NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, Rabbis, Father Young, colleagues, I would respectfully ask all in the chamber that we open this session in honor of the memory of our very, very close friend and colleague, Patricia -- Pat -- McGee, who, as you all know, passed away at 8:30 Saturday night and won't be with us here in this chamber physically, but she will be here with us spiritually.

Thank you, Madam President.

THE PRESIDENT: With us this afternoon to give the invocation is Rabbi Shmuel M. Butman, from Lubavitch Youth Organization in Brooklyn, New York.

RABBI BUTMAN: When God is with

you, you get to meet Mary Donohue twice on the same day. We did that before, and it's really a pleasure.

Let us pray together.

[In Hebrew.] Our heavenly Father, we ask You to bestow Your blessings upon the Senate of the State of New York. Bless them and their families with all good blessings of health and prosperity and the power to continue the good work that they have been doing until now.

You have been blessed, each and every single one of you. You are the representatives of the people of the great State of New York, and you legislate laws that govern society, laws that introduce goodness and kindness and honesty and decency to all the citizens in this great State of New York and, through them, to the people in the United States, and by extension to all the people in the world. Which means you in this chamber make the world a better place.

We are so glad that you have dedicated 103 days of education in honor of the Rebbe. The Rebbe is the one who worried

and worries for the education of every child regardless of race, religion, color and creed.

And the Rebbe tells us that we live in a special generation. This is the last generation of exile and the first generation of redemption. And we can bring that great redemption even closer by doing more deeds of goodness and kindness.

And talking about deeds of goodness and kindness, in 1991 I opened a much smaller chamber than this, the United States Senate in Washington. The Rebbe told me I should take a pushkeh with me -- a pushkeh is a charity box -- and then I should invite -- in the opening I should put in a dollar, on which it says "in God we trust," in the pushkeh, so that everyone should know that they have an obligation to give charity and do the right thing.

So although this is not a fund-raising campaign, but if you want to join us after that in doing an act of goodness and kindness, that would be greatly appreciated.

And now I would like to do exactly what the Rebbe asked me to do, and put in this

dollar into the pushkeh, so that we do another act of goodness and kindness. And that we show the example as to what money has to be used for, as the Rebbe told us.

In all our shuls, in all our synagogues every Saturday, I want you to know, we say a special prayer for each and every single one of you. We say the [in Hebrew], which means all those who serve the public faithfully, as you do, may almighty God reward their noble deeds.

We are too small to reward you for the wonderful things that you are doing, but almighty God, He Himself is the one who can reward you for those good deeds that you are doing and that you will continue to do.

And may God's blessing be upon you and your families for health and for happiness, for long life and for gladness of heart. May God bless you, all of you.

Thank you.

THE PRESIDENT: Also with us this afternoon to speak with us is the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: When we speak and meet in session today, we share our friendship while advocating our own constituency's agenda.

One of our peers, from the 57th District, has suddenly left a void in our Senate chamber. Her chair is represented by, today, red roses.

Her death leaves us with a sorrow that will not only be felt in the Olean and Jamestown area, but here where Senator McGee gave a voice to the agricultural community but respect, then, to all of her coworkers and friends here in the capital.

May we continue to follow her example of hospitality, dedication and commitment to the citizens of New York State.

We take this opportunity to pray for an eternal reward for her outstanding dignity and sensitivity as a member of this esteemed Senate body.

Amen.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, it's indeed a fortuitous set of circumstances

that bring us all back together again.

Rabbi Butman is not a stranger here. He has been with us on many occasions, and it's always been a joyous matter. He represents, with his colleagues, over a thousand years of continuous sharing of experiences, and very broad in his application.

I remember the first time they invited me over to meet the Rebbe, there were -- I stayed a solid hour at that time, and I was spellbound. He had been educated in the University of Paris, I believe, and he had had the benefit of a very wide education.

And if he were here now, you'd be very happy to hear him, because he represented all that we felt was sacred not only to our own particular view of our theology, but he strengthened everybody's understanding of that theology, that we are not -- we are not just animals or creatures of God of a lower order, but members of a great fraternity that they represent so well, and that throughout the world, in small numbers but significant numbers, small numbers who remind us of the

great significance of their presence. They go into Maimonides, they go into the great people who gave fire and emphasis to all of the things and experiences we felt.

So it's always a joy. I'm along in years, along with some of you -- but you're all younger than I am, I guess. And as long as it lasts, believe me, I think it fills us with a feeling of joy, of jubilation that you are here, because you have so much to point to in terms of reinforcing every spiritual feeling that runs into this wide society. Whether they're members of your religion, particularly, but you strengthen that throughout the world.

So it's indeed a joy to see you again, and I'm sure you will find the same spirit over in the Assembly when you visit them, because you exemplify that which is so important to the people, to the creatures of God, that we are meant for a higher destiny and we know it.

So again, it's been a great pleasure to see you, sir, and your colleagues. And I do hope I -- well, I just count it a

blessing when I have an opportunity, Madam President. You've got them right there, and I'm sure that you appreciate the fact that they are splendid people and that they represent a tradition that goes back a millennium, and over that, on the nature of our spirituality and our culture.

This is everyone. There isn't a person in this chamber who has not been affected by them and those who preceded them so nobly through the years.

So God bless you. And I'm very, very proud to see you again and very happy in this experience.

RABBI BUTMAN: Thank you very, very much. Thank you, Senator.

Madam President, thank you very much.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 3, the Senate met pursuant to adjournment. The Journal of Saturday, April 2, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Morahan, on page number 26 I offer the following amendments to Calendar Number 380, Senate Print Number 2044, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator Seward, on page number 25 I offer the following amendments to Calendar Number 369, Senate

Print Number 81, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: Those amendments are also received, and that bill will also retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Nozzolio, on page number 12 I offer the following amendments to Calendar Number 127, Senate Print Number 1973, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Spano.

SENATOR SPANO: Madam President, can we proceed to the noncontroversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 130, by Member of the Assembly Cahill, Assembly Print Number 3627, an act to amend the Alcoholic Beverage Control Law, in

relation to a license.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 192, by Senator LaValle --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 317, by Senator Fuschillo, Senate Print 3016, an act to amend the General Business Law, in relation to rental vehicle companies.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 340, by Senator Marcellino, Senate Print 2852, an act to amend the Criminal Procedure Law, in relation to evidence.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 345, by Senator Skelos, Senate Print 3157, an act to --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

347, by Senator Volker, Senate Print 3256 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 350, by Senator Morahan, Senate Print 3328, an act to amend the Penal Law, in relation to penalties for assault and manslaughter.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 353, by Senator Maziarz, Senate Print 3336, an act to amend the Penal Law, in relation to the crime of surreptitious surveillance.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 400, by Senator Maziarz, Senate Print 3234, an act to amend the Labor Law, in relation to standards and requirements.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 403, by Senator Robach, Senate Print 3521, an

act to amend the Workers' Compensation Law, in relation to the presumption.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

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

SENATOR SPANO: Can we now proceed to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will ring the bell.

SENATOR SPANO: Madam President.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Will you please ring the bells to inform the members that we're on the controversial reading of the calendar.

THE PRESIDENT: Yes, we just -- I

will again request the Secretary to ring the bell so the members can get to their seats for the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 192, by Senator LaValle, Senate Print 838A, an act to amend the Education Law, in relation to reporting.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR LaVALLE: Thank you, Madam President.

This is legislation that we have debated in prior years on this floor. This bill has one important change in it that resulted from prior debates on the bill, and I will discuss what that change is.

This bill deals with nonimmigrant students who come to this country to study that have an M-1 or an F-1 visa. They have received the visa, have indicated they are coming to a school but then disappear, never register. Or they come, register and then

disappear.

What we do in this bill is to set up certain reporting requirements. And that when we report information of a student that's missing to Homeland Security, we also report this to the State Police.

One of the changes that we have made in this legislation that differs from prior years is we indicate that the New York State Police shall not hold such person unless it believes the person poses a threat to the safety of the citizens of this state.

In prior debates, some of the members were concerned that students would be held against their will, they would be easy targets and so forth.

Now, the reason once again for this bill, we cannot, in the time that we live, in the period of time that we live, post-9/11, be too careful. We have to make sure that students who come into our country to avail themselves of quality education are here for that purpose. And if they haven't registered when they were supposed to register or they registered and then disappear, we want to know

where they are, whether they have, just because of their youth, kind of taken off and have become kind of playful, or they have taken off to do not good things.

And we want to be able to have our law enforcement people armed with the information so that we are protecting, to the greatest extent possible, our citizens.

We also ask our colleges to provide information that the colleges have but is not available, and that is the number of graduate and undergraduate students by country of origin and the number of students enrolled by degree program and country of origin.

That information I know I sought and could not get that information anyplace. And so we are asking the colleges -- we're not looking for individual names in that category, but we want to know what countries are sending students to our universities and what are they studying. We want to know that.

We also set up penalties under this legislation, because we want to make sure that the colleges and universities understand the importance of this in terms of the safety and

the welfare of our citizens, considering what took place after 9/11.

That's my explanation, Madam President.

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

Then the debate is closed.

Senator Stavisky.

SENATOR STAVISKY: I'll explain my vote instead.

THE PRESIDENT: All right. Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Thank you, Gov -- Governor? -- Madam President.

Would the sponsor yield for a few brief questions.

SENATOR LaVALLE: Sure. Yes.

SENATOR SCHNEIDERMAN: Thank you.

Is there any other state in the country that imposes a separate requirement for reporting to its state police in addition to the requirement imposed under the SEVIS system for reporting to the federal

government?

SENATOR LaVALLE: We believe that states like Florida and Texas have reporting to their state police.

SENATOR SCHNEIDERMAN: Through you, Madam President, how long have those systems been in effect?

SENATOR LaVALLE: I can't answer that, Senator. But obviously it has to be since 2001, would be my guess.

SENATOR SCHNEIDERMAN: And through you, Madam President, if the sponsor would continue to yield.

SENATOR LaVALLE: Yes.

THE PRESIDENT: The sponsor does continue to yield, Senator Schneiderman. You may proceed with a question.

SENATOR SCHNEIDERMAN: This legislation as redrafted, and I appreciate the effort to improve it, requires the officials of the designated schools to report to the federal government and also simultaneously to report to the State Police, does it not?

SENATOR LaVALLE: Yes.

SENATOR SCHNEIDERMAN: And then

this legislation goes on to require, quote, the New York State Police shall immediately notify the proper federal authorities.

That's in addition to the requirement that the college officials notify the federal authority.

SENATOR LaVALLE: Yes. And that is obviously if they're encountering someone. Now, we can't -- ideally, if the federal government has this information, which they do, ideally they should be reporting to every state and every state police.

We can't mandate that. So the best we can do is here in New York ensure that our State Police are being vigilant and part of the loop.

SENATOR SCHNEIDERMAN: Thank you. And through you, Madam President, if the sponsor would continue to yield.

SENATOR LaVALLE: Yes, I will.

THE PRESIDENT: Senator LaValle does yield. You may proceed with a question, Senator.

SENATOR SCHNEIDERMAN: This legislation then goes on to require that the

New York State Police shall not hold such person -- referring, I guess, to the foreign student -- unless it believes the person poses a threat to the safety of the citizens of the state.

How are the New York State Police to make a determination as to whether or not a person identified to them poses a threat to the safety of the citizens of the state?

SENATOR LaVALLE: I would imagine, Senator, that they would use the same criteria as they do under Terry to stop and frisk. That police, I think, are trained and have a protocol in seeing individuals that are in -- that either look suspicious or are in a certain circumstance that they would stop them and pursue a certain line of questioning and so forth.

So that language, again, Senator, was included because of prior debates where people thought that law enforcement people might be frivolous in their conduct in stopping someone and retaining them for a long period of time.

So I think what we are doing is

really saying, you know, you need to go through a protocol that is established before you move forward and hold an individual for a protracted period of time.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

Madam President, on the bill.

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

SENATOR SCHNEIDERMAN: I sincerely appreciate, in a house where we frequently see bills that come to us in the same flawed form for more than a decade at a time, anyone who attempts to work on a bill and make it better.

I do feel that we have not got before us today a bill that really fits effectively into the existing framework for law enforcement regarding foreign students.

The federal system, which is really very, very new -- August 2004 marked the one-year requirement for all international students to register under the SEVIS system -- was designed to create a seamless flow of information where everywhere in the United

States had the same information, where the federal government was able to monitor this.

Keeping in mind that we are not talking about monitoring people who are accused of committing any crime. We're talking about people who simply don't show up when you're expecting them to show up for school.

So this legislation as proposed today would take our overburdened State Police and impose a requirement on them that they don't want; take our overburdened and, I would respectfully submit, in many cases underfunded colleges and universities and impose a burden on them that they don't want; and impose a set of requirements that overlap with most of the federal requirements, although not precisely.

This is precisely the kind of confusing system that the SEVIS system and the efforts of the Homeland Security Department to consolidate information relating to immigrants and to foreign students are designed to prevent.

So what we have here is a bill that would say -- and I'm just reading from the

bill -- if a student, quote, has failed to report to the designated school official at the time he or she is expected to commence his or her program of study, such official shall simultaneously report such noncompliance to the federal agency and to the New York State Police.

So that means if someone is a week late to class, you already have whatever reporting requirements you have under the SEVIS system to the federal government. That student may have shown in another state at a school. We don't know; our State Police have no way of knowing.

This imposes on our State Police, then, some sort of an obligation, although it's not clear to me what it is, to investigate the situation because it provides that the police can't hold someone unless they believe the person poses a threat to the safety of the citizens of the state. Obviously there's some sort of an inquiry that is suggested there; they have to conduct some sort of investigation to determine if that person poses a threat to the safety of the

citizens of the state.

Then the State Police have the same obligation imposed under law that the college already fulfilled, to report to the federal government.

So I respectfully submit that this is a mess. This is not something that makes our state safer, this is something that creates more confusion.

We have, again, a situation here where we are monitoring hundreds of thousands of people, and in New York State I believe we have in excess of 70,000 foreign students now studying in our colleges and universities. Many of them make major contributions, are outstanding students.

We're setting up a system to monitor the activities of thousands of law-abiding students who are here to pursue an education. And many of them stay in this country and contribute substantially to the welfare of our state and of our nation.

We shouldn't be creating a second system that has the tremendous potential to inconvenience these people, to have people

wrongfully held when they shouldn't be held, to have investigations opened on people who simply are going to a different school than we expect them.

And there is no real guidance -- if I was a state police, I certainly wouldn't support this. I don't know what my obligation is other than this duplicative requirement to report to the federal government and to undertake some sort of an inquiry as to whether students who don't show up for class constitute a threat to the safety of the citizens of the state.

So for all of the reasons stated in last year's debate and the other reasons that we've identified here, I just don't think this legislation as drafted gets the job done.

I think we should be working with the federal government, we should trying to support our colleges and universities in their already substantial obligation to collect data and report to the federal system. We're not providing them enough money for that, much less the money to impose a simultaneous requirement that they also report to the State

Police and that the State Police undertake some unspecified form of investigation. And the colleges and universities under this bill are at risk of fines and other penalties.

So I don't think this is going to make us safer, I think it is going to make things more confused. I think it creates the potential for innocent people -- whether administrators of colleges, foreign students, or overwhelmed state troopers trying to figure out what student that was late for class is a threat to the safety of the citizens -- to suffer an undue burden. We shouldn't be imposing more mandates unless they are very carefully thought through on our colleges and universities and on our State Police.

For that reason and for the others stated, Madam President, I'm going to be voting no on this bill. Again, with due regard for the seriousness of the issue and for the sponsor's sincere efforts to redraft the legislation to make it work better, I still think we have another round of redrafting to do.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just a couple of quick questions, if the Senator would yield.

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

SENATOR LaVALLE: Yes.

THE PRESIDENT: He does yield. You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

We've just heard from Senator Schneiderman that the federal law already requires reporting requirements for our students. The question that I need to ask is, is there anything in the New York State law that impedes the federal statute or the process?

In other words, if there is a federal regulation that we track students and this information is already readily available and it's on a computer system that our New York State Police can access, why is -- what is it that makes us need something

separate, something different?

SENATOR LaVALLE: Senator, I think that we are trying to make this as easy as possible for our law enforcement people.

I think if we really cut to the chase on this, you know, I could make all the changes incorporated that various members would want and I'm afraid that there would always be a reason not to vote for this bill. I think it's more of a philosophical difference or an approach than the nuts and bolts in this.

I believe, as the sponsor, there are other states, you heard, that give to their state police the information. It's very simple. There's nothing confusing about it. Senator Schneiderman thinks this legislation is confusing. There's nothing confusing about it. Straightforward. Straightforward. You give information to the federal government, you send a copy to the State Police. It's not a big deal. There's nothing confusing about that. Nothing.

I believe that, and it's fine, people have different philosophical approaches

in terms of policy and who that should impact or who that should not impact. I, as the sponsor, believe that, given the time that we live in, that there's nothing wrong with giving some of the best-trained law enforcement people in the country, our New York State Police, information, more information. It's like, to me, it's a no-brainer. I mean, I don't understand what the big deal is.

SENATOR HASSELL-THOMPSON: Madam President, if the sponsor would continue to yield.

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

SENATOR LaVALLE: Yes, I do.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Senator LaValle, take my question separate from the discussion that you had with Senator Schneiderman. My question had nothing to do with fixing or tampering.

My question simply was, is there anything --

SENATOR LaVALLE: And the answer

is no, there is nothing.

SENATOR HASSELL-THOMPSON: Okay, the simple answer is no, there is nothing in the New York State law that would impede the to use the process that's already in place by the federal statute? That's the question.

SENATOR LaVALLE: Your question presupposes that the State Police have access, can have access into the federal system, and that is not clear, whether they can retrieve that information.

SENATOR HASSELL-THOMPSON: All right, that's the basis, Madam President. If the sponsor would continue to yield.

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

SENATOR LaVALLE: Yes.

THE PRESIDENT: You may proceed with a question.

SENATOR HASSELL-THOMPSON: Okay, that's the basis of my question.

Because my understanding is there's something called SEVIS, which is a system by which the federal government makes -- has available to it information about every

foreign student, and that is information that currently is available and could be accessible by the State Police.

But if you're telling me that there's something in the New York State statute that does not make that process simplified, then I can agree that this bill is necessary.

SENATOR LaVALLE: I have been told that it simply is not.

SENATOR HASSELL-THOMPSON: Okay. Thank you, Madam President.

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

Senator Stavisky, first, and then Senator Volker.

SENATOR STAVISKY: Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR STAVISKY: It seems to me that the purposes of the colleges and universities is to educate our students under the supervision and direction of the State Education Department and, by implication, the

Regents. And the purpose of the Department of Homeland Security is to protect us.

And I think we ought to let each one do their job. This information about foreign students is available through the SEVIS system, from what I understand. Whether it's in the same format as the State Police would like to receive it seems to be under dispute.

But it seems to me that by placing an additional burden on the colleges and universities, we're just making it more difficult for them to do their job and for the State Education Department to do its job. And for that reason, I plan to vote no.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President -- and I hesitate to say this, but in behalf of Senator Balboni and myself -- who's not here -- this is a homeland security problem that we're just getting into now.

We do not have direct access to SEVIS. The problem with the homeland security system is we are just developing it. I mean, the -- I realize that CUNY in particular is

just supersensitive to anything that deals with foreign students. And we understand that. There's lots of reasons for it. And SUNY is not as sensitive. And lobbyists for CUNY immediately say this has got to be some sort of plot. And I understand it.

The problem here is we know, there is no question that al-Qaida has been directing certain people into this country -- not just students, a lot of other people. We have all sorts of information that they are sending people in here under pretext.

Now, all that happens with this bill is that we develop -- I think temporarily, because at some point we'll have a seamless system. But it isn't going to be for a long time. And the reason is that the whole homeland security system, we hate to admit this, we probably have the best so far in the country, we are reputed. Which is scary to us, because we think we're just in our infancy.

This budget, by the way, has the first major increase in homeland security money by the state ever, really. Because most

of the money is federal. And I can tell you some things about some of the stuff that are in the budget that are federally reimbursable that we don't even seem to know. But that's neither here nor there.

But the problem here is, what's going to happen here is, in my opinion, it's going to be more of a problem if we don't do this for students. Because you're going to have counter-referencing back through the State Police from the feds. You're better off to have the State Police have this information so that they don't get into problems with certain students. That's my opinion.

Personally, I would rather have this information go to homeland security directly, but we are not capable right now. Our computers and all the rest of the stuff, you can't feed this stuff around in a big circle yet. It's going to take a few years. At some point the federal government will be able, it seems to me, to develop a seamless process. Right now, if you try to get information out of the federal government on a quick basis, you're going to have a devil of a

time, I'll tell you. Unless it turns out to be somebody who is named as a bomber or something like that, which is not very likely.

We're talking about people who may be bothered, by the way, by law enforcement people simply because they may not be in school for a while if you don't have information on them. Personally, I think this is to advantage for some of the people who may get sick, or whatever, and leave. I don't think the people realize the sensitivity here.

We're a state that has already been under attack. Many people believe that it's inevitable that at some point it's going to happen again. God forbid. If we are going to protect ourselves, we have to do some things that are somewhat distasteful to us but do it in the best and most benign way.

I don't see -- this is not as if the State Police are going to run out and pick up people. All they want to do is have the information.

Classic example, there has been a case like this where a student was in a university, left the university, in effect was

gone for two months, was picked up in a van with a known terrorist and with the possibility of bomb-making material. There was no information on that student. Nothing.

If the State Police had this information, they'd know right away that that student hadn't been in school for four weeks or whatever, and you wouldn't have to feed it back through the FBI and get it out of the national Homeland Security Department. We still don't have a seamless system. It will probably be years before we develop a seamless system.

So I think Senator LaValle's bill is, frankly, an excellent bill.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you. Just briefly on the bill.

This bill is an extremely important bill, in my mind. And I thank Senator LaValle for introducing it and bringing it back again, because he's doing a great service.

The students we're talking about are people who made a deal, they made a

contract with this country. The contract was for admission into the country. They were going to go to a school in this country and get an education.

They've broken their contract. In many cases they don't even show up. They don't go near the school. The school reserved a spot for them, a spot someone else could have taken, someone who wanted an education could have had. But because these students had that spot, blocked it out, another person can't get in.

They're doing the disservice. They're breaking the law. They've broken the law of the United States. If you're going to come here, you've got a visa, the visa has a purpose, there's a time limit on it, you must obey the law. We're making a mockery of our system of laws, we're making a mockery of our schools, who just take the money.

What inconvenience the school has, to provide the government with a list of students who are supposed to be enrolled and then didn't? I don't understand the inconvenience. We don't know where these

students are, we don't know -- calling them a student is a misnomer. We don't even know where anybody is.

Let's find them. And if they're going to go to school, fine. If they're not, they should leave the country. They don't belong here. It's as simple as that. They're welcome if they come and go to school for the purpose they're supposed to be. But if they're not, go home.

I don't think that's a big deal. I don't think that's an inconvenience on anybody. I don't think it's taking away anybody's rights. It's protecting this country.

THE PRESIDENT: Any other member wish to be heard?

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Padavan,

to explain your vote.

SENATOR PADAVAN: Thank you, Madam President.

Many have said that there are tens of thousands of young people from all over the world attending colleges and universities in this country, and I think basically and fundamentally that's a good thing. It's a good thing in terms of worldwide communication of what this nation is all about, it's a good thing in terms of our global economy. It has many positive aspects to it.

Indeed, many of our young people do a college semester, or sometimes even longer, in universities throughout the world. My daughter was one of them. She did two years in a graduate degree in Spain.

Let me tell you the requirements that exist in Spain. Not only did she have to get a visa, go to the Spanish embassy, provide a health document, a verification of economic support and a bunch of other things, but every three months in Madrid, Spain, she had to make her presence known, as a student, to the local police department, physically had to go there.

So this is not a unique requirement in any respect. And the bill makes sense.

But in another way, it doesn't go far enough. We know there are thousands and thousands of foreign students in our colleges and universities here in New York City and New York State who do not have student visas. They are simply here and enrolled.

And if you want to verify that fact, ask CUNY to give, as they gave to me, their internal survey and look at the student application which says: Are you a citizen or not, yes or no? And if you say no, that's it, you still get enrolled.

Now, what are we doing about that? Absolutely nothing. Absolutely nothing.

This bill at least deals with a part of the issue, provides some reporting mechanism. And perhaps if it's implemented, we could expand it to those who are on the campuses of our schools in this state without even a student visa. Because to me that presents even a more difficult situation to accept, and perhaps a more potential problem.

I vote aye.

THE PRESIDENT: You will be so recorded as voting in the affirmative, Senator Padavan.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 192 are Senators Andrews, Breslin, Brown, Diaz, Duane, Gonzalez, Hassell-Thompson, L. Krueger, C. Kruger, Montgomery, Paterson, Sabini, Sampson, Savino, Serrano, A. Smith, M. Smith and Stavisky.

Those Senators absent from voting: Bonacic, Connor, Dilan and Parker.

Also in the negative, Senator Schneiderman.

Ayes, 36. Nays, 19.

THE PRESIDENT: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 345, by Senator Skelos, Senate Print 3157, an act to amend the Penal Law, in relation to sentencing.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SKELOS: Madam President, this legislation would authorize the imposition of a sentence of life imprisonment without the possibility of parole for persistent violent felony offenders convicted of a violent felony offense when such person has been previously been subject to two or more predicate violent felony convictions within a ten-year period.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would like to know if the sponsor would yield for a question.

THE PRESIDENT: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Madam President.

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

SENATOR MONTGOMERY: Yes.

Senator Skelos, I note that among the charges that qualify under this three-strikes legislation is second-degree robbery, burglary, assault.

So is it true that this would cover those kinds of charges on a "three strikes and you're in for life" basis?

SENATOR SKELOS: It's listed under that section of the law, yes.

SENATOR MONTGOMERY: Under that section, all right.

Thank you, Madam President.

And I note that I have opposed this legislation in the past. I think we should look to other states where they have this kind of law, particularly California, where the prisons are overflowing, bulging with people who have essentially stolen a pair of dungarees as their third offense, and they're in for life.

So I think that this really is over the top. We are going way beyond what is required in order to deal with some of the areas of crime that are covered under this. There are much better, less costly to

taxpayers and more effective ways of dealing with this.

So I'm going to continue to oppose this legislation. I think for the -- for our state, the benefit of our state's economy, we cannot afford to go into a criminal justice program that essentially in the long run will bankrupt us. So I'm voting no on this.

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

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Diaz, to explain your vote.

SENATOR DIAZ: Thank you, Madam President.

Besides being a state senator, I am also a pastor of a church. And I believe in pardons, and I believe in people being --

people changing their life.

However, I also, when I took my duty as a senator, I took it because there's crimes in the city, criminals are coming into their own, and there was no end to it.

And I believe a person that has been found guilty of a felony and that that person will become a violent felony offender, and for that to happen, that person is supposed to be guilty of kidnapping, first-degree rape or sodomy, first- or second-degree, robbery, burglary, assault or aggravated sexual abuse.

Three times being convicted, a person like that, I think that that person should be taken out of the street for the better and for the good of the rest of the community.

I gladly support this bill, and I praise Senator Skelos for such a bill.

THE PRESIDENT: Senator Diaz, you will be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 345 are Senators Andrews, Duane, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Schneiderman, Serrano and A. Smith.

Those Senators absent from voting: Connor, Dilan and Parker. Also Senator Bonacic.

Ayes, 46. Nays, 9.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 347, by Senator Volker, Senate Print 3256, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President, colleagues, this is a bill -- and probably the last time you'll see this bill -- very close to the bill that was sponsored just before.

The fascinating part of this bill

is it's been around since 1995. It is, I believe, the original "three times and you're out" bill, which my former counsel and I just figured Ken Connolly, who's here and went to DCJS, and he's now retired back with us, I believe drafted this bill.

If you read the memo -- and I would ask my colleagues to read the memo, because the reason it's important is that this is a crossover memo and shows where we have come in the last ten years since we have passed tough legislation, the death penalty and all sorts of legislation dealing with tough criminal statutes and at the same time dealing with the issue of what we call nonviolent crimes.

At the time of this bill, the prison population was at about 74,000 to 75,000 or higher. It is now in the lower 60s. This is a three-times-and-you're-out bill. Joe Morelle sponsors it in the Assembly. Its passed this house every year since '95.

It, as I say, was a changeover because, if you look at the previous penalties for three-times-and-you're-out, they were much, much more lenient. We have actually

done upgrades in a whole series of areas since then. And now Senator Skelos, my colleague, has what I call the main bill.

But there's a reason that I thought it was important to at least put this bill out. It really outlines what this house has been doing over the last ten years in criminal justice to deal with the criminal problem and what Governor Pataki has helped us to do.

So my personal opinion is this still is a valid bill. However, it is very, very close to Senator Skelos's. And I thought that we should at least put this bill onto the floor. And as I say, I would just ask my colleagues to keep the memo on this bill as one of the longest standing bills in my committee. It's about to eventually see its demise.

But it's amazing how time has changed and changed our criminal justice system in this state. And we would hope that we don't make foolish attempts, like some people in the Assembly would have us do, to denigrate the criminal justice system and take us back to the bad old days when we had

75,000 inmates and we had people coming in and out of prison every other day, and when the violent prison population was 23 percent instead of 75 percent, as it is today.

So I just want to say to people, you can criticize this bill and its intent and all that, but a lot of the things that are in this bill have happened under the present Governor, and with the help of this Senate.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I must rise with respect to the bill memo and the bill. This demonstrates the point I was making earlier with regard to Senator LaValle's bill. I appreciate him updating his legislation.

This bill memo is 10 years old. It states, in justification for the bill we're voting on now, "Unmistakably, crimes of violence in this state are on the rise. Each day our court dockets are filled with greater and greater numbers of cases charging offenses that are striking in their savagery and

chilling in their randomness."

That was 10 years ago. Unmistakably, crimes of violence in this state are on the decline. The prison population is going down. We have had extraordinary success through, I would respectfully submit, the actions of the police and through better policing policies primarily, but we've done it without a "three strikes and you're out" policy.

We've done much better than California during that period, which does have a "three strikes and you're out" policy. We've done it without the death penalty, and we've done much better than states that have the death penalty.

So, look, I support Senator Volker's effort to get this bill into the one-house-wonders hall of fame. This has been here with us for longer than I have been here. I think it's -- it made the point. But the point that is made really more articulately than any other by this is let's think carefully. Things that appear to be tougher on crime are not necessarily the things that

result in a reduction of crime. Let's think carefully as we apply serious sanctions to our citizens.

I'm pleased to be able to speak at the memorial for this bill. I look forward to further improvements in our criminal justice system. We don't need a "three strikes and you're out" policy to reduce crime in this state. That's what proved by how outdated this bill memo is.

Thank you, Madam President.

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

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Yes. I'm going to vote no on this bill, not because of the "three strikes and you're out" provision,

but there's a provision in here that prohibits plea bargaining down from a violent felony offense if this happens to be the third violent felony offense that someone is indicted for.

That, to me, really restricts the hand of the prosecutor. You may very well want to charge somebody, you think you have a case, a violent felony offense, and then when you start the trial you may find out that you don't have one.

So what does the prosecutor do at that point? Simply continue on with an offense and not reduce it and end up with a possible not-guilty finding.

So I think restricting plea bargaining really restricts the hand of the prosecutor, and I don't think that should in this bill. So I'm going to vote no for that reason.

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

Senator Volker.

SENATOR VOLKER: To explain my

vote.

THE PRESIDENT: Senator Volker, to explain his vote.

SENATOR VOLKER: Senator DeFrancisco, if I just might say that I think you're right. When I was doing defense work many years ago, as I did for some time, I probably would have agreed with you.

But now that I'm not doing any more defense work, I'm going to vote aye.

(Laughter.)

THE PRESIDENT: So we will record you as voting in the affirmative, Senator Volker.

Senator Diaz, to explain your vote.

SENATOR DIAZ: Thank you, Madam President.

Again, as I said before, I'm a pastor of a church. A few months ago, Sunday, a member, a lady member of my church coming to the church, on her way to a church, a criminal, a criminal came running after her with a knife and slashed her face. One hundred stitches was taken in her face.

And then I come here and I got

elected, and when I got elected, part of my campaign was that I would protect the victims, not the criminals. And that I would do everything possible to send criminals to jail. Because criminals don't deserve to be in the street.

And we, when we go out there campaigning, we're saying: Vote for me because I will fight crimes and I will bring safer streets and whatever. And then when we come here, the whole thing changes.

It doesn't matter how long a bill has been put in here. It doesn't matter how long. That doesn't make wrong -- that doesn't make a person wrong because the bill doesn't pass. Or sometimes it doesn't make it right if the bill passes.

What makes it right is your position against crime. And I hope that we are here -- all of us, Democrat, Republican -- that when we got elected, we got elected to protect the victims, not the criminals. And that's why I'm voting yes for this bill.

THE PRESIDENT: You will be recorded as voting in the affirmative,

Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 347 are Senators Andrews, DeFrancisco, Duane, Gonzalez, L. Krueger, Montgomery, Paterson, Schneiderman, Serrano. Also Senator Hassell-Thompson.

Those Senators absent from voting on Calendar Number 347 are Senators Bonacic, Connor and Parker.

Ayes, 46. Nays, 10.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President.

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

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

Senator Dilan.

SENATOR DILAN: Madam President, I just want to go on the record that had I been present for Calendar Number 192 --

THE PRESIDENT: If the members would please refrain from conversing in chamber.

SENATOR DILAN: Had I been present for Calendars 192 and 345, I would have cast my vote in the negative.

THE PRESIDENT: The record will so reflect that, Senator.

SENATOR DILAN: Thank you.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 4:34 p.m.)

(Whereupon, the Senate reconvened at 4:38 p.m.)

THE PRESIDENT: Senator Marcellino.

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

THE PRESIDENT: The Secretary

will read reports of standing committees.

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

Senate Print 3685A, by Senator Skelos, an act to amend the Executive Law.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Madam President, is there any further business at the desk? I believe you do have a motion, if we could proceed with that.

But first, I move to accept the Rules report.

THE PRESIDENT: All in favor of accepting the Rules Committee report please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: The report is accepted.

Senator Breslin.

SENATOR BRESLIN: I believe, Madam President, there's a motion at the desk.

THE PRESIDENT: Yes, there is, Senator.

SENATOR BRESLIN: And can I be heard on that motion.

THE PRESIDENT: You may.

SENATOR BRESLIN: This is a motion that I've made in the past. It's to put --

THE PRESIDENT: Senator, first the Secretary has to read the motion.

SENATOR BRESLIN: Excuse me.

THE PRESIDENT: Thank you.

The Secretary will read.

THE SECRETARY: Senate Print 2480, by Senator Breslin, an act to amend the Social Services Law.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

This is a motion I've made in the past, and it's to put what we refer to as a hard cap on Medicaid.

This year, in this latest budget this past week, we put a soft cap on it. We talked about annual growth factors of

3.5 percent in 2006, going to 3.25 the next year and then down to 3. The Governor, subsequent to the budget, talked about tinkering with that and making some changes.

The county executives in the counties throughout this state, they do want a change. They want one single change to cap Medicaid and hopefully to cap Medicaid at this year's level, at 2004 levels.

Why do they need a cap? Most of the counties in the State of New York had over a 15 percent tax increase last year. Eighty-five percent of all property taxes that go to Medicaid across this country come from New York State. The remaining states, 15 percent.

Counties like Albany spend more than a hundred percent of their property tax on Medicaid.

The only way to give relief to the property taxpayer, the middle-income people, the people on fixed incomes, retired people, is to make sure we're not passing down the mandates. And how do we do that? We put the hard cap on Medicaid.

You talk to county executive after county executive, they're happy we did something this year. Do they think it will work in their county? No. They have serious, serious doubts.

And I believe that everybody, on both sides of this aisle, really believe that it's up to us. We're the ones that have passed those mandates down to the county. And we're the only ones that can rectify it. And we can rectify it on by putting a cap on Medicaid on the 2004 levels.

And I urge everyone to support this motion.

THE PRESIDENT: All the Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky and Valesky.

THE PRESIDENT: The petition is not agreed to.

Senator Marcellino.

SENATOR MARCELLINO: Is there any further business, Madam President?

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

SENATOR MARCELLINO: There being no further business, I move we adjourn in the name of Patricia K. McGee until Tuesday, April 5th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned in friendship, love and respect for Senator Patricia McGee, until Tuesday, April 5th, at 3:00 p.m.

(Whereupon, at 4:44 p.m., the Senate adjourned.)