NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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February 7, 2006

3:16 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 6, the Senate met pursuant to adjournment. The Journal of Sunday, February 5, 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.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nominations.

As a judge of the Court of Claims, Lawrence V. Cullen, of Forest Hills.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Madam President, I'm proud to rise to move the nomination of Lawrence V. Cullen, of Forest Hills, as judge of the Court of Claims. It's an excellent appointment by Governor Pataki.

His background and the qualifications were fully reviewed, and he was found to be well qualified. And earlier this day, the Senate Judiciary Committee unanimously recommended his nomination to the full Senate.

I would request that you would please acknowledge Senator Maltese to second this motion.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Yes, I first acknowledge a great debt of gratitude to Governor Pataki for this appointment.

The appointment to the Court of Claims of Lawrence V. Cullen follows in the tradition of bipartisan appointments and enhances the judiciary in Queens County, as in other portions of this state.

This particular appointment, Judge Cullen, has the advantage of appointing someone to the bench who has just recently served a too-brief term filling in as a justice of the Supreme Court in Queens County.

His credentials are indeed very impressive. But in addition to impressive credentials at the bench and bar, he in addition is a disabled vet, a veteran of the United States Marine Corps.

And I'd like to, if briefly, just enumerate that he has won the following decorations from our great country: Combat

Duty, Republic of Vietnam, Bronze Star with Device, Air Medal, Purple Heart, Vietnam Campaign Medal with Good Conduct Medal, Vietnam Service Medal, National Defense Medal, Vietnam Cross of Gallantry with Palm, Presidential Unit Citation, Navy Unit Citation, Meritorious Unit Citation, New York State Conspicuous Service Cross.

Most of all, he exemplifies what is good and great in our country. Coming from a family of six children, with his parents dying at a very young age, he made his own way in the world and has achieved a great deal so that he today is before us to be confirmed as a Court of Claims judge for the State of New York.

He has many, many honors and many professional memberships and accolades. He was created a Knight of the Holy Sepulchre of Jerusalem in 1991 by His Holiness Pope Paul II, elevated to Commander and Knight Commander and Knight Grand Cross.

There are many other achievements that he has accomplished in his life. He is here today with his wife, Margaret, his

daughter, Anya, his son, Patrick. And a good and close friend and advisor, a mentor, Judge Al Lerner is here with him today.

Madam President, I am very pleased today to second the nomination of Larry Cullen for a judge of the Court of Claims.

THE PRESIDENT: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President. I also rise to second the nomination of Lawrence Cullen.

You know, Senator DeFrancisco made the statement earlier in our committee, and it's very true, there's very few sole practitioners who actually rise to or ascend to the bench to the point of being on the Court of Claims.

Lawrence Cullen, who as a sole practitioner distinguished himself in the borough of Queens in the City of New York, in addition, the state of New York now knows the benefit of Lawrence Cullen and his intellect with regard to the bench.

He and his wife have two children, their daughter, Anya, and their son, Patrick.

And most importantly, and I think Senator Maltese talked about it, Lawrence Cullen actually served his country as well. Amongst many of his accomplishments, he also has a Purple Heart, which I know many people hold dear to them.

Lawrence, I know you're up there -- there you are. He's up there.

A very honorable individual, and I think the Governor deserves the type of praise for this particular person he put on the bench. It's not often you get somebody who's just an everyday person, and that's the way Judge Cullen is -- just an ordinary guy, doesn't have any chips on his shoulders, not pretentious, somebody you can approach at all times. And I think the Court of Claims is going to do well by having him on the bench.

It's my pleasure to second his nomination.

THE PRESIDENT: Senator Ada Smith.

SENATOR ADA SMITH: Thank you very much, Madam President. I too would like to second the nomination of Lawrence V.

Cullen.

And I'm very proud today and I'm thankful to the Governor for both of these nominees, because I have the privilege of representing a part of Forest Hills and a part of Howard Beach, along with Senator Maltese.

But I'd like to note that Lawrence Cullen was a product of the CUNY School of Law. And most of us from the city hold CUNY very dear to us. And he's very dear to Senator Malcolm Smith because he went to Fordham.

But he has truly practiced in what we consider the vineyards. He has proven himself over and over again. And he is truly deserving of this honor, and we wish him well.

Thank you.

THE PRESIDENT: The question now is on the nomination of Lawrence V. Cullen, of Forest Hills, as a judge of the Court of Claims. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations, Judge Cullen. And best wishes for continued success.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Cassandra M. Mullen, of Howard Beach.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm again proud to rise to move the nomination of Cassandra M. Mullen for Court of Claims, another excellent choice by Governor Pataki.

Her qualifications have been thoroughly reviewed. She met this morning before the Senate Judiciary Committee, was found to be well qualified, and her nomination was also unanimously referred to the full Senate for a vote.

I again would like to request that you would please recognize Senator Maltese for a second.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Yes, Madam President, I again wish to express sincere appreciation to Governor George Pataki for this excellent appointment.

The fact that both appointments were made in one day reflect on a true bipartisan spirit for the Judiciary and bodes well for the continued health and vital of our judiciary in New York State.

Cassandra Mullen is here today as a result of a long and distinguished record of achievement as a trial attorney. Her background includes many, many honors -- at law school, at St. Johns Law School, and receiving a scholarship to law school -- but, in addition, many, many medals and achievements: Best Speaker in the Nation, Irving Kaufman Securities Law Moot Competition; winner, Reverend Tinnelly Moot Court Award; winner, Bosch Award, First Place Speaker; winner, 1986 scholarship award granted by the Defense Association; Excellence in Appellate Advocacy; Who's Who in American Law Schools.

She has just -- it would take an extended period of time to indicate some of the positions that she has performed in in great distinction. But they include the Nassau County District Attorney's Office, where she served two years; Legal Aid of Nassau County, where she served three years; New York State Department of Law, where she served two years; Travelers Insurance Company for five years; the American International Group for one year; the New York State Attorney General's office for two years; a private firm, Valenti & Mullen; Countrywide Insurance Company, where she served for a year; and just recently where she served the City of Yonkers as corporation counsel and served with great distinction.

She received the approval and approbation of not only myself but Senator Nicholas Spano. I wish to also indicate that Senator Padavan and myself originally had recommended her to the Governor, and we're very, very pleased that he saw fit to appoint her to this distinguished court.

She is accompanied today by her

daughter, Victoria Mansfield; her mother, Eleanor Mullen; her brother, Jack Mullen; her sister-in-law, Sandra Hirsch; aunt, Mary Gramuglia; cousin, John Gramuglia; and her daughter's friends, Kerri Ann Gayle and Jessica Hamel.

Mr. President, I am very pleased and honored to submit today and second the nomination of Cassandra Mullen as a judge of the New York State Court of Claims.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I had the distinct pleasure to meet Cassandra Mullen five or six months ago. And, you know, I've been a lawyer for -- I'm not even going to say -- over 35 years. And you know, you see other lawyers, you meet other lawyers, you engage, you work with other lawyers. But I've all found the best way or the way that you most realize the quality of a lawyer is when the lawyer is your adversary. And I met Ms. Mullen in a case -- we're actually waiting for a decision. She withdrew

two weeks ago as opposing counsel because of the Governor's nomination.

But I have to say, having her as an advocate, at first I -- after our first encounter in court, I said to my client, "They've got a real lawyer on the other side. She's really smart and she's really good and knows what she's doing." Because you learn that when you're standing next to someone in court and they're your adversary.

Secondly, I learned as the case progressed that she's a pleasant person to deal with, that she is a courteous lawyer.

And those of us who have been lawyers for a long time remember certainly a time when that was the measure of the bar, the kind of professional courtesies we afforded one another. Hopefully -- and from various benches, the lack of that in some younger lawyers has been decried recently in the last couple of years.

But I can tell you, Mr. President, that Cassandra Mullen is a professional, she's smart, she's a vigorous advocate -- I want to assure her client, she's a vigorous advocate

for her client's cause, and she is a pleasure to work with in terms of the kind of courtesies that she extends to fellow members of the bar and to adversaries.

So I am delighted to vote in favor of this nominee. I congratulate the Governor on such a wonderful appointment. I congratulate Senator Maltese on his recommendation of such a fine candidate for the court.

Thank you.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I too rise to commend the Governor for this wonderful nomination and to thank Senator Maltese for once again being so wise in recommending my neighbor.

And I know that she is going to make each and every one of us proud. And as Senator Connor says, she brings much to this position. She brings grace, she brings knowledge, and she brings experience.

Thank you, Governor Pataki.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the nomination?

The question, then, is on the confirmation of Cassandra M. Mullen as a judge of the Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Judge Mullen is confirmed.

Judge Mullen is with us today in the gallery. Judge. She's accompanied by her daughter, Victoria Mansfield; by her mother, Eleanor Mullen; her brother, Jack; her sister-in-law, Sandra Hirsch; her aunt, Mary Gramuglia; her cousin, John Gramuglia; and her daughter's friends, Kerri Ann Gayle and Jessica Hamel.

Judge, we congratulate you and we wish you well.

(Applause.)

ACTING PRESIDENT MEIER: The

Secretary will read the report of the Finance Committee.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations:

As a member of the Ogdensburg Bridge and Port Authority, Donald J. Hooper, of Ogdensburg.

As a member of the Veterans Affairs Commission, Anthony S. Esposito, of Guilderland.

As members of the Medical Advisory Committee, Carl P. Sahler, Jr., M.D., Ph.D., of Canandaigua, and Kathleen Benson Smith, of Oswego.

As a member of the Mental Health Services Council, John V. Oldfield, Ph.D., of Syracuse.

As a member of the Board of Visitors of the St. Lawrence Psychiatric Center, Richard M. LaValley, of Canton.

And as a member of the Board of Visitors of the New York State Home for Veterans and their Dependents at Oxford, Richard M. Pedro, of Owego.

ACTING PRESIDENT MEIER: The question is on the confirmation of the above-named nominees. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: As a member of the State Civil Service Commission, Caroline W. Ahl, of Loudonville.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Carolyn W. Ahl as a member of the State Civil Service Commission. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Caroline Ahl is with us in the gallery here today, and she's joined by her husband, Dave.

We wish you well and congratulate you.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the New York State Employment Relations Board, Dean H. Leith, Jr., of Troy.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President and colleagues, I am proud to endorse the Governor's recommendation to serve on the Employment Relations Board -- a neighbor, a friend, a person who has vast experiences in business: Dean Leith.

Dean participated early in his

career in the formation of a company with nine employees doing about $200,000 first year. Grew the company to about $150 million, 1100 employees, and moved on with his life.

He's got a tremendous background. We're proud to be able to recommend him and to endorse the Governor's nomination for the Employment Relations Board.

I would move the nomination, Mr. President.

ACTING PRESIDENT MEIER: The question is on the confirmation of Dean Leith as a member of the New York State Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Leith is with us in the gallery today.

And, sir, we congratulate you and we wish you well with your duties.

(Applause.)

SENATOR BRUNO: Mr. President, can we at this time return to messages from the Assembly.

ACTING PRESIDENT MEIER: Messages from the Assembly.

SENATOR BRUNO: And is there a message from the Assembly referencing Assembly 9462, a bill that previously passed both houses, was vetoed by the Governor and unanimously overridden in the Assembly yesterday?

ACTING PRESIDENT MEIER: Yes, there is. The chair hands down a message from the Assembly.

The Secretary will read.

THE SECRETARY: Assembly Bill Number 9462, Veto Number 1, an act to amend the Public Health Law.

SENATOR BRUNO: I would move, Mr. President, to override the Governor's veto.

ACTING PRESIDENT MEIER: The Secretary will read the title of the bill.

THE SECRETARY: Calendar Number

88, by Member of the Assembly Gottfried, Assembly Print Number 9462, Veto Message Number 1, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: The bill is before the house.

I'll put the motion of Senator Bruno to override the veto before you. Senators, ought the same become a law notwithstanding the veto of the Governor?

The Secretary will read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The motion to override the veto is carried.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions.

ACTING PRESIDENT MEIER: Motions and resolutions.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 2062A, 2063A, 2442, 2443, 3822, 5745A.

ACTING PRESIDENT MEIER: So ordered.

Senator Bruno.

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

ACTING PRESIDENT MEIER: The Secretary will read the privileged resolution.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 3409, recognizing February 10, 2006, as Blue Friday.

"WHEREAS, The State of New York takes great pride in participating in significant days of recognition; and

"WHEREAS, Albany radio station WGNA has teamed up with the Capital District

Chapter of Concerns of Police Survivors, Inc., known as COPS, in recognizing February 10, 2006, as 'Blue Friday' in honor of all law enforcement officers who have given their lives in the line of duty as well as all of those still serving; and

"WHEREAS, COPS, organized in 1984 with approximately 110 members, has grown into a nationwide nonprofit organization with 48 chapters throughout the United States and an affiliate in the United Kingdom. Its mission is to help rebuild the lives of survivors of law enforcement officers killed in the line of duty by serving as a clearinghouse for federal and state benefits information and resources that may be available to the surviving families; and

"WHEREAS, COPS also provides training to law enforcement agencies on survivor victimization issues and educates the public of the need to support the law enforcement profession and its survivors; and

"WHEREAS, Each year between 140 and 160 officers are killed in the line of duty and their families and coworkers are left to

cope with the tragic loss; and

"WHEREAS, Today COPS' membership, including spouses, children, parents, siblings, significant others and coworkers of officers killed in the line of duty consists of more than 12,000 families; and

"WHEREAS, February 10 is a reminder to pay tribute to those in the law enforcement community who have made the ultimate sacrifice; and

"WHEREAS, On February 10, 2006, from 6:00 a.m. until 10:00 a.m., WGNA, DeNooyer Chevrolet, and COPS will be taking a Donation for a Carnation, selling blue carnations and special edition 'Blue Friday' T-shirts at DeNooyer Chevrolet, Colonie, New York, and at the Wilton Mall, Saratoga Springs, New York. All proceeds will go directly to COPS; and

"WHEREAS, In addition, the Western Chapter of COPS, headquartered in Buffalo, and the Southern Chapter, headquartered in Binghamton, are encouraging supporters to wear blue on that day; and

"WHEREAS, The State of New York is

eternally grateful for the service of its brave men and women in law enforcement and applauds the efforts of COPS to assist the families of those who have made the ultimate sacrifice; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to recognize February 10, 2006, as 'Blue Friday'; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to WGNA and COPS."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President and colleagues, this resolution, you heard it, sad in the message that it relates that 140, 160 people who step out, step up -- to do what? Face what truly is an enemy out there of society.

We celebrate constantly and recognize the men and women in uniform by the hundreds of thousands all over the world, keeping peace, fighting for peace, protecting our liberties. These people in blue or in

uniform who step out every single day.

And many of them, as we've heard, 140 to 160 a year, give their lives in the fight against evil. They don't have to, they elect to. And they leave behind wives, husbands, children who suffer the pain and the trauma and the anguish.

So it's appropriate that we, through this resolution, recognize this Friday as "Blue Friday," respecting and honoring the memory of so many that have made the ultimate sacrifice.

Locally I see Mayor Jennings is here. Lieutenant John Finn, not too many months ago, gave his life on the streets a few minutes from here, leaving a family behind, like the 12,000-plus families that are out there.

But there are people who step up to help alleviate the pain. We can never replace the individuals that are gone, but they help with the trauma and alleviate the pain in life.

And I would just like to acknowledge some of the individuals who help

so much, raising money to help the families in a transition in their lives. Some of them are here: WGNA radio hosts Sean McMaster and Richie Philips and other representatives of the press; Albany Police Officer Pat Fox; Town of Corinth Officer Somma; Troy Police Officer Bob Fitzgerald.

We really thank you for your service for those that you represent, thank you for everything that you do on a minute, hourly, daily basis to make a quality of life for all of us that we can enjoy as free people. Because you can live in fear on the streets in your business and in your homes, or you can live as free people. And it's these people in the front lines, many of them prepared and have given their lives so that we all can enjoy a quality of life.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I guess the resolution of Senator Bruno has said it all. But let me just say

this. That Blue Friday, this Friday coming up, is a day that we're going to recognize and support the police forces throughout our state and nation that really have put their lives on the line for us.

There's barely a community, including my own in Schenectady, that hasn't lost police officers in the line of duty.

And, you know, I have to pay tribute to the number-one radio station in this area, WGNA -- one of my favorites, incidentally -- with the dynamic duo who's up there in the audience, Sean McMaster and Richie Philips, and the other officers of WGNA, for making this possible to go out and raise some money on behalf of COPS. They're going to be selling blue carnations and T-shirts and so forth at the DeNooyer Chevrolet and Wilton Mall and be there live.

You know, it's so important that this Capital District and the area get out and support this effort because what we're doing is supporting the families and children and loved ones of officers who have lost their lives.

You know, the police officers that were acknowledged here, we're very honored to have you here in the front row. But we also have some police officers that serve here in the Senate. They had a career here. And with that, I'm going to yield to them and I'm sure that they may want to say something about their brethren.

ACTING PRESIDENT MEIER: Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President.

Thank you, Senator Farley and Senator Bruno, for your comments. Thank you, officers, for being here today.

"Blue Friday," on February 10, 2006, is a day of honor for all those police officers that we've lost across this country.

And if you look at just the number that we've lost here in the city and state of New York, just in a few short months we've lost over four police officers: Kevin Lee, Officer Lee, Officer Frank Hennessy, Officer Danny Enchautegui, and Dillon Stewart gunned down in the streets in the city of New York.

And if you take a look at the school safety agent, Vivian Samuels, and Deputy Sheriff Eric Loiselle from the Essex County Sheriff's Department, and a senior investigator, Thomas O'Neill, and Police Officer William Rivera, who all died this past year fighting for this great city and this great state. Over 140 to 160 officers each year killed in the line of duty.

Just this fall we've seen how many officers have died and how many were wounded, nine in the City of New York since June. These deaths compelled me to act quickly with my colleagues here in this chamber and in the Assembly chamber in drafting comprehensive legislation, the Crimes Against Police Act, so that we can stop this brutal killing of officers here in the city and state of New York.

As a former New York City police officer, I have firsthand experience with the dangers that our finest face each and every day and the heartbreak experienced by all of us when a police officer is killed in the line of duty.

I applaud each and every man and woman that wears blue here in the city and state and across this great nation. And I applaud WGNA, who won the New York State Broadcasters Community Service Award for this most recent event.

We cannot pay enough attention to our officers and to their families. What this group does, it gives counselling to the members or the survivors, the wives and husbands, it takes their children to summer camps and gives them counseling, and it gets the family out and involved in day-to-day life.

And you've done so many great things. We applaud you officers. We applaud all of the officers here in the State of New York. Thank you and God bless your efforts.

Thank you very, very much.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, it's been a while since I was a police officer -- actually, 32 years, since I just

began my 30th year on February 3rd in the Senate here. I missed one month between a defeat in '74 and my election in '75.

While I was with the Depew Police Department, I was president of the PBA and I was active in the statewide law enforcement people. And the reason I'm mentioning that is I think one of the problems that we're dealing with in this state right now -- and although it doesn't pertain directly to the situation today, we're very happy that WGNA and so many people are supporting the wives, families, and so forth of police officers.

It's a -- the new target, unfortunately, of business is police officers, and complaining about their benefits and complaining about their salaries.

I always laugh a little bit because all the police officers that have been killed in Erie County in the last thirty years, I could name every one of them. And in fact my office, I think like most former police officers, pays very special attention to the families of those that have been killed. In fact, I've helped getting jobs and education

and so forth.

Because there's one thing I do know, and that is that a law enforcement officer's life is a life that is difficult. And it's difficult for their families. So difficult, in fact, that when they are killed, it crushes the very fabric of the families. And whether they're killed, by the way, by bullet or knives or in an accident, whatever it is, it is very, very difficult.

And as a former police officer and as a person that represents legally and here in the Senate, I think, a lot of police officers, let me thank all those that are ready to help. Because I just don't believe and I think our problem is I just don't believe people really understand, unless you've been there, the kind of problems that police officers have been confronted with, not only in New York City and Buffalo -- and in Buffalo we're way short of cops, we know that.

They don't even realize in the county that the local government got rid of the sheriff's department undercover people in Buffalo, and they're surprised that the drug

problems in Buffalo seem to be increasing.

And I only mention this because there is an ignorance of how many law enforcement people there are and how many it takes to keep places safe, whether it's Amherst, New York, or whether it's Depew, New York, where I live, or Yonkers or the City of New York or Albany. And I know a lot of Albany police officers. Unfortunately, I've known several who have died.

All I can say is thank you, on behalf of this Senate. Senator Bruno said it a lot better than I can. But also thank you to those people that pay attention to the families and to the children and to those that are left behind. And I applaud you.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President.

I rise today to salute the men in blue, the men and women who serve on the front lines, providing our safety, protecting us and our children and our grandchildren.

I stand also in honor of my

father-in-law, my wife's father, Officer James M. Killion, who on January 29, 1935, was shot dead as a New York City police officer trying to thwart a holdup on Fifth Avenue in New York City.

His young widow -- he was only 29 years of age. He had two children; my wife was only 18 months old. That young widow, Nellie Thompson Killion, received $125 a month from 1935 till the 1950s, and she raised her two children, Joan and Helen, and supported her mother and her father and went to work every day of her life.

And I know what it is to see that impact on his children, who virtually never knew their father. And he sacrificed his life to the people of New York City. And I'm sure at that time they had felt he was the last police officer who would be cut down in the line of duty. But it goes on.

My wife is a founding member of the Law Enforcement Memorial in Washington, which she was there for the inauguration with President Bush. We brought our grandchildren there to have them understand what sacrifice

is for the community.

And these tragedies and these acts of violence continue today and will continue tomorrow, unfortunately. And I think anything we do as a society to support the families of those who laid down their lives so we could live in peace and in safety -- they need that support.

It's my honor to say thank you to the men and women in blue, to the law enforcement people across this nation who stand in defense of our homes and our lives. Thank you. It is indeed an honor to participate today and wish everyone well on "Blue Friday."

Thank you very much.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can I suggest that we open this resolution to all the members in the chamber unless they go to the desk privately and ask not to be put on.

ACTING PRESIDENT MEIER: All members will be listed as sponsoring the resolution unless they notify the desk otherwise.

SENATOR BRUNO: Can we give a standing ovation to the men represented here.

(Standing ovation.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

Mr. President, can we at this time adopt the Resolution Calendar, with the exception of Resolution 3383.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar, with the exception of Resolution 3383, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: And, Mr. President, can we at this time take up Senate Resolution 3383, by Senator Golden, have the title read, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 3383, commending Moshe Yedid upon the occasion of his designation for special recognition by Hatzolah of Flatbush.

ACTING PRESIDENT MEIER: Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President. I would like to talk about a little hero today, a little hero who was about -- how old? About 12, I guess, when this all went down.

Moshe Yedid is one of nine children. He has three older brothers and five sisters, one of whom is his twin sister. Moshe is a sixth-grade student, is well-liked, responsible, and hardworking, and is already recognized as a leader and has plenty of leadership qualities.

Two years ago, Moshe's father became seriously ill and Moshe had already spent countless hours studying and playing ball with his father. During his dad's illness, Moshe demonstrated great courage and determination. Concerned for his dad's health, Moshe wanted to help care for his father and did so, bringing his father meals and reading for him and adjusting his machine as he needed it.

Soon after, his dad passed away. Moshe decided to show his appreciation to the Hatzolah of Flatbush, a volunteer EMS and ambulance service, for the care and the kindness that Hatzolah had given to his father and to his family because of the numerous visits that they had made, the countless visits by his father for his father's illness.

During the week, in the mourning following his dad's death, Moshe collected several thousand dollars to benefit Hatzolah. He has also recently begun a small business of selling potato chips, in the hope that he might one day purchase an ambulance for Hatzolah in his father's name.

Moshe exemplifies this potential of our most precious resource, our youth. And today, as his dad smiles down on him and his family, I am proud to recognize the value of his labor and the promise of his future and the inspiration and model he represents for his family, his peers, and his community.

Ladies and gentlemen, help me welcome Moshe and his family and his friends as he sits up there in the gallery and congratulate him for his great valor.

Thank you, Moshe.

(Standing ovation.)

ACTING PRESIDENT MEIER: Senator Golden.

SENATOR GOLDEN: If everybody can sign on to that resolution.

ACTING PRESIDENT MEIER: Yes,

we'll take care of that.

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

And by request of the sponsor, Senator Golden, we'll add everyone's name, any member not wishing to have their name added to notify the desk.

Congratulations, Moshe.

Senator Skelos.

SENATOR SKELOS: Please recognize Senator Montgomery.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, thank you. I rise to speak on my resolution, Number 3403, in honor of Sadie Feddoes.

And I must begin by saying that some of my best friends are Republicans.

Sadie Feddoes was a Republican. But she was a very good friend, a wonderful woman.

She was a Caribbean woman, and she had all of the qualities of someone that you would want to be a mentor and to really give the kind of support and guidance that she always was very, very willing to give. She was truly a sister.

So I am very honored to be able to memorialize her in this resolution, along with a number of my colleagues, so that we will never forget that Sadie Feddoes was a good friend.

She served as vice president and community and government relations officer for Citibank. She worked there for over 40 years, when she retired. And she was also a columnist for the Amsterdam News for many, many years -- many decades, actually. And her role as a columnist was to really follow the elected officials to see what we were doing and to report about it. And it was always wonderful to be able to pick up the Amsterdam News and read the Sadie Feddoes column.

She was also on the board and

served for some time as chair of Bedford-Stuyvesant Restoration, I believe which was the first not-for-profit community corporation in the nation. And Sadie Feddoes, in her capacity as board member, was extremely supportive.

So we are really fortunate to have had a person like Sadie, who, though she worked in the corporate world, was very, very much a part of the community activities that went on in her own community and for people across the state.

So I'm honored to be able to speak and to introduce this resolution. I thank my colleagues for joining me. And I would ask that any of our colleagues who would like to be part of this resolution, I would like to open it up for sponsorship broadly.

Thank you.

ACTING PRESIDENT MEIER: Thank you, Senator Montgomery.

The resolution was previously adopted, and the sponsor has requested it be open for cosponsorship.

Senator Libous.

SENATOR LIBOUS: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, and the Senate will stand at ease until the Rules Committee is convened.

ACTING PRESIDENT MEIER: Immediately meeting of the Rules Committee in the Senate Majority Conference Room. The Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 4:07 p.m.)

(Whereupon, the Senate reconvened at 4:14 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT MEIER: Can we have a little order in the chamber, please.

The Secretary will read the report of the Rules Committee.

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

Senate Print 6300A, by Senator Volker, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: I move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

The bill is reported to third reading.

Senator Skelos.

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

ACTING PRESIDENT MEIER: The

Secretary will conduct the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 18, by Senator Volker, Senate Print 6277A, an act to amend the Penal Law and others, in relation to the crime of incest.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 31. This act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Savino, to explain her vote.

SENATOR SAVINO: Thank you, Mr. President.

I want to rise to explain my vote, and I want to thank Senator Volker for bringing this bill to the floor today.

This is an issue that's very important to me. In fact, I had introduced a similar bill on this, and I'm happy that this bill is going to get voted on, that there is

an companion in the Assembly, and that hopefully we'll get this signed by the Governor and passed into law.

This bill relates to incest. And incest, the current law back dates back to the 16th century. And certainly it is outdated, but it doesn't do anything to address the impact of incest on children and their families.

And I want to share with you an experience I had. As many of you know, I began my career as a caseworker in the child welfare administration. And the first case that I had that was handed to me after I received my training was the case of a young woman by the name of Alicia. She was a 24-year-old woman who had four children by the time she was 22. She herself had been a product of the foster care system and an incredibly dysfunctional family.

But her four children were taken away from her because she was found guilty of failure to protect and endangering the welfare of a child. And what she did wrong was she allowed her brother, who was 22 years old, to

babysit her children. She had a two-year-old girl who he sexually abused routinely, and it came to her attention only when she presented with VD.

Her daughter and her two siblings went into foster care for five years. Alicia lost all three of her children, including one to adoption that she never saw again. She was sentenced to five years' probation and, because of many problems that she had, she violated her probation and she actually went to jail and served it out there.

Her brother, who was 22, who repeatedly raped her two-year-old daughter, went to jail for 18 months. So a two-year-old girl spent more time in foster care, her mother lost all three of her children and went to jail, and this individual, the perpetrator, spent less time in jail than anybody else.

That is an inequity that we can correct with this bill today. And I want to thank Senator Volker for bringing it to the floor.

Thank you.

ACTING PRESIDENT MEIER: Senator

Savino will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 56, by Senator Volker, Senate Print 3117, an act to amend the Penal Law, in relation to the unlawful operation of a recording device.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 61, by Senator Volker, Senate Print 5622, an act to amend the Penal Law, in relation to

arson in the first degree.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 67, by Senator Spano, Senate Print 5956, an act to amend the Penal Law, in relation to authorizing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 68, by Senator Saland, Senate Print 6289, an act to amend the Penal Law, in relation to the crime of endangering the welfare of a child.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 74, by Senator Maltese, Senate Print 1156, an act to amend the Labor Law and the Education Law, in relation to prohibiting.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator Maltese, Senate Print 5463, an act to amend the Labor Law, in relation to the special task force for the apparel industry.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 120th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 134, by Senator Rath, Senate Print 1513, an act to amend the Penal Law, in relation to endangering the welfare of a child.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 135, by Senator Rath, Senate Print 1521, an act to amend the Penal Law, in relation to assaults.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator

Hassell-Thompson, to explain her vote.

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

When this vote came before us before, I had voted no. And I continue to have some very strong feelings about how we extend sentences and how we strengthen the laws in the State of New York.

But in this last two years, as a person who represents the borough president of the Bronx, in conjunction with Assemblywoman Naomi Rivera, on the issues of domestic violence, I have had the opportunity to meet with groups and individuals who talk about the repeated instances of domestic violence against children as well as against women.

And so that it becomes incumbent upon me, as someone who is representing that population, to look carefully and sensitively at the way in which we enact laws here in these chambers.

My concern continues to be that we spend a lot of our time talking about being punitive and we don't spend an equal amount of time trying to look at changing paradigms to

talk to why people find themselves perpetuating certain crimes that they do.

So that I would hope that even as we explore how to imprison and to incarcerate those persons who commit domestic-violence acts against people in our communities, we also begin to look carefully at what is the root cause and begin to put budgetary dollars toward the exploration and treatment.

So I will be voting yes on this bill, but I would like us to continue to work on both aspects of this very serious and growing problem that we are finding in our communities.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Excuse me. In relation to Calendar Number 135: Ayes, 57. Nays, 1. Senator Montgomery recorded in the

negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 137, by Senator Golden, Senate Print 3433, an act to amend the Penal Law, in relation to endangering the welfare of a child.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 147, by Senator Meier, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: In relation to Calendar Number 230, Senator Volker moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 9461A and substitute it for the identical Senate Bill Number 6300A, Third Reading Calendar 230.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 230, by Member of the Assembly Tokasz, Assembly Print Number 9461A, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR VOLKER: To explain my vote, please.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Senator Volker, to explain his vote.

SENATOR VOLKER: Two things. One, for the benefit of my colleagues, you probably aren't aware, the last three mayors of the City of Buffalo have been senators and have come from the Senate minority. I just want you all to know that.

For some years there's been a debate in Erie County over sharing of this sales tax. This is a sales tax, a temporary tax that was done in 1985 as a result of a fiscal crisis in 1985. There's been an agreement this year to share with the city and with the towns and villages the amount of $6 million each; that is, 6 million for the city and 6 million for the towns and villages.

I mention that because we have been working with the control boards, both the city and the county. We intend, by the way, to make sure that the county is made whole and that there is no interruption in county funds.

The sharing does not start until January 1st of 2007. In fact, one thing that's really good about this bill is that I don't have to have the sales tax as my first

chapter next year, because this is going to go on for two years.

Obviously, we are always uncomfortable about doing this. But without this, the real property taxes in Erie County would probably go up somewhere in the area of 30 to 50 percent. It's very possible.

In any case, this is something I think that needs to be done. We'd rather not do it. But frankly, due to the fiscal situation in Erie County, which has deteriorated badly in the last four years -- by the way, I want to mention to everybody the lowest taxes, real property taxes in the State of New York in a suburban area are in Western New York. It's not well known, but it's true. That's real property taxes. However, unfortunately, we have a high sales tax.

At any rate, I vote aye.

ACTING PRESIDENT MORAHAN: Senator Rath, to explain her vote.

SENATOR RATH: Thanks, Mr. Chairman. This is -- I guess I would call this a rather nostalgic vote. I was the minority leader in the county legislature when

we put this tax in, and it was always to be a temporary tax. The 1 percent sales tax was to come off.

Well, as has happened in many places throughout not only New York State but the United States, I would guess, costs have gone up. The tax never came off.

And at that time we were always going to share it. And you'll be interested to know that Erie County shares more dramatically than any other county in the state. We not only share with the cities, the towns, the villages, but also with the Buffalo School District.

So we share generously with all of these other jurisdictions. So that means there's less there for the county. And as Senator Volker has said, the county has gone through some difficult, difficult times, as I'm sure you've been noticing.

But I rose today because there is a question that I think needs to be addressed on a broad scale. I think it's easy enough for us to figure out who does what when we're talking about providing services. Who pays

for what is maybe a little more complex, because sometimes it's a mixture of state money and county money and federal money. But the big question is who takes credit for what. And that question burns in the minds of everyone who talks about reducing taxes and providing quality services.

What's happening here today is that some of the dollars that were used to provide services by Erie County will be going to the towns and the cities and the villages. Will they be providing the services that the county used to provide and can't provide now because they don't have the money? I don't know.

It's kind of like a balloon: You squeeze it at one end and it pops out the other end. You let go here, and it pops back the other way. And so someone is going to be picking up the cost of those services, or someone is going to be reducing services.

But the bigger question beyond that -- and this is why I have risen today, as I said, to explain my vote and to vote in favor of this -- is because now the money will be going a different entity: towns, cities,

and villages. I will be writing to my cities, towns and villages, asking them to reduce taxes in their jurisdiction.

It is my hope that Erie County will find ways to reduce their taxes and be accountable. But now these other municipalities will have more taxes than they had before. They will have a windfall. And you know what? Maybe they'll be more accountable than Erie County has been. I hope so. Or maybe the taxpayers would just rather not have the services, maybe they'd rather have the money back and not have so much come out of their pockets.

But we're going to have a better chance of finding out now this way. Eighteen, twenty years -- what was it, Dale, 1985?

SENATOR VOLKER: 1985.

SENATOR RATH: Okay, over 20 years. Over 20 years we've been waiting for this chance to see this happen. It's going to happen.

And we will let you know what happens when the jury comes back after a couple of years. We'll see if everyone in

Erie County has gotten a rebate from the fact that we have shared sales tax with the towns, villages and cities.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Malcolm Smith, to explain his vote.

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

I just rise briefly to thank Senator Volker, in particular because, as you know, a good colleague of ours who has distinguished himself in this body by the name of Senator Byron Brown is now the mayor of Buffalo. And as we all know, Buffalo is under the jurisdiction of the financial control board.

And this particular bill will go a long way in helping Senator Byron Brown to the tune of $6 million. So I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Statis -- Stachowski, on the bill.

SENATOR STACHOWSKI: Thank you, Mr. President. That's easy for you to say.

But I also rise to explain my vote. Senator Volker always has to have this as his first chapter of the year, the Erie County sales tax. And at least next year it won't be, because this is the first time we're doing it for two years.

And although the media has reported that we're causing an instant hole in the county's budget, they get the whole, according to the memo, roughly $121 million again this year, which they've been getting for twenty years, and at a growing pace. I think it started around $80 million, maybe 85.

And the fact is that the shared part of this sales tax is only going to be about 12.5 million, if the agreement serves my memory correctly. So that it's not really being shared at the same proportion that the standard formula is. I don't believe the school districts are getting any of it.

And so that the towns and the city -- and the city, which has the hard control board, as opposed to county's soft control board, can use the money very much and so can the other small cities in the area.

So hopefully they'll do the right thing with the money, the county will find a way to survive without the small amount out of an ever-growing sales tax bonus that they get by this extra sales tax and the previous extra percent we passed a few weeks ago that everybody seems to have forgotten -- back in Western New York, not necessarily in this chamber.

So hopefully this will serve as a step forward. Maybe, as Senator Rath said, it will serve as the start of people being more careful about what they do with their finances and try to streamline their governments and make things more affordable for the people that live there.

I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

If we could go to the controversial calendar. I think first we'll ring the bells and let everybody know.

ACTING PRESIDENT MORAHAN: The Secretary will ring the bells.

The Secretary will read.

THE SECRETARY: Calendar Number 147, by Senator Meier, Senate Print 6481A, an act to amend the Penal Law and others, in relation to establishing the offense of aggravated murder of a child and making technical corrections thereto.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Meier, an explanation has been requested.

SENATOR MEIER: Thank you, Mr. President.

This bill establishes a new Class A-I felony of aggravated murder of a child. And it provides for a mandated life sentence without parole upon conviction for that crime.

The crime of aggravated murder of a child occurs when the perpetrator is 18 years of age and they are the parent, the guardian, or other person legally responsible for the care of that child, no matter how brief the charge of that care may be, and they cause the death of a child less than 14 years old.

And the standard is with depraved indifference they recklessly engage in conduct which creates a grave risk of serious injury or death to the child and thereby causes the death, or where it's done as a case of intentional homicide.

Under current law, someone who uses torture, who uses the most excruciating means to murder a small child can wind up being sentenced to as little as 15 years to life, and that would mean the possibility of parole within as little as 15 years. This corrects what we believe is not just an outrage but an obvious oversight in the law.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Sampson.

SENATOR SAMPSON: Thank you, Mr.

President. Would the sponsor yield for a couple of questions.

ACTING PRESIDENT MORAHAN: Senator Sampson has requested you to yield, Senator.

SENATOR MEIER: Gladly, Mr. President.

SENATOR SAMPSON: Through you, Mr. President. When you talk about legally responsible, would that include a common-law wife or a common-law husband under the terms of being legally responsible?

SENATOR MEIER: Well, there's -- common-law marriage was abolished in New York in the 1930s, as a matter of statute.

But what it does include is anyone charged with the care of that child for a period, no matter how brief. So it would include a parent, it would include a guardian, it might include a babysitter, a live-in boyfriend or girlfriend, someone visiting -- so long as for any period, however brief, the care of that child is entrusted to them.

SENATOR SAMPSON: Through you, Mr. President, if the sponsor would continue

to yield.

ACTING PRESIDENT MORAHAN: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, when you say a brief period of time, are we talking about 24 hours, are we talking about a couple of days? When you have a live-in boyfriend who may be a transient who comes in and out of the home, at what point in time does he become legally responsible for the care of children that may not be his?

SENATOR MEIER: Well, Mr. President, let me tell you the intent of this bill.

When that person has enough time with that child, as the live-in boyfriend -- I guess he was the occasional live-in boyfriend -- had with Quachaun Browne, he had enough time to brutally murder that little boy, that's enough time, Senator. That triggers this, life without parole.

SENATOR SAMPSON: Mr. President, would the sponsor continue to yield.

ACTING PRESIDENT MORAHAN: Senator Meier, do you continue to yield?

SENATOR MEIER: Certainly, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SAMPSON: But when you're looking at the statute and you talk about legally responsible and the period of time, we need to understand whether or not does that individual fit within the legal framework of this piece of legislation.

SENATOR MEIER: Well, Mr. President, with all due respect to the distinguished Senator, there's ample case law on this. We have experience in the homicide statutes with regard to a person left in a position of responsibility to watch a child.

We have experience with other homicide statutes in terms of just these kinds of situations -- a babysitter, a boyfriend, a neighbor that someone says "Watch my daughter while I go to the store." It is in fact a

jury question. It's an element that the prosecutor must prove. But we do have case law experience that it doesn't require all that much time.

But, you know, we're really asking how many angels can dance on the head of a pin here. When we look at what happens in these cases, and if you talk about trying to protect children, we know what happens. We know who Nixzmary Brown's murderer was. We know it was her stepfather and someone who routinely lived in that residence. That should not be a big problem of proof.

We know who Quachaun -- we know who the person, the defendant in the Quachaun Browne case will be. That was a live-in boyfriend, a member of that household. That should not be a difficult matter of proof.

And, Mr. President, I understand perhaps what the Senator's concern may be from a legal point of view, but I don't think it diminishes the necessity of passing this law that in some instances prosecutors may have a difficult time proving some elements. That may be true in some cases, but I suspect not

so in the majority of cases.

In fact, Mr. President, if you want to talk about difficulty in proving a case, I spoke over the telephone to the district attorney who's going to be responsible for this case. And if he wanted to get a conviction for an A-I felony on this case and to prove that the child was murdered after first having been tortured, in order to get an A-I felony conviction showing that torture was the means, if you will, that led up to the child's death, he has to show that the torturer derived gratification or pleasure and prove that beyond a reasonable doubt.

That's a difficult item of proof, to get into the rather byzantine, bizarre and sick mind of somebody who would take pleasure from torturing a child.

So this is designed to protect children. It's designed to give prosecutors an additional tool to do that. And the fact that in some hypothetical case there may be a problem of proof on an element is hardly a reason to question the bill.

SENATOR SAMPSON: Through you,

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

ACTING PRESIDENT MORAHAN: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes.

SENATOR SAMPSON: I'm not questioning the importance of this bill. The only thing I'm pointing out is there could be a problem when you have a defense attorney on the other side that when you talk about being legally responsible and you're dealing with the issue of in some of these households you have single parents and you have a common-law wife or a common-law husband who may be a transient, who may be a guest at the time.

We're trying to create a statute that punishes these individuals to give them life in prison. But if you leave that door open, you won't get the punishment that you're seeking with respect to this legislation.

SENATOR MEIER: Mr. President, the bill clearly says --

ACTING PRESIDENT MORAHAN: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes.

The bill speaks in terms of a person in a position of trust. The bill clearly says, if you turn to page 3, beginning with line 30, person in a position of trust means any person who is charged with any duty or responsibility for the health, education, welfare, supervision, or care of another person, either independently or through another person. Through another person. In other words, the mother, the father, whomever asks someone else, no matter how brief.

Now, I think that's pretty clear. Now, can we sit around and hypothetically think of areas where a prosecutor might have a little bit of a problem establishing that? Yeah, he might. And is it inevitable that some defense lawyer is going to take a line of attack through that? You bet. That's what defense lawyers do.

But I think we've got it covered to the greatest extent possible, based on the case law that we have, based on our prior experience with these kind of statutes.

SENATOR SAMPSON: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senators.

Senator Diaz.

SENATOR DIAZ: I yield.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. Thank you, Senator Diaz, for yielding.

Mr. President, I would like to speak on the legislation.

I understand, I see now that Senator Meier has given a name to this legislation. This is the Nixzmary Brown Act, is that what this is? I believe. Nixzmary's Law.

Mr. President, Nixzmary Brown and her family lived in my district, and they actually lived right across the street in front of a precinct. And this clearly is one of the great tragedies in my district for a child, but it is certainly not the first one.

And I think that one of the problems that we have to Senator Meier's legislation, and to all of us who are trying

desperately to figure out how do we prevent this happening, that family violence is very troubling and very, very complex and difficult to deal with.

And so it's not just the Nixzmarys, but it's all of the people who witness it. Usually in cases where children are abused, women are abused in the same household. And so -- and it's difficult even to have those people who are abused actually decide that they must leave in order to save their own lives.

So it's very, very complex. I don't have the answers, and I'm sure that most of us don't.

But what we have done here in Senator Meier's bill and the other legislation today, in the name of looking to figure out to help children, we have just created sentencing laws, because that's easy. And we have longer sentences, sentences of life without parole for parents --

SENATOR MEIER: Mr. President, will Senator Montgomery yield for a question?

ACTING PRESIDENT MORAHAN:

Senator Montgomery, do you yield for a question from Senator Meier?

SENATOR MONTGOMERY: I would like to finish, and I would be happy to answer any questions.

ACTING PRESIDENT MORAHAN: The Senator does not yield at this moment.

SENATOR MEIER: I thank the Senator. Thank you.

ACTING PRESIDENT MORAHAN: The Senator does not yield at this moment.

Continue, Senator.

SENATOR MONTGOMERY: We're creating a sentence of life without parole for parents. And certainly parents should be punished if they kill their children or maim them or harm them or abuse them. And we certainly do have and Senator Meier certainly has introduced legislation to address that.

But I think this now has gone further than just looking for ways to punish the parents. There are so many nuances, so many different aspects to this issue. So a quick fix is not what we really need. It may satisfy us for our political purposes, but it

does not address the issue.

Now, I am proposing -- and I hope that we can have a discussion about this -- that we look at creating, especially in New York City but hopefully statewide, something akin to what has been done in other cities, namely Philadelphia, where I have visited and talked to people who have done this because they had similar problems and looked for solutions.

I'm proposing that there be an emergency response team made up of people not where we just send a social worker into a situation that is possibly dangerous for that person, but where we have a team that is comprised of the ACS plus all of the other agencies, human services agencies, as well as law enforcement.

Because this was a violent home. Social workers were obviously afraid to go into it. And once the child was reported and there was some contact with that family, the situation only got worse.

This was a father who was unemployed from his security job. What a

horrible situation. You have five or six children, you live in a one- or two-bedroom apartment, and you have lost your security job. And it goes on and on, the horrors of this story.

So we need to have a mechanism where we can address these issues before a child dies. Hopefully, before a woman dies. Because in many situations, if it's not one of the children, it is the woman.

Let's step back and think through what makes some sense. Let's work together. Because this is not Nixzmary's Law. This is not -- this doesn't address what happened to Nixzmary, because this doesn't address her family. No one is talking about what happened to her mother before. She was 27 years old, Mr. President, and she had five or six children, and her oldest child is 7 years old.

This doesn't talk about Nixzmary. This just talks about our need to rush and say if you do something, let's give you a longer sentence, ignore the possibility of judges having anything to say about it, let's just go life without parole and that will solve the

problem. This doesn't speak to Nixzmary. I object to this bill being named Nixzmary's Law. It's really not.

So, Mr. President, I'm going to vote against this. That child lived in my district, and I have pain about that. And I would like to see something done to help families who are caught up in a situation like Nixzmary's family so we don't lose another child and we don't lose another woman like I've lost women in my district to domestic violence.

So it's not Nixzmary's Law, it's not the right thing to do, and I am voting no on this bill.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Meier.

SENATOR MEIER: Will Senator Montgomery yield for a question?

ACTING PRESIDENT MORAHAN: Senator Montgomery, will you yield to Senator Meier?

SENATOR MONTGOMERY: Yes, I will.

SENATOR MEIER: Mr. President, I wonder if the Senator could tell us what she thinks an appropriate penalty would be if --

SENATOR MONTGOMERY: Well --

SENATOR MEIER: Well, let me finish the question, Senator.

SENATOR MONTGOMERY: Yes, go ahead.

SENATOR MEIER: -- what an appropriate penalty would be in a case where the following facts were proven: where a 26-year-old, fully grown man brutally beats and tortures a 7-year-old child to death. What's the appropriate penalty, Senator?

SENATOR MONTGOMERY: Mr. President, I'm looking at this -- I don't have the law book in front of me, but this says that a parent or a guardian who is convicted of murdering his or her child less than 14 years of age can be -- and who intentionally murders his or her child is subject to a parole-eligible sentence of between 15 to 25 years and a maximum of life.

We now have in law a bill, a law which allows us to -- in the event the judge

makes a determination that that is correct thing to do, we can sentence them to life. So it's not that we don't have a law that would allow us to do it, we just don't have a system which protects families and children in this situation from being killed, hopefully.

That's what I'm looking for, Senator Meier. I'm not looking for necessarily another sentencing bill, because we have that. You said it. It's in your memo right here. You say we have -- we can do that, we can punish them, sentence them to life. It's up to the judge to make the decision.

That's what I would like to see us use. But I would also like for us to focus on how do we keep those children from being killed in the first place.

SENATOR MEIER: Would the Senator yield for another question?

ACTING PRESIDENT MORAHAN: Senator Montgomery, do you yield?

SENATOR MONTGOMERY: Yes, I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MEIER: Mr. President, I would ask the Senator if she understands that when we talk about 15 years to life, that's what is called an indeterminate sentence. And at the end of 15 years, the New York State Board of Parole can parole someone under such a sentence.

So I would ask the Senator if she would feel that under the hypothetical that I posed to her, a 26-year-old, fully grown man tortures and beats a 7-year-old little girl to death -- while, by the way, she begs for mercy, begs for help, and he beats and tortures her to death -- do you think it's appropriate that that man can be out on the street at age 41 years with a full, long life ahead of him? Is that appropriate?

SENATOR MONTGOMERY: Mr. President, I want to be very clear. It is not appropriate for any parent to kill their child. It is not appropriate for any person to kill another person. We have laws that deal with that. And we have punishment that deals with it.

And all I'm saying to you, Senator

Meier, is that -- in answer, Mr. President, through you, in answer to his inquiry -- I think it's a rhetorical question that he asks, absolutely, because we have checks all along the way. We have the sentencing judge, we have the parole system. And so there are checks along the way if indeed it is necessary that a person spends their life in prison. We have a number of people who are spending their lives in prison.

That, I think, our system takes care of. What our system has not been able to do successfully is to have a mechanism whereby we can identify, early enough to intervene, symptoms and signals where things have gone wrong for a child. A child who comes to school obviously having been abused by someone, someplace. Who do we report to? Who reports them? Who goes to check on the report? That's where we have not been able to establish a working, workable system.

So what I'm talking about is not looking for another way -- another extension of the penalty. I'm looking for a way to hopefully prevent another child or another

woman from being killed and to be able to pick up the signals early, to be able to intervene appropriately early, and to avoid this kind of horrible death.

Let's use Nixzmary for a positive, positive response from our Legislature and our government officials for once and not to just run and look for another criminal justice bill. So this is not Nixzmary's Law. We should retract that. It's Senator Meier's extension of the Criminal Justice Act to provide life without parole for parents.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President.

I'd like to take this opportunity to speak on this bill because I think what we're doing today is very important and certainly very appropriate.

There is no greater gift, I don't believe, than the gift of a child in your life, be it a biological child, an adopted

child, or a child in your custody. And as the mother of six children, I just fail to comprehend how any parent, mother or father, could stand by and watch a helpless child -- and really, all children under the age of 14 are vulnerable and helpless. They can't really defender themselves. They are subject to our control, the control of their parent.

But to sit by and watch and to allow what happened to this child is absolutely unbelievable to me. It is inhuman that you could allow that to happen. Children are a precious gift.

Recently, in my district, we just had another sad incident. A young mother, 34, had seven children, none in her custody except this eighth child. The eighth child she slept with, at seven months old, while she was allegedly intoxicated and using pharmaceutical drugs, prescription drugs. The 7-month-old child suffocated.

These things should not, cannot happen. And when they do happen, they need an appropriate penalty. This child never had her eighth birthday. And yet the man who caused

her death will celebrate and could celebrate his 41st, 42nd, 45th and 50th birthday as a free person.

We need this penalty. We need to say life without parole. We have it for the killing of a child in the course of a sexual act or committing rape. The killing of a child is the killing of a child, a helpless child. We need to have this penalty. And I hope that all of my colleagues will support this bill today.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President. I rise to speak on the bill.

ACTING PRESIDENT MORAHAN: Senator Diaz, on the bill.

SENATOR DIAZ: Last year, three days before Christmas, the Governor called an extraordinary session of the Legislature. That was on Wednesday, December 21, 2005. The purpose of that extraordinary session was in response to pressure mounted by the New York Post and the New York Daily News in regard to

the assassination of two police officers, Officer Daniel Enchautegui and Officer Dillon Stewart.

On that day, Wednesday, December 21, 2005, I spoke and voted against the police killer bill. Let me now read my statement from that day. That day, December 21, 2005, I started by saying: "Let me express my condolences to the families of Police Officer Dillon Stewart and Police Officer Daniel Enchautegui and to all of those families who have lost a loved one in the line of duty. As the father of a New York City police sergeant, I could sympathize with their pain, knowing that at any time my family could be next."

"I want to make it clear," I said that day, "that I fully support those brave men and women of the New York City Police Department who risk their life in their daily work. However, saying that," I said, "I would like to share with you some of my concern about this legislation" that day.

"According to the statistics reported in the New York Post on Monday,

December 19, 2005, in New York City there have been 509 killings, homicides. 62 percent were committed with guns, 59 percent of the victims were black, 27 percent of the victims were Hispanic, and 8 percent of the victims were white."

I said that these statistics showed that out of 509 homicides or killings in New York City in 2005, 86 percent of the victims were black and Hispanic. These, I said, I suppose include grocery store owners and workers or what we call bodegueros. These, I said, I suppose include taxi drivers, especially livery car drivers. These, I suppose, include senior citizens and every other citizen in the black and the Hispanic community.

After reading these statistics, I said, I have to ask myself the following question. And I asked this question that day: If the black and Hispanic bodegueros or the black and Hispanic bodegueros, taxi drivers, and all senior citizens are the ones getting killed the most, why support legislation that applies only for those that kill members of

the police department and not bodegueros and taxi drivers?

I said, "My daughter, my only daughter, is a member of the New York City Police Department. She's a sergeant. And as I said before, at any time my family could be subject to the same suffering as the Enchautegui family and many other police officers' families."

Nonetheless, I said -- listen carefully -- nonetheless, I said, I have to ask myself if the life of a police officer is worth more than the life of a bodeguero, a taxi driver, a senior citizen or any other New Yorker.

I said: "Are we sending a message to criminals out there telling them that if they want to kill someone that they are better off a choosing a bodeguero, a taxi driver, a senior citizen, or any other because they will get a lesser sentence that way?"

"I am in support of legislation," I said, "that increases penalties on anyone that kills or that takes the life of a police officer or anyone else. I believe that if we

are going to send a message to criminals and if we want to stop crime in New York once and for all, we have to toughen penalties for the killing of anyone."

Finally, I asked, what is our message today to New Yorkers? Is it that a police officer's life is worth more than other lives?

Ladies and gentlemen, on that occasion, Wednesday, December 21, 2005, I advised all of you that every human life has equal value: Black, Hispanic, white, Asian, Indian, police officers, children, taxi drivers, bodegueros or a grocery store worker, senior citizens everywhere. They are all precious lives, and they all have the same value. One is not better than the other.

Today, just a few weeks after that day, December 21, 2005, we are facing a situation that I foresaw back then and that only Senator Kevin Parker understood and followed and joined me. Today we are trying to increase penalties for children killers.

The brutal murder of Nixzmary Brown by her guardian and the abuse and killings of

many other children cannot be and should not be forgiven. We have to act now. But we could have done it last year. On Wednesday, December 21, 2005, three days before Christmas, we could have done that.

Today, one more time, under the pressure of the media, we are dealing with the same problem, increasing penalties for those that kill a child. Last time it was to increase penalties for those that kill a police officer. Contrary to the last bill, I am voting in favor of this bill.

However, one more time I am telling all of you that we should not wait until tomorrow, when they kill a few senior citizens or a few taxi drivers or a few bodegueros. And we should not wait until the New York Post and the Daily News start pressuring us to increase penalties on senior citizen killings, and on bodegueros, to act.

All life are equal. All life are precious in God's eyes. We are all children of God. And going back to what Senator Montgomery said, and somebody asks: What should we do? Why don't we pay attention

before that? Well, ladies and gentlemen, let me tell you something. Children have been killed in the City of New York, children have been abused, and I see our Mayor next to the commissioner of ACS, Administration for Children's Services, saying that his support for the commissioner has grown.

So when is it that we will understand that it's under Commissioner John Mattingly's supervision that those killings and those children have been killed and have been abused? When are we going to ask -- when is the Mayor going to ask him to resign? When are we going to put somebody there that really, really looks into the problem before?

Because we have ample information that Nixzmary's killing could have been avoided if the Department of ACS, the Commissioner and the administration of the City of New York, could have done better.

The Mayor said we all have failed, the administration has failed, the city has failed. We all have. No, ladies and gentlemen, Mr. Mayor, Commissioner, we have not failed -- you failed. Your administration

failed. And it's about time that the Mayor remove the commissioner so we protect our children better.

Thank you. I'm voting yes on this bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Maltese.

SENATOR MALTESE: Mr. President, on behalf of my constituents in Queens County, I wish to express our sincere appreciation to the sponsor of the bill, Ray Meier, and all the other sponsors of the bill, as well as express appreciation to Assemblywoman Nettie Mayersohn, who has been fighting this fight to protect children and to penalize their murderers for many years.

She advised me just earlier today that on a comparable bill in her house she has already received assurances from over 100 Assembly members that they will cosponsor this bill.

Mr. President, Senator Meier has indicated that he spoke to Charles J. Hynes, Joe Hynes, the district attorney of Kings

County, and he has worked with Senator Meier and others on formulating this bill, which admittedly, to my good colleague Senator Montgomery, is a punishment bill.

At the same time, we have approached this bill, we in the Senate have approached this question, this issue, in a variety of ways. And tomorrow my understanding is that we will pass legislation that will require caseworkers to receive annual training that will provide educational resources for adoptive and foster parents, that will give caseworkers access to criminal records of those they investigate.

And we in the Senate Majority have had repeated meetings with the New York State Child Protective Services, with others in a position of responsibility for protecting the most vulnerable in our society, the children. And we will be holding task-force meetings, hearings, just as has been held and will be held in the Assembly, to address a problem.

Almost forty years ago I served as a Queens prosecutor and deputy chief of the homicide bureau and had the responsibility of

investigating some of these same heinous murders -- children killed, raped and murdered, in one case, a 9-year-old girl, by her own father. Similar situations, similar cases where the adequate punishment was not there to at least punish the transgressor, the perpetrator of these horrific crimes.

Here we are almost forty years later, and the same crimes are again occurring. And we in the Legislature, because of this little girl, because of this 7-year-old girl, Nixzmary Brown, are trying to prevent a horrendous act like that from occurring again.

At the same time, we must serve notice that a person in trust with the custody of these most vulnerable of our young, those that entrust their safety, their very lives to the parents, to those that are acting as stepparents or with custody of these children, who have nowhere else to turn, that at least if those children are horribly murdered, tortured, abused, and murdered, that we will exact a penalty of life without parole.

Admittedly, this bill doesn't

answer all the concerns and the questions of Senator Montgomery and many others. At the same time, a crime like this speaks out, cries out for some type of punishment that fits the crime. And this punishment does not fit this crime.

I know this bill has been labeled and Assemblywoman Mayersohn also is reluctant to label it Nixzmary's Law. But some of us felt that this little 7-year-old girl that had too short a life should be remembered. As I think back over the almost forty years of the hundreds and probably thousands of vulnerable children that have been killed by those that they should be seeking and receiving protection from, this little girl -- and I know that it has received press coverage, and I know that it has aroused anger and outrage on the part of a population beyond New York City, beyond the State of New York, a 7-year-old child that was tortured and abused over a lengthy period of time, and so many warnings signals that were ignored.

I would hate, I would not wish to be in the place of those ACS workers that

perhaps asked themselves should they have pressed a little harder, should they have received somebody in law enforcement to go with them, should they have pressed for entry into the household, should they have secured assistance from a supervisor. As the supervisors, should they have gotten others to step in and look over the case.

Here we had doctors that I believe should have done more to ascertain the causing of bruises and injuries that were patently unexplained.

This case cries out for the ultimate punishment. This case -- we cannot take steps to make sure that this never happens again. At the same time, the torture that this child received, the abuse that this child received, tied to a chair by a person who calls himself a man, tied to a chair with the apparent acquiescence of the mother that the child cried out to -- "Mama, Mama, Mama" -- and received no assistance.

The neighbors that now say, Maybe I should have heard, maybe I should have stepped in, the relatives that are now bemoaning the

fact that they could have done something, should have done something -- those people will carry that burden for the rest of their lives.

We here in the Senate have a responsibility to enact statutes. We try to protect the most vulnerable. In this case, we also must act on our obligation to punish the guilty. Life without parole is too easy for the perpetrators of this heinous crime but is what we can accomplish now and what we should pass and enact into law.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

I rise in support of this bill. And as I said earlier, my experience in the child welfare administration, both before the creation of ACS, the actual creation of it, and its current configuration -- I know that I'm not the only one in this chamber that has experience in this area.

I know Senator Meier has been a law

guardian for children. He's uniquely aware of the problems that these families face. I know Senator Robach has experience. I know many of you through your experience in law enforcement, those of you who are social workers or educators have encountered this in your entire career.

And as I listen to the debate today, what I hear is a desire to address what we recognize is a heinous crime and a despair over the fact that no matter what we do, we cannot seem to prevent the abuse and neglect of children.

Here's a hard and fast reality, ladies and gentlemen. People who are ill-prepared to have children reproduce every day, and we can't legislate against that. People who should not have children are capable of it and they do it and they don't take care of them and they neglect them and they abuse them, and we cannot really stop that from happening.

We can punish them when we catch them, but unfortunately, for us to punish them, they have to come to our attention. And

by the time they come to our attention, all too often the damage has been done. Whether it's abuse or neglect or a combination of the two, whether it's educational neglect or medical neglect, first children have to suffer.

And I wish that we could craft a piece of legislation that would prevent that from happening. I wish we could do it.

The current Administration for Children's Services is not the agency I went to work for 16 years ago, certainly not. It has been through numerous changes. And at one point, because of the death of another little girl just about ten years ago, Elisa Izquierdo, it underwent a major reform and overhaul, and it became a model across the country for child welfare.

But like every incarnation of this agency, if you take your eye off the ball, if you shift resources away, if you don't recruit and retain competent staff, if you cut community-based services, if you just don't do the education and outreach to mandated reporters like teachers, like doctors, like

nurses, if you don't encourage people to be vigilant on this, this is what happens.

We've seen in the past two years in ACS a mass exodus of people leaving. It's an incredibly difficult job, incredibly difficult. And unless you have knocked on someone's door in the middle of the night and asked them to give you their children, you really cannot understand just how hard it is.

That does not mean that there were not mistakes made in this case, and they will be dealt with. However, if we want to have an impact, and I think we do -- what I hear is a frustration and a desire so that there is not another law named another dead child -- then I think what we can do is address some of the inequities in the child welfare system. And it's not just about throwing money at a problem. It really isn't.

It's about going back to the model that we started a few years ago, fine-tuning it. Perhaps there's things we can do in the Family Court law. Are there barriers to early intervention in families? Are our teachers aware of the triggers of the child abuse and

neglect? Are they intervening, or are they calling it in? Do our nurses and doctors know, our daycare providers?

And how about an outreach in education to the public? Because before ACS may have failed this little girl, before her doctor did, before anybody else did, her family failed her. They stood by and they did not do anything. Her neighbors failed her. The people in her community failed her. You cannot see a child who is viciously abused and not recognize that there's something wrong.

So we all have to understand that it is not just the responsibility of government or the criminal justice system. I hate to use the metaphor that it takes a village to raise a child, but in this instance it does. We are all responsible for the children in our lives and our communities. And I hope that we don't just pass this bill today and then forget about it until the next child is dead.

Thursday morning the Assembly is convening hearings on this issue. I think it would be wonderful if members of the Senate

who are in New York City could attend, or if the Senate could convene its own hearings. And perhaps we can finally begin to address the triggers that lead to child abuse and neglect in New York City.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Balboni.

SENATOR BALBONI: Mr. President, about a week or two ago we had the anniversary, I think it was over 30 years ago, of the brutal murder of a woman by the name of Kitty Genovese. She died in Queens. She died in the middle of the street. And the neighbors could hear her cries, and they did nothing.

That case captivated the United States and came to symbolize crime and fear in our cities and the apathy of our neighbors. Well, so has this case captivated us, because there are many elements that are the same here.

That's why I object to the characterization of this bill as merely a

sentencing bill, that somehow by enacting this law we automatically assign to a defendant a penalty. Forgetting that there is a justice system that has our constituents as the jury and elected and appointed officials as the judge who will make determinations, based upon this language, as to guilt or innocence.

Likewise, the concern about victim-specific penalties is no concern of mine. It is always in our legislative history that we have decided as a society there are certain members that deserve more protection than others. The Latin phrase that is throughout the law is "parens patriae." We are in a position to protect our children. And if someone attacks my children, they should get a much harder penalty than attacking me. So this is a perfectly appropriate response.

And lastly, it is wholly appropriate, and not exclusive in remedy, that we choose to express our outrage as a Senate and as a society that this would occur. And it is depressing to think that anyone would do this to a child -- the most vulnerable, the

most innocent. We give voice to those who do not have a voice. To stand by and let this go by is to stand at the abyss of the breakdown of our society, because there's no more basic job that we have to do than to protect our children.

Now, hopefully, in a couple of weeks we'll be voting to spend millions of dollars on Child Protective Services throughout every corner of this state. But going to Senator Savino's point, we can't blame the system, ladies and gentlemen, wholly. Yes, ACS failed this individual child. But it's the individual responsibility of the person who committed the crime that we must look to, and that's who we look to today.

I'm going to vote aye on the bill. Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Balboni.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

One problem when you speak late in the session and after a lot of speakers have

spoken before you, many of your points have already been made. So I won't go back over each and every one of them.

I too remember the Kitty Genovese case, and I do remember the outcry that occurred after that. And I do remember when they tried to pass legislation, people were standing up and saying: Well, it's not just the punishment, it's the system. And we've got to deal with the system because it failed. It failed.

This was in a middle-class neighborhood that this occurred. So it occurs in all neighborhoods. We've had situations tragically occur in my Senate district not that long ago, of a similar nature, where a child was abused.

Where were the parents? Where were the schools? Where were the social workers? Where were the courts? Where were the judges, where were the police? We could go on and on and on and lay it off.

One of our U.S. Senators said it takes a village -- we've heard that too -- to raise a child. I suggest it takes a community

to protect one. Certainly the parents didn't.

What do we do if we pass legislation tomorrow, if we put up legislation that doesn't punish the perpetrator of the act? What if we took the children away from that mother? Would that make us happy? What if we took each and every one of those children out and we said, This is an unfit parent who cannot raise a child because, I don't know, maybe she was a drug addict, maybe she was -- who knows. I don't know the full background.

But she was living with a guy who obviously was not stable, and that man killed a helpless child. That man has to be punished for that act. We're going to give him to psychiatry, we're going to put him in an institution where he's given mental health treatment and we don't remember what he did?

It's a very difficult question. I agree with you, Senator, it's a complicated issue. But I think what we have to do is separate two things, the social problems from the act itself. The act is unforgivable. I cannot feel sympathy for any adult that

destroys the life of a helpless child. They don't deserve our pity. They just don't deserve it.

Senator, I suggest you should change your mind and I think you should vote for this bill, because that's the message that we need to send. I agree with you there has to be an address of the system. We have to look at the cause. Those are the complicated issues, how to help that mother, if she was abused, to come to the right conclusion.

How do you prevent someone from having children that they can't care for, perhaps don't even want, but don't know how to stop? It goes on and on and on. It's never ending. And if we keep getting bogged down, the people who destroy a helpless child don't get the punishment they deserve.

The punishment this person deserves is Senator Meier's legislation. That person deserves to be off the street and never to see it again. There's no forgiving that.

Dealing with the other cause, the other issues, I agree with you. There's the complexity. And I don't have the answer. I

don't have the answer. Perhaps wiser heads will come up with it. But right now we have something before us that we can deal with. And I think we have to get this type of an individual who would act in such a vicious way -- that person has to be taken off the streets to protect society again.

We cannot have these people walking around who are going to kill children. We just cannot allow it. As a compassionate society, we want to help people who need help. But as we said before, let the punishment fit the crime. If you commit such a heinous crime as this, you deserve the ultimate punishment. You deserve life imprisonment without parole. Because you don't deserve to be in the company of civilized people.

I intend to support this bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marcellino.

Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President.

I too rise to congratulate my good colleague Ray Meier and Senator Serph Maltese

and others that worked with the district attorney, Joe Hynes, in Brooklyn to put together a piece of legislation that we believe works.

And an estimated over 3 million children were reported to child protective service agencies as alleged victims of child abuse. That was in 1998. And over approximately 1 million of these reports were confirmed. The number has not gone down; it continues to go up. In 2003, 77,086 New York State children were abused or neglected -- 17 out of every 1,000 children. It gets uglier. Nineteen percent of the victims were aged 2 or younger, and 52 percent are aged 7 or younger.

In the nation overall, and here in New York City and New York State, crime has fallen over 22 percent. But in that area, reports of child abuse and neglect have gone up over 8 percent by 1997 and continue to grow to the present date.

In 1998, three children a day were being killed and assaulted and abused and neglected. Dead. Figure that's pretty bad. But in 1999, it went up to almost four a day.

And since 1985 the fertility rate has gone up 39 percent.

I don't know what message we're waiting to send. I think the message that that body is going to send today is the right message: No more Nixzmary Browns here in this city and this state.

So again, I urge all of my colleagues to vote for this legislation. And as we see Nixzmary Brown in New York City, we've seen a couple more children since then, and the numbers continue to grow.

So I vote aye, Senator Meier, and thank you for your legislation.

ACTING PRESIDENT MORAHAN: Thank you, Senator Golden.

Senator LaValle.

SENATOR LaVALLE: Thank you, Mr. President.

It seems whenever we have legislation dealing with our young people, this chamber and the members demonstrate a lot of passion and enthusiasm. And certainly our future are our children.

And every member here, every single

member -- I was thinking about this through the debate -- really has always been so supportive in what they do, either in their prior lives before being elected or today, in doing things that protect our children to support our children.

I think each and every day we're here in session someone is introducing a bill or a bill is being reported from committee or a bill is being passed on the floor that goes to looking at the society, the problems, and how we can make it a better place, particularly when it concerns our children.

This session already, if you look at the bills that we've passed, our focus and the intensity has been there to do just that. We are dealing with a situation where there was obviously a depraved indifference to a life. And I think, as we begin to analyze this, I think members who have spoken have really bifurcated the issues and said, yes, there are issues.

And that's what I'm speaking of. Every day we're here, we deal with the issues of how we can protect our children. But once

someone shows depraved indifference for our children, then we say, as a society, we must put a law in effect that says you crossed the line and our society will not stand for that. That's what it's all about. A life has been taken.

Senator Meier, you are to be congratulated, Senator Maltese, and others who really spent hands-on time in developing this legislation.

All of us know that we keep repairing and fixing the system, as I have said so many times. I am afraid that as much vigor that we put in to fix and repair the societal problems, there are those that are dysfunctional, and all the money that we put into the system, and the hard work in our education system and the social workers, goes for naught.

We continue to try. We don't shirk our responsibility; we continue to try to fix the system. But at the same time, we cannot turn our backs when a member of our society shows depraved indifference. He must be punished to protect those that really can't

protect themselves.

I will be voting in the affirmative, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator LaValle.

Senator Hassell-Thompson.

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

I would like if the sponsor would just yield for one question.

ACTING PRESIDENT MORAHAN: Senator Meier, will you rise and yield to a question?

SENATOR MEIER: Yes, Mr. President.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Through you, Mr. President, I just need -- this is a question purely of clarification.

By naming this Nixzmary's Law, aren't we presuming -- and I heard you use the language "we know," in your presentation, that he did it, that they did it. But aren't we presuming, before this case has been tried,

that in fact we -- we're almost trying this case in a public manner that might, in fact, interfere with the very thing that we want to try to make happen in this case? That's my only question.

ACTING PRESIDENT MORAHAN: Senator Meier.

SENATOR MEIER: No. I don't think so at all, Mr. President.

We are not prejudging a criminal case. But what we know is somebody beat and tortured this child to death. That is a certainty. The defendant, defendants in this case will have their day in court.

What came to light as a result of this case, when you talk to the prosecutor, is the inadequacy of the criminal statutes as they deal with a situation like this. And that's what this case addresses. We're not prejudging any particular defendant.

SENATOR HASSELL-THOMPSON: Just on the bill.

ACTING PRESIDENT MORAHAN: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON:

Senator Meier, thank you for your clarification.

I'm not as clear, however, that some of your colleagues in the presentations today haven't really come very close to the line on that.

I think that I've worked with you on enough bills and on enough issues that I really do understand your intent. And I believe that, of a few people in this chamber, I think I believe I understand what's in your heart. And that becomes important to me.

It becomes important to me because, as someone who has worked with children for much of my life -- I started my career as a pediatric nurse and then went from pediatric nursing to infant daycare and then worked with families with children and have worked with very troubled families over the course of those many years.

And I know that what I've tried very hard never to do is to judge whether parents are good parents or bad parents. But I like to try to talk about whether parents are effective in their parenting or

ineffective. It is very clear that this is way over the line of anything that is even in the realm of parenting. And so it is never my attempt to make excuses.

But it is my concern that we are not, in this chamber -- and for the first time I heard Senator Balboni say: In a few weeks, when we get to the budget, we're going to begin to talk about where we're going to put the money. And I think that I have stood in this seat over the six years, going into my sixth year, and said at the point we begin to demonstrate in the budget that we care, then we will truly be able to put our money where our mouth has been.

And while I don't think that we certainly need to get caught up in the social implications of this issue, we can't dismiss the social implications. Primarily because the neighbors didn't complain either. Nobody came forth. So we have created a society where our children become an endangered species just by virtue of our own silence.

This bill talks about speaking out and sending the message. And I want to send

the message, but I want us to be very, very, very clear that in the process of how we -- I almost said "adjudicate," because sometimes I feel like that's what we do here -- but in the process as to how we enact things, that we are clear about what it is that we're attempting to do and to look beyond this moment and say what is it that we're going to do with the siblings of Nixzmary and what are we going to do on a continuing basis because of the kinds of impact that her death is going to have on the other children in that family as well as her classmates and other children who are affected by this behavior.

So let us be clear that we have a big job to do, that this is just the beginning of the effort, and that if we really seek justice and love mercy we will really do our job very well.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Onorato.

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

SENATOR MEIER: Yes, Mr. President.

SENATOR ONORATO: Just for a little clarification. I read part of the justification, and the thing that is bothering me, I want to know -- it says you can get an A-I felony for intentionally killing a person under the age of 14 while in the course of committing rape, a criminal sexual act, aggravated sexual abuse or incest against a child, or the depraved indifference or intentional killing of a person under 14 while legally responsible for the care of that child.

Now, what if the person who commits the exact same crime is not responsible in any way, shape, or form for the care of the child? Does the same sentence apply to that particular individual with the same crime being committed?

ACTING PRESIDENT MORAHAN: Senator Meier, do you yield?

SENATOR MEIER: I will yield.

And, Mr. President, you have to pull that apart, and it starts getting a

little complicated. It would become an A-I felony and therefore subject to life without parole if it was a matter of -- if there was a sexual offense committed along the way, if there were various -- if the murder took place in the course of committing various other felonies.

Part of what we've gotten at here is the depraved indifference statute and elevated that to the A-I felony life without parole, where you compound that by the fact that you've got a person in a position of trust.

SENATOR ONORATO: But again through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator, do you continue to yield?

SENATOR ONORATO: A person who is not position of trust committing the same crime is subject to the same penalty?

SENATOR MEIER: I believe you would, if -- other than the areas that I talked about, I believe you'd be in a category of murder in the second degree. And the sentencing structure -- other than the

categories that I talked, which would be the felony sex crimes and so forth -- counsel has corrected me.

If it's an intentional murder of a child, it would still be an A-I felony, but now you're into the indeterminate sentencing category of 25 to life.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill very briefly.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: This has been, I think, a very good debate. I do not for a moment doubt the sponsor's sincerity in this. I join some of my colleagues who have worked with him on other issues in the area of social services.

I think the message that some of my colleagues are trying to send -- and particularly, Senator Maltese said it as articulately as anyone. The concern is this. If all we do this session is to enact this

bill, then we in the Senate will have failed Nixzmary Brown.

The concern is this. If all we do is -- say we do penalty enhancers, we did a tougher sentencing bill, but we don't deal with the other issues that have been raised here on both sides of the aisle, we will have failed Nixzmary Brown.

I agree with some of my colleagues that it's hard to accept that this bill, which deals with such a small, if offensive and outrageous, part of this overall problem is to be named Nixzmary's Law.

We are not waiting for the budget. And Senator Hassell-Thompson just spoke about this. We're not waiting for the budget.

We're dealing with an Executive Budget that proposes, in the face of the childcare system, the child welfare system that was on display in the inquiry into this horrible murder, an Executive Budget that cuts education funding for kindergarten, that cuts money for the Office of Children and Family Services, that cuts OASAS money for community-based providers. Childcare slots,

the advocates tell us, have a backlog of 400,000 in this state. So we're not waiting for the budget. We're dealing with it now.

I hope that my colleagues on the other side of the aisle are sincere -- I believe that they are -- that we're going to address these other issues. This is a situation, clearly, where the perpetrator bears primary responsibility. I will vote to support this bill. We have to send a strong message. But let's not kid ourselves. There's responsibility to go around everywhere else.

To their credit, in the City of New York they have moved quickly to recognize that child welfare workers -- caseloads have grown too high with cuts. They've added more than 300 employees. They're trying to do something. The Assembly, as has been pointed out, is holding hearings.

Let's move to address these problems as well. If we have a package of bills that what we can do in the Senate -- we can't solve all the problems. We can't solve the problems of neighbors who remain silent or

of schools that don't take action when they see a 7-year-old child weighing less than 40 pounds with bruises. We can't solve those problems.

But in this Senate let's at least commit to do everything we can do to provide the funding, the training and the services to ensure that to the best of our ability this never happens to another child. Then we will have a package of bills that we can call Nixzmary's Law.

I hope to see that before this session ends. That, I think, is the message that some of you are hearing here.

If you want to vote for a penalty enhancer here, let's not send the message that that's what we in the Senate believe is enough, that that's what we believe is the end of our response to this horrible crime. If we only pass this bill, then we also are failing Nixzmary Brown.

I will be voting in support of the bill, Mr. President, but I urge my colleagues that we will be coming back to this issue again and again as the session progresses.

Thank you.

ACTING PRESIDENT MORAHAN: Does any other Senator wish to be heard?

Senator Meier, to close.

SENATOR MEIER: Thank you, Mr. President.

You really have to pull the issues apart here. And like others who have spoken, I reject the idea that either the setting of this crime or the environment of poverty and deprivation or the gross failings in the system are somehow related to the culpability of whomever did this.

So yes, this is both a penalty bill and a protection bill. But we do need to step back, and I will say this. This case and other cases bear examination in terms of looking at what happened here, why did it happen, and where were the lost opportunities to save the life of this child.

Nixzmary Brown was absent from the school that she attended for some 46 days. That in and of itself should be prima facie educational neglect, and there should have been an intervention through the Family Court.

I asked the district attorney, Mr. Hynes, "Where do you think along the way here something could have been done?" And we identified some places. There was a point in time when this child was brought to an emergency room and examined by a physician. The physician found that her injuries were consistent to the story given to him by the parents of accidental injury.

One of the things we need to look at in the very near future, but it will be a budget issue, is this whole issue of making child advocacy centers available in more communities throughout this state. And that's something that my colleague Senator Saland helped to pioneer here. And some of you are familiar with that.

We need the opportunity with a child like this, when there is a question of abuse, to take that child to a child advocacy center, where you've got a trained, multidisciplinary group of people, where the physician who examines the child is not a harried and hurried general practitioner serving in an emergency room on his or her

tour of duty, but a pediatrician who specializes in the area of child abuse and knows what to look for.

Those are the kind of things we need to look at. Child protective service workers went to the door of this child twice, and the stepfather stepped outside the door, shut the door behind him, and denied those protective workers entry.

That situation might have been different if those workers had been accompanied by a New York City police officer. That situation might have been different if we had, either in regulation or even in state-mandated protocols, that the first refusal gets you a trip to Family Court and a warrant to get in.

Those are the kinds of things we need to look at. And those are the kinds of things we are going to look at. Senator Spano in the Investigations Committee, Committee on Social Services, Children and Families -- we're going to look at all those things. We're talking to the professionals. We're talking to the advocacy community. We're

talking to people who have knowledge in this area.

But you know what? Sometimes the things that you do first are the things that are obvious. And what is obvious to me is that someone who would torture a 7-year-old child -- while she begs for mercy -- to death deserves more than a shot at parole after 15 years.

And this is not just punishment, this is a matter of protection. In our tradition of justice in this country, we believe in something that you might call proportional justice. The punishment should fit the crime. The scholars call it distributive justice.

But there's something else involved here. You lock up someone so depraved, so irredeemably evil that they would torture a child to death, for the rest of their lives without parole. They will never kill or harm another child again. And if someone who would do this -- you know, that's an old-fashioned term. Somebody laughed at me the other day when I used it. Someone who would do this to

a child is evil. And if they aren't, then evil has no name or no face.

And that's what this bill is about. But this is not the end. We have work to do to protect children in this state. I pledge myself to that. And I reach around this chamber for others who will do the same.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Meier.

Ring the bells.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, I want to just say how much I appreciate the extensive debate.

And I hear my colleagues who agree

with me that they also understand that this really is not helping families like Nixzmary. And this really is not, in so many words, several of my colleagues have indicated, even my Republican colleagues -- Senator Marcellino, I appreciate your words especially -- that this really doesn't address the core issue.

So this is the penalty phase that we feel comfortable doing, it's easy to do, it's quick, and it's what the public, quote, unquote, demands, that we punish the guilty. And so, yes, we've done that.

But you know, Mr. President, in this budget there are going to be cuts in healthcare for working people, poor working people who work for employers who employ more than a hundred people. And most of those are the places where we all shop. Like Home Depot, and if you eat Kansas Fried Chicken, like I do, and a whole list of over a hundred places where people are immediately going to lose their health insurance because of that budget.

Some of those people work for home

healthcare agencies. There is a woman who works for a home health care agency who takes care of my aunt who earns $7 an hour. She will lose her health benefits.

I guarantee you, Mr. President, we'll be back with the next sensational killing of a child talking about another kind of penalty, whatever penalty we can come up with at that point. So I understand that. That's how the system works.

I feel frustrated and I am ashamed, and I say to this body if we don't do better, if we don't do better than this, we have blood on our hands. Because our people send us here to make a difference in their lives, not to try to figure out how we can arrest every moving person in our state other than the ones who sit in here. And some of us will be going to prison too.

So, Mr. President, I'm voting no on this legislation. We're not helping Nixzmary Brown and her family and other children like her in our state. Thank you. I vote no.

ACTING PRESIDENT MORAHAN: Thank you. Senator Montgomery will be recorded in

the negative.

Senator Malcolm Smith, to explain his vote.

SENATOR MALCOLM SMITH: I yield to Senator Stavisky.

ACTING PRESIDENT MORAHAN: I have the floor here.

Senator Malcolm Smith, to explain his vote.

SENATOR MALCOLM SMITH: Mr. President, I yield to Senator Stavisky, please.

SENATOR STAVISKY: Thank you. To explain my vote, Mr. President.

I hope in the coming weeks that the points that Senator Meier has raised -- and it was a very, I think, intelligent and thoughtful discourse -- that it will be backed up at the budget hearings with the proper appropriations so that we can accomplish all of the things that you speak about. I vote aye.

ACTING PRESIDENT MORAHAN: Senator Stavisky will be recorded in the affirmative.

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Mr. President, thank you very much.

I do not question the sincerity of Senator Meier and Assemblywoman Nettie Mayersohn, who is from the borough of Queens, who has been championing this issue for quite some time. I congratulate her on her efforts and continued success on this bill.

But I do have to stand in support of what Senator Montgomery has put forward. There is no question that this particular crime, no one would want to talk about this in any way that they would accept it or even apologize for what occurred. There's no question about it, it was outrageous. There's no doubt about that.

However, putting a Band-Aid on one's body doesn't mean that somebody can't stab you or shoot you somewhere else. And by putting a Band-Aid on this particular problem, yes, we put them away. Yes, we have other laws on the books that will put them away. But the bottom line is if we don't deal with the symptom -- and I heard it today. Senator

Meier mentioned it. I heard Senator Maltese mention it. I know Senator Ruth Hassell-Thompson asked for it.

And I just want to be on record, Mr. President, that when the time comes, I hope that we do come back, whether it's one week or it's two weeks, because we do have to deal with the symptoms. There's no question about it. When crimes like this happen, it doesn't happen because that particular parent premeditatively went after that child. It comes from a series of events that drove them to an environment that put them in the frame of mind where they actually committed a crime that in some instances they probably had little control over.

So I hope, Mr. President, that we do take the time, enact those things that will counteract the symptoms that have caused this particular problem. If not, as some of my colleagues have said, we will be back here over and over again.

What happened to Nixzmary clearly is a problem, but we do have to deal with the symptoms. We've got to have these kind of

things in place that will make sure things like this do not happen again.

Thank you very much.

ACTING PRESIDENT MORAHAN: Thank you, Senator Smith.

Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: Thank you, Mr. President.

I sat here, like all my colleagues, for many hours, and I want to compliment the sponsor, Ray Meier. A lot's been said I agree with, I disagree with.

The fact is that this poor girl was helpless. Did the system fail? Senator Smith, the system failed her. Absolutely the system failed her. And it has to be changed. It should have been changed. Maybe there's too much of a backlog. Maybe they're just not taking the phone calls anonymously seriously. But they should. Because the system failed this helpless girl.

But the fact remains that this guy killed her. He brutally abused her, he tortured her. And Ray Meier used the word

"evil." I'd like to use something else to describe this guy. But he is evil. And life without parole the same, getting jail, we're throwing the key away. We're not going to allow you at the age of 41, 42 to have the opportunity again to kill somebody. Because that's what we would be doing.

So what I hope is that we don't come back to revisit this issue. I hope the Assembly has the courage and leadership to adopt this bill in their house.

I'll be voting in the affirmative.

ACTING PRESIDENT MORAHAN: Senator Fuschillo will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President. To explain my vote.

My mother raised eight children alone. Single mother. Single parent. And there were no welfare. There were no coupons. There were no system that we have now.

I can hear people saying the system, we have to do something, why people do things. But you know what happened during the

time that my mother raised us eight children? There were something called value for life. But we have lost that. We have lost that.

Senator Montgomery says we don't do better, we're going to have blood on our hands. My dear friend Senator Montgomery, this state and this nation is full of blood on their hands. And one million child every year are aborted.

So we have -- we have lost the value of life. And people don't care about life. That's why children have been killed, that's why children are being abused, because we have lost that. Until this nation and the this state are going back to value life, to stop the killing -- not only of Nixzmary, but those unborn children too -- we will always have blood on our hands.

I'm voting yes.

ACTING PRESIDENT MORAHAN: Senator Diaz will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 147 are

Senators Duane, Montgomery, and Parker.

Absent from voting pursuant to Rule 9: Senator Breslin.

Absent from voting: Senator Wright.

Ayes, 53. Nays, 3.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any further business at the desk?

ACTING PRESIDENT MORAHAN: There is no housekeeping at the desk, Senator.

SENATOR SKELOS: I move we stand adjourned until Wednesday, February 8th, at 11:00 a.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Wednesday, February 8th, 11:00 a.m.

(Whereupon, at 6:05 p.m., the Senate adjourned.)