NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 20, 2004

3:05 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: With us this afternoon to give the invocation is Reverend Alex True, pastor at Cornerstone Community Church in Brockport, New York.

REVEREND TRUE: Let's pray.

Dear Lord God, we thank You this afternoon for the opportunity to gather together as Your servants. And Your word tells us that we are Your servants. Those who serve You in the office of government are indeed Your servants, and we thank You for each one here.

God, we thank You for the Lord Jesus Christ, who is the only savior, the king of kings and the lord of lords. And we thank You for the great love and forgiveness that You share and that You offer to each one of us

through him.

And, God, we pray now today and ask that You would please bless each and every servant that's gathered here today. Have Your will and way done in the issues and in the legislation that's decided today. Guide and direct with Your wisdom on the decisions that need to be made, and bless and protect each one of us as we go our separate ways.

Help each one of us to understand and to know and to accept Your love and Your forgiveness and Your salvation that's offered to us free of charge. And we thank You for going to the cross for us. We thank You for dying for our sins. And we thank You for rising the third day. And we give You all the praise and thanks with all of our hearts.

In Jesus' name we pray, amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 19, the Senate met pursuant to adjournment. The Journal of Sunday, April 18, 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 Skelos.

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

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: If we could make them at this time, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 14, Senator Marcellino moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 3073 and substitute it for the identical Senate Bill Number 897,

Third Reading Calendar 287.

On page 22, Senator Robach moves to discharge, from the Committee on Transportation, Assembly Bill Number 8237 and substitute it for the identical Senate Bill Number 1997, Third Reading Calendar 441.

And on page 28, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 10163 and substitute it for the identical Senate Bill Number 6428, Third Reading Calendar 523.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time could we adopt the Resolution Calendar.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, I have three resolutions at the desk. If we could have the titles read and move for their immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 4573, commending Gerald Schlossberg upon the occasion of his designation for special honor by the Shomrim Society of Nassau County at its 38th Annual Breakfast on April 25, 2004.

By Senator Skelos, Legislative Resolution Number 4574, commending Samuel Livingston upon the occasion of his designation for special honor by the Shomrim Society of Nassau County at its 38th Annual Breakfast on April 25, 2004.

And by Senator Skelos, Legislative Resolution Number 4575, commending Robert Glassman upon the occasion of his designation for special honor by the Shomrim Society of Nassau County at its 38th Annual Breakfast on April 25, 2004.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolutions are adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 373, by Senator Volker, Senate Print 4170, an act to amend the Penal Law, in relation to payment of mandatory surcharges.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 424, by Senator Skelos, Senate Print --

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 527, by Senator Meier, Senate Print 5736B, an act to amend the Tax Law, in relation to authorizing the County of Lewis.

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

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 597, by Senator Little, Senate Print 6444, an act to amend the Civil Service Law, in relation to providing for binding arbitration.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 612, by Senator Velella, Senate Print 6476, an act to amend the Labor Law, in relation to requiring prevailing wages to be paid.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 618, by Senator Volker, Senate Print 241, an act to amend the Penal Law and the Criminal

Procedure Law, in relation to term of imprisonment.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 619, by Senator Volker, Senate Print 243, an act to amend the Criminal Procedure Law, in relation to expanding the number of a victim's family members.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 623, by Senator DeFrancisco, Senate Print 1143, an act to amend the Penal Law, in relation to the payment of reparation or restitution in certain cases.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 631, by Senator Morahan, Senate Print 5388A, an act to amend the Penal Law, in relation to authorized depositions for certain murder-in-the-second-degree offenders.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

643, by Senator Little, Senate Print 4924, an act to amend the Real Property Tax Law, in relation to state aid for improved assessment administration.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 649, by Senator Skelos, Senate Print 6177, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is

passed.

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

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 424, by Senator Skelos, Senate Print 557, an act to amend the General Obligations Law, in relation to exoneration of certain crime victims.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SKELOS: Thank you, Madam President.

This legislation, which has passed the Senate on numerous occasions, would amend the General Obligations Law by bringing back the assumption of risk doctrine in certain civil lawsuits.

In order for the plaintiff to be

barred from recovery, the defendant must furnish proof by a preponderance of evidence by showing that the plaintiff committed the crime and that the defendant's actions were justified. The criminal has assumed the risk of injury by his intentional actions against the victim.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: This is a bill that has been around in this house for a long time. There are similar bills that we've debated earlier this session. Senator Balboni's bill -- I have to say I think this is a more moderate and carefully crafted approach than that one. However, in my view, it suffers from the same fundamental flaw.

This is an effort to change a body of law that actually is working very well. I mean, we discussed this when we debated Senator Balboni's bill, the Barker versus

Kallash rule. There is a wrongful plaintiff rule in this state. Criminals have their cases thrown out if they're bringing a civil action and the court determines that the subject matter of the civil action is the same as the criminal conduct that the plaintiff was engaged in.

So we have a rule that's working rather well. And I'm afraid that this is just an effort to close the courthouse doors to a group of people who should be entitled to a hearing.

Again, we're talking about a bill that states that crime victims and Good Samaritans may be exonerated from certain tort liabilities and refers to actions where the injuries sustained by the plaintiff, where the defendant shall furnish proof that the injury arose during the commission or attempted commission by the plaintiff of a crime, referencing several crimes.

Again, this could be a situation where someone is fleeing from having committed a crime and a third party assaults them, and this could prevent the court from, as the

court is empowered to do now, considering all the factors involved in determining whether or not to apply New York's existing wrongful plaintiff rule.

I would suggest that, again, this bill is not going anywhere. We should -- if we're going to make an effort to deal with these issues, passing the same series of bills over and over again does not further that effort.

And I think that we also -- one final point. And I fear that we may see this bill again. And if we do, I think it does need to be amended, because it still refers to sodomy. And the law as it exists now, we've taken references to sodomy out of the law.

And so I hope that we can at least see some amendments. As I've encouraged my colleagues in the past, it at least looks like we're making an effort to pass two-house bills and change the law here when we're updating our legislation and changing typographical errors as bills pass over and over again.

I vote no. I think we have a body of law that works well here. There's no

demonstration of the need for this change. Let's keep the courthouse doors open to everyone. Let's empower judges to use their discretion to do justice. And I encourage everyone to vote no.

THE PRESIDENT: Senator Diaz.

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

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

SENATOR DIAZ: You know, I heard my fellow Democrat Senator Schneiderman saying it is -- that this bill ain't going nowhere. And frankly, it is a shame. It is a shame to hear that this bill ain't going nowhere.

Because if we're going to put an end to crime, if we're going to put an end to criminals committing crimes, and to protect the victims, this is a bill that should go somewhere. This is a bill that we should all support.

Because if someone decides to go and commit a crime and assault someone and in the process of doing that the victim hurts the person, the perpetrator, or a bystander,

helping the victim, hurts the perpetrator -- and we are going to give the perpetrator the ability and the will to be able to sue and to recover some kind of benefit from the victim?

I mean, if we are going to put an end to criminals and to crime in the State of New York, again, this is a bill that we should all support.

I think that once you decide to commit a crime, once you decide that you are going to go into a bodega or to a home or to somewhere to commit a crime or to assault someone, and in that process you get hurt, that's your own doing. You should have no right to sue anyone. You committed a crime; you should go to prison. You should go to jail, not -- you should not be given the right to sue.

So, ladies and gentlemen, I am for this bill. And I think it is a shame to hear that this bill ain't going nowhere.

Thank you very much.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 424 are Senators Andrews, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Sampson, and Schneiderman. Ayes, 46. Nays, 9.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time return to motions and resolutions in the calendar.

I believe that there is a privileged resolution at the desk sponsored by myself and Senator Little. I would ask that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

SENATOR BRUNO: Can we ask for order in the chamber, please, Madam President.

THE SECRETARY: By Senators Bruno and Little, Legislative Resolution Number 4570, paying tribute to the life and selfless heroism of Private First Class Nathan Patrick Brown, of South Glens Falls, New York.

"WHEREAS, It is with a heavy heart that this Legislative Body pays tribute to Private First Class Nathan Patrick Brown, a 21-year-old soldier serving with the National Guard, who was killed on Sunday, April 11, 2004, when his armored Humvee was attacked while on routine patrol in Samarra, Iraq; and

"WHEREAS, Private First Class Nathan Patrick Brown was a member of a Glens Falls-based Army National Guard unit, Company C of the 2nd Battalion of the 108th Infantry, attached to the United States Army's 1st Armored Division in Iraq; and

"WHEREAS, Private First Class Nathan Patrick Brown's job responsibilities as a member of the National Guard was to guard, search and secure transportation routes; and

"WHEREAS, Private First Class

Nathan Patrick Brown was born on June 13, 1982, in Glens Falls, New York, the loving son of Ricky L. and Kathy J. (Ryan) Brown; and

"WHEREAS, This Legislative Body extends its deepest sympathy to the family of this brave American, Private First Class Nathan Patrick Brown; and

"WHEREAS, No one can fully understand a tragedy such as this, but only know that prayers help us through the day and help us endure the night. There are prayers of friends and strangers that give us all strength, and there are prayers that yield our will to a will greater than our own; and

"WHEREAS, Private First Class Nathan Patrick Brown is survived by his parents, Ricky and Kathy Brown; brother, Christopher; two sisters, Megan and Victoria; half-brother, Matthew Secor; half-sister, Sarah Secor; his fiancee, Sara Grace Hill; maternal grandmother, Beatrice I. Ryan; grandfather and World War II veteran Paul H. Ryan, Sr.; paternal grandparents, Raymond and Josie Brown; great-grandmother, Lillian Wooley; great-grandfather Amarante Chavez;

several aunts, uncles, and cousins; and all of his fellow soldiers who served with him in Iraq; and

"WHEREAS, It is the sense of this Legislative Body to convey its grateful appreciation and heartfelt grief in recognition of the loss of this courageous individual, who dedicated his purposeful life and career to serve his country as a member of the National Guard; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay tribute to the life and selfless heroism of Private First Class Nathan Patrick Brown of South Glens Falls, New York; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Private First Class Nathan Patrick Brown."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President and colleagues.

This really is as sad as anything can be when you hear this resolution describing a fun-loving, caring, 21-year-old

young man -- 21 years old -- dying tragically on what has been, on Easter Sunday, described as a routine patrol, if there can be such a thing over there in a war zone. Routine patrol. Four others were injured in that attack.

You know, the Lieutenant Governor and Senator Little attended, this morning, the funeral. I understand there were hundreds, maybe thousands of people there, just caring and sharing in their grief.

You think about a 21-year-old and how this comes home to us -- graduates from high school, dedicates himself unselfishly to a fight for freedom in wartime, in a time of very great peril. His grandfather, as we heard, served in World War Two; his father served in the Marines in 1980. An uncle served in the Air Force and Navy. This is a committed, patriotic, dedicated family.

This young fellow, we read and heard, was always asking his mom to send candy. And the candy he shared with the Iraqi children, and that's why he kept asking for candy. Volunteered in orphanages there in

Iraq, for young people. Just as a caring, caring individual.

So it's so appropriate -- you wonder what benefit do you see in something like this. I guess if there's any benefit at all, other than he's committed his life and died fighting for freedom for us, people around the world, and for those in Iraq, when you think about a young man like this who spent the time he had on this earth really committed to relating to others, doing good -- think about it. He's a son, he's a grandson, a fiance, soon to be married, as they were planning.

So it's a sad time for us. But it's a good time for us to think about all those that are serving around the world, those that are there in the troubled areas not because they want to be but they feel compelled that they have to be. And we can all thank the good Lord there are people out there like Nathan Patrick Brown, who was willing to commit his young life to protecting those people and their freedom a long ways from home, and consequently defending us here

in this chamber, in this state, and in this country.

Thank you, Madam President.

THE PRESIDENT: Senator Little.

SENATOR LITTLE: Thank you, Madam President. And thank you, Senator Bruno.

It truly is a sad day. It's truly every military family's nightmare to have the knock on the door to find out that your son or daughter has made the ultimate sacrifice in giving of one's life for their country.

And since our country began, we have had the good fortune of having young men and women who were willing to put themselves in harm's way, knowing that at any time they may have to make that ultimate sacrifice.

So we owe a great deal of gratitude to Private First Class Nathan Brown and to all of the men and women who are serving in Iraq and in other places in this world, protecting us and protect our freedom.

At today's funeral, you certainly had to be impacted by the sadness of the family, by the sadness of the other members of the National Guard. This is the first time

that a New York National Guard has been sent to a foreign country since World War II. And Nathan is the first of our National Guard to lose his life in Iraq.

So you say, what can I say or what can I do to mend the heartbreak of this family? There certainly is nothing more tragic than standing next to the coffin of one of your children. What we're doing today in our resolution, in recognizing the heroism of Nathan and our gratitude to him, is what we can do.

Today, hundreds and hundreds of people lined the funeral path when they went from the church past the Glens Falls Armory on their way to the Saratoga National Cemetery, where he will be buried with -- was buried with full military honors.

So at a time when words seem very inadequate, I think the only thing we can do is through our presence and through our action here today with this resolution, and through our thoughts and prayers, express our sorrow, our sympathy to the family, and our gratitude to men and women in our country who make this

sacrifice, and today to Private First Class Nathan Brown.

And I also believe that we can continue to show our support for all those men and women who continue to serve in Iraq and to offer a prayer for them each and every day and for their safety, that they return home well.

Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This is certainly a sobering subject matter. I am very pleased that we're at least able to pause for a moment to put things in perspective, as the death of someone this young under these circumstances has to do for any caring, thinking person.

And obviously this is not an ideological or partisan issue. This is a human issue. And I think we all have to think about working as hard as we can to support the troops, to support all of the men and women in our state who have loved ones abroad.

And I would thank Senator Little,

Senator Bruno for taking a moment to make us focus and get us a little more serious in an atmosphere that occasionally gets a bit frivolous on substantial issues.

And I would also just like to mention that tomorrow is West Point Day. And sometimes, you know, we're all wandering around doing other things. I hope everyone will be here tomorrow for West Point Day when we bring the troops up. Let's remember what's going on now. This is not a casual thing to be in the military. And particularly for those who serve in the Guard from New York State, let's all remember them as we go forward.

Thank you.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I too stand in honor and gratitude for Nathan Brown, and I want to tell you a little story that happened today.

Simultaneously with that funeral and burial, there was another individual where there was a mass today in Sidney, New York --

Delaware County -- a 20-year-old whose name was Isaac Michael Nieves. And he died in Baghdad.

And I went to the church to honor this family, and they asked me to speak. And when I got up to that pulpit and looked out, there was his mom and dad and nine siblings, six of which had uniforms on of Air Force, Navy, and Army.

The whole church was crying. His younger brother, a 19-year-old cadet from West Point, got up to that podium and with the strength and wisdom and passion and commitment and love of this country, he talked of his brother and his dedication to his family.

And when I left that place, I said because of Nathan Brown and because of people like Isaac Nieves, we are going to win the war on terrorism, because our greatest resources are our people.

Now, these were individuals I don't know. And I'm sure many of us don't know these heroes that are out there fighting for our freedoms. But I am so proud of the Nathan Browns of the world for their love of God,

love of country, love of family. And some pay a higher price of freedom, and their families, than others.

But we are in this together, and we should remember that always as we go down the political campaigning and all of the rhetoric.

Thank you, Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, on Friday of this week there will be another funeral held, this time for a Marine, Kevin Kolm, who died four days ago in Fallujah.

And what we're seeing, obviously, is that New York is paying a price in terms of its National Guardsmen. And what Senator Little said about this being the first deployment is absolutely accurate.

And I am very heartened that we are choosing to mention each of these young soldiers' names here in this chamber, that we are stopping to take the time to reflect upon their lives and their sacrifice.

But I also want to make sure everybody is reminded of that, different than

nowhere war in this nation's history, every man and woman who is serving in Iraq is a volunteer. Every man and woman chose to enter into the service.

It's a very unique time in our history, in many different respects. And each man and woman in the service that has died for their country is indeed a hero. Let's offer our prayers for all the families for these volunteers.

Thank you, Madam President.

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

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 adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Commerce Committee in the Majority Conference Room.

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

SENATOR BRUNO: Madam President, can we at this time return to the reading of the controversial calendar.

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: Calendar Number 618, by Senator Volker, Senate Print 241, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill which has passed this house on a number of occasions.

And we have termed this the "three times and you're out" bill, which says that if -- on certain violent felony offenses, if you have previously had two such violent felony offenses, that the third must include

at least a plea of guilty to a violent felony offense. In other words, it can't be pled down to less than a violent felony offense.

Now, these people probably have been around for a while, because if they already have two violent felony offenses on their record and they end up with a third one, quite clearly they have a pretty good criminal background. This is not -- by no means are we talking about anybody that could, by any stretch of the imagination, be said to be nonviolent. Under any circumstances, they have to have a rather extensive rap sheet.

So I think under the circumstances -- and by the way, this I think was developed, if I'm not mistaken, because a person -- and so many of these proposed statutes have occurred because some judges or a judge or whatever allowed someone to plead down who had long criminal records.

If you look back, by the way, what's fascinating is it caused tough drug laws -- because I was there when the so-called Rockefeller Drug Laws passed. You would realize that there was a study done which

showed that the same people or the same sentences in different parts of the state were considerably different. For instance, a person charged under the violent felony offense in New York City would get about a third of what they would get in upstate New York.

And in drug areas, by the way, there were some judges in New York City who refused to send anybody to jail on drug charges. And that was particularly true in several of the boroughs.

The only reason I mention that is a lot of people say: Well, why do we go to these mandatory sentences? It's because there was so much irresponsibility going on in certain places, that that's the real reason that we went to mandatory minimum sentences. And they were changed later on as the climate changed. And I think a lot of people don't realize that it happened.

Anyways, the bottom line is this is one of those bills that basically says if you're into a third -- if you have two predicate felons -- violent felony

convictions, on the third conviction you must be sentenced to at least a plea of guilty to a violent felony offense.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I thank the sponsor once again for his explanation. Not quite as good as his explanation last year, when he said, "We're moving fairly quickly to do something here on sentencing before this month is out," and predicted that the Assembly and the Senate were going to reform the sentencing laws. So I liked that better. But perhaps a little more circumspect this year.

The problem here is very simple. It's not a matter of people believing that violent felons who are dangers to society shouldn't be in prison for a very long time. The problem is that this legislation simply states "where the indictment charges any

violent felony offense." And Senator Volker spoke eloquently about our effort to get rid of judges who may abuse their discretion.

The problem is there still are human beings with discretion in determinate schemes. They're called district attorneys. And indictments are not issued by some cabal of wise men. They are not handed down from Mount Sinai. Indictments are issued by human beings who are as capable of abusing their discretions as those who sit in black robes on the bench.

The question here, quite simply, is what are we going to do about the sentencing laws in this state that I think virtually everyone, on every side of the debate, recognizes are badly flawed. We have to do something.

Again, this is a bill that we've seen many times. We still have the bill memo on it that states that crimes of violence are on the rise every day, which I hope we'll update, along with Senator Skelos's bill on sexual assault and Senator Balboni's bill with the typographical errors that we see year

after year.

But let's try and get serious about the issue of sentencing. We're having a hearing tomorrow morning in Hearing Room A that Senator Duane and Senator Montgomery are convening on the issue of sentencing in the context of the Rockefeller Drug Laws, 10:00 a.m. tomorrow, to try and put some further energy into the flagging effort to reform a body of laws that are seriously flawed.

What we have now under the determinate sentencing rules is exactly what Senator Volker described when he was complaining about the abuse of discretion of judges and the inconsistency of sentencings. They have a virtual what's called a Mason-Dixon line, of which north of the city where district attorneys will charge much heavier offenses and therefore get much heavier sentences than below the Mason-Dixon line.

Abuse can exist in either body. Let's not just shift discretion from judges to prosecutors; let's do something that

comprehensively deals with the issue.

I'm voting no on this. I really do sincerely wish that Senator Volker's prediction of last year will come true this year and that we will meet with the Assembly and attempt to do something about the sentencing laws. Because while we pass one-house bills and the Assembly passes one-house bills and prosecutors exercise their unfettered discretion to charge people as they see fit, there are a lot of people doing time who shouldn't be doing time. And there are laws that we can reform very easily by just passing some simple bills.

I think that we've attempted, in our conference, to advance a comprehensive proposal to get the debate moving again. We're having a hearing tomorrow. Let's try and do something.

And I know that the sponsor would be happy to actually see progress in this area rather than us continually going through this debate and the Assembly going through their parallel debate, passing their one-house bill.

So I'm going to vote no, Madam

President, but in the hope that Senator Volker's prediction perhaps was a year early but nonetheless accurate.

Thank you.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 618 are Senators Duane, Hassell-Thompson, Montgomery, Parker, Paterson, and Schneiderman. Ayes, 55. Nays, 6.

THE PRESIDENT: The bill is passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I request unanimous consent to be recorded in the negative on Calendar 424, Senate Print 557.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting

in the negative, Senator DeFrancisco.

Senator Skelos.

SENATOR SKELOS: Please recognize Senator Parker.

THE PRESIDENT: Senator Parker.

SENATOR PARKER: Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 424.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative.

Senator Skelos.

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

THE PRESIDENT: No, there isn't, Senator.

SENATOR SKELOS: If I could just remind the members that session will start at 11:00 tomorrow, and our cadets from West Point will be here. So if we could all be in the chamber at the appropriate time, it would be appreciated by all.

And there being no further business to come before the Senate, I move we stand adjourned until Wednesday, April 21st, at

11:00 a.m. sharp.

THE PRESIDENT: On motion, the Senate now stands adjourned until Wednesday, April 21st, at 11:00 a.m.

(Whereupon, at 3:47 p.m., the Senate adjourned.)