NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 16, 2004

3:11 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, Monday, March 15, the Senate met pursuant to adjournment. The Journal of Saturday, March 13, 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 Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the Resolution Calendar, with the exception of Resolution 3926.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 3926, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Bruno.

SENATOR BRUNO: And, Madam President, can we at this time take up the privileged resolution numbered 3926, by Senator DeFrancisco, have it read in its

entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 3926, congratulating Fred Hale of Baldwinsville, New York, upon being recognized as the oldest living man in the world.

"WHEREAS, It is the intent of this Legislative Body to publicly recognize those among us who have attained such a remarkable age that they alone are then recognized for their longevity; and

"WHEREAS, This Legislative Body is justly proud to honor one of our citizens who has attained the distinction of being the world's oldest man; and

"WHEREAS, Fred Hale, of Baldwinsville, New York, has been so named. Fred Hale was born on December 12, 1890, in New Sharon, Maine, and therefore today is 113 years of age; and

"WHEREAS, Heretofore, Fred Hale had been identified as the world's second oldest living man. He became the oldest living man

on March 5, 2004, succeeding Joan Riudavets Moll, of Spain. Moll had been recognized by the Guinness Book of Records as the world's oldest man until his passing; and

"WHEREAS, Concurrent with attaining his status as the world's oldest living man, Fred Hale became the ninth oldest person in the world, taking his place behind eight women his senior; and

"WHEREAS, Today, Fred Hale is believed to be the 81st on the list of all known individuals with the greatest longevity throughout history; and

"WHEREAS, To help underscore this remarkable achievement, it shall be noted that among the highlights of Fred Hale's birth year of 1890 were: the creation of the Oklahoma Territory; the admission of Idaho and Wyoming to the United States of America as the 43rd and 44th states; the designation and opening of Ellis Island as an immigration station; the stage premiere of 'Beau Brummel' in New York City; Cy Young's first victory as he pitched his first baseball game; the occasion of the first professional baseball game, which was

played at the Polo Grounds in New York City and where the New York Metropolitans defeated the Washington Nationals; and the Census Bureau estimated the population of the United States to have grown to almost 63 million people; and

"WHEREAS, This distinguished man has witnessed a great deal of history during an exciting time for our nation. His years coincidence with a time span that includes the introduction of the first gasoline-powered engine in 1893, the Spanish-American War, the turn of not one but two centuries, two world wars, and technological advancements too numerous to mention but which include manned space travel, two man-made rovers on the planet Mars, the dawning of the computer era, and countless advances in science and technology; and

"WHEREAS, During his working lifetime, Fred Hale was a railroad postal clerk for 50 years, a position from which he retired; and

"WHEREAS, Following his formal retirement, Fred Hale was employed by his

daughter at Lord's Lobster Pound, where he shelled lobsters and steamed clams; and

"WHEREAS, This remarkable man traveled Japan at age 95, was a tourist in Germany at age 96, and celebrated his centenarian year, in part, by taking a deer while hunting in Kentucky; and

"WHEREAS, Today, Fred Hale resides at the Syracuse Home Association in Baldwinsville. Each day his son Fred, Jr., who is a mere 82 years of age, stops by to join his father for lunch. Fred, Jr., is one of five children who were all born to Fred and the late Flora Mooers Hale; and

"WHEREAS, Today, Fred Hale is the patriarch of a family that includes nine grandchildren, nine great-grandchildren, and 11 great-great-grandchildren; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Fred Hale, an exceptional individual who has lived in all or parts of three centuries, has enjoyed a full life and continues to do so, and who is an inspiration to others; and be it

further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Fred Hale, Baldwinsville, New York."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

It's truly an honor for me to stand up for a resident of the 50th Senate District. I know we do many remarkable things in the 50th Senate District; we bring many individuals before this body who have done remarkable things. But I don't think we've heard anything as amazing as this resolution about Fred Hale, 113 years old. Absolutely amazing.

In fact, due to the advances in technology, while this is being transmitted live over the Internet, Mr. Hale is in Baldwinsville watching this program right now, and we're honoring him on his 113th birthday.

What's amazing is when you look, it's not only the longevity but also the fact of the things that he's done over his years.

And to think that he's a tourist at age 95 and 96, and he actually downed a deer at age 100, while hunting, is truly an inspiration to everybody as to how vital an individual can be in their senior years.

And I've been told that at age 103, he was actually on the roof of a building shovelling snow off the roof. I wouldn't advise that for anybody half his age. But in any event, it shows the vitality of the man.

So I'm very pleased and proud to be here on this historic moment to honor Fred Hale, who's being honored as the oldest man in the world. And also he's 81st-oldest of all the oldest men in history, the history of the world, which is also pretty remarkable.

So we wish Mr. Hale many, many more years, hopefully good years of good health. And we honor you. And we hope you are watching us honor you today back in Baldwinsville.

Thank you.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

(Standing ovation.)

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time ask for 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 Bruno.

SENATOR BRUNO: Madam President, I believe I have a privileged resolution at the desk. I would ask at this time that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 3927, commemorating Good Joes Day, 2004.

"WHEREAS, St. Joseph is everyone's patron saint, not just the patron saint of those who are fortunate to bear his name; and

"WHEREAS, The New York State Legislature is appreciative of the vital contributions of those good members known as Joseph; and

"WHEREAS, the Society of Good Joes is celebrating its 46th year in memory of the late Joseph Addonizio, and its members have banded together under a common name in the spirit of camaraderie and good fellowship; and

"WHEREAS, Tradition holds that St. Joseph is the patron saint of the working person, of all those who labor with the dignity that only true humility imparts; and

"WHEREAS, on St. Joseph's Day in March, the swallows return to Capistrano, heralding the conclusion of a long, cold winter and the advent of a new spring; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations and recognize this great day, Friday, March 19, 2004, in commemoration and deliberation of all Good

Joes in the State of New York, to be celebrated on Tuesday, March 16, 2004, in honor of all Good Joes of this Empire State."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, thank you.

And I simply want to recognize all of the Good Joes in the chamber and in the world -- and the Josephines are also included -- because, as we just heard, there's a long history. And Senator Velella and I were just remarking in that 46 years have passed since this had been celebrated. And it truly just seems like yesterday.

But when you think about the name Joe, there's something very special about it. Like Joe Robach. Where is Senator Joe Robach? Well, it's not very special at the moment.

(Laughter.)

SENATOR BRUNO: But St. Joseph, the patron saint, hardworking, diligent, looking after a family, all the right messages.

And there are so many good Joe -- you know, cuppa Joe. What do you know, Joe?

G.I. Joe. Everywhere you go, there's something that relates to Joe in a very positive way.

So I welcome all of you here, and in memory of Joe Addonizio, who had the foresight to recognize that he had a very special name. And I can remember, being older than most of you, Joe Louis. And then, later, Joe Namath. And now Joe Torre. Some great Joes out there.

So when I say that you are all welcome as a Good Joe today, I think, Madam President, this will probably be one of most productive sessions we've had so far this year.

Thank you very much.

(Laughter; applause.)

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

(Response of "Aye.")

THE PRESIDENT: Opposed?

(Response of "No.")

(Laughter.)

SENATOR BRUNO: Can we open up this resolution to all the Good Joes, and the

previous resolution for Fred Hale on his 113th year celebration -- who is also contemplating changing his name, by the way, to Fred Joe Hale at this stage.

(Laughter.)

SENATOR BRUNO: So anyone that would not want to be on this resolution, either one, would you please let the desk know.

And thank you, Madam President.

THE PRESIDENT: Anyone please so notify the desk if you do not wish to be on this resolution or Senator DeFrancisco's previous resolution that he spoke on.

The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: And, Madam President, I believe that there is another privileged resolution, by Senator Fuschillo. And it had been previously adopted, but I would like to at this time ask that it be read in its entirety and we move again for its passage.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Fuschillo, Legislative Resolution Number 2316, honoring Marie Murray Mango upon the occasion of being crowned Ms. Senior New York State.

"WHEREAS, Senior citizens bring a wealth of experience and knowledge to the increasingly active roles they play in today's society. Their past contributions and future participation are a vital part of, and valuable asset to, the fabric of community life and activity; and

"WHEREAS, This Legislative Body is justly proud to honor Marie Murray Mango upon the occasion of being crowned Ms. Senior New York State at Suffolk Community College; and

"WHEREAS, A resident of Massapequa Park, New York, for 36 years, Marie Murray Mango is married to Jim Mango, and a mother of three and a grandmother of one; and

"WHEREAS, Marie Murray Mango is a member of Ms. Senior America, devoted to women who have reached their age of 'elegance,' honoring their dignity and maturity; and

"WHEREAS, In addition, Marie Murray Mango is a volunteer at local hospitals and a

featured vocalist at churches, nursing homes, civic events, and musical variety shows all over Long Island; and

"WHEREAS, Marie Murray Mango's personal philosophy is to inspire women of all ages to have a positive attitude, reach out to the community, and 'remember, you're not getting older, you're getting better!'; and

"WHEREAS, Marie Murray Mango, a very active and industrious woman, has inspired and enriched the lives of her family and friends through her love and respect for others, generously sharing the wisdom gained over years of experiencing life to its fullest; and

"WHEREAS, It is the intent of this Legislative Body to publicly recognize and commend those who have witnessed and contributed to the developments and achievements of our nation, state, and communities over the course of their noteworthy lives; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Marie Murray Mango upon the occasion of being

crowned Ms. Senior New York State, and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Marie Murray Mango."

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

I am honored to rise and talk to my colleagues a little bit about the Ms. Senior America Pageant. The Ms. Senior America Pageant is the world's first and foremost pageant to recognize and give honor to women who have reached the age of elegance. It is a search for the gracious lady who best exemplifies the dignity, maturity, and inner beauty of all seniors.

The Ms. Senior America Pageant philosophy is based upon the belief that seniors are the foundation of America and our most valuable treasure. It is upon their knowledge, experience, and resources that younger generations have the opportunity to build a better society.

Madam President, Ms. Senior New York America had the honor of a visit with the Majority Leader of the Senate, Senator Bruno; she had the honor of meeting you personally in your chambers; she toured the Capitol of the state and said to me it was a wonderful experience.

And it is my honor to present to my colleagues and all those in attendance Ms. New York Senior America, Marie -- you can stand up -- Murray Mango.

(Applause.)

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Can I just add my words to congratulate Marie, but especially to congratulate Senator Fuschillo to be so fortunate as to have someone like Marie in his Senate district.

And she is a very distinguished lady, a very elegant lady, a worthy -- certainly, we are -- we really appreciate the fact that you would be representative of so many good things that take place here in New York State.

And when Marie saw this chamber,

she said it's beautiful enough to live in. Well, we live here sometimes, Marie, longer than we want.

And you are welcome, with Senator Fuschillo, to visit as many times as you like. And we appreciate the fact that you're bringing him along and making him look so good. Thank you.

(Laughter.)

MS. MANGO: Thank you. Thank you.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is duly adopted.

Congratulations. Continued best wishes. And we want your list of vitamins before you leave.

(Laughter.)

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, could we at this time recognize Senator

Fuschillo for a motion.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: I have to gather my breath after that, Madam President.

On behalf of Senator LaValle, I wish to call up Senate Print Number 924C, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 23, by Senator LaValle, Senate Print 924C, an act to amend the Highway Law.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I now move to reconsider the vote by which the bill was passed.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Bruno.

SENATOR BRUNO: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, Senator, there are.

SENATOR BRUNO: Can we make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator DeFrancisco moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 1937A and substitute it for the identical Senate Bill Number 1144A, Third Reading Calendar 1.

THE PRESIDENT: Substitution ordered.

Senator Bruno.

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

I believe there are some reports at the desk. I ask that they be read.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Print 1935, by Senator Larkin, an act to amend the General Municipal Law;

2085A, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

2088, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

2603A, by Senator Maziarz, an act to amend the General Municipal Law;

5942, by Senator Alesi, an act to amend the Tax Law;

And Senate Print 6035, by Senator Nozzolio an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

Senator McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 42A, by Senator Alesi,

an act to amend the Vehicle and Traffic Law;

433, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law;

953A, by Senator Larkin, an act to amend the Education Law;

1028, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

2576, by Senator Larkin, an act to amend the Alcoholic Beverage Control Law;

2776B, by Senator McGee, an act to amend the Vehicle and Traffic Law;

2858, by Senator McGee, an act to amend the Alcoholic Beverage Control Law;

2861, by Senator McGee, an act to amend the Vehicle and Traffic Law;

2866, by Senator McGee, an act to amend the Alcoholic Beverage Control Law;

3772, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

4733, by Senator McGee, an act to amend the Alcoholic Beverage Control Law;

And Senate Print 4988, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law.

Senator Velella, from the Committee

on Labor reports:

Senate Print 1779, by Senator Fuschillo, an act to amend the Labor Law;

5403, by Senator Flanagan, an act to amend the Workers' Compensation Law;

6273, by Senator Velella, an act to amend the Labor Law;

6338, by Senator Velella, an act directing the Commissioner of Labor;

And Senate Print 6375, by Senator Maltese, an act to amend Labor Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 37, by Senator Padavan, an act to amend the Penal Law;

215, by Senator Saland, an act to amend the Penal Law;

1109, by Senator Volker, an act to amend the Criminal Procedure Law;

1384, by Senator Volker, an act to amend the Criminal Procedure Law;

1441, by Senator Volker, an act to amend the Penal Law;

1504, by Senator Golden, an act to amend the Penal Law;

2773A, by Senator Volker, an act to amend the Criminal Procedure Law;

3134, by Senator Velella, an act to amend the Penal Law;

3423, by Senator Wright, an act to amend the Penal Law;

And Senate Print 3582, by Senator Flanagan, an act to amend the Penal Law.

Senator Alesi, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 2806A, by Senator McGee, an act to amend the Executive Law;

3786, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law;

And Senate Print 5940, by Senator Saland, an act to amend the Alcoholic Beverage Control Law.

Senator Balboni, from the Committee on Veterans, Homeland Security and Military Affairs, reports:

Senate Print 578, by Senator Johnson, an act to amend the Public Authorities Law;

1967, by Senator Larkin, an act to

amend the Vehicle and Traffic Law;

And Senate Print 4294, by Senator Robach, an act to amend the Public Officers Law.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 930A, by Senator Maziarz, an act to amend the Environmental Conservation Law;

1662A, by Senator LaValle, an act to amend the Environmental Conservation Law;

2428A, by Senator Wright, an act to amend the Environmental Conservation Law;

4524A, by Senator Marcellino, an act to amend the Environmental Conservation Law;

4779, by Senator Farley, an act to amend the Environmental Conservation Law;

5861, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 6160, by Senator Marchi, an act to amend Chapter 84 of the Laws of 2003.

Senator Meier, from the Committee

on Social Services, reports:

Senate Print 6124, by Senator Little, an act to amend the Social Services Law;

6357, by Senator Meier, an act to amend Chapter 906 of the Laws of 1984;

And Senate Print 6358, by Senator Meier, an act to amend Chapter 534 of the Laws of 2000.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President. Could we please have the reading of the noncontroversial calendar -- the noncontroversial reading of the calendar.

ACTING PRESIDENT KUHL: We'll have the noncontroversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 87, by Senator DeFrancisco, Senate Print

5711A, an act to amend the Social Services Law, in relation to protection of children.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 137, by Senator Nozzolio, Senate Print 432, an act to amend the Penal Law, in relation to making it a crime to steal or possess stolen anhydrous ammonia.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 223, by Senator Leibell, Senate Print 1653, an act to amend the Penal Law, in relation to unlawful defilement of a water supply.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 225, by Senator Golden, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

277, by Senator Rath, Senate Print 1711 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 279, by Senator Balboni, Senate Print 4744, an act to amend the Executive Law, in relation to requiring the Disaster Preparedness Commission.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Balboni, Senate Print 4749, an act to amend the Executive Law, in relation to local disaster preparedness plans.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 282, by Senator Balboni, Senate Print 5439A, an act to amend Chapter 15 of the Laws of 1998 relating to authorizing the extension.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 311, by Senator Spano, Senate Print 4226, an

act to amend the Executive Law, in relation to authorizing the Commissioner of General Services.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act --

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 365, by Senator Fuschillo, Senate Print 5088, an act --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR MORAHAN: Thank you, Mr. President.

Would you recognize Senator Maziarz.

ACTING PRESIDENT KUHL: The chair

recognizes Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President.

I'd like unanimous consent to be recorded in the negative on Calendar Number 87, Senate Bill 5711A, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz will be recorded in the negative on Calendar Number 87, Senate Print 5711A.

Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President. I too would like to be recorded in the negative on Calendar Number 87, if there's no objections.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Morahan will be recorded in the negative on Calendar Number 87, Senate Print 5711A.

Senator Morahan.

SENATOR MORAHAN: Can we return to reports of standing committees. I believe there's a report from the Rules Committee at the desk.

ACTING PRESIDENT KUHL: There is

a report of the Rules Committee at the desk.

We'll return to the order of reports of standing committees. I'll ask the Secretary to read.

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

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

180, by Senator Hoffmann, an act to amend the Penal Law;

1712A, by Senator Rath, an act to amend the Penal Law;

4434, by Senator Fuschillo, an act to amend the Penal Law;

4435, by Senator Fuschillo, an act to amend the Penal Law;

4436, by Senator Fuschillo, an act to amend the Penal Law;

4584, by Senator Fuschillo, an act to amend the Penal Law;

5031, by Senator Balboni, an act to amend the Executive Law;

5561, by Senator Skelos, an act to

amend the Penal Law;

And Senate Print 5749A, by Senator Balboni, an act to amend the Penal Law.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Senator Morahan.

SENATOR MORAHAN: Move to accept the report of the Rules Committee, Mr. President.

ACTING PRESIDENT KUHL: The motion is to accept the report of Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The motion is granted. The bills are ordered directly to third reading.

Senator Morahan.

SENATOR MORAHAN: If we could have the noncontroversial reading of the Rules report, Mr. President.

ACTING PRESIDENT KUHL: We will have the noncontroversial reading of the Rules report, which for the members is on Supplemental Calendar 19A on your desks.

The Secretary will read.

THE SECRETARY: Calendar Number 498, by Senator Balboni, Senate Print 3A --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the Acting Minority Leader.

THE SECRETARY: Calendar Number 499, by Senator Hoffmann, Senate Print 180, an act to amend the Penal Law, in relation to creating the crime of agri-bioterrorism.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I rise to explain my vote.

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

SENATOR MONTGOMERY: Yes, I recognize that I have voted in the past on this bioterrorism legislation, but -- and this is agri-terrorism. But as I look at the legislation, I am going to change my vote from a no to a yes.

So I'm voting yes on this legislation.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the noncontroversial reading of Supplemental Calendar 19A.

THE SECRETARY: Calendar Number 500, by Senator Rath, Senate Print 1712A, an

act to amend the Penal Law, in relation to civil liability.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 2004.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 502, by Senator Fuschillo, Senate Print 4434, an act to amend the Penal Law, in relation to criminal impersonation.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 503, by Senator Fuschillo, Senate Print 4435, an act to amend the Penal Law, in relation to including an official law enforcement.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 504, by Senator Fuschillo, Senate Print 4436, an act to amend the Penal Law, in relation to

identification.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 58. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 505, by Senator Fuschillo, Senate Print 4584, an act to amend the Penal Law, in relation to false personation.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Hassell-Thompson and Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 506, by Senator Balboni, Senate Print 5031, an act to amend the Executive Law, in relation to the New York State Office of Public Security.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

507, by Senator Skelos, Senate Print 5561, an act to amend the Penal Law, in relation to the possession of disguised knives.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 508, by Senator Balboni, Senate Print 5749A, an act to amend the Penal Law, in relation to establishing definitions pertaining to offenses involving computers.

SENATOR LIZ KRUEGER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Morahan, that completes the noncontroversial reading of Supplemental Calendar 19A.

SENATOR MORAHAN: Thank you, Mr. President. Could we have the controversial reading of the original active list.

ACTING PRESIDENT KUHL: The Secretary will read the controversial reading of the original calendar, beginning with Calendar Number 225.

THE SECRETARY: Calendar Number 225, by Senator Golden, Senate Print 3962, an act to amend the Penal Law, in relation to criminal use of public records.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Golden, an explanation by the Acting Minority Leader has been requested.

SENATOR GOLDEN: Thank you, Mr. President.

This is a bill that was introduced for Section 1 to amend the Penal Law to

provide for the use of public records for the purpose of committing a crime, which shall be an E felony.

This was created for the Freedom of Information Act, the FOIL, which is important for people that need to be able to access to find out what's going on in government and have a right to be able to use FOIL, the Freedom of Information Act, to get information that they may need to find out about a government enterprise or something that may have been done against them and they'd like to take it to a lawsuit. Or to find out if it was done correctly.

Unfortunately, we find people committing crimes by taking FOIL, the Freedom of Information Act -- we've seen it with two correction officers in Long Island, where their information was taken by the Freedom of Information Act and their credit was raided and felonies were committed, and grand larceny, against them by inmates that they had supervised.

We see it today, if you look at the Google.com, you will see that using the --

"Use public records for gain in Google search," 1,690,000 hits.

That's the type of issues that we have facing us today, people using the Freedom of Information Act to go after police officers, correction officers, probation officers, and to commit crimes against them.

And we believe that this law will hopefully put an end to that.

ACTING PRESIDENT KUHL: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would yield for a question few questions.

ACTING PRESIDENT KUHL: Senator Golden, do you yield to a question from Senator Schneiderman?

SENATOR GOLDEN: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

The definition of "record" for the purpose of this bill limits -- is limited to FOILed records; is that not correct?

SENATOR GOLDEN: Correct.

SENATOR SCHNEIDERMAN: Through you, Mr. President, is there anything in this bill that requires that the person who uses the public record and is subject to this criminal penalty be the person who actually FOILed the record or obtained it through the Freedom of Information Law?

SENATOR GOLDEN: No, there isn't.

SENATOR SCHNEIDERMAN: Is there any requirement anywhere in this bill that the person who is guilty of criminal use of public records knows that this record was obtained through the Freedom of Information Law?

SENATOR GOLDEN: No. And it wouldn't matter. If they were going to commit a crime with it, they -- one would intend that the person committing that crime would be charged with this crime and therefore would eliminate that process.

SENATOR SCHNEIDERMAN: And with regard to --

ACTING PRESIDENT KUHL: Senator Schneiderman, are you asking Senator Golden to yield?

SENATOR SCHNEIDERMAN: Yes, Mr.

President. Through you, if the sponsor would yield.

ACTING PRESIDENT KUHL: Senator Golden, do you continue to yield to a question from Senator Schneiderman?

SENATOR GOLDEN: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SCHNEIDERMAN: Clearly, because subsection -- Section 1A contemplates the fact that this law only comes into play if this record, which is necessary for creating this additional criminal act of crime of the use of public records, this -- it requires that the record be used in the furtherance or commission of a crime.

But we're creating here a second crime, the use of public records; is that not correct?

SENATOR GOLDEN: Yes, sir.

SENATOR SCHNEIDERMAN: And through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Golden, do you continue to yield?

SENATOR GOLDEN: I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SCHNEIDERMAN: So my question is, we know when someone is committing a crime or acting in furtherance of the commission of a crime. But is there any requirement in this bill that the person who is committing the underlying crime have any knowledge whatsoever where the record was obtained, that it is a public record, that it was improperly obtained, that it was obtained through FOIL?

SENATOR GOLDEN: No. But again, if the individual took a document and used that document to create a crime or commit a crime, that person would be found guilty under this legislation.

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

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that the -- there are several problems with this legislation. But what we just, I think,

brought out in our colloquy is the fact that under this bill, one person could use FOIL to obtain a record and someone else, having no idea that it was FOILed or where the record came from, could use it and be subject to this additional penalty.

The purpose of the law, I gather, is supposedly to try and prevent people from improperly using public records. The difficulty is it provides absolutely no boundaries.

It has no scienter requirement. It has no requirement of knowledge. It doesn't provide that if you go and FOIL and get some information and then misuse it, you're guilty -- it says anyone who uses it, even if they don't know where it came from. This is as overly broad a statute as you could possibly draft.

And I also respectfully submit that the problem -- you know, if the public record is available to the public, it's in the flow of ideas and commentary that, you know, we have to suffer in this country by virtue of the First Amendment. The solution to the

problem of people obtaining records to use them against police officers and corrections officers is to put those records under the Civil Rights Law. Let's take them out of FOIL.

You can't have a system that's designed for open government, which is what the Freedom of Information Law is about, and then impose a penalty with no requirement of knowledge, no requirement of scienter, no requirement of intent, and create an additional crime just for using those records.

I understand the issue that we're attempting to address here. But I respectfully submit that this bill does not address the issue and opens up a whole series of problems. And, frankly, I think that this -- it might even rise to the level of a constitutional infirmity.

I would suggest that rather than creating new criminal offenses, we direct our energies towards limiting the amount and type of information that the government and the private sector can collect on individuals, and that we restrict access to records of law

enforcement officers.

Those are the kinds of approaches that would solve the problem. This would not. I vote no, and I urge everyone to vote no.

ACTING PRESIDENT KUHL: Is there any other member wishing to debate the bill?

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

Keep your hands up, please, so the Secretary can record your votes.

THE SECRETARY: Those recorded in the negative on Calendar Number 225 are Senators Breslin, Brown, Connor, Dilán, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, M. Smith, Stavisky. Also Senator A. Smith. Ayes, 43.

Nays, 18.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the controversial reading of the regular calendar.

THE SECRETARY: Calendar Number 277, by Senator Rath, Senate Print 1711, an act to amend the Penal Law, in relation to the placement of devices and objects.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 277 are Senators Duane, Montgomery, and Schneiderman. Ayes, 58. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 311, by Senator Spano, Senate Print 4226, an act to amend the Executive Law, in relation to authorizing the Commissioner of General Services.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Spano, an explanation has been requested by Senator Montgomery.

SENATOR SPANO: Thank you, Mr. President.

This bill is introduced at the request of the Office of General Services. And it would authorize OGS to fingerprint and process criminal history checks on employees of contractors who are performing services on state property.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President, I'm just going to speak briefly on this bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. As I

read this legislation, I see that Senator Spano, in the interests of security, I believe, is going to require fingerprinting of any person who is contracted by a contractor that is employed by OGS. So subcontractors and all of their employees also have to be fingerprinted.

I believe that this really is very far-reaching and may have negative consequences -- as a matter of fact, probably will have negative consequences, especially on some of those projects that are outside of the state capital, maybe out there in the parts of the state that are not even close to the capital, on some far-removed state campus of some facility or other where there is a subcontractor, maybe a little painter or someone who is doing some minor job, but because they're working, they're contracted by -- as a third party to the contractor who's contracted with the state, they can't do a job because they have to be fingerprinted.

And I just think that a lot of jobs that may be available otherwise to people who -- certainly some of them may be in my

district, some of them even in Senator Spano's district -- but won't be able to work because of this legislation.

So I think that we need to be a little bit more careful that we don't end up with, as one of my colleagues said earlier, unintended consequences that this bill could create.

So I'm going vote no on this legislation, because I think that it's not in the interest of security. And it's certainly not in the interest of there being possibly some jobs somewhere where people in my district may qualify but, under this legislation, they would not.

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

Senator Brown, why do you rise?

SENATOR BROWN: Thank you, Mr. President. Through you, Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator Spano, do you yield to a question from Senator Brown?

SENATOR SPANO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR BROWN: Senator Montgomery's question raises a question in my mind, and that is the question of fiscal impact. What would the actual fiscal impact of this legislation be on the state?

SENATOR SPANO: The cost would be paid by the OGS contractors, not by the state.

SENATOR BROWN: Okay. So the costs would be passed on to the contractor.

SENATOR SPANO: Yes.

SENATOR BROWN: Okay. Thank you, Senator.

SENATOR SPANO: Thank you.

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

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record

the negative and announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 365, by Senator Fuschillo, Senate Print 5088, an act to amend the General Business Law, in relation to the employment of security guards.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 365th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Morahan, that completes the controversial reading of Calendar Number 19.

SENATOR MORAHAN: Thank you, Mr. President. Could we now have the controversial reading of the Supplemental Calendar Number 19A.

ACTING PRESIDENT KUHL: The Secretary will read the controversial reading of Supplemental Calendar 19A, beginning with Calendar Number 498, by Senator Balboni.

THE SECRETARY: Calendar Number 498, by Senator Balboni, Senate Print 3A, an act to amend the Criminal Procedure Law, in relation to creating crimes of criminal possession.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Balboni, an explanation has been requested by the Acting Minority Leader, Senator Schneiderman.

SENATOR BALBONI: Thank you, Mr. President.

We have considered the measure before us on two separate occasions. The

first time I believe we had just experienced our set of change of alerts for the nation. And again, we consider this measure against the backdrop of the tragedy in Madrid, Spain. Those events continue to raise up our darkest fears as to the continuing threat of terrorism and our vulnerabilities as a society.

This measure before us would create, for the first time in New York State, what in my opinion are way overdue changes that would essentially create new crimes to attack terrorism, not only in terms of the utilization or possession of the worst weapons imaginable -- chemical and biological weapons -- but also to give law enforcement tools to permit the aggressive enforcement, the aggressive prosecution and detection of terrorists, those being the crimes of money laundering, structuring, conspiracy.

And, lastly, it would also allow for law enforcement to utilize every tool possible, including roving wiretaps, which maintain the protections of judicial oversight but recognize changing technologies that certainly the 9/11 terrorists utilized. And

they never used a landline, they only used cellphones.

Mr. President, I hope and pray that measures like this would be obsolete as quick as possible. Unfortunately, we need to continue to focus on this issue and get these measures signed into law.

My last comment, Mr. President, is that yesterday I was at the White House meeting with Homeland Security. The President is very focused on terrorism; so is Homeland Security. The Senate is very focused. The Governor of the State of New York, George Pataki, is very focused. But the Assembly is not.

So I hope that once again we can pass this measure and we can have a partner in the State Assembly and make these provisions law.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, why do you rise?

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

I rise, as the chair of the Senate

Minority Task Force on Terrorism and Emergency Preparedness, to state for the record my concern that the federal government has not supported New York City in its effort to prepare for the next terrorist attack.

Before the attacks of September the 11th, the United States had no comprehensive plan to defend its highways, railways and waterways. Since 9/11's terrorist attacks, the federal government has begun to address many security needs but has completed few of them, and has often not provided the money needed to fully shore up security.

Governments across New York, including New York City and suburban upstate towns, cities, and counties have been hampered by a lack of federal funding and, in most areas of homeland security, they confront a lack of focus and financial support from our federal government.

New York City deserves more money mainly because it has to protect targets that prompted such terrorist attacks in 1993 and again in 2001. Despite being a target before, New York City, however, continues to be

shortchanged by our federal government for homeland security funding relative to other cities.

I am troubled that federal antiterrorism money specifically intended for the nation's most vulnerable cities is still being spent in parts of the country that do not have the same urgent security needs. The federal government is doling out money to a growing list of cities that face no apparent threat, thus shortchanging New York City and other obvious targets for terrorism.

In 2002, President Bush and the Congress established a fund for urban areas believed to be at high risk for attack. The fund was created in response to concerns that millions of dollars in federal homeland security money was being given to every state regardless of its vulnerability.

Initially, the money for high-risk areas was distributed among seven cities. In May 2003, the list expanded to 30 cities. Now it has been increased to 50 cities, including St. Paul, Minnesota, Fresno, California, and Louisville, Kentucky. These are all fine

cities, but they do not have the track record of other cities with respect to targeting by terrorists such as New York and Washington, D.C.

The disappointing end result was the drastic reduction in the share of money that New York City and other major cities need to support their first responders and cover the increased security costs.

New York City was initially awarded $125 million out of a total of $500 million in federal grants through the Department of Homeland Security. In November, after more cities were added, New York's share was cut to $47 million out of $675 million that was disbursed.

The need for increased funding assistance in high-threat cities was once again made clear over the holidays when the threat level was raised to Code Orange.

Let's keep in mind that, in the wake of the horrible Madrid bombings, that the cities we are talking about here are also the cities with the most extensive commuter rail systems.

Even though $100 million has been spent in upgrading security in New York City's Pennsylvania Station, $350 million more in upgrades is needed to protect the 400,000 people who use Penn Station every day.

The men and women serving in our military in Iraq have been granted some $87 billion more to fight the war over there. They got the money because they needed it in order to get the job done. But the men and women serving in law enforcement here at home are still getting shortchanged. We need them to get the job done right here as well.

I hope my colleagues in this house will join me in urging our federal government to allocate money for our high-threat areas.

Thank you, Mr. President.

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

Hearing none, the Secretary will read the last section.

Oh, Senator, excuse me. Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I rise to speak on the bill.

ACTING PRESIDENT KUHL: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

SENATOR MORAHAN: Mr. President.

ACTING PRESIDENT KUHL: Excuse me, Senator Krueger.

Senator Morahan, why do you rise?

SENATOR MORAHAN: Yes, there will be an immediate meeting of the Health Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Health Committee, immediate meeting of the Health Committee in Room 332, the Majority Conference Room.

Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

We debated this bill last year, and I had serious concerns and I raised them. And I raise them again, although I won't raise them in debate today, because I think we've had the dialogue with Senator Balboni.

There are parts of this bill that I support and agree with, and there are parts of this bill that are too worrisome to be allowed

to become law in this state.

First off, choosing to make an exception for the Fourth Amendment and those protections therein is a very dangerous road for this state to be going down. And I would urge us to rethink the concept of giving up our constitutional protections through this law.

Equally concerning to me is the concept of roving wiretaps. Even though in this bill the provision expires in two years, again, what decisions are we making in choosing to do away with fundamental constitutional protections?

This bill would also allow for the distribution of tax records and the implication that other private information would be made available for government sources.

Just earlier today we heard a debate around Senator Golden's bill to actually penalize people for using government information inappropriately. And I have to say the government going into that same business of potentially taking private

citizens' information and distributing it to others -- to other law enforcement, to other even private companies -- on the claim that this would only be used for sorting through the potential of terrorism, is an issue that should concern us.

And it is an issue that is timely in Albany today, even outside the context of Senator Balboni's bill. And that was the announcement by the State Police that New York State was pulling out of the Matrix system, a data-mining system that New York State Police had gone into in an agreement with the private company and other state law enforcement agencies without even bringing the information to the Legislature.

Was this a decision that the State Legislature would want on behalf of our citizens, the idea that under the Matrix system, private databases and public databases of information, including your DMV records, your court records, your tax records, your school records -- frankly, any information that was available to government -- would be shared through a centralized Matrix computer

system controlled by a private corporation who would then, in theory, use it only for specific purposes?

But in fact, this information could have been used for many, many purposes, and it could have been accessible to many, many others beyond the role of law enforcement.

And so when I think about this bill and the pluses and the minuses of it, I went back to take a look at some of the constitutional questions. To quote Benjamin Franklin, who said that people who trade their fundamental liberty for a little temporary security deserve neither.

And it's a tough issue for us to discuss at this point in time. Obviously we have lived through our own terrorist attacks here at home, and continue to see these types of attacks around the world.

But it still raises, for me, the fundamental constitutional question of how far do we allow the government to have control over and take power away from the privacy rights and the civil liberties of individuals. And the dangers, even in good intentions, of

expanding those limits of government power, as this bill would do through, quote, good-faith exceptions to the Fourth Amendment, roving wiretaps, and distribution of government records such as tax records for exploratory purposes.

There's been any number of times in the history of this country, both at the federal level and at individual state levels, where we've asked these questions and different decisions have been made. But I have to tell you that that history shows that in many circumstances when we veer too far away from constitutional protections, from the recognition of privacy rights and civil liberties in this country, even with the best intentions, we saw that the harm that was done to our citizens was greater than the win. Again, even under good intentions.

And I have no doubt that the sponsors of this bill have good intentions. But I fear that the risk to ourselves and to the people of our state if we were to move hastily in passing these new rules would result potentially in a scenario not unlike

what we saw at the federal level in the 1950s, when a Wisconsin senator openly judged the guilt of citizens of this country based on their associations and their beliefs and hearsay.

And I would argue that we have not come far enough along in our understanding of how you both protect your citizens and protect their constitutional rights to open up the door so wide for law enforcement to not have to follow the existing constitutional protections and rights that we live by.

And so I would urge my colleagues to vote against this legislation, even if they understand the goals are good and parts of this are much less dangerous than others. The dangerous parts are too serious for us to ignore.

I'll be voting no. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Fuschillo, why do you rise?

SENATOR FUSCHILLO: Mr. President, will the sponsor yield for a question?

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to a question from Senator Fuschillo?

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

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR FUSCHILLO: Thank you, Mr. President.

First of all, Senator Balboni, my compliments to you. I remember a few years ago nobody would listen to you when you raised the issue of water security and protecting our reservoirs here in the state and throughout the nation. And yesterday you were in Washington, and my compliments to you for being appointed by Tom Ridge to a committee on homeland security.

We've heard statements read and comments today about the lack of support from the federal government. Where are we as a state with receiving federal funds, and what is our current relationship with the federal government on homeland security?

SENATOR BALBONI: Mr. President,

through you. Thank you very much, Senator, for your question.

And thank you, Senator Hassell-Thompson, for your participation in the Joint Task Force on Emergency Preparedness. And your question is a very good, and so is the Senator's.

I've had a unique opportunity, my colleagues. It's a 20-person task force, essentially consisting of governors and mayors from around the nation. And the point of the task force is to examine the logjams of federal funding and how the money has not gotten from Washington to Main Street. And we've participated already in about 10 to 11 hours of discussions with principals, and we're going to be continuing this for several months.

And the amazing thing that we found out is that though $6 billion to $7 billion has been appropriated through the Office of Domestic Preparedness, two startling facts about that. Number one, it's not nearly enough money, even though it's a huge amount. And, number two, only 15 percent of it has

actually been spent.

Now, what we found out yesterday is that much of the problem, believe it or not, is the fact that money alone is not the answer. The point of the program is equipment, training, and planning.

But here's the problem. If you check with your fire departments and your police departments and you go around the state and talk with different people as to what they need, they don't know. There's no comprehensive plan yet as to what will make us safer in this nation when it comes to homeland security at the local level.

Now, before anybody gets critical necessarily of the administration or of the federal legislature, let me point this out to you. We were attacked two and a half years ago. In that period of time we've gone through the largest realignment of the federal agencies in the history of our nation. They're still making it up, ladies and gentlemen, because there are no books on this.

It used to be all about the military and the defense and us versus them.

Now it is about not soldiers and the military, but rather about firemen, police officers, EMS workers. And it is very difficult to get that money into the fire department and have them be consistent, have them be prepared, and have them be trained.

And like I said before, it's just simply not enough money. People have been very critical about this. And I will say that New York State could absolutely use more money. But the point of the matter is even if you don't get more money, you're still going to defend the sites that need to be defended.

But the point that we need to focus on here is that we need laws like we're addressing today, because we're not sending the right message by not passing it. Law enforcement needs to see that we are committed to the principles we enunciate in today's bill.

Senator Krueger, you will be happy to know that on March 9th the New York State Police sent a letter withdrawing from the Matrix program. And I think that was an acknowledgment that, yeah, Matrix probably has

gone too far. But it doesn't mean you don't need something like that. You know, ask the people in Spain if they wouldn't have wanted to know better about what people were doing or if there wasn't anything that they would have suspended in a time of crisis.

Your concerns about the roving wiretaps and about the good-faith exception of this bill are valid. But, I would submit, not in a time of terrorism.

And the other thing I'd like to point out to anybody listening to the debate is that the changes that are advocated here are not without control or protection. Before you get a roving wiretap, a judge must sign off. Before you get a good-faith exception, there must be a hearing with the police officer and they must prove to the judge that in fact good faith was demonstrated.

And again, in the exigent circumstances of a terrorist act, particularly if it comes to the point of prevention -- which is the key to everything -- I think these are reasonable, reasonable measures.

Mr. President, to answer my

colleague and good friend's question, New York has not gotten all the money it needs. But this is not the only time in which we're going to be funding. Unfortunately, terrorism is going to be an issue for this state and for this nation for years to come. The key is to get it right. And I think hopefully through the next couple of months and years we're going to get that chance -- if we continue to focus on this.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Volker, why do you rise?

SENATOR VOLKER: Mr. President, I just want to, first of all, say that I want to compliment Senator Balboni for the enormous job that he has done.

I think part of the problem here is -- and I'll be perfectly candid. I sort of oversee the financial part of or helped to oversee the financial part of it. It wasn't until very recently that we were able to get a real handle.

First of all, Senator Hassell-Thompson, I must tell you New York

City has got a lot more money than has been said. Because when you go to orange and all that, a lot of that money does come from Homeland Security.

There's a lot of things about this. And the problem that I found was -- and as Senator Balboni found, both of us -- is that the demand in this state alone -- for instance, we could take every dollar we have from the 911 fund, the wireless fund, and push it into New York City to fix their system. Remember one thing people don't realize, their entire system went down, their 911 wireless system just died during the attack. I mean, there's so much that has not been said by the media about the tremendous hit that was made on this country.

I could tell you this -- and we're really not supposed to talk about it. But if every dollar that was assigned to New York was spent, it still wouldn't be enough, as Michael said. The demand -- and Mr. Kallstrom is a nice man. He's a former FBI agent. He went around pledging all kinds of money to all kinds of people. The problem is, you know,

FBI people don't have any money. I mean, they don't have to worry. They got an open budget.

This is New York. We have a budget. We've put a lot -- the amount of money that has gone into security in this state is unbelievable -- and you don't hear about that, but it's enormous, I'll tell you right now -- to helping police New York City and police this state.

But I happen to agree with Senator Balboni. And, you know, Norm Siegel is a very nice guy. I've known him for years. But he thinks and many of us continue to think in terms of domestic law enforcement. We have forgotten that a big reason -- and they can do all the investigating in Washington they want about 9/11. People know what happened. We don't have to investigate it. All this nonsense about, you know, suing phone companies and all this stuff. What happened is we were not prepared because we didn't have either the manpower or the technology to find out about this sort of thing.

You can blame George Bush if you want. You can blame Bill Clinton. You can

blame all kinds of people. The truth is, we're all at fault.

And one of the things we absolutely need to do is give our people the same opportunity as the terrorists. And if there's violations and mistakes made, then we have to deal with that. Because if we don't, I'll guarantee you, we're going to have another hit. And it probably won't be in New York City this time. It could be. But my guess is it will be someplace else in this state, for lots of reasons.

I can only say to you that we have some information that this place has been cased. In fact, rumor has it -- we know they have. We know they've looked at this place. And the people around here, everybody is annoyed by the security. You'll be a lot less annoyed if something happens, God forbid.

But I can only say that we must deal with these kinds of issues. Because one of the things that Mike and I have said about this, I'll tell you, if we get another hit, this bill will pass in about 20 seconds. And that's too bad, in a way, because we have to

be prepared to deal with a bunch of vicious beasts -- that's what they are -- that are not part of our civilization. People that kill themselves in the name of religion, they're not part of our civilization. That's ridiculous. Think about it. They're not part of our -- I mean, you can't play with them.

The media seems to think you can write stories about -- the reason the guy got off in Europe, by the way, because we wouldn't give the information, is, as I understand it, is because we were not about to give up our sources and all that just to get him convicted. And somebody said: Well, the guy's innocent. Well -- yeah, right. He's innocent under the law. But we can't afford to let the enemy know who's who, because they'll use our people.

And I only say this because, you know, I -- I'll only tell you one story, or I'll forget it. Joe McCarthy. Everybody criticizes him, terrible guy, his methods were wrong. Do you realize when they got the KGB files in Russia, they found out thousands of people that he accused were Communists? They

actually had sent information to Stalin. They even gave our code. And Stalin fortunately was too dumb to realize it was true. But somehow that story never really got out.

Nobody is saying that McCarthy was a great guy. But in all honesty, there were a lot of people that were Communists. And a lot of those people were pretty bad people, because they were cooperating with a foreign nation against our country. And I mean, you know, it's nice to live in a nice and quiet world. And as I call the Court of Appeals in this state the "tea and crumpets" Court of Appeals. That's very nice. Except it gets people killed. And unfortunately, it makes our civilization vulnerable to the other people.

ACTING PRESIDENT KUHL: Senator Parker, did you wish to be recognized?

SENATOR PARKER: Yes, please, Mr. President. On the bill.

ACTING PRESIDENT KUHL: Senator Parker, on the bill.

SENATOR PARKER: I want to begin by again, as my colleagues have, thanking

Senator Balboni for his tremendous work on not just this bill but on the subject matter. And I think there's a great deal about this bill to be commended, and things that I think would be helpful. But there are some things that I think that I have some concerns about.

On September 11th, 2001, I wasn't yet elected to the State Senate. I actually was a candidate for the City Council. And I remember standing at the train station, meeting people in my community, and somebody driving up to me and saying to me that the World Trade Center was on fire. And I looked at him; I was kind of like in disbelief. I was like, no, no, no, today's Election Day. They're like, no, the World Trade Center is on fire.

And I went back to my campaign office and watched on NY1 as a second plane hit the World Trade Center. And unlike many of my colleagues upstate, my first thoughts were of people that I knew who worked in that building. And particularly my neighbors and my friends. And in fact, my niece, who had taken the day off to help me on my election,

actually worked in the Trade Center and would have been in the Trade Center had it not been Election Day.

So I say that to say -- and having a brother who unfortunately has passed away, but spent 16 years in the Marines, I do have some understanding of what folks are talking about when they talk about homeland security.

So I don't -- this is not some faraway thing or something that -- you know, all of us in this room were highly affected by this and watched as those buildings burned down. In my district later that night, I stood on my front porch as literally papers, some of them burnt, that littered the street in front of my house in Brooklyn probably, you know, three or four miles away, were coming down in the street in front of my house, from the building.

This is, I mean, dramatic. And the effect that it has had on my community and me and all the people in this room is undoubtedly serious.

However, I also believe that homeland security starts at home. And I

remember that the president came out and said he was going to give us $16 billion, much of which we haven't seen yet. I do know that at this point, right now, we are about 4500 cops less in New York City than we were on the morning of September 11th. And in two years we have not gotten back to that number.

And I am appalled by the impudence of our, you know, Republican mayor and Republican governor to get to the Republican president to get us, you know, a few more dollars to give police. At the same time, you know, $87 billion goes to Iraq, and I understand that and we have to support the effort, and fine. But if you can find $87 billion for Iraq, how dare you stand here and tell me you cannot find money for New York City after it's been attacked and someplace that continues to be a target?

I have people who, you know, honestly, they're no longer concerned about the terrorists, because they're getting mugged walking down Avenue D and 41st Street, right around the corner from my house, because simply in the 67th precinct, that covers my

district where my office is, we do not have enough police.

And although, you know, the mayor has talked about 15 percent down all over the city, when you look at individual police districts, that is not in fact the case. In fact, murders are over doubled in my district. In the 70th precinct, the commanders are never going to say this, but they're understaffed. And why? Simply because we have no more money.

And, you know, we have a -- you know, we're looking at a $9 billion deficit here on the state level after you add in CFE and you add in some of the other things that need to be dealt with this year. You know, and so we can't get money from the federal government to deal with homeland security after we say that we're, you know, concerned about homeland security -- I'm not sure what we're supposed to do.

And so I'm concerned about how we in fact implement the things that are in Senator Balboni's bill if in fact we can't find the requisite funding to do the things

that at base level need to be done; that is, fire, police, emergency services.

Lastly, my major concern in this bill, and I said this last year when the bill came to the floor, is that when we start tinkering around and making exceptions to amendments, particularly the Fourth Amendment, you know, we create a slippery slope that I'm not sure how we put the brakes on. So today is the Fourth Amendment, tomorrow the Fifth. And again, when we get to the 13th, 14th, and 15th Amendments, you know, I then wind up in a very significant problem.

And so I'm voting no today not because I think this is a bad bill; I think this is a good attempt. But I really would love to see some significant changes that would really safeguard the protections that we as Americans believe in and we hold so near and dear to our hearts.

ACTING PRESIDENT KUHL: Senator Marcellino, do you wish to be recognized?

SENATOR MARCELLINO: Yes, Mr. President. On the bill, briefly.

ACTING PRESIDENT KUHL: Senator

Marcellino, on the bill.

SENATOR MARCELLINO: I want to thank my colleague and congratulate my colleague Senator Balboni for working tirelessly and diligently on this very important issue. It isn't easy, and I know he's taken some ribbing from a lot of us and some kidding around. But the issue he's addressing with this legislation and the things that he's doing are of the utmost importance.

This is a serious matter. This is not a matter for rhetoric. This is not a matter for a political campaign or political speeches. This is serious business. People can die, people are dying, people will die if we don't do the right thing here in this house, in the U.S. Congress, and in statehouses all over this country.

$87 billion wasn't sent to Iraq for Iraq. It was sent and it was delivered by the federal government to help our forces, our troops, in support of them, to purchase fuel, gasoline, ammunition, weapons, clothing, armor, you name it, whatever they need, so

that they can carry on the task of taking the fight to the enemy on the streets of Baghdad rather than the streets of Brooklyn.

I do not understand how that can be misunderstood. It is an imperative that we take care of it over there because if we don't take care of it over there, we're going to have to do it over here. And frankly, after 9/11, I don't want to do it here again, and I don't think anybody does.

And I'm not laying that on anybody. And I'm not accusing anybody of being soft on anything. All I'm saying is we have a tendency to forget in this country. We have a tendency to let things go for a while. If it isn't on our front doorstep immediately, we have a tendency to say, well, you know, let it slide a little bit. You know, we've got more important things to deal with. We've got problems in the local community. We can let that slide.

We had a blackout recently. I met with some of my first responders. And the response around Long Island was great. Fire departments, police departments reacted. And

I met with the county representatives in Nassau and Suffolk County for these people that were supposed to centralize our response. You know something? There was no centralization. There was no communication from those centralized authorities in both Nassau and Suffolk County to local fire and police departments. No word went down. These people responded on their own and did their own thing, in their own communities, to protect their neighbors. Without coordination.

We need a lot of work. We have to do a lot here. To point fingers at Washington and say it's money -- it doesn't require money to make plans. It requires people to sit down and do it and stop thinking about what's happening in my neighborhood, to think about what could happen if we don't do the right thing.

Senator Balboni's bill is a first step. And we've got to take this. This is a new world and this is a new kind of fight and this is a new kind of battle. And by God, if we don't win it, our children are going to

have one hell of a time to deal with. And our grandchildren might not have a country to come back to.

So we've got work to do here, ladies and gentlemen. Let's pass this bill and let's get on with it.

ACTING PRESIDENT KUHL: Senator Lachman, do you wish to be recognized?

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

I wasn't going to speak, but I listened to the debate. I'm ambivalent about the bill, I have to be very candid about that.

But I do feel that this international war on terrorism is the greatest war that our nation has fought since World War II. And we do not know what will happen next week or next month. I personally feel that the October surprise that might occur will not come from the White House, or my party, but will come from international terrorists, as they did three or four days before the Spanish election.

However, I deeply regret that one of my distinguished colleagues raised the

issue of Senator McCarthy, which is totally irrelevant to this bill. And we have to be very careful about this. Senator McCarthy destroyed civil liberties in this nation. He destroyed the reputation of the U.S. Army, some of its greatest generals, such as General George Catlett Marshall.

At the same time, weighing the pros and the cons, I would say we are in a major war that we must win without taking our civil liberties away. I vote yes on the bill.

ACTING PRESIDENT KUHL: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I rise to speak on the bill again, in response to some statements.

ACTING PRESIDENT KUHL: Senator Krueger, for a second time on the bill.

SENATOR LIZ KRUEGER: Thank you.

I thank Senator Lachman for bringing up my equal concern about revisionist history of Senator McCarthy. Despite the fact that it is Good Joes Day, I'm not sure we ought to be including Senator Joe McCarthy in the Good Joes story.

And clearly the lesson -- thank you. I think the lesson there, even if Senator Volker is correct and history shows that some of the people Senator McCarthy accused of doing bad things in fact did bad things, I actually think that Senator Volker agrees with me that our civil liberties and our civil protections overall as a country are a greater and more important good, since that time future, than the failure to recognize some number of people who were doing bad things.

I'd even argue that if Senator Volker was in the U.S. Senate at the time, he would have figured out how to catch the bad guys without taking the approach that Senator McCarthy did so wrongly in the fifties.

But we also just heard that -- and we know this -- we are in uncertain times. We are in times of crisis, we are in times of international terrorism. Again, my concerns with this bill, the reason I think we must think much more seriously before we vote for this bill, is history from terrorism.

In 1974, when the IRA started its

bombings in London, the British government passed the Prevention of Terrorism Temporary Provisions Bill. It was supposed to be a one-year bill. It has, in fact, been renewed every year since and is still in effect in Great Britain. It allows suspected terrorists to be searched without a warrant. It allows the government to label organizations as illegal and make it illegal for an individual to even wear clothing indicating that they support such an organization.

You no longer have the right to remain silent in Great Britain when you're accused of a crime because of this law. If you remain silent, your silence can and will be used against you in court. That provision was originally introduced solely as an antiterrorism measure, but like so many other measures in that original bill, it quickly spread and infected the entire criminal justice system of Great Britain.

In fact, today, law enforcement agents in Great Britain can break into somebody's house, do whatever they want, even steal property, and they can do wiretaps they

want without judicial approval, without warrants, without judicial approval.

It is twenty years later. Great Britain has cut away at their civil liberties. And unfortunately, I don't think the people of Great Britain would tell you that they are safer from international terrorism today than they were twenty years ago.

I hope this is not a twenty-year fight in this country. I hope we are not facing twenty years of potential internal attacks on civilians. But if we hope to have a country that we still believe in and believe in our liberties in twenty years from now, we must be very, very careful about the way we change our laws today.

So again, I urge my colleagues to vote no. Thank you, Mr. President.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Through you, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator

Balboni, do you yield to a question from Senator Schneiderman?

The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

I want to come back to the comments that Senator Ruth Hassell-Thompson made and that was followed up, I think, by Senator Fuschillo, and ask you -- since you were at the White House yesterday and had a chance to take the temperature of those in power in Washington in the wake of the Madrid bombing -- the issue that Senator Hassell-Thompson was raising really hasn't been addressed, and that's the fact that New York City was initially awarded $125 million out of a total of $500 million in federal grants, and then in November, after more cities were added, New York's share was cut to $47 million out of $675 million that was disbursed.

The billions that were promised for our city after 9/11 have not been coming from Washington. We got some money; we didn't get what we need. And we're dealing with a situation in which, in your new role on this

task force, you may have an opportunity to address it.

But the fact of the matter is we took a hit for the whole country, we lost tens of thousands of jobs. In my district, we lost many, many, many, many jobs. And Washington promised us help, and it really didn't come. We've raised property taxes, we've raised sales taxes. Senator Parker pointed out we've had to cut the number of police officers.

Can you give us a sense of what, if anything, we can do to ensure that New York gets its fair share of funding for this and that the tragedy of September 11th is not just used for political purposes but that the people who actually paid the price for that are taken care of by the federal government?

SENATOR BALBONI: Mr. President, through you, I thank the gentleman for his inquiry.

This is probably the most important issue that we're going deal with in the next couple of months, particularly as the Republican National Convention comes to the city of New York. That is uppermost on so

many minds from a security perspective, and the ability of the city to deal safely with what we already know is a very target-rich environment and how to make sure that the convention comes to a city that is safe.

What is important, when considering federal dollars, is to consider the fact that, one, that there is no one source of dollars. That is a part of the very frustrating complexity. The Office of Domestic Preparedness is but one pot of money that the federal government has sought to fund the activities of prevention and emergency response. Added to that are the pots that come from the Centers for Disease Control, the Health and Human Services Department, the Department of Transportation, as well as the NSA that also has developed programs in this state.

And so when you cobble all those dollars together, what you find out that is that New York State is probably the place where the most money has been spent. That's the good news. The bad news is it's not enough.

And in terms of what we can do to get Washington to send us more money, I think a key component is for all of us to lobby, to make the case to Washington -- but not just to the Republican governor, to the Republican president, to the Republican mayor, but to the Democrat U.S. senators. The two names that haven't been mentioned here today are Clinton and Schumer. They are very powerful people in Washington, and they must be enlisted in this battle because, frankly, they haven't brought enough money back either.

The same with the Congressmen and women, both sides of the aisle. This is not a Democrat or Republican issue, it's a New York State issue. And we have to have the dollars to facilitate the programs.

But at the same time, we have got to work with our local governments, particularly in the City of New York, and try to help focus their attention on developing the kind of programs that will truly make us safer.

Let me ask you a basic question, Senator Schneiderman, in response to your

question. I'll ask this rhetorically. If you were a firefighter and you were told that there are four or five different hazmat suits to purchase that would make you safer, how would you respond as to which one to select? There's no certifications, no standards as to what equipment works and what doesn't. Now, whose fault is that? I don't know whose fault it is, but it's a problem that's got to be fixed.

Same thing with our detection equipment, both chemical and radiological. These are new instrumentalities, new technologies that are still being developed and yet are so essential to our continued protection.

And, lastly, we have a culture of me, me, me, me, me. I had a fascinating discussion with representatives from a national legislative organization yesterday who said, "You know, Senator Balboni, unfortunately, our views are divergent on the issue of whether or not we should adopt a risk-based approach to funding." And I said, "Well, what do you mean?" They said, "Well,

we represent all the states in the nation. You're also representing all the states in the nation. But it's our position every state should get something." And I responded by saying, "Well, you know, that's just so antithetical, so contrary to what should be the basic funding response and logic."

So I think that, to answer your question, we need to engage more with Washington and we also need to engage more with the localities. Because we're not really in the process. And I'll tell you what. This is a message to all of us in the chamber nationally -- and this is not their faults, but the Governor's Association, the White House and the Congress, they don't see us as a part of this issue. They don't see legislative oversight as being a benefit. They see it as a burden.

Take a look at the funding timelines. You're supposed to obligate money within 60 days. Well, that doesn't include the consideration of a body like this, of how the money is being appropriated. Whether it's by a Republican governor or by a Democratic

governor, it doesn't take that into account. So the legislatures are not a part of this oversight from the national perspective.

But we must be. But we must also be the ambassadors and the representatives to our own districts to work with our municipalities to help them understand what's doable, what's accessible, and what's realistic.

SENATOR SCHNEIDERMAN: Thank you.

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

ACTING PRESIDENT KUHL: Senator Balboni, do you yield?

SENATOR BALBONI: I do, Mr. President.

ACTING PRESIDENT KUHL: And the chair would just simply, for the record, remind the members that, you know, the rules of the Senate really do contain questions and answers to the content within the bill.

Now, I know that there's a great propensity on behalf of most -- of the two members that are now on the floor and speaking and entering into dialogue to recognize that

it's snowing outside and this is spring coming on very soon, and that there's an attempt to try to warm up the atmosphere.

But I would just remind the members that we're not here to really discuss global solutions, we're here to discuss the bill. And so if you could continue to have your conversations about the elements of the bill, that would be, I think, pertinent, and I think the appropriate word is germane to the discussion here before us today.

So with that, Senator Schneiderman, I think Senator Balboni has in fact yielded to a question.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I think trips to the White House sometimes can take what was once statewide and make it nationwide, so we have gotten a bit global.

My question on the bill at this point is directed to the section on page 2, line 32. And this paragraph appears to eliminate the requirement in New York law that you can't be convicted upon the testimony of an accomplice unsupported by corroborative

evidence. Is that correct, that that requirement is being eliminated by this paragraph?

SENATOR BALBONI: That is correct.

SENATOR SCHNEIDERMAN: And through you, Mr. President, is that something that the sponsor supports for all crimes, or is this something that you only think should be applicable in this particular situation?

SENATOR BALBONI: Through you, Mr. President, on the substance of the bill, this particular section refers to Section 125.27 of the Penal Law specifically.

SENATOR SCHNEIDERMAN: Yes. And it --

SENATOR BALBONI: There are no other crimes contemplated.

SENATOR SCHNEIDERMAN: Through you, Mr. President, and --

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

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

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR SCHNEIDERMAN: And I'm not sure I got an answer to my question. Is the sponsor saying that he does not support repealing this requirement for other crimes, or that he does support repealing this requirement for other crimes?

SENATOR BALBONI: Mr. President, through you, the section specifically refers to crimes of terrorism. None other. And that is the only crime of which I would support such a waiver.

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

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

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SCHNEIDERMAN: Turning to the provision relating to the exclusionary rule on page 11 of the proposed legislation, an issue that was raised last year but not

really addressed, in my view, is the following.

This bill states that the court may not suppress evidence or order that evidence be excluded on account of a violation of any right accorded by the Fourth Amendment to the Constitution of the United States or Section 12, Article 1 of the constitution of this state, if the court finds after a hearing that the law enforcement officer or officers acted in good faith.

So this section tells the courts of our state that they are not allowed to follow the precedents of the United States Supreme Court with regard to the Fourth Amendment to the federal Constitution. And my question to the sponsor is, isn't that an unlawful act if we attempt to direct courts not to follow binding precedent on the federal Constitution from the United States Supreme Court?

SENATOR BALBONI: Mr. President, through you, the language is specific. First off, the evidence would only be permitted after a court has ruled that the officers acted with good faith.

And now, so that we can flesh this out just a little bit within the parameters of germaneness, what I mean by "good faith" is that if you torture a victim in order to get a confession out of them, that would not be good faith. If you planted evidence in someone's apartment, that would not be good faith. In other words, the actions of the police officers were lawful, but perhaps under existing laws of evidence would not be admissible.

And remember, again, what we're talking about here. We're not talking about exclusions from liability on behalf of the actions of police officers during the course of their investigation. We are talking about the admission of evidence into court in a court case. It does not mean conviction, it means consideration by the jury.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Thank the sponsor for his answers. And I would like to speak on the bill.

SENATOR BALBONI: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that the problem some of us have with this legislation -- and I think everyone recognizes that Senator Balboni's commitment to the issue of trying to move our state forward in the battle against terrorism is a commitment that preceded September 11th.

The problem a lot of us have with this legislation is it reflects a fundamentally flawed approach to combatting not just terrorism but crime. The Fourth Amendment to the Constitution, which states that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but on probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized -- the Fourth Amendment requires a warrant for a search.

Under federal law, there is a good-faith exception to this requirement only

if there was a mistake or an error and a police officer obtained a warrant, it wasn't a proper warrant, but acted in good faith believing there was a warrant. But there is a requirement for a warrant.

And I would respectfully submit, for all of the discussion of how we are in new territory here, in 1789 when the Fourth Amendment was enacted into law, we had just come out of a much worse domestic crisis than what we're facing now, and espionage and death in the streets in our own country were fresh in people's minds. We used to celebrate Evacuation Day when we had to evacuate from the British in this state.

Now, the flawed approach that is in this legislation -- and believe me, I believe there are some very good things in this legislation. The provisions relating to money laundering I think are good. But the flawed approach that's going to prevent this from ever becoming law -- because I don't think it's going to ever pass in the other house, and it should not -- is that you don't fight terrorism by reducing the standards required

to convict someone. You don't take away the constitutional rights that guarantee as best we can that innocent people don't go to prison. Because that's not an effective way to fight terrorism. That's an effective way to lock up innocent people.

And it is clear to me that this provision relating to attempting to expand the good-faith requirement relating to the exclusionary rule without requiring a warrant goes beyond federal law. I think this would be an unlawful section of law if we enacted it, and it would be struck down by the courts.

My concern, though, is we've seen this bill before. And I don't want to end this session with us saying, Well, we passed these tough bills, and the Assembly doesn't do it and, you know, if they weren't wimps, we would be able to fight terrorism better. The point here is not to posture, the point is to actual pass something that becomes a law.

And you do not strengthen our country in our efforts to fight terrorism by making it easier to convict innocent people, by reducing a rule, the exclusionary rule,

that has worked for many, many years to deter bad conduct by the authorities.

In fact, I would respectfully suggest to Senator Balboni, as he makes his travels around the country and the world in his effort to work on these issues, that it is in fact our constitutional protections that are what -- that are the essence of the United States. It's the essence of what makes us different from the countries that terrorists would like us to emulate.

I mean, we have a country where pluralism is supported, where authorities are subject to limitation. The people who we're fighting with now would like us to live in a theocracy where there are no limitations on authority.

Let's not get rid of the very thing that creates the country, that provides a framework for the nation, that has dominated the world because of our success of a system that works with checks and balances. Limits on authority are a good thing. A high standard before you convict someone of a crime is a good thing.

We have been through many crises. We didn't eliminate the Fourth Amendment during World War II. We didn't eliminate the Fourth Amendment during the period of the Cold War, when, as Senator Volker points out, there was a lot more espionage activity going on.

Let's draft a bill that we can pass into law that includes the money laundering provisions, that provides the strengthening that our police officers need. And let's not get carried away with all of this high-tech talk. What makes people safe? More police on the streets, better-paid police officers, better cooperation between police and the community. Let's not get hung up on issues that don't actually make people safer.

I would like to pass a bill that includes some of these provisions this session. We know this bill is not going to pass. And I would respectfully suggest to the sponsor, who I know is extremely sincere in his efforts to deal with this issue, that if we take away the elements that suggest we fight crime better by making it easier to convict innocent people, then we might be able

to craft legislation that could pass both houses and become a law. That's not this bill.

I look forward to seeing something better before this session is out. But as it is, I will vote no and I urge everyone to vote no.

Thank you.

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

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Mr. President, I just rise to --

ACTING PRESIDENT KUHL: Explain your vote?

SENATOR HASSELL-THOMPSON: -- to explain my vote.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT KUHL: Keep your hands up so the Secretary can record your votes.

SENATOR HASSELL-THOMPSON: Mr. President, for many weeks I sat with Senator Balboni -- and I forgot to commend him, by the way, for doing an extraordinary job with his joint committee. And I sat with him and our committee for several weeks as we listened to testimony after testimony. And certainly, having done so, it would appear that I should find it impossible to vote against this bill. But I cannot.

I do not find it impossible to vote against the bill for two reasons. Clearly, this proposal fails to reasonably balance individuals' privacy interests in an attempt for law enforcement. The other concern that I have about this bill is that the good-faith exemption and warrantless searches and seizures would render our Fourth Amendment

virtually worthless.

The goals of terrorism, as I see it, is to destroy the ideals for which this country stands. In our desire to protect ourselves, let us be careful that we do not erode these ideals and constitutional freedoms and do a better job than terrorists would ever do.

I vote no.

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

Senator Montgomery, why do you rise?

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

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

SENATOR MONTGOMERY: Thank you.

There are a couple of areas in this legislation that concern me greatly. Certainly the good-faith exception to the Fourth Amendment and to Article 1, Section 12, of our State Constitution I think is a real problem that's been proposed in other

legislation. And I certainly oppose that. I think it's extremely problematic to be thinking along those lines.

And I also am concerned about the need to divulge information on an individual's personal tax information and so forth and so on.

But I was in Senator -- I was in Queens, Far Rockaway, last Friday. Watch it. Whose district is that? And I noted that the planes flying over, I could read the lettering on the belly of the plane. And I thought, gee, this is very, very interesting. The vulnerabilities are very serious for us, specifically in New York City. Particularly in New York City.

And I have given up so much of my freedom. I left my -- I forgot my ID card yesterday and I couldn't go to the cafeteria because I could not have gotten back in without being searched. And I didn't watch want to have my person searched.

So I've given up a lot of freedom. We all have, already, in the name of terrorism and security and homeland security and all of

those things. So I'm going vote yes on this bill, because I think that I understand Senator Balboni's sense of nervousness.

I would caution him, however, that I don't see anything in this bill that would protect us from an attack in the first place. He is going punish the terrorists severely, but he still is not protecting us. Nor is the federal homeland security agency protecting us. I just want to remind him of that point.

So I'm going to vote yes, because I think his heart is in the right place. He's trying to do the right thing, and I appreciate that.

Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the affirmative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 498 are Senators Connor, Dilán, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 51. Nays, 10.

ACTING PRESIDENT KUHL: The bill

is passed.

The Secretary will continue the controversial reading.

THE SECRETARY: Calendar Number 508, by Senator Balboni, Senate Print 5749A, an act to amend the Penal Law, in relation to establishing definitions.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Morahan, that completes the controversial reading of Supplemental Calendar 19A.

SENATOR MORAHAN: Thank you, Mr.

President. Can we return to reports of committees. I believe there's a Health Committee report at the desk.

ACTING PRESIDENT KUHL: There is a report of the Health Committee at the desk.

We'll return to the order of reports of standing committees. I ask the Secretary to read.

THE SECRETARY: Senator Hannon, from the Committee on Health, reports the following bills:

Senate Print 3899, by Senator Hannon, an act to create a task force;

5446B, by Senator Robach, an act to amend the Public Health Law;

6097, by Senator Johnson, an act to amend Chapter 572 of the Laws of 1994;

6174, by Senator Hannon, an act to amend Chapter 884 of the Laws of 1990;

And Senate Print 6428, by Senator Hannon, an act to amend Chapter 904 of the Laws of 1984.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without

objection, all bills are ordered directly to third reading.

Senator Morahan.

SENATOR MORAHAN: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: We do.

The chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 11 I offer the following amendments to Calendar Number 209, Senate Print Number 6007A, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 209 are received and accepted, and the bill will retain its place on the Third Reading Calendar.

Senator Morahan.

SENATOR MORAHAN: There being no further business before the Senate, I move that we adjourn and that we stand in recess until tomorrow morning at 11:00 a.m., March 17th.

ACTING PRESIDENT KUHL: On

motion, the Senate stands adjourned until tomorrow, Wednesday, 11:00 a.m.

(Whereupon, at 5:09 p.m., the Senate adjourned.)