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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

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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.

1 Reports of standing committees.

2 Reports of select committees.

3 Communications and reports from
4 state officers.

5 Motions and resolutions.

6 Senator Skelos.

7 SENATOR SKELOS: Mr. President, I
8 move that we adopt the Resolution Calendar,
9 with the exception of Resolution 741.

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

14 (Response of "Aye.")

15 ACTING PRESIDENT MORAHAN:
16 Opposed, nay.

17 (No response.)

18 ACTING PRESIDENT MORAHAN: The
19 Resolution Calendar is adopted.

20 Senator Skelos.

21 SENATOR SKELOS: Thank you, Mr.
22 President.

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

1 ACTING PRESIDENT MORAHAN: The
2 Secretary will read.

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

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

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

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

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

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

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

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

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

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

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

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

1 team and to Coach Kelsey Green."

2 ACTING PRESIDENT MORAHAN:

3 Senator Libous.

4 SENATOR LIBOUS: Thank you, Mr.
5 President.

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

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

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

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

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

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

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

25 And, Coach, you should be applauded

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

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

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

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

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

25 And he too shares with us today,

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

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

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

11 (Response of "Aye.")

12 THE PRESIDENT: Opposed, nay.

13 (No response.)

14 THE PRESIDENT: The resolution is
15 adopted.

16 Congratulations and best wishes for
17 similar success.

18 (Applause.)

19 THE PRESIDENT: Senator Skelos.

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

23 THE PRESIDENT: Yes, there are,
24 Senator.

25 SENATOR SKELOS: Thank you. If

1 we could make them at this time.

2 THE PRESIDENT: The Secretary
3 will read.

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

10 THE PRESIDENT: The substitution
11 is ordered.

12 Senator Skelos.

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

16 THE PRESIDENT: The Secretary
17 will read.

18 THE SECRETARY: Calendar Number
19 14, by Senator Trunzo, Senate Print 150A, an
20 act to amend the Penal Law, in relation to the
21 unlawful sale of tobacco.

22 THE PRESIDENT: Read the last
23 section.

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

1 THE PRESIDENT: Call the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes, 42.

4 THE PRESIDENT: The bill is
5 passed.

6 THE SECRETARY: Calendar Number
7 91, by Senator Golden, Senate Print 1942, an
8 act to amend the Elder Law, in relation to a
9 bill of rights of senior citizens.

10 THE PRESIDENT: Read the last
11 section.

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

14 THE PRESIDENT: Call the roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 42.

17 THE PRESIDENT: The bill is
18 passed.

19 THE SECRETARY: Calendar Number
20 152, by Senator Alesi, Senate Print 965, an
21 act to amend the Penal Law, in relation to
22 endangering the welfare of a child.

23 THE PRESIDENT: Read the last
24 section.

25 THE SECRETARY: Section 2. This

1 act shall take effect on the first of
2 November.

3 THE PRESIDENT: Call the roll.
4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 42.

6 THE PRESIDENT: The bill is
7 passed.

8 THE SECRETARY: Calendar Number
9 153, by Senator Padavan, Senate Print 1138, an
10 act to amend the Penal Law, in relation to the
11 disposal of allegedly stolen motor vehicles.

12 THE PRESIDENT: Read the last
13 section.

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

17 THE PRESIDENT: Call the roll.
18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 43.

20 THE PRESIDENT: The bill is
21 passed.

22 THE SECRETARY: Calendar Number
23 172, by Senator Volker, Senate Print 2727 --

24 SENATOR SCHNEIDERMAN: Lay it
25 aside.

1 THE PRESIDENT: The bill is laid
2 aside.

3 THE SECRETARY: Calendar Number
4 173, by Senator Little, Senate Print 1615, an
5 act to provide for the application of a local
6 law.

7 THE PRESIDENT: Read the last
8 section.

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

11 THE PRESIDENT: Call the roll.
12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes, 43.

14 THE PRESIDENT: The bill is
15 passed.

16 THE SECRETARY: Calendar Number
17 178, by Senator Robach, Senate Print 1469, an
18 act to amend the Highway Law, in relation to
19 the designation of the Erie Canal Expressway.

20 THE PRESIDENT: Read the last
21 section.

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

24 THE PRESIDENT: Call the roll.
25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 43.

2 THE PRESIDENT: The bill is
3 passed.

4 THE SECRETARY: Calendar Number
5 180, by Senator Little, Senate Print 1881, an
6 act to amend the Highway Law, in relation to
7 the designation of a portion of the state
8 highway system.

9 THE PRESIDENT: Read the last
10 section.

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

13 THE PRESIDENT: Call the roll.
14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes, 43.

16 THE PRESIDENT: The bill is
17 passed.

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

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

25 THE PRESIDENT: The Secretary

1 will ring the bell.

2 Senator Skelos.

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

6 THE PRESIDENT: The Secretary
7 will read.

8 THE SECRETARY: Calendar Number
9 172, by Senator Volker, Senate Print 2727, an
10 act to amend the Criminal Procedure Law, in
11 relation to capital punishment.

12 SENATOR SCHNEIDERMAN:
13 Explanation.

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

16 SENATOR VOLKER: Madam President,
17 this is -- the bill in question here, Senate
18 2727, is almost identical to a bill that this
19 house passed last year. There are a few minor
20 changes in it.

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

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

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

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

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

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

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

25 And we realized, by the way, last

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 And this statute was one of the
4 earliest statutes to declare that only
5 18-year-olds and older -- and that was an
6 interesting discussion. We all felt that the
7 Supreme Court ultimately would declare that
8 under-18-year-olds shouldn't be executed.
9 And, frankly, I was agreeable to put that
10 anyways, because I don't see the deterrent
11 effect of under 18 years old.

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

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

25 That would put it -- every attorney

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

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

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

25 We believe that Senate 2727

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 We're not perfect, but we also have
4 something that other states don't have, and
5 that is a declining prison population. Which
6 was thought to be impossible, with the rest of
7 this country, for the most part, seeing
8 continually increasing prison populations.
9 And our prison population went
10 approximately -- and these are all
11 approximates -- from 25 percent violent,
12 75 percent nonviolent to 75 percent violent,
13 25 percent nonviolent.

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

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

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

4 ACTING PRESIDENT LITTLE: Senator
5 Schneiderman.

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

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

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

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

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

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

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

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

1 wrong.

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

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

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

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

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

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

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

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

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

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

18 Thank you, Madam President.

19 ACTING PRESIDENT LITTLE: Thank
20 you, Senator.

21 Senator Marchi.

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

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

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

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

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

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

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

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

25 So that I believe you make a

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

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

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

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

1 Powers in Europe. And this is self-defense.

2 This was circumstances going beyond.

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

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

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

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

10 ACTING PRESIDENT LITTLE: Thank
11 you, Senator Marchi.

12 Senator Krueger.

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

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

25 And in fact, the Assembly did have

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

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

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

1 death penalty system costs taxpayers more than
2 \$114 million a year more than the cost of
3 simply keeping convicts locked up for life
4 without parole. And that figure from
5 California did not count the millions more
6 spent on court costs to prosecute capital
7 cases. I'll be addressing those issues a
8 little later.

9 That report concluded that
10 Californians and federal taxpayers have paid
11 more than a quarter of a billion dollars for
12 each of the state's 11 executions, a quarter
13 of a billion dollars for 11 executions, and
14 that it costs \$90,000 more per year to house
15 one inmate on death row, where each person has
16 a private cell and extra guards, than in the
17 general prison population. This additional
18 cost per prisoner adds up to another
19 \$57.5 million in annual spending for the
20 640 Californians currently on death row.

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

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

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

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

25 And every day, whether you say it

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

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

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

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

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

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

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

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

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

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

25 The serious errors that have been

1 discovered during the sentencing process must
2 be done over and over again. When these death
3 penalty cases are retried, approximately
4 82 percent result in a life sentence. Thus
5 the typical death penalty case has all the
6 expenses at its early stages and through
7 appeal, then it's overturned and a life
8 sentence is imposed, resulting in all the
9 costs of a lifetime of incarceration plus all
10 the costs of a capital case, death penalty
11 case.

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

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

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

5 The most comprehensive study
6 conducted in the country found that death
7 penalty costs in North Carolina were
8 \$2.16 million more per execution than the cost
9 of a nondeath penalty system imposing life
10 imprisonment without parole.

11 The Miami Herald estimates the
12 costs of the death penalty in Florida were
13 \$3.2 million per execution, based on the rate
14 of executions at that time. And that time was
15 in the year 2000.

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

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

1 week.

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

9 The studies go on and on and on.

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

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

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

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

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

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

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

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

1 Thank you very much, Madam
2 President.

3 ACTING PRESIDENT LITTLE: Thank
4 you, Senator.

5 Senator Parker.

6 SENATOR PARKER: Madam President,
7 on the bill.

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

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

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

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

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

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

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

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

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

1 deterrence, and the victim impact on evidence.

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

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

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

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

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

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

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

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

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

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

18 So again, you know, we are looking
19 at reinstating a policy that is going to,
20 you know, significantly impact on those who
21 are mentally ill.

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

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

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

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

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

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

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

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

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

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

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

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

25 And the impact in terms of victims

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

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

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

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

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

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

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

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

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

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

1 after bad policy as it relates to the death
2 penalty.

3 ACTING PRESIDENT LITTLE: Thank
4 you, Senator.

5 Senator Duane.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 traced the outcomes of judicial review of the
2 6,000-plus death penalty verdicts imposed in
3 the 23-year study period of the 34 states that
4 had the death penalty at the time. Now,
5 New York was not included because New York
6 didn't have a death penalty.

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

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

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

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

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

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

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

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

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

10 Thank you, Madam President.

11 ACTING PRESIDENT LITTLE: Thank
12 you, Senator.

13 Senator Montgomery.

14 SENATOR MONTGOMERY: Thank you,
15 Madam President.

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

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

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

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

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

21 As a result, this young man spent
22 18 years of his life incarcerated. He was
23 finally exonerated in June of 2003. And he
24 was exonerated based on evidence, DNA
25 evidence, which proved that he and three other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 punishment system.

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

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

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

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

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

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

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

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

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

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

8 I will be voting in on this
9 legislation.

10 ACTING PRESIDENT LITTLE: Thank
11 you, Senator.

12 Senator Breslin.

13 SENATOR BRESLIN: Madam
14 President, on the bill.

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

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

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

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

4 New York, as well as the remaining
5 49 states, we should think of ourselves as a
6 civilized society. You know, up until the
7 Supreme Court of the United States a couple of
8 weeks ago said it's cruel and inhuman to
9 execute someone who's a minor, it was just the
10 United States and Iran that executed minors.

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

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

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

25 Is it foolproof? It isn't

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

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

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

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

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

6 So I am inalterably opposed to this
7 legislation to begin with. But the fact that
8 we haven't reviewed whether it's a deterrent,
9 we haven't reviewed whether it's foolproof, we
10 haven't reviewed whether it's administered
11 differently throughout this state -- why do
12 65 percent of the capital cases come from a
13 few counties? Does that mean that you really
14 should kill somebody in one county so you
15 won't go to the gas chamber in that county? I
16 don't know. Hearings would tell us that.

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

20 ACTING PRESIDENT LITTLE: Thank
21 you, Senator.

22 Senator Oppenheimer.

23 SENATOR OPPENHEIMER: Thank you.

24 On the bill, please.

25 ACTING PRESIDENT LITTLE: Thank

1 you. Senator Oppenheimer, on the bill.

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

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

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

25 And you may say, how can that be if

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

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

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

1 "At \$13 million per year to fund
2 the Capital Defender office, together with all
3 of the money expended for capital-qualified
4 assigned counsel and prosecutor's costs, the
5 death penalty may have cost us as much as
6 \$200 million.

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

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

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

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

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

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

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

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

1 much wiser way to spend our very scarce
2 resources.

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

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

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

24 So I will be voting against this
25 death penalty.

1 ACTING PRESIDENT LITTLE: Thank
2 you, Senator.

3 Senator Sampson.

4 SENATOR SAMPSON: On the bill,
5 Madam President.

6 ACTING PRESIDENT LITTLE: Senator
7 Sampson, on the bill.

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

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

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

1 human beings who are capable of mistakes and
2 misjudgments."

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

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

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

22 For that reason, I vote against
23 this bill.

24 ACTING PRESIDENT LITTLE: Thank
25 you, Senator.

1 Senator Hassell-Thompson.

2 SENATOR HASSELL-THOMPSON: Thank
3 you, Madam President.

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

10 And so in looking at some of this
11 testimony that my colleagues have been talking
12 about today, I selected to look at the
13 testimony of John Dunne. And the reason that
14 I chose John Dunne was because he was a member
15 of this New York Senate body from 1966 to
16 1989.

17 And he says in his testimony that
18 he had the occasion to vote as many as
19 12 times to establish a death penalty in
20 New York State. But he also goes on to say
21 that: "Each of these votes were difficult.
22 For each of them, I deliberated at length.
23 Each time I cast a vote for death, I believed
24 that I was doing the right thing morally as
25 well as legally."

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

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

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

25 In 1995, the year that the death

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

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

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

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

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

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

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

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

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

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

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

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

25 "Can the defense ever be truly up

1 to the task in each capital case in New York?

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

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

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

25 After years of upholding death

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

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

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

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

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

17 Madam President, I will be voting
18 no.

19 ACTING PRESIDENT LITTLE: Thank
20 you, Senator.

21 Senator Connor.

22 SENATOR CONNOR: Thank you, Madam
23 President.

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

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

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

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

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

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

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

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

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

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

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

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

9 Now, Madam President, I have to
10 make a confession: I've never polled my
11 district on the death penalty. But I suspect
12 the present district I have now, if it were
13 polled, would be, in today's atmosphere,
14 against the death penalty. Not so with the
15 then district and the attitudes of eight or
16 10 years ago; I'm sure my district was in
17 favor of the death penalty.

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

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

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

10 (Laughter.)

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

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

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

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

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

16 And I'm not persuaded by other
17 arguments, with all due respect -- and I
18 understand it's designed, perhaps, to persuade
19 or wake up someone on the other side, but I'm
20 not impressed with Senator Liz Krueger's
21 argument. Because, frankly, if we save
22 \$170 million in ten years or in a year by
23 having the death penalty, I'd still be against
24 it. And you know what, Madam President, I'm
25 pretty sure she would be too.

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

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

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

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

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

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

1 somebody who's getting the \$50 or \$60 or
2 \$40 an hour or whatever it is, \$25 an hour,
3 that the state is willing to pay an
4 investigator.

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

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

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

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

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

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

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

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

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

25 The other thing we all know and we

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

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

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

1 the judge I'm against the death penalty."

2 He wasn't some elitist, by the way.

3 He didn't go to an Ivy League college. He
4 quit school at grade 6 and for a dollar a year
5 went to night school to get through 8th grade.
6 He was a factory worker. He was literally
7 born here a year after his parents immigrated.
8 He was poor all his life, never made more than
9 \$70 a week in his life. But he was against
10 the death penalty.

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

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

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

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

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

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

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

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

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

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

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

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

24 I'm against this, Madam President.

25 ACTING PRESIDENT LITTLE: Senator

1 Maziarz.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I know this is going to get a lot

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

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

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

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

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

1 of in New York.

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

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

25 I think that this is about the

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

11 Thank you, Madam President.

12 ACTING PRESIDENT LITTLE: Thank
13 you, Senator.

14 Senator Malcolm Smith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ACTING PRESIDENT LITTLE: Thank
21 you, Senator.

22 Senator Klein.

23 SENATOR KLEIN: On the bill,
24 Madam President.

25 ACTING PRESIDENT LITTLE: Thank

1 you. Senator Klein, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 states the death penalty is a deterrent to
2 crime.

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

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

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

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

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

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

10 Thank you.

11 ACTING PRESIDENT LITTLE: Thank
12 you, Senator.

13 Senator Robach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Thank you, Madam Speaker.

16 ACTING PRESIDENT LITTLE: Thank
17 you.

18 Senator Schneiderman, to close for
19 the Minority.

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

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

1 responsible legislative body.

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

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

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

25 Why aren't we having hearings? Why

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

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

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

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

1 evaluating the objective evidence. We have
2 not proceeded by evaluating the objective
3 evidence.

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

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

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

1 over and over again -- and this completely
2 undercuts, I believe, the argument for
3 deterrence -- the death penalty is applied in
4 a biased way. It has been noted that in
5 New York State, in our own state in the last
6 decade the geographical disparity is
7 phenomenal. Six counties account for
8 56 percent of all death-noticed cases. Is
9 that a fair application?

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

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

1 effect is on victims.

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

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

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

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

1 and have hearings and evaluate it.

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

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

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

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

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

5 Thank you, Madam President.

6 ACTING PRESIDENT LITTLE: Thank
7 you.

8 Senator Volker, to close the
9 debate.

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

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

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

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

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

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

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

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

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

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

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

1 of mine. They've been anti-death penalty for
2 50 years. Or 30 years. Demi's only 25.
3 Whatever it is, anyways.

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

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

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

1 2571. They did go to 2397, then they went
2 back up to 2420. Yeah, that was a big decline
3 there. And then as soon as the death penalty
4 was passed, it was down to 1550, 1330 -- I
5 mean, come on.

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

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

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

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

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

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

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

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

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

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

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

24 ACTING PRESIDENT LITTLE: The
25 debate is closed.

1 The Secretary will ring the bell.

2 Read the last section.

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

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

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

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

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

25 One small little section, that's

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

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

13 I vote aye.

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

16 Senator Diaz, to explain his vote.

17 SENATOR DIAZ: Thank you, Madam
18 President.

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

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

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

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

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

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

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

1 killing of 4,000 babies every day. Since
2 1973, we have killed 48 million unborn
3 innocents that have done no wrong, innocent
4 babies. That's immoral.

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

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

19 And because I'm pro-life and I
20 believe that the killing of unborn babies,
21 48 million in 32 years, 4,000 babies every
22 day -- and none of you, none of you are
23 defending that. Because I believe in life,
24 I'm voting against today.

25 Thank you.

1 ACTING PRESIDENT LITTLE: Senator
2 Diaz recorded in the negative.

3 Senator Ada Smith.

4 SENATOR ADA SMITH: Thank you,
5 Madam President.

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

13 Therefore, I definitely and always
14 will vote no.

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

17 Senator Maziarz, why do you rise?

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

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

23 Thank you, Madam President.

24 ACTING PRESIDENT LITTLE: Thank
25 you.

1 Senator Maziarz recorded in the
2 affirmative.

3 The Secretary will call the roll
4 and announce the results.

5 (The Secretary called the roll.)

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

14 Ayes, 37. Nays, 22.

15 THE PRESIDENT: The bill is
16 passed.

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

19 SENATOR SKELOS: Thank you, Madam
20 President.

21 Is there any housekeeping at the
22 desk?

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

25 Senator Fuschillo.

1 SENATOR FUSCHILLO: Thank you,
2 Madam President.

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

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

11 Senator Skelos.

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

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

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

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