been there.

And in my natural American hesitation to answer, I was very curtly informed that I could be taken in and held --

and this was not in northern Ireland, this was in the Republic -- and be held for seven days, without talking to lawyers or anybody else, until I chose to answer all their questions.

I don't think we want to go there. By the way, I answered all the questions on the spot. I didn't want to ruin my vacation. And I didn't really have anything to hide.

But the fact is, I don't think we want to go down this road. Reasonable suspicion is a pretty loose standard as it is for the police. It's a combination of some objectivity, yes, some street smarts on the part of policemen and women. And we want them to have some street smarts and street knowledge about, you know, trouble spots and troublemakers. That's -- you know, we can live with that.

This idea, though, that a police officer can just basically stop everybody coming down the street -- not in a national emergency, I think we'd understand that -- but just as part of a hit-or-miss "I'm going to make a bust if I got to stop fifty people," I don't think that's the way to go. I think

this goes way too far. Way too far.

And, you know, if you look at the federal exclusionary rule, if you read carefully the seminal Supreme Court cases that federalized the -- that used the 14th Amendment to apply the exclusionary rule to the states -- what am I thinking of? Mapp against Ohio, probably. And their rationale was -- there had been a federal rule for federal officers -- that they were applying it to the states because the states had failed to take action against their law enforcement personnel who violated people's rights under the 4th Amendment against search and seizure.

And if you read that, there was almost an invitation there that said this is going to be the rule for the states until the states prove to the Supreme Court that they'll do something about it.

I have yet to see the really strong enactment by this state that has real severe punishments for law enforcement officers who in bad faith, in bad faith conduct unlawful searches and seizures. Yes, there are civil suits, there have been civil suits. There are

some pending now for some rather tragic cases in New York City. But realistically, when a police officer in bad faith decides to conduct an illegal search, what's the penalty?

I mean, yeah, there's a certain irony in the exclusionary rule, because the only person whose right to be secure, the only people whose right to be secure against unreasonable, unlawful search and seizure are those who probably were guilty of something, because the evidence being suppressed is evidence of criminality.

But what have we done, what have we done to vindicate and uphold the constitutional rights of citizens who are unlawfully searched and there's no criminal evidence found? They're upset, they're outraged, maybe they'll sue. I've yet to hear, with probably one exception, of any punishment coming down on law enforcement officers or their supervisors who authorize such conduct.

And I would suggest, before we start tinkering with the exclusionary rule, perhaps we ought to address what do you do

about people who wilfully conduct unlawful searches. And if you could frankly vindicate the rights of all the innocent people who are unlawfully searched, then maybe you could start talking about, well, do we really have to let those few who were guilty of having evidence of criminality walk by suppressing the evidence. We haven't done that.

So, Mr. President, I'm against this bill. I think we're going -- taking a big step down the wrong path on this bill. The reason this country and this state are different than the rest of the world, the values that we uphold, are at stake here. We shouldn't let the criminals win. We shouldn't let anyone else win by changing our standards because of their conduct.

I think, under present law, crime has been coming down. That's all we hear in New York City and New York State, the drastic reductions in crime. Which the Governor takes credit, for which Mayor Giuliani took credit for, and Mayor Bloomberg takes credit for. The drastic reductions in crime that we've experienced have been under the law that we're

now saying is too lenient, too liberal, too whatever.

I don't understand. If it's not broke, we shouldn't be trying to fix it. I'm voting no, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Connor. You will be recorded in the negative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for one question.

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield for one question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SCHNEIDERMAN: The current law, as has been pointed out by some of my colleagues, requires -- State Criminal Procedure Law Section 140.50 permits police officers to approach and stop a person in a public place where the officer reasonably suspects that the person is committing, has

committed, or is about to commit a crime.

This legislation would change that standard. And it states that an officer may approach a person, stop and take other actions when he has an objective -- this is the language of the bill -- an objective, credible reason not necessarily indicative of criminality to do so.

And I'd like the sponsor to list for us, if he could, some examples of objective, credible reasons not necessarily indicative of criminality for stopping someone.

SENATOR VOLKER: Sure. You could list a whole bunch of things.

But let me tell you something, Senator. This has nothing to do, really, when you come right down to it, with stopping people in the street. This isn't going to change anything.

The problem here is, I think what we're not looking at is we're reading this language and we're saying, Oh, my gosh, people are going to read this and a cop is going to read this and say: Now I can go out and

really stop somebody.

This is all for the appeals courts. I mean, remember, what this is about is how appeals court have interpreted our statute. And they've said, Well, if you don't know that this is a criminal, if you don't know that this person has committed a crime or is about to commit a crime.

Well, the problem is that that's getting into the head of the police officer. And he has to have solid evidence, basically, even though this person, as somebody said, may walk up with a knife or a gun or a sword, as one guy did, and swings it around. Maybe he's not a criminal. Maybe he just happens to be somebody who's walking down the street and likes to use a sword. Or the other guy that had the AR-57, or whatever it was, without the firing pin in it.

I think, Senator, the answer to that is that the objective -- the objective, credible -- you have to have some evidence that the person did something which could be interpreted as disorderly or criminal or something of that nature.

And this won't really change anything, I can tell you. I've been out in the street, by the way, and I could tell you some -- when I hear these stories about minority neighborhoods, I have to kind of laugh. Because I was picked up, my son was picked up. I can tell you that it happens everywhere, and it happens for different reasons.

My son was speeding one night in the Senate car. The only reason they stopped him, they knew for sure that that kid in the car wasn't a Senator.

And, I mean, you know, things of this nature that -- but the problem, I think, is, Senator, and I mean this very sincerely, I think I'm as assiduous to worries about law enforcement officers as anybody. I knew good cops, and I knew bad cops.

And when you talk, by the way, Senator Connor, about bad searches and things like that, you're right, they don't prosecute cops, they fire them. At least in my area, if you create too much problem and if you have -- and in the City of New York they do too, you

just never hear about it. Sometimes they do. Or they get shifted out some place in East Yujunga.

In the State Police, they ended up in the North Country. And if they do it too often, they get fired. Or you can bring criminal charges against them, but you got to prove it. Which is my point.

And that is that I think -- I understand what spawned this. And I understand the problems in New York City that spawned this. And -- but I can say to you that if you have a person who commits or does some activities that calls into question whether they might create disorder, harm themselves or harm somebody else, a police officer right now has the right to stop that person.

However, if they go into the appeals court, they find a gun or, let's say, drugs, courts have been regularly in New York throwing those cases out. Because they said, Well, you didn't know he was going to commit a crime. You didn't know that he had already committed a crime or might commit a crime.

And therefore, they're throwing it out.

This statute is not for the street. This statute is for the appeals courts.

And, you know, you mentioned Mapp versus Ohio. We can't reverse Mapp versus Ohio. We don't want to. What this does, however, is to allow New York police and New York law enforcement people to have the same kind of rule as is in the whole rest of the country.

If police, by the way, abuse it, then they should be punished and certainly their charges could be thrown out. This doesn't say anything about arresting anybody. This doesn't change arrest rules. It's only setting up a standard which has already been the standard but which now makes more sense in the appellate courts.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

I certainly respect the sponsor's sincerity. However, I don't think we got an answer to our question. I do not understand what an objective, credible reason not necessarily indicative of criminality would be

for stopping someone and again, this is the language of the bill, take such other action as the officer deems appropriate.

This is an extremely broadly worded bill. And it's asking us to do something, to change a law, as has been pointed out by many of my colleagues, that is working pretty well. Crime has gone down.

I also don't know where we got this notion that we're the most lenient -- have the most lenient criminal justice system in the world. We incarcerate more people than any other industrial democracy. Maybe we have a more lenient system than Iran. But certainly when you compare us to other industrial democracies, we don't necessarily match up as being so lenient. There are not criminals running free here that would be incarcerated in other places.

And I would respectfully request from the sponsor, before asking us to monkey around with the rule that protects people from abuses by those in authority, a rule that changes a system that seems to be working pretty well, to provide more justification

than we've received so far. I mean, the bill memo states that guns and reliable evidence of guilt are all too commonly excluded in murder, rape, assault, robbery, weapons possession, narcotics, and other serious felony trials in our state.

I don't know how many -- there's no citation to any studies showing how many there are. I know that, you know, from my own limited experience I don't think it's very much. This is a prophylactic rule that works more or less well. I don't think that there's any justification been offered to change it.

I would also note that in addition to New York, many, many other states have an alternative exclusionary rule to the federal rule, including Alaska, Arizona, Connecticut, Ohio, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana and -- out of deference to the time, I'm not going to continue.

But there are lots of states that have dual exclusionary rules. Our dual exclusionary rule works pretty well. Crime is going down. We don't know how many of these

bad cases actually exist.

And my final point, which I think is critical, is that I don't see any possible argument, if this is meant for appellate courts, I think we should make it constitutional before we send it to appellate court.

We cannot legislate, by legislation tell the Court of Appeals how to interpret the New York State Constitution. And Section 4 of this bill seems to me to be a transparent effort to do that. This attempts to restrict what courts can do in interpretations of the State Constitution. I don't see how that survives scrutiny.

I hope that if there is a way to address a serious problem that we experience in terms of disorderly activity, unruly activity -- many people have spoken about it. Let's come up with a solution that actually narrowly addresses that problem.

I don't see a definition of the language in Section 1 that would allow us to proceed responsibly with this bill. I don't see any sort of recitation of the numbers of

cases in which criminals are getting away because of abuses of the present system. I don't see any explanation how Section 4 could possibly be constitutional.

And, frankly, I really don't see the necessity to restrict constitutional protections through a mechanism that is so vaguely worded.

And I respect the fact that the sponsor is talking about appellate courts. But if this bill became law -- and I'm confident it will not -- but if this bill became law, you've got to believe that the police officers of the state are going to be aware of it and that it is going to change conduct on the street.

So I'm going to be voting no, and I hope we'll be able to come back to a more realistic effort to address some of the issues that have been raised here today at some point before the end of the session.

Thank you, Mr. President.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: Just let me say, I guess I may have misspoke. I didn't say our system itself was so lenient. Of course it's not that lenient. It's a good, tough system.

But I point out to you, and there's a whole list of cases in the memo here that points out some of the ludicrous attempts, I think by the Appellate Division and by our Court of Appeals to allow clearly criminal people to be able to avoid justice.

The Torres case, where there was all kinds of evidence that the person that person they were looking for was the same person. It turned out he had guns and drugs and so forth, because he dropped the bag. And the police officer had felt the bag and said, "There's a gun there." And they said, "Yeah, but you didn't really know it was a gun." I mean, a lot of nonsense is what it really is.

This doesn't have to do with the street because it -- it could have, by the way, in one way been determined that the same rules that apply presently, that is the rules that apply presently for stop and frisk, could potentially have been used, except that the

narrow scope that many of the Appellate Division judges are using, and the Court of Appeals, is so narrow that they used the present statute to exclude evidence.

There's nothing in this bill, when you come right down to it, that allows police that much latitude to stop and frisk anybody that's not always there. But what it does do, however, is that it sends a message to our Appellate Division and changes the statute.

And the basis of the constitutional decision by our Court of Appeals is based on our statute, not based on the federal decision. Because if it was, they would have to follow federal constitutional law.

So what I'm saying is -- and I understand the nervousness. I'm nervous too about this sort of stuff. I've defended, I've prosecuted, I've done all sides. But I must tell you that in the long haul we're going to do a bill similar to this someday, I'm sure. And unfortunately, we may do it in a big hurry when -- if things get worse. Which has always bothered me, because the best time to do statutes is not under some sort of an

emergency, because then you tend to do things that maybe are not the best idea.

The old saying about bad cases make good law, well, that's not necessarily so. Because in the long haul, if we should start to get real big problems in our streets and found out, for instance, like we now know, that one of the terrorists was let out of prison because of some, you know, technicalities and so forth, you may see even more of that. And that's not good.

And I guess I understand your concern. I have the concern too. But I have a bigger concern that people who clearly are guilty of a crime and are guilty of something that they can't even defend are in a situation where they're able to get off because somebody made a technical decision based on what many of us think are erroneous assumptions.

As I said, I was picked up one time when I was younger on suspicion of a stolen car because I was following the gasoline trail of a car, because I knew it was a friend of mine who had been in the car, and we were trying to find out where he ended up. And the

police brought me in and sort of threatened me. The big threat was they were going to call my father. I said, "Please don't do that, don't do that."

But the point is, I mean, these kind of things do happen with law enforcement people. Because in the long haul, in the old days, things were a lot different. And we realize that. And we realize that things are -- you know, have been in agitation in the city because of all the problems that have happened.

But just remember one thing, for all of us, whatever -- whoever we are, in the long haul, we're much better off to have a tough, efficient, and just criminal justice system.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Does any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

SENATOR MONTGOMERY: To explain my vote, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Montgomery, to explain her vote.

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

I apologize for taking these -- some of these bills so personally and expressing it in that way. But I'm just reminded how our experiences are so different. And very often it shapes how we respond to these bills.

I know that when I get off at Exit 17 and I ride through and get back on the Thruway, I'm constantly thinking, Whose district am I in? Is it yours, Mr. President? It is Senator Larkin? Is it Senator Bonacic? Because I know that in case I get stopped and I'm -- you know, I'm having to call someone, I'm going to call one of you guys. So I keep your numbers with me. Because I like driving

down there, but I know it's not necessarily the safest thing to do.

And now that I have a 16-year-old, I guess I'm also so cognizant of the fact that now for the first time he goes and comes by himself. And in his quest for a little bit of independence, walking the streets in my neighborhood, I've told him and all of his friends: "Be sure you take your identification and my card." And I mean that most sincerely. Because I understand that at any moment, he could be stopped.

And even currently, he could be stopped. But with this legislation, if he is stopped, there would be no recourse for me to appeal that he was stopped for no apparent reason.

So I think that is a mistake. Yes, I do take it very personally. I know my experience is so different from Senator Volker's, and thus he has a different perspective. But this is what has shaped my life, the experiences that I've had throughout my life.

So I certainly take this very

personally. It's a very serious issue for me. And I am voting no on this legislation, therefore.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 374 are Senators Andrews, Breslin, Brown, Connor, DeFrancisco, Dilán, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 42. Nays, 18.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Kuhl.

SENATOR KUHL: That completes the calendar, I believe, does it not, Mr. President?

ACTING PRESIDENT MORAHAN: Yes.

SENATOR KUHL: Okay. Can we return now to the reports of standing committees. I understand that there's a report of the Rules Committee at the desk.

ACTING PRESIDENT MORAHAN: The

Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills direct to third reading:

Senate Print 3060A, by Senator Marcellino, an act to amend the Penal Law and the Correction Law.

And Senate Print 4099, by Senator Saland, an act to amend the Social Services Law.

ACTING PRESIDENT MORAHAN: Senator Kuhl.

SENATOR KUHL: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MORAHAN: All those in favor of accepting the Rules Committee report say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Rules report is accepted.

Senator Kuhl.

SENATOR KUHL: Is there any

housekeeping at the desk?

ACTING PRESIDENT MORAHAN: Yes, there is, Senator.

SENATOR KUHL: Could we do that at this time.

ACTING PRESIDENT MORAHAN: Senator McGee.

SENATOR McGEE: Mr. President, on page number 38 I offer the following amendments to Calendar Number 745, Senate Print Number 1123. And on behalf of Senator Bonacic, I ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Mr. President.

Mr. President.

ACTING PRESIDENT MORAHAN: Senator McGee.

SENATOR McGEE: On behalf of Senator Skelos, on page number 39 I offer the following amendments to Calendar Number 760,

Senate Print Number 2851A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator McGee.

Senator Kuhl.

SENATOR KUHL: Does that complete the housekeeping at the desk?

ACTING PRESIDENT MORAHAN: Yes, it does.

SENATOR KUHL: May we return to the order of motions and resolutions, then. I understand there's a privileged resolution, a concurrent resolution at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

SENATOR KUHL: I ask that the title be read only and move for its adoption.

ACTING PRESIDENT MORAHAN: The

Secretary will read the title.

THE SECRETARY: The Assembly sent for concurrence Assembly Concurrent Resolution Number 897. Senator Balboni moves to substitute Assembly Concurrent Resolution 897 for Senate Concurrent Resolution 1911.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read the title.

THE SECRETARY: Assembly Concurrent Resolution Number 897, concurrent resolution of the Senate and Assembly proposing to establish the Temporary Joint Legislative Committee on Disaster Preparedness and Response, and providing for such committee's powers and duties.

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

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution is adopted.

SENATOR KUHL: Mr. President, will you please recognize Senator Larkin.

ACTING PRESIDENT MORAHAN: Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

We earlier passed two resolutions, and I would like to ask that it be opened up for all members. One was on the initiation of the Purple Heart stamp, which will be on Friday, May 30th. And the other is on the fiftieth anniversary of the cessation of hostilities in Korea.

ACTING PRESIDENT MORAHAN: Resolutions 1899 and 1890 are open for anyone who would like to be listed. If you care not to be listed on the resolutions as a sponsor, notify the desk.

Thank you, Senator Larkin.

Senator Kuhl.

SENATOR KUHL: Also, Mr. President, Senator Balboni has indicated his desire to have all the members on the concurrent resolution which was just passed in this house. And so could we ask that the

same -- take the same procedure, put every member on. That's with the consent of the Minority members.

ACTING PRESIDENT MORAHAN: The resolution is open for anyone who wants to be a sponsor. Anyone who does not want to be a sponsor, please notify the desk.

Senator Kuhl.

SENATOR KUHL: That having been done, Mr. President, there being no further business to come before the Senate today, I move the Senate stand adjourned until tomorrow, Wednesday, May 28th, at 3:00 p.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Wednesday, May 28th, at 3:00 p.m.

(Whereupon, at 5:18 p.m., the Senate adjourned.)