NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 9, 2005

11:04 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

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

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

ACTING PRESIDENT MORAHAN: In the absence of clergy, I ask that we take a moment of silence.

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

ACTING PRESIDENT MORAHAN: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 8, the Senate met pursuant to adjournment. The Journal of Monday, March 7, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MORAHAN: 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: Mr. President, I move that we adopt the Resolution Calendar, with the exception of Resolution 741.

ACTING PRESIDENT MORAHAN: All in favor of adopting the Resolution Calendar, with the exception of one resolution, 741, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

Resolution 741, by Senator Libous, could we have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 741, congratulating the Chenango Forks High School Football Team and Coach Kelsey Green upon the occasion of capturing its second consecutive New York State Class B championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Chenango Forks Blue Devils High School Football Team are the New York State Class B champions for the second straight year; and

"WHEREAS, the Blue Devils defeated Rye High School 48-0, in a rematch of last year's Class B Title Game, to finish the 2004 season with a perfect 13-0 record; and

"WHEREAS, Senior quarterback Tim Batty was named the game's Most Valuable Player for the second consecutive year, and Matt Faughnan was named Most Valuable Offensive Lineman; and

"WHEREAS, The team's extraordinary defense continued its season of dominance by shutting out a Rye team that has averaged more than 27 points per game during its season; and

"WHEREAS, The athletic talent displayed by this tame is due in great part to the efforts of Coach Kelsey Green and his team of outstanding assistant coaches, skilled and inspirational tutors respected for their ability to develop potential into excellence; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Kelsey Green and his outstanding athletes have clearly made a contribution to the spirit of excellence which

is a tradition of Chenango Forks High School; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Chenango Forks High School Football Team, its members -- Tim Batty, Kevin Purce, Rick Mirabito, Tim O'Branski, Ben Farnham, Jim Nicholson, Tim Green, Dave Falcon, Jason Chier, John Florance, Jarred Wells, Tyler Spencer, Joe Nicholson, Ben Collingwood, Chris Kwartler, Dylan Rittenburg, Drew Hessney, Alex Sabo, Nick Tarnowski, Brian Baxter, Joe Cippolina, Alex Williams, Tim Briggs, Storm VanDoorn, Josh Preston, Kyle Firmstone, Josh Cary, Dave Fendick, Ben Lewis, Luke Parga, Jesse Sherman, Brad Watson, Brian Hall, Matt Faughnan, Randy Riley, Ed Samson, Adam Stampfler, Zach Vredenburgh, and Justin Brewer -- Assistant Coaches Dave Chickanosky, Dave Hogan and John Petley, and Coach Kelsey Green on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Chenango Forks High School Football

team and to Coach Kelsey Green."

ACTING PRESIDENT MORAHAN: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, it's an honor for me to stand here again for the second consecutive year to honor the Chenango Forks Football Team. This is their second state championship in the last two years.

They actually had gone to the state championships three years in a row. After getting there the first time, they figured it out and got it right, were able to win last year and again this year.

And as a matter of fact, Mr. President, this team, along with the team last year, is undefeated. They have never lost a game and certainly carried that tradition into the Dome at Syracuse this year when they took on a team from Rye, a team that was averaging about 27 points a game during their regular season. And, quite frankly, in the second half of the game that team never made it past the Chenango Forks 48-yard line. And if you

look at the size of some of these young men, I think you'll understand why.

We have some individuals -- and certainly we named all the individuals on the team. But the entire team was successful again this year because of team effort.

Certainly, while there are key players -- and again, quarterback Tim Batty was named the Most Valuable Player of the game and Matt Faughnan was the Most Valuable Offensive Lineman of that game in a superb performance -- it is a team, Mr. President, that comes together, that allows those individual players to do what they can do best. And this team certainly has played well together over the past couple of years, and again for a very, very successful season.

I want to also congratulate Coach Green, because certainly Coach Green has some very special skills. He's been able to put together a championship team during the past two years, and certainly taking this team to the state finals in the previous year. That is a very, very rare talent.

And, Coach, you should be applauded

for your hard work and dedication and what you do for these young men.

Mr. President, it is always an honor for this body to -- Madam President. I did not see the change. Excuse me, Madam President.

It is always an honor for this body to honor those young men and women who are -- who excel in athletics. And in this case it is a special honor, because they come back for a second year.

This is a very special group of young men. They do well academically. They have served their community well and given great pride to not only Chenango Forks, but also to Broome County.

There's also an additional thing I'd like to add, Madam President, is that there's another individual who has some great pride who's joined us in the chamber today, and that's former Minority Leader of the Assembly Clarence Rappleyea, who's over here by the clock. His grandson Zach is again on the team.

And he too shares with us today,

Rapp, the joy and pride not only of the championship that these boys have won, but certainly special on behalf of your grandson.

So, Madam President, it is again a pleasure for me to present to this body the champions of the Class B Title in New York State, the Chenango Forks Blue Devils.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Congratulations and best wishes for similar success.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: Thank you. If

we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 8, Senator Oppenheimer moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 1877 and substitute it for the identical Senate Bill Number 949, First Report Calendar 240.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Thank you. If we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 14, by Senator Trunzo, Senate Print 150A, an act to amend the Penal Law, in relation to the unlawful sale of tobacco.

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, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 91, by Senator Golden, Senate Print 1942, an act to amend the Elder Law, in relation to a bill of rights of senior citizens.

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 152, by Senator Alesi, Senate Print 965, an act to amend the Penal Law, in relation to endangering the welfare of a child.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 153, by Senator Padavan, Senate Print 1138, an act to amend the Penal Law, in relation to the disposal of allegedly stolen motor vehicles.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 172, by Senator Volker, Senate Print 2727 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 173, by Senator Little, Senate Print 1615, an act to provide for the application of a local law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 178, by Senator Robach, Senate Print 1469, an act to amend the Highway Law, in relation to the designation of the Erie Canal Expressway.

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, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 180, by Senator Little, Senate Print 1881, an act to amend the Highway Law, in relation to the designation of a portion of the state highway system.

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, 43.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President. If we could have the bells rung at this time to let the members know that we are going to the controversial reading of the calendar.

THE PRESIDENT: The Secretary

will ring the bell.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 172, by Senator Volker, Senate Print 2727, an act to amend the Criminal Procedure Law, in relation to capital punishment.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President, this is -- the bill in question here, Senate 2727, is almost identical to a bill that this house passed last year. There are a few minor changes in it.

But it is a bill that deals with, obviously, one of the most serious issues of our time, the death penalty, something that it has been my lot to carry. In fact, I guess I have to say my family's lot, since my father

wrote the minority report to the Bartlett Commission in 1964 and predicted at the time that -- because he knew the death penalty was going to go down, and he predicted a huge and massive increase in murder and violent crime. And of course he was totally right.

And he predicted at that time that sometime in the future people would get fed up with it and they would start passing very tough criminal statutes, and eventually they would get back to the death penalty. And then the murder rate would drop down again. And then, when the murder rate was at a big low, all of a sudden, particularly in New York City, they would start saying: Well, I guess we don't need the death penalty, it's a bad thing. And then there would be a move to get rid of it.

Well, we're in that phase now. It's been ten years since we passed the death penalty statute, almost to the day. I was looking at the -- I have it right here, it was March 6th. In fact, Senator Klein was then Assemblyman Klein and was one of the people that voted for it.

There are only 28 people here that were here in 1995. The Assembly -- and I've got the numbers here somewhere. We researched this very thoroughly. The way we look at it, ultimately, when this is voted on by the Assembly, you don't do it really by individuals as much as by districts.

We expect -- and we may be wrong -- that the same districts pretty well will vote the same way. Despite what the media says, because they don't really understand that this is not a plebiscite vote. We have a democracy, not a plebiscite kind of situation.

The issue here really does not relate to the death penalty as such. Let's be -- let's understand. In ten years, the Court of Appeals, that's known to be very liberal -- I guess you'd have to call them anti-Legislature, because they've really done us in on budget matters and a whole series of other things -- couldn't find anything really substantial in our death penalty bill to declare it unconstitutional. All the attacks on the death penalty have been procedural.

And we realized, by the way, last

year that they'd have to find something else. So what's fascinating is the provision that the Court of Appeals is attacking, many of us believed was the other -- the reverse, that we thought it was more pro-inmate. But if you're anti-death penalty -- the four judges, in my humble opinion, showed exactly what they thought. They looked at it from the anti-death penalty side, just as Dick Dollinger, who argued this provision with me on the floor, did. And he looked at it from the anti-death penalty provision because he was anti-death penalty.

What the Court of Appeals said is that they're so afraid of the death penalty that somehow people in the jury would get into a huge fight and say they're afraid to let a deadlock happen, because then the person could get out after 25 years or whatever it is because of the way the law is now.

That doesn't rank very highly, by the way, with the feeling for juries. And I have to say this, and then I'll get right into this and be quick. Many of the top criminal lawyers in this state that I've talked to,

many of them anti-death penalty, were very upset at this decision. In fact, some judges who are friends of mine, who are -- as I said, they're not pro-death penalty -- because they felt this was an attack on the jury system.

And that is happening, by the way, all over the country. The judges are overruling not only legislatures but juries, because they feel that judges have a better understanding and should be allowed to make decisions on the law.

That's wrong. The whole system of government in this country is based on a jury of your peers and the opportunity for local people to make decisions in those cases. And I only point that out; you can argue whether you're right or wrong or anything you want.

This Governor's program bill is very simple, really. It's a procedural matter. This bill deals with the decision of the Court of Appeals in People vs. LaValle. No one, by the way, disputes the fact that LaValle was guilty.

As a matter of fact, in all the murder cases the issue of guilt has never been

an issue. In fact, no one who's been executed in this country in the 28 years since the Supreme Court restored it -- oh, there have been some disputes about it. No one has really been found to be executed when innocent. I want to point that out.

There have been cases where people have been found guilty and then -- in Illinois, for instance, because of DNA and some other things -- they were let go because of evidence. But no one has been executed who has later been found to be innocent.

What this bill does, it says that those convicted of first-degree murder be unanimously sentenced by a jury to either death, life without parole, or a life sentence. That's added to the three options.

And then the deadlock provision, which is the most important, says if the jury is unable to agree, then, instead of a life sentence, they would be sentenced to a term of life imprisonment without parole.

Now, our current death penalty statute was adopted in '95 by about a two-thirds majority of both the State Assembly

and the Senate. That, by the way, mirrored the support of the death penalty in this state at the time.

I think it probably would still be two-thirds outside the City of New York, but it has declined somewhat since then because there's been so much anti-death penalty publicity, I don't think there's any question about it.

The 1995 statute brought in unprecedented protections for capital defendants. Nobody in the country has as much protections as we do. Guarantee of two state-funded public sector or private sector capital-qualified trial and appellate division counsels for every single defendant. Training and legal assistance for prosecutors. Requirement that capital crime aggravators be proved in the guilt phase. 120 days for the district attorney to deliberate on whether to seek the death penalty or not.

This is not well known; unprecedented proportionality data collection and weighing by the State Court of Appeals. Substantial limitation on what constitutes a

death-penalty-eligible offense. Prohibition on the execution of mentally retarded.

And this statute was one of the earliest statutes to declare that only 18-year-olds and older -- and that was an interesting discussion. We all felt that the Supreme Court ultimately would declare that under-18-year-olds shouldn't be executed. And, frankly, I was agreeable to put that anyways, because I don't see the deterrent effect of under 18 years old.

Although I had met a couple of people who I think -- one fellow who admitted to 18 murders by the time he was 14 years old. He probably deserved it, but I don't think you could find any deterrent in that fellow.

Individual voir dire of jurors. Mandatory nonwaivable direct appeals. That really is -- and if you look in the bill, the mentally retarded section, which relates as much to mental illness as mentally retarded, the one thing about it is there were a lot of advocates who wanted us to say, You can't be executed if you're mentally ill.

That would put it -- every attorney

who ever came in on a death penalty case would argue that. He can argue it now. But if you ever tried to do that, I mean, that's -- that's an open invitation. Who knows, really, what completely determines mental illness.

But right now, the way it's set up, anybody with any substantial mental illness will never be executed. Ted Kaczynski, for instance. The gentleman's brother is now the leading -- leading against the death penalty. He's only here because his brother was a mass murderer, a serial killer. But there's no way he would ever be executed under New York law. His -- even if he got past the issue, the normal issue of mental illness, the jury would never execute a person under the mitigating provisions. There's just no way it could happen.

In People vs. LaValle, Judge Bundy Smith, writing for the four-to-three majority, held that a strictly procedural law, not the first-degree-murder statute, violated the constitution's due process laws. And that's the deadlock provision they talked about.

We believe that Senate 2727

requires that, in addition to the capital punishment and life without parole, juries would have a third option, as you know. I'm just going to comment quickly on all this stuff about innocent people being executed, to set the record straight a little bit. I've sent some stuff to the daily papers in this state. Nobody's ever printed it. Which, you know, is the way it is, I guess.

We often hear anti-death penalty opponents bring up the issue of innocent persons being executed. They pointed out that a hundred-plus death row defendants have allegedly been exonerated.

Every defendant convicted under New York's capital punishment statute was indisputably guilty, so much so that their own attorneys routinely admitted their guilt in the opening statements in the trials because they were so worried about the possibility of the death penalty.

And by the way, people have been diving away from the death penalty, pleading to life without parole and all sorts of things, which has saved us millions and

millions of dollars, despite the contention that it has cost us so much money.

Death penalty opponents and prosecutors have debated the issue of the innocence situation. And prosecutors from United States, California attorney general's office, former attorney generals from Illinois, and the National District Attorneys Association have examined the purported exoneration, to determine that the vast majority of the defendants involved were anything but innocent. The majority were reconvicted on the same charges. Others had key evidence proving their guilt suppressed, or their real trial was not able for other reasons.

For all intents and purposes, the majority of those people exonerated were factually guilty. And that's something that many of us have talked with prosecutors across the country on these issues. You throw out the evidence, under our system -- it's the way it should be, by the way. If you don't have evidence, you don't convict them. You not only don't find them for the death penalty,

you throw the conviction out. And that's just the way the system is.

We must also recognize and understand that a selected few of the exonerated were in fact innocent. Some may say, I told you so. However, I take the opposing view. The judicial system is working as intended. The main ingredient of our adversarial system, with multiple capital-qualified counsels, a neutral judge, a jury of ordinary citizens, mandatory nonwaivable appellate review -- which, by the way, almost no other states have -- qualifications for the defense attorneys, and the ability to rectify any potential indiscretions or anything of that nature that was done during the capital case is something that we believe is critical. As I have often said, I don't want to see to anybody executed who's not guilty.

The fascinating part of this is -- and it hasn't come out -- is that no one has ever been able to really claim with any kind of substance that in the last ten years any of the people convicted were not guilty. Our

death penalty statute has been free from racial, religious, ethnic, geographic and all other forms of bias.

It's a tool that should be available to prosecutors in deterring criminal behavior and has proved over and over again, in my opinion, to save thousands of lives.

I'm just going to finish by saying, you know -- and I know one of the local papers looked at -- these are the declines in murder and violent crime in this state since 1995. Anything you want to say about George Pataki -- and there's been a lot of criticism of George Pataki, and I realize that. There's been a lot of criticism of me, too. And it's probably more me justified than him.

But his legacy in this state is going to be that he took a state that had a reasonably high murder rate -- in fact, more than that, at times was extremely high -- and with tough criminal statutes and the death penalty together, because it's not -- you don't do it all separately, brought the murder rate and the violent crime rate in this state down to a point where the rest of the country

admires us immensely. The lowest crime rate of all the major states in this country.

We're not perfect, but we also have something that other states don't have, and that is a declining prison population. Which was thought to be impossible, with the rest of this country, for the most part, seeing continually increasing prison populations. And our prison population went approximately -- and these are all approximates -- from 25 percent violent, 75 percent nonviolent to 75 percent violent, 25 percent nonviolent.

If California were able to do what we did, they wouldn't have 165,000 inmates. And as we stand here today, they wouldn't have our correction commissioner in California advising them about the system that they have. Which is, in my opinion, a warehousing system, but that's just an opinion of mine.

What we're criticized for is what's happening in California, but we're not doing that in this state. And I still believe we need the death penalty, not to execute all kinds of people, but just to be there to take

care of situations and make sure that everyone understands that this state is very serious about killings and about violent crime.

ACTING PRESIDENT LITTLE: Senator Schneiderman.

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

I think that we are faced here with a fairly stark decision. And the decision, in my mind, is not whether or not to vote in favor of this bill and move forward to restore the death penalty in New York State, the decision is, is the New York State Senate going to live up to its obligations as a legislature, is the New York State Senate going to gather up all of the voluminous evidence, all of the reports and studies that have been developed in the last decade since we last visited the issue of death penalty, are we going to inquire into the facts that underlie Senator Volker's arguments, or are we just going to do a quick patchwork fix and jam this through in the less-than-two-week-period since this bill was added to the Codes calendar?

I personally think that while ignorance is bad, willful ignorance is shameful. And what we're engaged in here is an effort for this house to proceed with willful ignorance.

Now, it's one thing for Senator Volker to assert and say, Oh, I believe that there is a deterrent effect, I believe that innocent people aren't being wrongfully convicted. But let's get out the facts. There are many, many experts with far greater knowledge in this field than Senator Volker or myself or anyone in this room, I suspect, that have looked at this issue very carefully over the last ten years. They have produced extraordinary, extraordinary findings that have led people to change their minds.

And I would respectfully submit, Madam President, that we do a disservice to every member of this house by not giving people a chance to fully and fairly evaluate the facts related to the death penalty and giving them a chance to change their minds. As the governor of Illinois changed his mind. As defense attorneys in this state have

changed their minds, saying, You know what, now that I look at the way the death penalty is applied, what it really does, I don't think we should have it. As members of the Assembly have changed their mind. As members of the United States Supreme Court in the last decade have altered their thinking on the death penalty.

Are we to proceed without the information that has led these other honest, thoughtful, intelligent people to reevaluate their positions? That's what you're saying today if you vote to move this bill forward.

We should not move the bill forward on a two-week quick-fix schedule. If we had held hearings, as the Assembly did, the members of this house might have heard the testimony and read the documents submitted by Professor Jeffrey Fagan of Columbia Law School, who recounted and cited a large series of studies that completely gut the argument that the death penalty has a deterrent effect. Well, maybe he's right, and maybe -- and although I know he's proceeding in good faith on this issue, maybe Senator Volker is just

wrong.

I mean, maybe Professor Fagan, we should have listened and examined him and asked questions when he stated that all of the studies on deterrence "produce erratic and contradictory results. Some find there is no deterrent effect. One of the studies shows that executions are as likely to produce an increase in homicides in states following execution as there are states where there seems to be a reduction in homicides."

Citing Franklin Zimring -- a great criminal justice author -- and Gordon Hawkins' book Crime is Not the Problem, citing 1997 studies -- a 1999 study explaining the decline in inmate partner homicide in the Journal of Homicide Studies, citing a 2003 study in the American Law and Economics Review, citing the Emory University Law School article in 2004, "Deterrence versus Brutalization: Capital Punishment's Differing Impacts Among States." All of this developed since we last voted on the death penalty a decade ago.

And we are saying if you vote for this today, we shouldn't consider any of that,

that the members of this house should not have the opportunity to change their minds if there's more information out there? I think that that's the wrong way to proceed.

And I think that this attitude that process doesn't matter -- which is reflected, I believe, in the comments about the death penalty procedures as well as the comments about how we move forward as a legislature -- is completely out of line with the most fundamental principles of this republic. Procedure is how we determine guilt and innocence. The right to a jury is procedure. The right to a unanimous verdict is procedure. The right to cross-examination and confront witnesses, that's all procedure. Procedure is not trivial, procedure is critical.

And the New York State Court of Appeals -- majority appointed by Governor Pataki -- having given us back this issue, we owe it to our constituents to address the issues of procedure in a more comprehensive way than we are doing in this house.

Again, ignorance is bad; willful ignorance is shameful. We are proceeding

today, if we vote to move this bill forward, with willful ignorance. I do not think we should do that. I think we should hold hearings. I think we should examine the facts.

And I think that there are members of this house, I am confident, if they proceed in an open-minded, intelligent way, with the integrity I've seen in many members of this house, there are people here who will change their minds if we give them that opportunity. As of today we have not, Madam President.

I'm going to vote no and urge everybody to vote no until we take a more thoughtful and thorough look at what Senator Volker has just stated is one of the most serious issues of our time.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Marchi.

SENATOR MARCHI: Madam President, I have the greatest respect for the Senator who sponsored this bill. And I know he does it in good faith and in the belief and

conviction that it would make -- that it would be a dramatic and realistic appraisal of our method of addressing a problem of this nature where life is taken.

I maintain, Madam President, that the worst possible way in which we can condemn capital punishment is to resort to capital punishment as a response. There have been circumstances where the real perpetrator of a crime has emerged throughout the course of history.

I remember debating this, Madam President, back when I was only 18, which is over 60 years ago, 65 years ago. And there were cases. They had a case in Michigan and across the isle. Michigan was then -- I don't know whether they've been consistently so against capital punishment. But right across the water divide, they had capital punishment. Well, the murder rate was high in both areas. But it was higher in those -- in that part of Canada that was right across the water, that had capital punishment.

So I don't know whether you can demonstrate statistically. But I would ask

you to concentrate -- and I believe the Minority Leader mentioned it. Bob Morgenthau, who runs one of the finest anticrime administration of the law in the United States, and he has -- there are homicides committed in his district. But he is against capital punishment. And he opted and he supports imprisonment, unless circumstances change, which is very rare, of life imprisonment.

So if you're going to be -- unless you are trying to kill the federal government or -- there is no -- there is no recourse in his jurisdiction, which is Manhattan. And Manhattan does have a very heavy percentage of problems with crime, but they treat it differently. And Bob Morgenthau has steadfastly refused to recognize the death penalty as the way to command respect for law.

You're not going to respect the law if you're going to turn around and do the same thing. I'm not saying that this is implicit in the support of capital punishment. But it goes to the heart of it.

So that I believe you make a

greater contribution in adhering to an articulation of opposition to taking life as a method of punishment. And you can do that by life imprisonment. You take the person and remove them from an opportunity to repeat the crime.

I have introduced legislation of that species, and we do provide in the legislation, as they have in areas, that in the event that the crime is committed against the state, then it is of a different color and goes beyond, beyond a criminal intent, almost, in the sense that it tends to abolish a nation.

But other than that, Madam President, I believe that we give a bad example if we say, and our jurors say: You die. We don't have a right to do that, to say: You die.

I don't know how many of you have been in combat during World War II. I know I saw it. And I had taken a position against capital punishment before World War II. But I remember shooting when we were in a very serious war with the Japanese and the Axis

Powers in Europe. And this is self-defense. This was circumstances going beyond.

But when you point an accusing finger, as Bob Morgenthau very courageously stood up -- and I'm not sure that his actions have enjoyed a general approbation. But the fact is that he is still the district attorney of Manhattan County, and this has one of the best records in the United States. So you can be against taking life by doing it in the most enlightened way. I believe Bob Morgenthau has given us an excellent example of what that way is.

So I ask that you reflect very seriously. And I say this most regretfully, because I have the greatest respect for the sponsor of this bill. And I know that he wants to do the right thing and he would not support and would do everything possible to avoid mistakes. But I maintain that most of the major nations, who have very credible records compared to ours, do not have the experience that respect for life evidenced by the state, and at the same time extending a protective hand to protect those who may be

menaced in future attempts to kill, that this would invoke any harm.

So I respectfully request that this not be encouraged and that we take the opportunity and support my bill, which would provide for life imprisonment but at the same time would not call upon the state to say: You die. We don't say that. We don't say that, and we don't do it. And we shouldn't.

ACTING PRESIDENT LITTLE: Thank you, Senator Marchi.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. On the bill, please.

Senator Volker says he believes many things. But again, we aren't supposed to make our decisions based on our personal belief, but on facts. And the fact that we aren't having hearings and the fact that we aren't even all here today to listen to this debate begs the much larger question of how would the State Senate of New York make this determination about whether we continue to have a death penalty in our state.

And in fact, the Assembly did have

five hearings, and they had testimony from innumerable experts around the issues and the questions that were raised by Senator Volker. And I hope that every one of us went out there and got copies of the testimony and went through it and educated ourselves, in the absence of hearings. But I believe confidently that if I were to survey my colleagues, I would learn that very few had either attended the hearings or read the testimony that came out of those hearings.

But I want to address specifically one of the issues that Senator Volker did raise in his argument, the importance of a judicial system that assures that people don't get put on death row who should not be on death row. And the fact that there are enormous costs associated with having that kind of system, costs that are far beyond the costs anyone pays in any state in this country for a model that provides for life in prison without parole.

And there was a recent study released -- actually, just March 6th -- in California documenting that the California

death penalty system costs taxpayers more than $114 million a year more than the cost of simply keeping convicts locked up for life without parole. And that figure from California did not count the millions more spent on court costs to prosecute capital cases. I'll be addressing those issues a little later.

That report concluded that Californians and federal taxpayers have paid more than a quarter of a billion dollars for each of the state's 11 executions, a quarter of a billion dollars for 11 executions, and that it costs $90,000 more per year to house one inmate on death row, where each person has a private cell and extra guards, than in the general prison population. This additional cost per prisoner adds up to another $57.5 million in annual spending for the 640 Californians currently on death row.

So when we talk about the costs, of course we talk about the cost to us as a society when we make a mistake and someone ends up on death row when they should not have been there, or the costs to society from a

moral perspective of appearing to have a criminal justice system that is based on a model of vengeance rather than justice and protecting the public.

But these are also costs that I think we can all identify with here in New York State, because we struggle every day as state senators to figure out how we're going to provide for the fundamental and basic needs for our citizens without enough money in our budget. We're in budget process time now.

And perhaps it's callous to talk about the death penalty in the contest of the expenses, but it's a very real issue. Every day we decide we don't have the money to provide programs and services that save lives. You know that's true. As committed legislators, every single day you read something or you talk to a constituent group who has ideas about if the state only had the money for this, we could save lives, we could save money down the line, we could be a better society, we could be a society with less crime.

And every day, whether you say it

to them or not, you think in your head why don't we have the money and what are the trade-offs. And you often think about the trade-off of could you ask your constituents to pay a higher tax to pay for that, and what that would mean.

But you never think about, I would argue, how much money the State of New York would save and have available to spend on important lifesaving issues if we didn't have a death penalty.

So the irony, I suppose, is we've had a death penalty since 1995 that has cost us a fortune, has taken money out of other important programs, including public protection programs, and yet I suppose, from my perspective, being anti-death penalty, the good news is we haven't executed anyone.

But I don't ask you to just take my belief for it. I ask you to listen to me as I cite some of the statistics and data from national studies, studies that were testified to in the Assembly hearings that we're not giving ourselves the opportunity to listen to, studies that document not just the questions

of how many people have been exonerated from death row but the cost of having a system where you have capital cases.

It's the most expensive form of criminal justice there is. The court costs are enormous. Death penalty cases are more expensive at every stage of the judicial process than similar nondeath cases that result in life in prison without parole. They are lengthy, they are complicated. They need to ensure that there are a series of rights for appeal. We have to do that. Otherwise, how could we look ourselves in the face knowing that people do get exonerated from death row?

So we spend more time on pretrial preparation. They typically take over a year to come to trial. There are more pretrial motions that have to be filed and answered. More experts have been hired. Twice as many attorneys will be appointed for the defense, and a comparable team for the prosecution. Jurors have to be individually quizzed on their views about the death penalty. They are more likely to be sequestered.

Two trials instead of one will be conducted, one for guilt and one for punishment. The trial will take longer. A cost study at Duke University estimated that death penalty trials take three to five times longer than typical murder trials. And then comes a series of appeals, during which the inmates are held in the high security of death row.

A study that has been cited over and over again -- and I'm sure you'll hear more about today -- out of Columbia University Law School demonstrated how few capital cases actually result in an execution. That study found that 68 percent of death penalty sentences or convictions are overturned on appeal.

Now, Senator Volker, I think, would argue that that proves that there's constitutional protections in the death penalty model. Well, it also proves that we're spending an enormous amount of money not to execute people but, rather, to put them through the process.

The serious errors that have been

discovered during the sentencing process must be done over and over again. When these death penalty cases are retried, approximately 82 percent result in a life sentence. Thus the typical death penalty case has all the expenses at its early stages and through appeal, then it's overturned and a life sentence is imposed, resulting in all the costs of a lifetime of incarceration plus all the costs of a capital case, death penalty case.

Nationally only about 12 percent of people who have been sentenced to death have been executed. Again, from my perspective, a good thing that we're not putting more people to death, but, from a financial and cost analysis perspective, an unbelievable amount of waste of money -- rather than simply moving to a system, as we can and have done in this state, of having the option of life in prison without parole.

And the cost studies are startlingly shocking. The cost studies show that at minimum, at minimum, New York State has spent over $170 million since we imposed

the death penalty, without executing anyone. But most people argue, when you look at the national studies, that that New York figure is low.

The most comprehensive study conducted in the country found that death penalty costs in North Carolina were $2.16 million more per execution than the cost of a nondeath penalty system imposing life imprisonment without parole.

The Miami Herald estimates the costs of the death penalty in Florida were $3.2 million per execution, based on the rate of executions at that time. And that time was in the year 2000.

In Texas, a study on death penalty costs showed an average of $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level in Texas prison for 40 years.

The Sacramento Bee found that the death penalty costs California $90 million annually beyond the ordinary cost of the justice system. And again, I just cited you earlier a more recent study just from this

week.

A recent study in Indiana by their Criminal Law Study Commission found that the total costs of the death penalty projected into the future for the state's current capital cases would be about $51 million, exceeding the future costs of life in prison without parole by 38 percent.

The studies go on and on and on.

Why are we prepared to go back to a system in New York State where we will make the conscious decision to spend millions of dollars more per prisoner on a death penalty system that will likely not increase the number of executions but will translate into each of us having to explain to our constituents why we don't have the money for education or for health care or for an emergency food program in your community or for public transportation or for lifesaving programs?

There is no justification from an expense perspective for us to move forward -- excuse me, move backward to the system we had in place for ten years that documented that we

were wasting money, we were not deterring crime, we were -- in fact, in some studies it shows that the biggest penalty paid in a death penalty state is by the local counties, who, having to pay for the costs of trials, end up cutting back on other trial expenses or other public safety. They spend so much of their money that in fact poor counties nationally can end up bankrupting themselves with one trial.

Certainly all of us know from our own counties the pressure they are feeling based on the decisions we make in this Legislature. It is an odd statement, perhaps, but is not reestablishing the death penalty yet one more expensive unfunded mandate on our counties?

But I have to, even though I'm supposed to focus primarily on costs today -- and I think I've made some solid arguments that could be made far better if the actual experts came and testified before us. Experts like Jonathan Gradess, executive director of the New York State Defenders Association, or Richard Dieter, executive director of the

Death Penalty Information Center, or James Liebman, a Columbia professor who, with Professor Jeffrey Fagan, did the national studies.

But I also have to say, from a moral perspective, and from a respect for the power of the courts and the importance of judicial system that works, I have to ask myself the question as I read all of these studies that a system that requires college students to provide justice as a class project, as happened at Northwestern University, my alum university, that helped to advise the governor of Illinois to call for a moratorium on the death penalty -- the concept that whether somebody is exonerated from death row is the luck of a draw of whether a group of college students got assigned it as a class project is not a system I believe we can justify in our time anywhere in this country.

So I also urge my colleagues, vote against this bill today and go out and educate yourself on the actual facts and figures about the death penalty, what it costs us financially and what it costs us morally.

Thank you very much, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Parker.

SENATOR PARKER: Madam President, on the bill.

ACTING PRESIDENT LITTLE: Yes, Senator Parker, on the bill.

SENATOR PARKER: I'm actually astonished that we are having this conversation without any regard for what the trends have been nationally, what people have talked about around the state, what our constituents say or what our constituents think.

I thought, when I came to the Senate two years ago, that, you know, I was coming to a deliberative body, a place where we, you know, thought through the important issues of the day, that we took time to listen to the voice of the people who we represented, to listen to people who run agencies, people who do the work day-to-day on the issues that we are going to be considering.

And that's not been the case on a critical issue, that when we talk about capital cases and how you dispose of them, to talk about enacting the death penalty with -- you know, without any kind of deliberation, without any kind of thought or study of the issue and where it has moved in the last ten years, I think is a -- is almost, Madam President, a crime against our communities and against the people of the State of New York.

I think had we taken the time to listen to what the studies have said and what people around the state thought vis-a-vis Senate hearings on the issues of reenactment of the death penalty that we would have gotten some important data; that we would not only have raised some of the moral questions that were just discussed by Senator Marchi -- and I appreciated his comments. I agree with him that I don't think that the way that you combat violent crime is by committing more violence. Violence begets violence. They say that, you know, an eye for an eye, a tooth for a tooth, and then we stand around and everybody is eyeless and toothless. And

that's not the situation I think that we want to be.

At a time when we are talking about violence on video games and we talk about what's happening sometimes in the music industry and we talk about the violence there, to have state-sponsored violence doesn't send the kind of message I think, Madam President, that we want to send to our children.

And so had we spent time and actually listened to the testimony the way the Assembly did, then I think we would have gotten some important information. We've gotten important information about how the death penalty impacts on race, how it impacted on mental illness, how it acts as a deterrent, and, most importantly, how it acts in terms of the impact it has on victims and the victims' families.

And one of the testimonies that was heard by others, but not heard, not heard by the Senate, was one of John Blume, the director of the Cornell Death Penalty Project. And Dr. Blume talked about all four of these issues, about race, mental illness,

deterrence, and the victim impact on evidence.

And essentially what Dr. Blume has told us is what we've already known, that there's a significant correlation between race and those who are convicted of the death penalty. And I'm going to quote his testimony: "In fact, what we had concluded was that an African-American charged with killing someone who is white is statistically more likely to be sentenced to death in cases involving any other race of defendant/race of victim combination."

All right? And in effect, it's significant that they are three to four times more likely to be sentenced to death. So they're telling us something that, again, we've known for a very, very long time.

He goes on to further say: "One important point is that this race effect is not confined to former slave states. As a former son of the South who is now happy to be a New Yorker, I wish I could say that was the case, but it is not. I also wish I could say that these race effects were a thing of the past, but the data does not support such a

conclusion. Race has and does determine in many cases who will live and who will die.

"So if this committee reinstates the death penalty in New York, it is inevitable that at least some of the persons who are sentenced to death will receive the ultimate punishment because of their race and of their victim's race. That is a fact of doing business in the death penalty in the world." And that's a quote from John Blume.

He also goes on further to talk about those same types of impacts as it relates to people with mental illness. And I know that Senator Volker touched a little bit on this, and he assures us that this is not the case. Dr. Blume argues that in fact that is the case, the fact that people with mental illness oftentimes are executed summarily, you know, through the death penalty.

And again I'm going to quote Dr. Blume, because he says it better than I can.

"No fair-minded person can dispute that the death rows of every state have a disproportionate share of mentally ill

individuals. A number of different studies and even a cursory view of the appellate court decisions demonstrate that it is not at all uncommon for persons with mental retardation. Schizophrenia, fetal alcohol syndrome, autism spectrum disorders, depression, and manic-depression or bipolar illness to be sentenced to death.

"I recently completed a study of death row volunteers or inmates who waived their appeals to submit to execution. My research revealed that 70 percent of these individuals had been diagnosed as having a mental illness and that there was a very high incidence of the most severe mental illnesses, including schizophrenia, depression and bipolar illness."

So again, you know, we are looking at reinstituting a policy that is going to, you know, significantly impact on those who are mentally ill.

Dr. Blume goes on to further say, about this issue about mental illness and the death penalty, that "If the death penalty is to be reenacted in the New York, there should

be an exemption for persons who are severely mentally ill. For example, a current proposal by the ABA Task Force on Mental Illness and Capital Punishment, of which I am a member, is worded in terms which would prevent individuals with severe mental impairment or mental illness from being executed. But it would not bar the death penalty for a person who, for example, only is determined to have a substance abuse disorder or antisocial personality disorder."

So, you know, in the case of African-Americans, in the case of people with mental illness we are disproportionately implementing a policy that is detrimental to those groups.

Many people have also talked about the idea of a deterrence. And again, this is something that Senator Volker raised, that the idea of having a death penalty is a deterrent. And again, Dr. Blume contradicts that argument. And again, I'm going to quote him:

"The overwhelming weight of the scholarly research indicates that the death penalty does not deter persons from committing

murder. First, our research reveals that states that have abolished capital punishment by and large have lower murder rates than states that retain capital punishment.

"By way of contrast, all the former slave states have death penalties, and most routinely sentence persons to death. Yet, on average, Southern states have higher murder rates than other regions of the country.

"Second, I have spent some time studying serial killers, which I think we would all agree, to borrow a phrase which has been previously used in these hearings, are the, quote, unquote, worst of the worst. For the most part, these individuals are more intelligent than the average death row inmate and also, again, as a general rule do not suffer from a psychotic thought disorder. Thus these persons would seem to be the most susceptible to the deterrent effects of capital punishment, because they have the ability to make the necessary cost-benefit analysis.

"But the most notorious serial killers in recent times -- Ted Bundy, John

Wayne Gacy, Donald H. 'Peewee' Gaskins, Aileen Wuornos, to name a few -- all committed their crimes in states which have active death penalties. They were also all apprehended, convicted, and sentenced to death. The threat of capital punishment was no deterrent to them.

"Third, and finally, in my study of death row volunteers I uncovered cases where some individuals committed murder for the purpose of being apprehended and sentenced to death. Thus there are cases where retaining capital punishment may lead to an individual -- admittedly, a mentally ill one -- to actually commit murder as a form of suicide."

So again, as a deterrent, the death penalty doesn't hold any weight. If we're going to truly, you know, create a society where violence is not the norm, creating state-sponsored murder is not the way to go, according to not just the moral teachings of many of those in the state but actually the experts.

And the impact in terms of victims

and the victim impact evidence also is not necessarily important as it relates to the death penalty. And again, I'm going to go back to Dr. Blume's testimony. And he says, and I'm quoting him:

"One of the ironies of how victim impact evidence has played out is that it is essentially a one-way street. If the victim's surviving family members support the prosecutor's decision to seek the death penalty, then their testimony is embraced. If, on the other hand, they oppose the prosecution's decision to seek death, then they are, for all practical purposes, ignored.

"There should be a role for victims in the criminal justice system. I would not dispute that. Keeping victims involved in the process is a good thing. But I have doubts as to whether the best way to accomplish this is to permit victim impact evidence during the sentencing procedure. In fact, based on my experience, there are several negative consequences that flow from permitting victims' impact evidence. I will briefly touch on two.

"First, many victims' family members are misled by the idea, often coming directly from victims' advocates or DA offices, that the death sentence will bring closure. While it would be presumptuous of me to say that that's never the case, my conversations with a number of surviving family members reveals that it's often not the case. Why?

"First, even if the defendant is sentenced to death, there will be years of appeals. And almost every time an appeal is rejected or granted, there will be media coverage of the case, leading to a reexperiencing of the trauma. Second, a significant number of the cases will be reversed on appeal. Then there will be a retrial or the case may at the point end up in a plea bargain for a sentence less than death.

"Second, because of perceptions that victim impact evidence is so powerful, prosecutors who intend to seek the death penalty are not above cajoling even reluctant family members to both support the decision and to proceed with the capital trial and

testify at the sentencing phase. But if the jurors choose life despite the victim impact evidence, the testifying family members will feel as if they have failed their loved one."

So to me this is, you know, more than enough evidence that indicates that this is not a policy that we ought to be following. That we do ourselves more harm than good, that we have unintended consequences for victims' families, unintended consequences for, you know, African-Americans and people who are mentally ill.

And, more importantly than anything else, that it does not do anything to deter the kind of violence that we seek to deter with the kind of -- the good intentions behind a policy such as this one. We're better off spending the savings that we would save by actually eliminating the policy that Senator Krueger raised and put those monies into our communities, to put it into policing, to put it into better programs for our young people.

And so I ask you today to vote against this bill, to not go back to the past and not to put, you know, more bad policy

after bad policy as it relates to the death penalty.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Duane.

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

ACTING PRESIDENT LITTLE: Thank you, Senator. On the bill.

SENATOR DUANE: You know, I just want to reiterate what it is that we're doing here today. We're really just passing a one-house bill. That's it. We know that the Assembly is not going to pass this bill. And by the way, we also now know that a plurality, if not a majority, of New Yorkers are against the death penalty now.

So the ten-year experiment that we had with the death penalty in New York is over. And as someone who is strongly opposed to the death penalty, I'm happy that our experiment is over and has been shown to be a dismal failure.

You know, there are so many important criminal justice issues facing our

state, including the lack of action on addressing real Rockefeller Drug Law reform. One, by the way, that would include recognizing that drug addiction is not only a criminal justice issue but also a public health issue.

But we're not dealing with that. Instead, we're really doing what I would call press release legislation on the death penalty.

And let's be honest. What happens in this state if someone is convicted of murder? He or she is not getting out of prison in New York now. Can anyone sit here and honestly say that the Parole Board would ever let any of these people out of prison? I mean, the Parole Board right now isn't even, in the vast, vast majority of cases, allowing nonviolent felons to get out of jail. So why would we think that someone convicted of murder would be released under the Parole Board?

And let's be honest about what happened here. The Legislature, including the Senate, knew about the jury deadlock provision

when the death penalty law was originally passed. Everybody knew it was problematic, but for ten years no one did anything about fixing it. So, you know, why should we express surprise or outrage that the Court of Appeals did the right thing and overturned the death penalty?

You know, the very first veto I believe that former Governor Cuomo did was on the death penalty, and he said because he didn't want to be responsible for putting an innocent person to death. And you know, he was right then and he would be right today as well.

And, I mean, New York has sent many innocent people to prison for murder. One of them was Bobby McLaughlin. And he said something to the effect of "You know, if New York State had had a death penalty when I was convicted, I'd just be ashes in an urn on my parents' fireplace." He was found to be innocent, but he could have been put to death if we had had a death penalty.

You know, there is no way to right the wrong of killing an innocent person.

There's no way to make that right. So what moral justification could our state have for putting a person to death who it could turn out was an innocent person?

And, you know, my colleagues have pointed out very appropriately that we didn't have hearings on the death penalty in this chamber. The other side, they did, they had hearings on it. So I would also like to put some things on the record here that should have been put on the record in hearings. But we didn't have hearings, so they can't get on the record that way.

So I just want to try to get some of them on the record here. Should anyone look at why it is that people voted the way they voted here, at least they'll have some background on why so many of us, particularly on this side of the aisle, but also on the other side of the aisle, are voting against the death penalty.

And I also want to talk about the studies that were done by Professor James Liebman and Professor Jerry Fagan about the death penalty. And they did two studies that

traced the outcomes of judicial review of the 6,000-plus death penalty verdicts imposed in the 23-year study period of the 34 states that had the death penalty at the time. Now, New York was not included because New York didn't have a death penalty.

But of the states that did have the death penalty, the state and federal courts overturned 68 percent of all death penalty verdicts reviewed. And about half of those verdicts were overturned because the finding that the defendant was guilty of capital murder was so seriously flawed and so unreliable that the verdict could not be enforced. So our critical justice system and our judicial system is humanly flawed.

In 85 percent of the states, of those states that had the death penalty, the reversal rate was over 50 percent. That means that any death verdict imposed was more likely to be rejected on appeal than approved for execution.

Now, 82 percent of all death verdicts reversed and sent back to new trials ended up in sentences less than death,

including 9 percent ending in a finding that the previously condemned defendant was not guilty. So 9 percent of those people who were sentenced to death were ultimately found out to be not guilty.

So why are we risking killing innocent people? Why would we do that? Well, the fact is we probably aren't going to do that, because, as I said before, the other side is not going to do that.

So, you know, I know -- and believe me, I'm going to be putting out a press release saying that I voted against the death penalty. I assume the people who are voting in favor of the death penalty are going to put out a press release saying that they are voting in favor of the death penalty. But really, to what end is that except just to try to legislate in this body by press release?

If we really, really cared about our criminal justice issues in this state, then we would have had a hearing on the death penalty. And beyond that, we would go back to the table and try to really work out a way to reform Rockefeller Drug Laws so that we don't

just look at it as a criminal justice issue but also as a mental health issue.

I'll be voting no on this, and I encourage my colleagues to vote no on it, both because it's wrong and also because the process by which this came to a vote here today is so flawed, it's as flawed as many of the death penalty decisions that juries have made in our nation.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

I rise to oppose the death penalty legislation that we're considering today. I think that we can appreciate the fact that we have a court-imposed sunset of our death penalty law and that this is an opportunity for us to review the effect, the effectiveness and the implications of this statute.

And we should do that, I think, by holding hearings where we hear from a variety of independent sources, testimonials, both pro

and con. And this should be a requirement before we implement or we reinstitute our death penalty.

I have a number of facts that I have been able to get, based on the Assembly's hearings, and it's very interesting. I have testimonials from two people in particular who were convicted of crimes that they did not commit. And moreover, had we had a death penalty law, in both of those cases those people probably would have been executed.

One of them in particular is a young man, John Restivo, who is a resident of Valley Stream, Long Island. He was arrested and convicted in 1984-85 of killing a young woman and raping this young woman. And it was obviously a very highly tinged death. And there needed to be some action by the local law enforcement based on that murder, because the community was up in arms.

As a result, this young man spent 18 years of his life incarcerated. He was finally exonerated in June of 2003. And he was exonerated based on evidence, DNA evidence, which proved that he and three other

people that -- who were convicted along with him were innocent of this crime.

And similarly, another young person, Madison Hobley, was convicted and spent 16 years on death row before he was exonerated of a crime which he did not commit.

These are just two examples. These are people who came before the committee to provide testimony. They are citizens of New York who would be possibly dead at this point in time had there been a death penalty when they were convicted.

There is a problem, obviously, with our criminal justice system. We know that it is not equal, even though the symbol of our justice system is equality and justice for all. It is not so. And I think there is no one in this room, who is going to be honest with themselves, who would say that this is not the case.

So what are the district attorneys themselves saying about this death penalty? Well, I have here two pages of quotes from various law enforcement agents in their counties, and they have a lot to say about it.

And this comes from them, these are quotes from them.

I quote from District Attorney Robert Morgenthau, and he says: "The death penalty exacts a terrible price in dollars, lives, and human decency." He also said that prosecutors -- this is a quote from Morgenthau: "Prosecutors must reveal the dirty little secret they too often share only among themselves: The death penalty actually hinders the fight against crime." That's from the chief law enforcement officer of the County of Manhattan.

My own district attorney, Charles J. Hynes: "My opposition to the state's policy of life termination in murder cases is pragmatic. Life imprisonment without the possibility of parole is a much more punishing expression of society's outrage."

The Nassau County district attorney, Denis Dillon, simply put, "I am opposed to the death penalty."

The former district attorney of Warren County, Sterling Goodspeed: "I think I could prove to you that I could put someone in

the Waldorf Hotel for 60 to 70 years and feed them three meals a day cheaper than we can litigate a single death penalty case."

Delaware County, former District Attorney Paul Eaton: "In our county, if we had a death penalty case, it would virtually shut us down."

Fulton County District Attorney, former Fulton County District Attorney Richard Giardino: "A single capital case will double our annual budget. Without additional funding, the death penalty serves no purpose."

District attorneys throughout our state have indicated that it is not the death penalty that they need to fight crime but, rather, resources which allows them to build up the kind of law enforcement program that in fact is a true deterrent of crime.

I have evidence over evidence that this punishment, this ultimate punishment, has plenty of problems in terms of the errors that we know exist in our criminal justice system. The Columbia study, for instance, talks about the fact that there is a 68 percent prejudicial error rate in the American capital

punishment system.

What are the sources of these errors? The most common errors, according to that study, is, one, incompetent defense lawyers who failed to seek or simply missed important evidence. And I would add to that that they are underpaid and way overworked.

The other important issue in terms of the problem with error rates is police or prosecutors who suppress evidence, and they know that they're suppressing it.

In addition, the study at Columbia suggests significantly higher error rates in capital cases occur in those states in which judges are more susceptible to political discipline through direct elections and elections that are more frequent and more partisan.

The greater the proportion of a state's population that is African-American, the greater the state's rate of serious error in death penalty cases.

So clearly there are flaws that exist in our criminal justice system. And there are flaws, there's racial bias that

exists in our criminal justice system. And a death penalty on top of this level of error and bias is clearly problematic.

And lastly, Madam President, I just quote from a Times Union editorial by Scott Christianson. And he says, "My own recent study of wrongful convictions in New York documented more than 130 cases all over the state, most of them involving convictions since 1980, in which innocent persons were convicted, mostly of murder, and sentenced to long prison terms."

And I emphasize innocent people. I have them returning to my district being released from prison on a weekly basis, monthly basis, very frequently being returned to their communities after having long sentences, long terms having been spent in prison and being exonerated based on new evidence and a new trial.

So, Madam President, I think that it is just important that we have an opportunity to hear the testimony that comes from law enforcement across our state, from people who have been involved in the system

who've been convicted and they were in fact found to be innocent, as well as our great array of advocates and experts in the field of criminal justice, so that we understand specifically what it is we need to be doing and what we should not be doing especially in reinstituting the death penalty.

I will be voting in on this legislation.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Breslin.

SENATOR BRESLIN: Madam President, on the bill.

ACTING PRESIDENT LITTLE: Thank you. Senator Breslin, on the bill.

SENATOR BRESLIN: You know, being the seventh speaker to oppose this legislation, most of what needs to be said has been said. So I'll try to be brief.

I never thought I'd have the opportunity, coming to this house after 1995, to stand here and debate the death penalty. Because I must say, before I get into what I believe to be the flaws in this legislation,

that I am against the death penalty and would vote against it even if there weren't those flaws.

New York, as well as the remaining 49 states, we should think of ourselves as a civilized society. You know, up until the Supreme Court of the United States a couple of weeks ago said it's cruel and inhuman to execute someone who's a minor, it was just the United States and Iran that executed minors.

Most of the civilized countries of this world, if they had the death penalty, have long since removed it. The European Union, which is really probably the most like us in groups of countries, one of their requirements is not economic, one of their requirements for admission is that you be opposed to the death penalty.

So even without this bill, with another bill that I viewed as not flawed, I would be against the death penalty.

Is it fair, this bill? When you're executing people who kill whites at twice the rate, that doesn't make it fair.

Is it foolproof? It isn't

foolproof when you look at, as Senator Krueger and Senator Montgomery have pointed out, a Columbia study that showed that in 68 percent of the cases there's reversible error. Reversible error.

And what about the 117 people who were convicted, sentenced to death across this country who just on DNA alone were later let go from prison?

And when we think of it, as I just mentioned, racially, when we think of it in terms of the errors that are committed -- and is it a deterrent? The biggest drop in crime is in New York City, where Robert Morgenthau doesn't seek the death penalty. The biggest increase in murders is in and around the Monroe County area, where they do seek the death penalty.

And the idea that it's racial, it's not foolproof, it's not a deterrent, and we've had this ten-year study, this ten-year study that's right before us in facts -- and we don't have hearings? We should all be embarrassed that we don't have hearings. They probably wouldn't convince me otherwise, and

probably wouldn't convince others. But it's our responsibility. It's our responsibility as legislators to accept evidence, to receive it, to analyze it, and to admit where we're right and to admit where we're wrong.

So I am inalterably opposed to this legislation to begin with. But the fact that we haven't reviewed whether it's a deterrent, we haven't reviewed whether it's foolproof, we haven't reviewed whether it's administered differently throughout this state -- why do 65 percent of the capital cases come from a few counties? Does that mean that you really should kill somebody in one county so you won't go to the gas chamber in that county? I don't know. Hearings would tell us that.

So we should be ashamed of ourselves. And for that and other reasons, I vote no on this legislation.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. On the bill, please.

ACTING PRESIDENT LITTLE: Thank

you. Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I agree with Senator Breslin and the people that have said that it would have been very valuable to have hearings, because I know -- and I bet you know, too -- many people that have changed their minds from the information that has been coming out over the last decade. Friends of mine have changed their minds, and I'm sure friends of yours.

And the polls, the polls have shown us that many people in our state have changed their minds. So we're really not where we were ten years ago as far as the feelings of the general population.

But I want to take a little different tack than what we've been talking about and discuss comments that were made by Bob Carney, who's the district attorney of Schenectady County. And his testimony was very interesting before the Assembly committee, because he does support the death penalty. But he hopes we aren't going to reinstate it.

And you may say, how can that be if

he supports it? And he cites criteria problems, cost problems. And I think he has a very pragmatic approach to this. He's not talking racial demographics. He's not talking philosophy or spiritual points. He's just talking very pragmatically about this.

And so -- this was a very long testimony, and I'm just going to skip over all the criteria and the procedural issues that he had and -- except that I should say he feels that no prosecutor would want the burden of a death verdict on his or her conscience. And he says that prosecutors take this obligation very seriously, and they are very circumspect about seeking death. And that is clearly shown by the fact that in more than nine years, only seven people have been placed on death row.

But let me focus on what I think is his most compelling argument. This was his statement, that "Finally, the most compelling argument against the death penalty is the misdirection of resources necessary to maintain capital punishment." And mind you, we're talking about a DA's testimony here.

"At $13 million per year to fund the Capital Defender office, together with all of the money expended for capital-qualified assigned counsel and prosecutor's costs, the death penalty may have cost us as much as $200 million.

"Can it truthfully be said that putting seven people temporarily on death row was worth the expenditure of those monies? For this cost, a handful of defendants have only temporarily confronted the remote prospect of execution."

And he goes on to say that there are so many criminal justice initiatives that are really and truly effective in reducing crime, and they can be enhanced for just a tiny fraction of this money.

For instance, he talks about something that the Pataki administration just launched a couple of years ago, and that's called Project IMPACT. And it has seriously decreased the homicide in the target populations. And that target population were basically the violent gangs. And they have seen a big improvement in street gang --

improvement in their behavior. And that whole program cost $4 million.

And then he talked about a second initiative called Road to Recovery, and there they divert qualified defendants out of prison and into drug treatment.

And these are very small costs. And this DA thinks that they're very valuable because they are working and at a tiny fraction of the cost of putting the death penalty back.

He continues by saying that "Continuing to spend millions of dollars to take a murder defendant who has already been caught and subject him to death rather than life without parole will not prevent the next murder. Redirecting money to more vigorously apprehend and prosecute armed robbers, rapists, burglars and those who commit gun crimes will prevent murder and will save lives."

And so he talks for expanding the funding for Operation IMPACT and Road to Recovery and other equally compelling crime reduction strategies. He says it's a much,

much wiser way to spend our very scarce resources.

And he concludes by saying he doesn't think you can write a law that will restore capital punishment in this state and withstand judicial scrutiny. So he thinks "the continued pursuit of this very quixotic endeavor will require vast expenditures of additional scarce public resources, and we really are better off without it."

And I agree wholeheartedly with -- this is me talking now, not him -- with Senator Marchi and some of the other Senators who have spoken to the fact that if we as a society are condemning murder, then we as a government should not be setting the bad example of murdering.

And as Senator Breslin has spoken of, I don't know of another industrialized nation that has a death penalty. And the only ones I can think of, nonindustrialized Third World, are not -- not nations that we want to be in company with.

So I will be voting against this death penalty.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Sampson.

SENATOR SAMPSON: On the bill, Madam President.

ACTING PRESIDENT LITTLE: Senator Sampson, on the bill.

SENATOR SAMPSON: I rise in opposition of this bill this afternoon. And there are 119 reasons why I'm against the death penalty, because 119 individuals were sentenced to death that were innocent.

I want to quote from a testimony given by District Attorney Robert Morgenthau, and he quotes as follows:

"Convicting an innocent man is the ethical prosecutor's worst nightmare. And that, of course, is compound when the punishment is death. If you have the death penalty, you will execute innocent people. No one disagrees that such horrors occur. The only argument concerns how often. Our jury system in the best in the world. But as the current Broadway production of Twelve Angry Men reminds us, juries are made up of fallible

human beings who are capable of mistakes and misjudgments."

A 1985 study published in the Stanford Law Review in 1987 identified 350 cases in this century in which innocent people were wrongly convicted of crimes for which they have received the ultimate penalty, death. Of that number, as many as 23 were executed.

When we talk about the death penalty, it is not a deterrent to crime. To serve as an effective deterrent, punishment must be prompt and swift. And when looking at life without the possibility of parole, that is the answer.

The Lord says -- the only justification for the death penalty is vengeance, but the Lord sayeth, "Vengeance is mine." So we are basically putting ourselves in the place of the Lord by administering such punishments.

For that reason, I vote against this bill.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

A lot has been said, and I think that many of it is -- may be considered as repetitious. And so the question is why do we each keep saying it? Well, hopefully, if enough of us say it in enough different ways, perhaps somebody may get the message.

And so in looking at some of this testimony that my colleagues have been talking about today, I selected to look at the testimony of John Dunne. And the reason that I chose John Dunne was because he was a member of this New York Senate body from 1966 to 1989.

And he says in his testimony that he had the occasion to vote as many as 12 times to establish a death penalty in New York State. But he also goes on to say that: "Each of these votes were difficult. For each of them, I deliberated at length. Each time I cast a vote for death, I believed that I was doing the right thing morally as well as legally."

He was then the chair of the New York State Senate Committee on Crime and Corrections, and it was his responsibility to examine the disturbances at the Tomb, the Auburn riots, and the prison conditions throughout the state. And when he was at Attica, he observed that during this uprising he still thought that the capital sanctions particularly, then, should be for the worst -- the worst penalties for the worst crimes.

From 1990 to 1993, when he left the Senate, he was the Assistant Attorney General for Civil Rights at the United States Department of Justice, and he headed up the enforcement of all federal civil rights laws. And he came to a new level of understanding -- now, remember, I'm paraphrasing. But when I'm doing his quoting, I will be clear that these are his quotes not mine.

He came, and I quote, "to a new level of understanding and appreciation of the depths to which poverty, racism and civil rights abuses and human rights violations affect the day-to-day lives of our citizens."

In 1995, the year that the death

penalty was instituted in the State of New York, he joined something called the New Yorkers for Fairness in Capital Punishment. Remember, he is still now a proponent of capital punishment. And he said, "The voices of both the proponents and the opponents melded then into a consensual statement of principles."

He said that when the death penalty became law, he said Majority Leader Bruno appointed him to be one of the first members of the Capital Defender Board. In many respects, he said, that experience -- he thought that he was prepared. However, it opened his eyes to the concrete difficulty of trying to implement a fair death penalty statute.

Now, his testimony goes on to talk about some of the cases and the opportunities that he had to try to put together a law panel as well and the difficulties those imposed. He said hiring a capital defender was a very high priority and a difficult task:

"September 1st, the new law became effective, and there was much to do to prepare

for cases that would be capitally indicated. And their charge was to look for a highly talented, experienced criminal attorney with proven commitment to indigent clients and someone with considerable recent experience in capital litigation at the trial level, and a person with the skill to oversee and manage a large office and motivate a staff under difficult circumstances.

"They thought that they had found the right person in doing this, but then similar challenges became apparent in the screening panels under the new law. It was critical that these panels not be viewed as sources of patronage, but, rather, that they needed to have the courage to exclude even experienced criminal attorneys who wanted to handle these cases for the wrong reasons.

"The panel needed to be inspired not to cut corners. In fact, the difficulty of those choices, the fights against patronage, and the effect and effort to get a capital structure, even the one we have on track, showed me the human fallibility, ego, hubris, and the most positive qualities that

most associate themselves with the legal profession frequently stand in the way of assuring fairness, making fairness almost impossible."

He goes on to talk about some of those cases. But the last couple of points that I want to make on his testimony, which made it important to me, was that he says:

"The questions that were raised came under many categories. And the first of such were, Can we always rely on our police, prosecutors, defense counsel and judges to sift through the wheat and the chaff of these capital incidents?

"Can we expect our police, as Governor Ryan's commission recommended, to keep pursuing all reasonable lines of inquiry, whether these point toward or away from an already identified suspect?

"Will prosecutors always and in every case oversee the police, provide open file discovery, concede error where legally compelled, and give due weight to mitigating factors?

"Can the defense ever be truly up

to the task in each capital case in New York?

"Can our judges be assured of their independence, refraining from inserting personal biases, and be intellectually capable in every case?

"To ask these questions is to answer them. The 'always and every' standard that should be demanded for capital cases because life is at stake cannot be met. We know for a certainty that while there will be cases that have all of these elements, some will have very few. We know for a certainty that given a perfect jurisprudential storm, there will be cases where none of these standard will be met. And our problem is that we can never be truly sure, before or after the poison is injected, which is which."

These thoughts and many like them led him then to conclude that the death penalty was impermissible policy. By the time he had grappled with these questions in an official capacity for nearly four years, a part of him, he says, was glad to leave the Capital Defender Board.

After years of upholding death

sentences, he declared, and I quote, "I have come to think that capital punishment should be abolished. I, for one, regret my many votes in favor of the death penalty and join the stream of witnesses that have gone before me concluding that their minds have been changed irrevocably. I believe that the United States should abolish capital punishment and that the Legislature should refer to reinstate it in New York."

He goes on to quote John Paul and talked about, as a Roman Catholic, how he was also guided by the very narrow posture that the Catholic Church has taken. But then he says that "As circumstances improved, the penal system, because it had more sophisticated ability for containment, the Church then began to take a more open posture toward the death penalty."

And later he quotes Pope John Paul as stating that the principles set forth in the New Catechism of the Catholic Church remains valid. "If bloodless means are sufficient to defend human lives against an aggressor, and to protect public order and the

safety of persons, a public authority must limit itself to such means, because they better correspond to the concrete conditions of the common good and are more in conformity to the dignity of the human person."

Thus, he says, "As a Roman Catholic and a former supporter of the death penalty, and as a person who has struggled for more than 40 years with this issue, I urge you not to reinstitute or to reinstate capital punishment, but to use those bloodless means that are associated with life imprisonment without parole to cap our punishment for first-degree murder with that sentence and to use the resources thereby to save the quality of life for all of our citizens."

Madam President, I will be voting no.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Madam President, I look around the chamber and realize that, with one exception,

I have spoken more frequently on this floor against the death penalty, and voted against the death penalty more frequently, than everyone except my colleague Senator John Marchi.

And when I first voted on this issue and debated this issue, the Majority Leader, the then Majority Leader was opposed to the death penalty, as was the number two, the then number-two person in the Majority, Senator Marchi, who was the Finance chair.

I've seen, over the years, members on both sides of the aisle change their positions. I once sat up there right where Senator Savino sits and next to me was a colleague who, after speaking in favor of the death penalty, would whisper to me, "I'm really against this, but my district would kill me."

Through the miracle of reapportionment, in 1982 I got the really conservative parts of his district and he got a whole new district, and he came back and switched his position the next year. I didn't switch mine; I just had to contend with all

his former constituents yelling at me, including some of his family members.

You know, earlier in the debate -- and really before I got over here, but I heard it on the box -- I heard Senator Volker say that, Well, if you look at the Assembly and you do it by districts, the votes should be there.

Well, that's not always true. I haven't done a poll, I haven't done a poll of Senator Marchi's district, but I'm very familiar with all of its iterations certainly since I came to the Senate, even when it had part of Manhattan in it. And when I first moved to New York State, my state senator was John Marchi, because he had part of Brooklyn.

I haven't done a poll there, but I venture to say that every district that he's had, if you did the poll, would be overwhelmingly in favor of the death penalty. Yet he has been unswerving in his opposition.

Indeed, in 1978 he had a very, very close, contentious general election against the Democrats, supported by the then leadership in this conference, and the major

issue was the death penalty. The Democrat was pro-death penalty. And Senator Marchi stood up, didn't budge.

I'm sure he was urged by political handlers or whatever, because they do things like that, that, well, if you moderate your position or you changed it, you don't have to worry. But he held his ground.

Now, Madam President, I have to make a confession: I've never polled my district on the death penalty. But I suspect the present district I have now, if it were polled, would be, in today's atmosphere, against the death penalty. Not so with the then district and the attitudes of eight or 10 years ago; I'm sure my district was in favor of the death penalty.

So things shift. And I remember on this issue once our former colleague Senator Halperin, who was then in the office next to me in the LOB, saying, "Gee, I had a group come up" -- it was Catholic Lobby Day at the time. And he said, "A monsignor from my district, I said to him, 'Monsignor, what do you think of the death penalty?'"

And Donny was against the death penalty, but his district was really giving him a hard time to be in favor of it.

And he said that the monsignor said: "Well, Vox populi, vox Deus" -- the voice of the people is the voice of God. And Donny had the greatest answer. He said, Yeah, but -- he said, "Father, does God change his mind every eight or ten years?"

(Laughter.)

SENATOR CONNOR: So what do you do with this issue?

You know, most of the -- and the debate has been enlightening, and I appreciate my colleagues quoting various facts that came out at the hearings. And let me say there should have been hearings in the Senate on this. There should be hearings, in my opinion, on every important bill. Whether it influences how we vote or not, we should collect the evidence, we should make the record.

And the people have a right to be heard, the people who have done the studies or invested their time and effort and emotions

into an issue ought to be heard. So it's not just this issue, it's a lot of issues.

Am I persuaded by any of the things I've heard from my colleagues here? Well, no, because I got to tell you something. Most of the studies by the professors and the statistics and all, I listen for the dates. And Senator Sampson mentioned the dates of his. And frankly, they were all studies done long after I was here speaking against and voting against the death penalty. So it would be certainly disingenuous to stand here now and say I was really persuaded by that study that came out in, you know, 1987 or '86 from whatever university.

And I'm not persuaded by other arguments, with all due respect -- and I understand it's designed, perhaps, to persuade or wake up someone on the other side, but I'm not impressed with Senator Liz Krueger's argument. Because, frankly, if we save $170 million in ten years or in a year by having the death penalty, I'd still be against it. And you know what, Madam President, I'm pretty sure she would be too.

So the fact is, what's it really come down to? It comes down to certain facts that we all know and we can't deny. And we don't need some professor to tell us that they're facts. It's nice to have your viewpoint vindicated by some studies, but that's not why we vote. It's not why we vote. There's certain things we know.

Is the death penalty racist as it's applied? Well, you know, one part of me says, well, it's not just that. That's part of the problem. I saw in the New York Times, was it, or somewhere they had a history of the death penalty in America. And one of the colonies, the first death penalty the colony adopted -- right, the first death penalty, because when they started out, none of them had it, really, right -- was for murder, rape, a couple of other crimes. But it only applied to African slaves. White colonists who committed those same crimes didn't get the death penalty.

And mind you, Madam President, this was before they had any kind of penitentiaries or whatever where they could securely imprison someone.

So the very core of the death penalty in America is racism. But there's something else involved. We all know it, we all know it with the criminal justice system. It's about economics.

And I appreciate that Senator Volker in his death penalty bill, this one and the one that passed ten years ago, provides for a legal defense and public funds for legal defense and so on. But we all know -- and it's certainly not the least bit to denigrate the abilities of capital defenders or whatever, but there's just a big difference between those who can afford the law firm crammed full of $800-an-hour lawyers and the overworked public-payroll capital defenders who have to live with the budget that they're given.

There is a difference. No one can stand here and say there's no difference. We all know there's a difference. And we know, when you get down to other things that make up a trial, the $200-an-hour investigator is going to do a more thorough job and dig up more helpful things to the defense than

somebody who's getting the $50 or $60 or $40 an hour or whatever it is, $25 an hour, that the state is willing to pay an investigator.

And the more money you have, you can have four or five of those $800-an-hour lawyers working on your case. You know, if you're indigent, so you get a couple of lawyers from the Capital Defender Program who don't make nearly that amount of money. There's a difference. There's a difference.

You know, really rich people, really rich people in modern America, no matter their color or ethnicity or whatever, they really don't face the same risk of going to the chair for the same crime as somebody who's poor. And that's been true through history. As I said once before on the floor, just remember, Loeb and Leopold did not get the chair; Sacco and Vanzetti did.

There's a difference between being poor in America and being very wealthy in America. We all know that. We don't need a professor to tell us that. That's just the way it works. The jails are crammed full of

poor people. And they don't get out and get to wear a bracelet for half of their term, you know, on their ankle. You know? They don't get to go back and address their employees and their stockholders when they get out of jail.

So is the death penalty as it's applied biased? Yes. It's biased against poor people. Is it racist? Well, you know, look at all those studies. And now, I know I said, ah, but you don't need the studies. But there's a study we all know, whether we've read the studies, read the census data or we just open our eyes as we drive through various parts of the state. And that is a disproportionate percentage of the poor people in this state and in this country are people of color.

You don't need a study. You know that. We all know that. We all know that. But there's plenty of studies and statistics. If you want to contest this, I'll be happy to show them to you. But we know. So we know that within that whole bias against poor people is an enormous bias against African-Americans, Latinos and others. And

then you put the overlay of historical racism on that, which varies -- I do believe varies in its intensity from different parts of the country and all. But it's there.

Some other things you don't need a professor to tell you. The death penalty is irrevocable. Hello? I don't need a study from any university to tell me that when you execute somebody -- oh, you can always say you're sorry later, I guess. But the penalty, for that person, is irrevocable. And if you find out later they didn't do it, oops.

Now, I'm not making light of the fact that people have been kept in prison for 15 and 20 years and then later exonerated. But, you know, damages are awarded. Yes, it's a tragedy. But it's not the same as -- it's not the same, Madam President, as in justification of the sanctity of life you take a life and it turns out it was an innocent person. That you can't -- there's not enough damages for that. There's no way to do that. I don't need a study. We all know it's irrevocable.

The other thing we all know and we

don't need studies for but, you know, we do have evidence now, thanks to DNA -- but we always knew. In those debates, you know, back in the late '70s and early '80s when DNA, we all knew from our science studies it existed, but it seemed like one of these ephemeral things out there. Nobody had every quantified it, measured it. Certainly there was no way it could be put in a computer and compared with anybody else's DNA.

Long before that, we all knew and sponsors would even concede that we have a fallible criminal justice system. Any human instrumentality is, by its very nature, inherently fallible. It can make mistakes. That's one of the reasons I was always against the death penalty. You know? Secondary to the fact that I always knew it was the people on the bottom.

I can remember as a small child my grandfather, who was born in 1890 and just passed away a few years ago at age 104, saying he was called for jury duty. I was about 6 or 7. I said "Oh?" He said, "Yeah, but they want to put me on a murder case, but I told

the judge I'm against the death penalty."

He wasn't some elitist, by the way. He didn't go to an Ivy League college. He quit school at grade 6 and for a dollar a year went to night school to get through 8th grade. He was a factory worker. He was literally born here a year after his parents immigrated. He was poor all his life, never made more than $70 a week in his life. But he was against the death penalty.

Well, what was his experience as a boy? The people he knew were the ones that got the chair in New Jersey. Other Irish immigrant kids, that's who was getting the chair. The poorer kids. None of the rich people got the chair. So I heard that as a boy, it was inherently prejudicial against poor people, working people.

But we all know the system is fallible. We just didn't know how fallible it could be. Now, some of us who are lawyers and experienced with trials I think had a better innate sense of how fallible it could be than those who weren't. I learned early on that what's a trial. Well, a trial is a search for

the truth. That's how it's defined, a search for the truth.

What is it really? As one very experienced, very good trial lawyer said to me when I was a young lawyer, a trial is a drama. It's a drama staged in a courtroom. You don't hear everything. You hear, first of all, only the evidence that's deemed, quote, unquote, admissible. But then you only hear the admissible evidence that one side or the other chooses to present to the court. So you don't get the whole story. It's a drama. It's a drama with a limited script that gets a result.

It's really a horrible system that we have in this country. It's just better than any other criminal justice system I've every heard of anywhere else. But that makes it far from perfect.

So what is the new evidence? Well, from DNA we have learned just how fallible it is, just how many people actually do get convicted wrongfully for murders, for rapes, for -- we've learned it about crimes where there is DNA evidence.

And I had someone say to me a week or two ago who is a proponent, somebody I was talking to, a staff member who is a proponent of Senator Volker's bill say, Oh, well, you know, we could write it in there and say you can only be executed -- where there is DNA evidence, you could only be executed -- you know, it was one of these what-if. What if we wrote that where there's DNA evidence, someone could only be executed if the DNA evidence proved they did it.

I said, "Well, what about the cases where there's no DNA evidence?" The answer was: "Well, then, what's your complaint? There's no DNA evidence. You can't prove they're innocent." I said, "Well, that's got it backwards. You're not supposed to have to prove people are innocent."

What we've learned from DNA evidence is that trials come up with very fallible results. In very high percentages, much higher than we ever dreamed. And if that's the case with the cases where there's DNA evidence, why should we have any doubt that we get just comparable percentages of

wrongfully convicted in those cases where there's no DNA evidence?

I don't need a study to tell me that. And I don't need a study to tell me that I legislate with my head and what I know in my heart. And I know that in a civilized society when, today, with modern tools of penology -- video monitors, all sorts of electronic gear and whatever -- we can securely imprison someone and protect society. And with enough spent, certainly less than it costs to have a death penalty, but enough spent, we can do it in a way that assures maximum protection to those who have to work in the prison system, because they do deserve to be protected from such a violent criminal.

But that said, why do we have to be as uncivilized, why do we -- Madam President, Senator Marchi said it best debating this issue perhaps 25 years ago. And I remember him saying, "Show me where the word 'exception' is included in the commandment 'thou shalt not kill.'"

I'm against this, Madam President.

ACTING PRESIDENT LITTLE: Senator

Maziarz.

SENATOR MAZIARZ: Well, thank you very much, Madam President.

I just want to preface my remarks by saying I have respect for all of my colleagues, but for Senator Marchi there's always that special level of respect. But in this instance, I have to respectfully disagree with him and several of the previous speakers, Madam President.

You know, we've quoted here today statisticians and professors and doctors. And a whole host of individuals' names have been mentioned -- with one, I think, notable exception. No one has talked about the victims of crimes. I want to mention some names.

I want to talk about an individual by the name of Jill Cahill. Jill is not a constituent of mine. She lives in Central New York, I think in Senator Valesky's -- did live in Senator Valesky's district. Jill was a young mother in a bad marriage. Her husband abused her. Several times he was arrested for it. The last time, he beat her with a

baseball bat. He hit her, the doctors determined, at least four times in the head with a baseball bat.

Ironically, James Cahill didn't kill her that time. She was in the hospital recuperating and was doing very well. Her family was visiting her, staying with her on a daily basis.

James Cahill surreptitiously gained entrance to the hospital, in violation of an order of protection, of course, by disguising himself with a wig and a maintenance worker's gown. And he went into that hospital, and he poured cyanide poison down his wife's throat. In the autopsy, there were scars on her cheeks where she must have been gargling and spitting up the poison as he was pouring it down her throat.

I want to mention a Ramon Nazario. Doesn't live in my district, never met him in my life. Ramon went to work in Queens one day at a fast food restaurant, the Wendy's restaurant. Ramon just went to work. John Taylor went in Wendy's that day with the intention of robbing it and not leaving any

witnesses behind. Mr. Taylor and his accomplice marched Ramon and four of his coworkers into the basement of Wendy's, made them kneel down on the floor and one by one shot them in the back of the head, executed them.

Juan Rodriguez-Matos was a young mentally retarded man in the city of Rochester. Again, not in my district, not my constituent. Angel Mateo was upset that he couldn't find his girlfriend. And he went up to Juan Rodriguez-Matos, and he asked Juan where his girlfriend was. And his family feels that Juan probably didn't understand the question, because he was mentally challenged.

Angel Mateo became angry, put a gun up to his face, and pulled the trigger and shot Juan Rodriguez-Matos. But he didn't kill him. And he was angry that he didn't kill him. So he put a plastic bag around his head and tied a knot tight and stood there and watched him suffocate to death in pain.

I mentioned those three individuals -- they're not doctors, they're not statisticians, they're not real

professionals. But they're victims, and their cases and their names should be mentioned.

Senator Breslin said, for one reason or another, that we should be ashamed of ourselves for bringing this up. I think we'd be -- I'd be ashamed of myself if I didn't bring up the names of some victims of crimes.

We talked about the possibility and last week Senator Bruno held a press conference with the Senate Majority on this bill, with Senator Volker. And a couple of reporters asked some interesting questions. One of them talked about, "Well, what about life without parole?" And life without parole came up here today.

You know that Jim and Jill Cahill had two young children. And Jill's family was able to gain custody of those two children. After James Cahill was convicted by a jury and the death penalty was upheld by a jury, Jill's family was able to gain custody of those two children.

On the anniversary of the day he murdered Jill Cahill, James Cahill, from his

prison cell, filed in Family Court a request to force his two young children to visit him in prison, further victimizing, further victimizing Jill Cahill's family. And that's why he did it. And he said that's why he did it.

Another question the reporters asked last week or two weeks ago when we held that press conference was about the Court of Appeals and the confirmation. And we were very critical, and I think rightfully so critical, of the Court of Appeals.

Judge Kaye, Judge Ciparek, Judge Bundy Smith, Judge Rosenblatt and Judge Robert Smith don't have the guts to run for governor, they don't have the guts to run for the Assembly, and they don't have the guts to run for the Senate, but they want to -- they want to make laws, but they don't have the guts to run for the seats where the laws are made in New York State.

The reporter asked the question: "Well, Senator Bruno, you know, you confirmed Judge Rosenblatt, you confirmed Judge Robert Smith, and, you know, they went in there and

voted against the wishes. And why did you confirm them if they feel that way?"

And Senator Bruno was too polite to answer the reporter's question the way I would have answered it. It's because when they come down here for the confirmation process, they lie to us.

Judge Robert Smith sat in a hearing room with Senator DeFrancisco, said, "I understand what the Legislature meant when they passed the death penalty. I think that the Legislature should make the laws in New York State. I don't think the courts should overrule the will of the Legislature."

A couple of months later, he went in there, of course, and probably has his personal feelings and voted for them as opposed to what he told us.

Robert Smith is a lousy judge, but he's worse. At his confirmation process, he had his young daughter there with him. I think he's not just a lousy judge, he lied to us in front of his daughter. I think he's a lousy father.

I know this is going to get a lot

of press here, so I want to make that very clear, what I think about him and Judge Kaye.

A couple of weeks ago, Judge Kaye gave her annual State of the Judiciary message. This will be, I think, my last point, her State of the Judiciary message. And I know that Senator DeFrancisco, the chair of the Judiciary Committee, and I'm sure the members went there and heard Judge Kaye talk about the state of the judiciary.

You know, one of the things she mentioned that was important to the judiciary in New York State -- not about justice for Jill Cahill, not about justice for Ramon Nazario, not about justice for Juan Rodriguez-Matos -- one of the pressing issues facing justice in New York State or facing judges in New York State today is a pay raise.

Now, we all meet that over here. You know, I'm sure that everyone listened attentively there. And of course we just, you know, filed that request on our side.

But for them to request a pay raise without giving justice to these people is -- I think is -- that's what we should be ashamed

of in New York.

You know, Senator Connor made a very good point. It's one that I think Senator Duane, I hope, picked up on. You know, Senator Duane said that this is never going to be become law in the State of New York, that the Assembly is never going to pass this bill. Senator Connor I think made a point, maybe not intentionally, that a lot of this is about the politics of it.

And I think as we get more and more headlines like this one, "Desperate Manhunt as Jewel Thief Kills Again" -- you know, this individual, Christopher DiMeo, went into a jewelry store in Rockland County. He killed two people, husband and wife, two young children left parentless, went into a jewelry store in Glen Head, I assume that's on Long Island, in Westbury, I assume that's on Long Island. The suspect spoke for a half hour to the store clerk -- this is on videotape -- telling him about his upcoming marriage, before he pulled a gun on salesman Tom Renison and shot him in the chest four times.

I think that this is about the

politics of it. I think that eventually -- this is a trend, if you will, and there's no question that the trend is going against the death penalty now. But as more and more headlines like this appear, that's going to change. And as more and more victims' families put pressure on members of the majority in the other house, they're going to change too, because they won't be able to avoid the swords of justice.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President.

I paused only to collect my thoughts a little bit. Because while I am going to speak on the death penalty, I do want to, as ranker on Judiciary, defend a friend of mine, which obviously needs no defense, and that is Judge Smith. Unfortunately, he's not here to defend himself. And while I do not appoint myself as his counsel, clearly I must tell you that he is a very upstanding young

man and I think he is a very dear father, to be quite frank about it.

But let me -- my colleagues Ruth Hassell-Thompson, obviously Senator Krueger, obviously Senator Schneiderman and I understand that Velmanette Montgomery delivered some tremendous comments around the whole death penalty issue, facts, figures, talked about the costs, talked about the morality part, talked about the process.

What I'd like to do is just briefly talk about what I think is the critical point that most people hang their hat on as to why they feel the death penalty is necessary.

Many would tell you that there's clearly a relationship between the death penalty and the deterrent in terms of crime. However, I have had the fortunate opportunity to look at a couple of statistical models around what would show a relationship between the death penalty as well as it being a deterrent in crime.

Now, there's three of them. There's one particular statistical model called a linearity test, and that just does a

relationship between one dependent variable versus an independent variable. That is the death penalty versus the deterrent in crime.

The second one is what they call a derivative of a linearity test, which is a multiple colinearity test. And that essentially just takes several variables and it provides a test between the dependency of those variables versus another. Same thing, being the death penalty versus the deterrent in crime.

And when you get to the point of where neither one of those tests prove themselves, you can go to a final test, which is called a correlation matrix, which also provides you a backup to whether or not those first two tests prove themselves.

Now, both proponents and opponents of the death penalty have run those tests. And on each side of the fence, neither one of them have proven that the death penalty is a clear deterrent in crime.

It is very clear to just about everyone where the death penalty exists -- obviously, if you're a prosecutor, there's the

argument that says, Well, you know what, I can use the death penalty as a means by which to negotiate a plea. The problem there is the particular crime has already occurred. So you can't use that to say, well, the death penalty is a deterrent.

So, Madam President, what I would submit to you today is there is nothing that tells us that the death penalty is a deterrent in crime. We have used the morality test, we have used the cost test. And for those who look for hard numbers, you can run any one of those statistical models and it is proven, from California to New York, that there is no relationship between deterrent in crime versus the death penalty.

And for that reason alone, Madam President, in addition to the morality issue, I'll be voting no.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Klein.

SENATOR KLEIN: On the bill, Madam President.

ACTING PRESIDENT LITTLE: Thank

you. Senator Klein, on the bill.

SENATOR KLEIN: I rise today in support of this legislation and also a supporter of the death penalty statute. I think Senator Volker mentioned it earlier; ten years ago, when I was first elected to the Assembly, I was one of the cosponsors of Senator Volker's legislation in the Assembly.

I still believe today, as I did then, that the death penalty is a deterrent to crime. I believe in proportional justice, and I think the death penalty clearly sends a message of proportional justice to our society.

I just want to touch a little bit on the LaValle decision, because I think it's worth talking about. Because I think it says a lot about the Court of Appeals in the State of New York that I think is hell-bent on making sure we don't have a death penalty statute in this state.

First of all, the deadlock instruction, which was the bone of contention in the court decision. We're the only state in the United States that has such a deadlock

provision. And it really isn't necessary to pass constitutional muster.

The seminal case in the area, Jones vs. United States, which is a case that does not require any type of deadlock provision, was kind of overlooked by our Court of Appeals, who stated that the rights under our due process in our state constitution are far superior.

I think what was talked about earlier was the Cahill case. The Cahill case is another death penalty case. I think the facts were drawn out earlier by one of my colleagues and, again, the failure of this Court of Appeals to uphold our death penalty statute on what I think is a technicality.

One of the things that was mentioned, without repeating the gruesome facts of the case, was that here was an individual who clearly was -- killed his wife with intent, as required under the statute. Actually went into the hospital, broke into the hospital, which of course would be considered a burglary -- but under our statute, supposedly, according to the Court of

Appeals' interpretation, did not actually commit a crime, a first-degree murder charge or a second-degree murder while in the commission of a felony. Totally ridiculous.

So I think today this bill, of course, is going to pass this house. I think our work is cut out for us in making sure the Assembly passes this legislation and the Court of Appeals finally agrees to uphold our death penalty statute.

I do agree with my Democratic colleagues on a very, very important note. I think we should have had hearings. But I think we should have had hearings for a completely different reason. I think we should have had hearings to build up momentum and to show that the death penalty statute in the State of New York over the last ten years worked.

You know, you can't deny the fact that ten years ago, when we instituted the death penalty again in New York State after a very, very long absence, we have seen a tremendous drop in crime. I'm not saying that's the only answer. But clearly, I think,

there's a lot of factors that went into our drop in crime.

First and foremost, I think, is the number of police officers that we were able to hire around the state due to federal monies that came to various localities. I think smart police work. I think it's very important that we learned over the years how to manage crime.

But again, I think the deterrence of the death penalty sends a clear message to criminals of all walks of life that we're going to adopt proportional justice in the State of New York.

So as I did ten years ago, as I did today, I support the death penalty. And I wish we would have hearings, because I think a lot of what was raised by my colleagues can be argued in the opposite.

First, I think I'd like to raise the issue of deterrence. I heard a lot about studies that were done which showed the death penalty is not a deterrent to crime. Well, the seminal study in this area was written by a man named John [sic] Ehrlich in 1977, which

states the death penalty is a deterrent to crime.

I have a study in front of me here which was written in 2000, by a Dr. Paul Rubin and Joanna Shepherd of Emory University, which states that every person who is put to death on death row saves the life of 18 people.

I mean, these are facts in the opposite. And I think we should have the opportunity to have these individuals testify before a committee.

Fairness. You know, I think, again, another reason why we should have hearings is to show that our death penalty statute in the State of New York is really a model around the country as far as making sure that the person, the capital offender, actually has their due process rights -- they're afforded attorneys, the appeal process is very lengthy. And I think that's why we haven't executed anyone in ten years under this statute.

DNA. I think it's important to have individuals testify that DNA works both ways. We can make sure that someone is not

wrongly convicted of a crime and someone isn't executed when in fact they didn't commit the crime.

So I'd like to see a lot more debate on this, but I think a lot more debate for different reasons, to make sure that we have a death penalty statute on the books in New York State that passes constitutional muster.

Thank you.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Robach.

SENATOR ROBACH: Yes, Madam Speaker. On the bill.

This has been very interesting. I have really enjoyed the input from everyone. You can tell this is an important topic. People seem to have a lot of passion, a lot of opinion.

And I guess what I would say is -- I wasn't going to speak originally, but I am because I think one thing we all agree on in this chamber is we have an obligation to protect the public. Now the question becomes

how do we do that, what is the best way to do that.

And I heard a lot of points being made on -- really more on whether you like capital punishment, you don't like it, some of the anecdotal things that are applied to this.

I think the reason that we reinstituted capital punishment in this state wasn't because of polls, wasn't because of surveys, was simply for the fact -- in my prior life, I worked for Monroe County Department of Public Safety. And if we went back 10, 12, 15 years, what frequently happened, not only in my community but across the state, is we saw a number of people who I think we would all agree that given the crimes that they had committed, that they had pleaded guilty to, were let out in relatively short times.

I won't go through victims like my colleague Senator Maziarz. But in my job, I had the opportunity to sit down with the victims' families in these victim/witness protection groups. And I can tell you, it was very, very compelling. And it was very hard

to be working in the system where one gentleman -- I'll name the offender -- Arthur Shawcross, who had killed two children in a very vicious manner, was let out of jail after I believe 12 years, only to come back to the Rochester community and kill a number, multiple other people.

And the outcry from the public, the community, was huge, because they said, What kind of system do we have that allows someone of this ilk and nature to be back out in the community to prey on more people? And I had no answer for them.

Now, where I think we can all agree, and this is where I think the logic parts, I think if you're for life without parole in a negotiated system -- and I believe we all are. I believe we know that there's people out there that exhibit behavior that most likely will do it again, if given the chance, because of their violent tendencies. We want to keep them off the street.

But if you are for life without parole in a negotiated system -- and that's what we have in our criminal justice system --

on a scale of 1 to 10, if you want 9, life without parole, you have to have 10 in place, capital punishment, to get that negotiation. And quite frankly, that's exactly what's happening.

Conversely, in the case with Art Shawcross or many others, we had people knowing, in the criminal justice system, common knowledge amongst everyone involved -- prosecutors, defense lawyers, even in the criminals in some case themselves -- that really what they used to say, hard time in New York used to be 18 years maximum. That was unacceptable. Who lost out in that system was the victim.

And I don't know if it deters the first time, but it sure as heck deters them the second time, because they're not back out there to prey on more kids, more women, more adults, more children and do more heinous crimes. Understand who we're talking about here. These are not first-time -- well, I won't say not first-time offenders -- these are the most heinous, violent serial killers, multiple murderers, bad, bad folks.

So I don't know if I'm going to change anybody's mind. But I really do think this, and I think that's a good thing. I think everyone in this room wants to protect the public best. I would say, given the system is working, with most people who are clearly guilty taking that plea, for us to really have those people never seeing the light of day to prey on more people, we really need 10 to get to that 9.

I say let's not change it. Our first priority should be protecting future innocent victims. And I think this bill will go on to addressing that.

Thank you, Madam Speaker.

ACTING PRESIDENT LITTLE: Thank you.

Senator Schneiderman, to close for the Minority.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I will try to be brief.

I think one thing that is clearly demonstrated here today is the need for more discussion on this issue, is the need for hearings, is the need for us to behave as a

responsible legislative body.

I mean, I appreciate the fact that some people are moved by emotion on this issue. And some people have personal experience or intuitions. I'm sorry to say, in response to the eloquent and thoughtful remarks of Senator Connor, some people I think do need studies. Some people ignore the evidence that's right in front of their faces.

Because what we're hearing here today is a lot of disinformation. I'm not saying I'm right about everything. But I'm saying that we are supposed to be functioning as a deliberative legislative body on what Senator Volker has called one of the most important issues we face, and we haven't done it. We've failed in our job as a legislature.

You want to know why people think this is a dysfunctional legislature that doesn't get the job done? Here is an example. The Assembly sent out notices for hearings. They didn't say you have to have a particular position. These were open notices that said anyone can sign up.

Why aren't we having hearings? Why

aren't we cross-examining these people that apparently some of my colleagues disagree with? I mean, Senator Klein referred to Professor Ehrlich's study. Well, let's get Professor Ehrlich's study on the table.

And let's get Professor Jeffrey Fagan of Columbia Law School back, who testified in front of the Assembly that "Although Ehrlich's research was highly technical, and no matter how carefully he qualified his conclusions, his article had the popular and political appeal of a headline, a soundbite and a bumper sticker. Reaction was immediate. Ehrlich's findings were disputed in academic journals across the country," and then he lists the states.

Let's gather evidence and evaluate it. When Senator Volker says, Oh, the death penalty has caused crime to go down, well, if you look at the real numbers, crime started to fall precipitously in 1990. And it fell every year to 1995, when the death penalty was enacted.

The point here is this. We can proceed by superstition, or we can proceed by

evaluating the objective evidence. We have not proceeded by evaluating the objective evidence.

My colleagues here have attempted to read some testimony from the Assembly hearings, because we have none in this house. We should be ashamed that the Assembly held five hearings, thousands of pages of testimony, people invited on both sides of the -- and on multiple sides, because there are people who have a variety of views.

I mean, some people believe, as Senator Marchi does and Senator Connor does, that the death penalty is just wrong -- Senator Duane. Some of us believe that it is a sanction that maybe, under the right circumstances, should be available to the state but, like District Attorney Carney, who Senator Oppenheimer cited -- and, frankly, like myself -- I just don't think it's ever been fairly applied.

I think that the way to determine who gets the death penalty is to look at race, to look at economic status, and not to look at the quality of the crime. As has been stated

over and over again -- and this completely undercuts, I believe, the argument for deterrence -- the death penalty is applied in a biased way. It has been noted that in New York State, in our own state in the last decade the geographical disparity is phenomenal. Six counties account for 56 percent of all death-noticed cases. Is that a fair application?

The racial disparity has been noted. The economic disparity that Senator Connor mentioned is much harder to study, but it's clearly there. This is why justices of the United States Supreme Court have referred to the death penalty as being as random as a lottery or, as Justice Stewart said, the chance of being sentenced to death is like being struck by lightning.

Criminals don't believe they're going to get the death penalty. Or maybe if they do, let's get the facts out on the table. The victims, the statements of the victims, let's not have just a few victims that we choose based on their individual testimony. Let's have open hearings and see what the

effect is on victims.

And I would note for my colleagues that had you reviewed the records of the Assembly hearings, had we had our own hearings, you might have heard the parents of Jenna Grieshaber, for whom Jenna's Law is named, who both testified against the death penalty, stating, and I quote:

"I read a quote that said that premeditated murderers truly believe they will get away with it, and therefore the death penalty never enters their mind. And that a crime of passion is an irrational act, without premeditation, and therefore the death penalty never enters their mind.

"So if it's not a deterrent and it's not cost-effective, if it begets more violence, if it puts the victim's family through years and years of reliving the event, if it does not change our lives without our loved one and if it makes us no better than the murderer, what possible reason could there be to have a death penalty?"

If you want to talk about victims, let's get all the victims' families in here

and have hearings and evaluate it.

But first and foremost, let's act like a responsible legislature. Let's not say, Oh, I believe there's deterrence, when the evidence is to the contrary. Let's not ignore the cost issue. Because the quick and the effective prosecution and punishment of crimes is much more important than this lottery process by which some people get the death penalty and some people don't.

Let's go back to doing our jobs. Let's have hearings. Let's have joint hearings with the Assembly, if you like. And let's get the issues on the table so we do not proceed based on superstition. Let's proceed based on objective evidence.

Right now we're back where the criminal justice system was in the 1600s before scientific evaluation started in. We're proceeding based on superstition, rumor and prejudice. That is no way to enact a law in this most critical area.

I vote no. I think everyone here who's concerned about our integrity as a legislature and concerned about the process of

this house, as well as people who just have strong feelings on the death penalty, should vote no and we should do our job thoroughly before enacting the ultimate sanction.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Senator Volker, to close the debate.

SENATOR VOLKER: Madam President, you know, the -- it's interesting. I want you to all know I respect every member of this house. And I have listened, as usual, to some of the same debate for the past 30 years.

By the way, it seems to me a little bit, though, prejudicial to talk about reform. We are passing a bill. We're debating it. The Assembly had hearings. You said that anybody could come. It's no secret they told a few people that were pro-death penalty that they couldn't come because they had too many pro-death penalty people.

The Columbia study -- by the way, the Columbia study has nothing to do with New York. Everybody stays away from New York.

You know why? Because our state is a bad state, it always has been a bad state, because our history here of criminal justice is so good.

You know, there was a mention here of that stupid, and I hate to say it, Stanford study. Those guys came in here, they were history professors from California. Frankly, they were eventually roundly criticized by just about everybody. They tried to say there were 13 people here that were executed who were innocent.

We went through, we started going through them. Ted Hallman, who is the deputy commissioner of, now, homeland security, one of the most -- I think one of the top guys in criminal justice, we went through seven of them. They were so funny; I mean, anybody that said he was innocent, he was innocent.

There was one guy -- and I'll just do this one. There was Joe, Fred, and Frank. I'm just using the names. They were all shooting. Eyewitnesses to all of them firing. Two guys were executed. As Fred was being executed, he said, "You know, Joe didn't do

it. He's innocent," he said, the whole thing. The reason was that they claimed that Fred was a bad shot and he didn't hit anybody. And therefore, because he didn't hit anybody, even though he admits he fired, that he shouldn't be executed. Because the other two guys were better shots.

And that's the "bad shot" defense. And according to those professors from Stanford, you shouldn't execute him, even though the guy admitted that he wanted to kill him. But he was a bad shot. All right. I mean, it was just loony, nuts.

The Assembly has decided, it appears, that they, under the Brennan Institute, want to have hearings. They don't want to pass a bill, they want to have hearings. Fine. We are passing a bill. We're doing what I think is reform.

All this new evidence that you're talking about is all the same old stuff. Same old anti-death penalty people coming in. Jonathan Gradess is here, very violently anti-death penalty; Demi McGuire, right there. I have great respect for them, they're friends

of mine. They've been anti-death penalty for 50 years. Or 30 years. Demi's only 25. Whatever it is, anyways.

My point is there's no new evidence. In fact, the interesting thing about the evidence here is it's overwhelmingly pro. And if we had a hearing -- and which we, by the way, will. Because I want to tell you, if the Assembly does not pass the bill this year, they're going to get their hearings. I'm going around the state then. Because we should really do this, because the Assembly is going to pass it next year anyways, I'll guarantee you.

You can talk all you want about New York City. My good friend Sheldon -- who is my good friend, by the way, and I -- we served together in Criminal Justice, he's not going to want to go into an election without voting on this issue. I don't believe it.

And the New York Times is not going to stop it, or the Times Union, who just did this ridiculous thing on the declining numbers. By the way, I hate to say this, Eric -- let's see. They went from 2605 to

2571. They did go to 2397, then they went back up to 2420. Yeah, that was a big decline there. And then as soon as the death penalty was passed, it was down to 1550, 1330 -- I mean, come on.

It's -- it's -- I'm not telling you -- I'm only saying that it seems to me that we have to stop kidding ourselves. The capital defenders, in their meeting, said: Jack up the money, because we want to use it against the system.

By the way, we've saved tons of money on life without parole people pleading away from the death penalty. It's very hard to determine what the net numbers are. We know that they're more, but they're not anything close to the 170 million. That's outrageous. Probably less than 100 million, less -- but you know what? You want to argue with me that we shouldn't have capital defenders, we shouldn't have the best defense system in the country? I don't think that makes a lot of sense. I don't want to be responsible for people getting executed who are innocent.

And I would remind you, and I'm not going to specifically say anything, but a couple of Senators talked about people in their district who were exonerated by DNA. And if there were multiple defendants, better ask which one of them actually committed the crime. Because the problem is, the weakness of DNA is when you have multiple defendants and you're using DNA evidence, if it turns out to be somebody else and you used that, you can throw out all the cases, simply because you don't have the evidence.

The wilding case is the classic example. In the wilding case they found DNA evidence that wasn't with the other people, so they just let them all go even though they were confessed and so forth. You know, that's the Morgenthau assistants, now, who sometimes don't know whether to indict people or hug them. But that's the new breed. And that's interesting. I mean, you can praise -- well, I'm not going to say anything about Bob Morgenthau.

But I will say this, and I'm going to finish by saying Timothy McVeigh -- who's

from my region, by the way. The Oklahoma City bomber, which caused all these buildings here to be checked. I want to tell you, we went through all kinds of stuff here. He was a white supremacist. A lot of us expected that after that there was going to be a number of -- and we know that some buildings were looked at -- there was going to be a number of those. He was executed. Isn't it fascinating, we haven't had one bombing incident by white supremacists since then.

In fact, the biggest incident now is going on in Chicago, where the judge's father and -- a couple of real courageous people killed a couple of people, and one was in a wheelchair and the other one was crippled and so forth. Those are the kind of courageous people that unfortunately sometimes are involved in our criminal justice system.

I'll only finish by saying this. Look, no hearing is going to change the votes in this chamber. You can say all you want about evidence. We know that. Come on. I mean, let's be realistic. This is not really about politics, I'll be the first to admit to

you. My -- I don't know what my district is anymore. I have often said there are certain issues that are inherent in a person. You should not follow your district with certain issues, you really shouldn't. Death penalty, abortion are two of those that are so critical to you as a person that you got to vote your conscience, and you should. And not because of polls or anything else.

So for me, it doesn't -- and people say: Well, what if your district turned anti-death penalty? I'd still vote for it. I'd have to. Same with abortion.

I have a deep-seated belief in the sanctity of life. I believe that the sanctity of life says that the innocent should be protected. The guilty is a different issue. And that follows with both abortions -- because what we're doing with the death penalty is we're saying we've got to protect the guilty, but we'll take a chance with the innocent that are out there being killed. That's the problem. That's the problem.

ACTING PRESIDENT LITTLE: The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT LITTLE: Senator Balboni, to explain his vote.

SENATOR BALBONI: Madam President, the difference ten years makes. Ten years ago, I was in the Assembly chamber, and these debates would always engender a lot of interest. This year, it's quiet.

And I think that this issue is a victim of its own success. We now have some of the lowest crime rates in our history, and so we don't have the interest or enthusiasm for the debate. But let me explain my vote and clarify the issue.

This vote today is not on the death penalty on its merits. It's not. Take a look at the Court of Appeals decision: 99 percent of the death penalty statute that this Legislature voted on ten years ago and was the will of the people has been found constitutional, 99 percent.

One small little section, that's

what we're voting on. Ladies and gentlemen, if we wanted to revisit this issue because we were concerned about the changing morality, statistics, human consequence, we would have enacted a sunset clause in the initial statute. We chose not to. Democrats and Republicans, two houses with the Governor, chose not to.

So this is back here by a technicality. We are voting to correct the technicality or voting to keep the technicality.

I vote aye.

ACTING PRESIDENT LITTLE: Senator Balboni will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Madam President.

Today we're dealing with the death penalty. Shall we take a life or shall we give life? I heard my colleagues today talking about the reason, some of the reasons why they are opposing the death penalty. Some of the reasons that I hear was economical, the suffering of the person, sympathy for the

criminal. Some people say here, why are we killing innocents? And others mention, we should have justice for all. They say that's unethical, immoral.

But do I believe that a person that takes a gun, that goes out and buys a gun, puts six bullets on it and goes into the grocery store and shoot that person, do I believe that that person deserve to die? Yes, of course I do.

Do I believe that a person that takes a gun and go into a taxicab and shoot the driver, do I believe that that person should die? Of course I do.

Do I believe that a person that takes a woman, abuse her, rape her and kill her, do I believe that that person deserves to die? Of course I do.

But I believe also in the sanctity of life. I believe also in the right to life. I believe also in the dignity of life.

And yes, Senator Schneiderman, we should read some statistics and some documents. But there's one that you people know and you are ignoring. The killing, the

killing of 4,000 babies every day. Since 1973, we have killed 48 million unborn innocents that have done no wrong, innocent babies. That's immoral.

But I don't hear the same passion that I hear to defend an old man that takes a gun and kills someone. I don't hear the same passion defending the unborn, the innocent. The baby had done no wrong. So why don't you read these statistics, that short life that a baby is alive. And to take life is wrong.

So I am not basing my vote in how economical it is. I'm not basing my vote today in the suffering of the criminal. I don't even -- I don't care about that. I am not even voting in the sympathy or on justice for all or the morality of the issue. I'm basing my vote on the sanctity of life.

And because I'm pro-life and I believe that the killing of unborn babies, 48 million in 32 years, 4,000 babies every day -- and none of you, none of you are defending that. Because I believe in life, I'm voting against today.

Thank you.

ACTING PRESIDENT LITTLE: Senator Diaz recorded in the negative.

Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President.

As long as justice is not applied equally in this country, especially to people who are poor, indigent or of color, there is no place for the death penalty. Because people will be sentenced and put to death that may and in many cases have been proven to be innocent.

Therefore, I definitely and always will vote no.

ACTING PRESIDENT LITTLE: Senator Ada Smith recorded in the negative.

Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Thank you very much. Just to explain my vote very briefly.

I want to vote in the affirmative, in memory of Jill Cahill, because it's about the victims.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Senator Maziarz recorded in the affirmative.

The Secretary will call the roll and announce the results.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 172 are Senators Andrews, Breslin, Brown, Connor, Diaz, Dilan, Duane, Hassell-Thompson, L. Krueger, Marchi, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, A. Smith, M. Smith, Stavisky, and Valesky.

Ayes, 37. Nays, 22.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President.

Is there any housekeeping at the desk?

ACTING PRESIDENT LITTLE: We do have a motion, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Skelos, on page number 10 I offer the following amendments to Calendar Number 4, Senate Print Number 85, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT LITTLE: The amendments are received and adopted, and the bill will retain its place on the calendar.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Monday, March 14th, at 3:00 p.m., intervening days being legislative days.

And there will be an immediate meeting of the Majority in the Majority Conference Room.

ACTING PRESIDENT LITTLE: Thank you. On motion, the Senate stands adjourned until Monday, March 14th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 2:01 p.m., the Senate adjourned.)