NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 14, 2007

3:16 p.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

I ask all in attendance to please rise and recite with me the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT MORAHAN: We're joined today by the Reverend Peter G. Young, from Mother Theresa Community in Albany, who will give us the invocation.

REVEREND YOUNG: Thank you, Senator. Let us pray.

By being a Senator, you have been accepted into a leadership position so that you can more fully serve the people of New York State.

In this spirit of community, our prayer on this beautiful May day will be to better achieve the goal of dedicated representation in the power that is entrusted to all of our legislative leadership. May you attain your satisfaction in your services to your constituents.

We ask You this through God. Amen.

ACTING PRESIDENT MORAHAN: Thank you, Reverend Young.

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 13, the Senate met pursuant to adjournment. The Journal of Saturday, May 12, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Robach.

SENATOR ROBACH: Yes, Mr. President. These amendments are offered on the following Third Reading Calendar bills:

Senator Fuschillo, on page 17,

Calendar Number 136, Senate Print Number 2360A;

Senator Little, page 36, Calendar Number 630, Print Number 3814;

Senator Lanza, page 35, Calendar Number 629, Print Number 3584;

Senator Fuschillo, page 43, Calendar Number 753, Print Number 5035;

And lastly, Senator Nozzolio, page 37, Calendar Number 682, Print Number 4118.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

On behalf of Senator LaValle, I wish to call up his bill, Print Number 3821, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number

550, by Senator LaValle, Senate Print 3821, an act to amend the Alcoholic Beverage Control Law.

SENATOR BONACIC: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MORAHAN: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

SENATOR BONACIC: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted.

SENATOR BONACIC: This is a second matter by Senator LaValle. I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Bill Number 1688.

ACTING PRESIDENT MORAHAN: So ordered.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're

welcome, Senator.

Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 1154, by Senator Wright, was previously adopted. Could we have it read in its entirety at this time, and please recognize Senator Wright.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Wright, Legislative Resolution Number 1154, congratulating the Hammond Central High School Girls Basketball Team and Coach Shawn H. Dack upon the occasion of capturing the New York State Class D Championship.

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

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy

living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Hammond Central High School Girls Basketball Team are the New York State Class D champions. Hammond's historical state championship is the first ever basketball title for a Section X team; and

"WHEREAS, The Hammond Lady Red Devils defeated S.S. Seward by a score of 52 to 51 in a thrilling comeback win to claim the state crown on Sunday, March 18, 2007, at Hudson Valley Community College, Troy, New York; and

"WHEREAS, After shooting a dismal eight for 32 from the field, Hammond trailed 34-22 at halftime. The Lady Red Devils then made serious adjustments to get back into the game; and

"WHEREAS, With 15 seconds left to play in the game, the Lady Red Devils hit a three-pointer to take the lead for good as they stymied S.S. Seward for the New York State Class D Championship; and

"WHEREAS, The athletic talent

displayed by this team is due in great part to the efforts of Coach Shawn Dack, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the Hammond Central High School Girls Basketball Team, from the opening of the season to participation in the championship, were a sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players were second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents reflecting favorably on their school; and

"WHEREAS, Coach Shawn Dack has done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Shawn Dack and these outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Hammond Central High School Girls Basketball Team, its members -- Emily Moquin, Brittany Kenyon, Nicole Davidson, Aubrie Dunn, Cassie Cunningham, Brooke Hollister, Katlyn Hunt, Whitney Atkins, Malynda Jenne, Sarah Sheridan, Sara Measheaw, and Jessica Martin -- and Coaches Shawn Dack, Larry Hollister and Chet Truskowski, Superintendent Doug McQueen and Scorekeeper Cathy Tulley, on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Hammond Central High School Girls Basketball Team and to the aforementioned staff."

ACTING PRESIDENT MORAHAN: Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

I rise to welcome the New York State champions for basketball. The Class D champions from Hammond have joined us here in the chambers today. I would ask them to rise, if they would please stand.

For those of you who are not familiar with it, Hammond is not a very big place. It's a crossroads in St. Lawrence County. And this small high school has produced these young ladies, who are not only statewide champions but all of them are returning next year. So we're hoping that we're going to see a repeat of the championship.

And to give you some sense of how proud Hammond is, the school superintendent also serves as an assistant coach. The mayor has joined us today also, Shelley Young, because her daughter is on the team.

Hammond is all about what I think we believe very strongly in this chamber, the

values of community, the values of family. And this team and this school district typify that.

And so we're very pleased and proud of their accomplishment. We're very appreciative of the Senate enacting this resolution today, recognizing not only their athletic achievement but their ability to serve as role models to young women throughout this state, women who demonstrate that they can achieve an accomplishment, that they serve their peers well, that they can serve as role models.

So it's my honor to represent them and their families in Hammond. It's my honor to welcome them here to the Capitol today. And it's my honor to express my appreciation on behalf of Senator Bruno and all the members of the Senate today in recognizing your accomplishments.

Well done. Congratulations.

(Applause.)

ACTING PRESIDENT MORAHAN: Thank you, Senator Wright.

Senator Volker.

SENATOR VOLKER: I just want to say, as the -- some people up there say the second Senator from Hammond, I've spent a lot of time fishing at Black Lake for the last 45 years. And Hammond is actually the town where the cottages we've stayed at is.

And I know a lot about the town. The people there love Jim Wright, and they should. It's a great place.

And I want to congratulate you on behalf of myself and my family. And my daughter and my family would think I was remiss if I didn't say something good, because they've always loved the town of Hammond. Congratulations.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

The resolution was adopted on March 27th.

And as Senator Wright pointed out, these young ladies are in the gallery today. Congratulations. Well done; a great accomplishment. Thank you.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 232, by Senator Farley, Senate Print 2864, an act to amend the Banking Law, in relation to enforcement.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 475, by Senator Rath, Senate Print 1756A, an act to amend the Vehicle and Traffic Law and

the Penal Law, in relation to suspension.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 475 are Senators Duane and Sabini.

Ayes, 54. Nays, 2.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 537, by Senator Volker, Senate Print 3910, an act to amend the Criminal Procedure Law, in relation to a sentence of parole supervision.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 610, by Senator Larkin, Senate Print 2721, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to the imposition of fines.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 639, by Senator Golden, Senate Print --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 642, by Senator Libous, Senate Print --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 644, by Senator DeFrancisco, Senate Print 2739, an act to amend the Penal Law, in relation to establishing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 655, by Senator Volker, Senate Print 4146, an act to amend the Criminal Procedure Law, in relation to final orders of observation.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 707, by Senator Flanagan, Senate Print 796, an act to amend the Tax Law, in relation to exemptions.

ACTING PRESIDENT MORAHAN: There

is a local fiscal impact note at the desk.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of a sales tax quarterly period.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 716, by Senator Young, Senate Print 3714, an act to amend the Agriculture and Markets Law --

SENATOR SKELOS: Lay it aside for the day, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 734, by Senator C. Kruger, Senate Print 4541, an act to amend the Family Court Act and the

Domestic Relations Law, in relation to orders of protection.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 90th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 752, by Senator Fuschillo, Senate Print 4964, an act to amend the General Business Law, in relation to mail order and telephone order merchandise.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 757, by Senator Marcellino, Senate Print 4368, an act to amend the Tax Law, in relation to making technical corrections.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. 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: Ayes, 56. Nays, 0.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 758, by Senator DeFrancisco, Senate Print 53,

an act to amend the Vehicle and Traffic Law, in relation to penalties for littering.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 762, by Senator Griffo, Senate Print 880, an act to amend the Highway Law, in relation to designation of the "Griffiss Veterans' Memorial Parkway."

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 769, by Senator Winner, Senate Print 3237, an act to amend the Highway Law, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 5. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 777, by Senator LaValle, Senate Print 4299, an

act to amend the Highway Law, in relation to designating.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: nnounce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 790, by Senator Maziarz, Senate Print 21, an act to authorize the First Volunteer Fire Company of Bergholz, Inc.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 795, by Senator Morahan, Senate Print 1475, an act authorizing Northeastern Conference Corporation of Seventh Day Adventists.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 54. Nays, 2. Senators Bonacic and Larkin recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

803, by Senator Trunzo, Senate Print 3260, an act in relation to authorizing the assessor of the Town of Brookhaven.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 54. Nays, 2. Senators Bonacic and Larkin recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 805, by Senator Trunzo, Senate Print 3262, an act in relation in authorizing the assessor of the Town of Islip.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. 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: Ayes, 54. Nays, 2. Senators Bonacic and Larkin recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 817, by Senator Flanagan, Senate Print 4175, an act to amend the Public Authorities Law, in relation to powers.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. 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: Ayes, 56.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 825, by Senator LaValle, Senate Print 3922, an act to amend the Education Law, in relation to disclosure of gifts.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President. If we could ring the bells and then move on to the controversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will ring the bells.

The Secretary will read.

THE SECRETARY: Calendar Number 639, by Senator Golden, Senate Print 319, an act to amend the Penal Law and the Criminal Procedure Law.

SENATOR DUANE: Explanation, please.

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

SENATOR GOLDEN: Thank you, Mr. President.

We're introducing the death penalty today because we believe it will save lives and bring crime down across the state of New York.

We've seen, in 1977, when the Supreme Court took out the death penalty, we've seen crime rise across the State of New York, over 900,000 crimes and over 2245 homicides in 1992 and 1993. And then we've seen the death penalty put back in by our Governor, Governor Pataki at that point, reinstated.

And even though we put nobody to

death in this state between 1995 and 2003, when they took out -- when the Supreme Court found that it was not justified on the jury sentencing portion of it, we've seen crime come down across this state drastically, to below 300,000 crimes committed across this state, to less than 600 homicides in 2005 and 2004.

And the Supreme Court again found that the jury section, the sentencing section of this law was unconstitutional. So what we're doing here today is correcting that and moving the death penalty for those that would kill police officers, state troopers, those that would kill peace officers, and those that would kill correction officers and correction employees in their line of duty.

And the question is why do we do that today. Well, we do it today because we've seen over 10 police officers and troopers killed in the past year and a half, a rise in numbers that we haven't seen since the '70s, an outstanding number of police officers and state troopers being assassinated. One most recently in Utica, where they walked up

behind the state trooper and they shot him in the back of the head.

And we've seen most recently Trooper Brinkerhoff, and we see most recently the case with Trooper Andrew Sperr. And we see a host of cases and a host of crimes that are going up across the cities and state, and the number of homicides that are going up as well.

And I point out Andrew Sperr because the codefendants in that case, while being questioned in a jury trial, stated the reason that they shot and killed Trooper Sperr is because there is no death penalty here in the State of New York and that all they would get is time in jail.

And then we see studies, the Mocan and Gittings study that shows each individual execution results in a decrease of five murders, and we see the study of Shepherd coming out of the University of Chicago. That confirms that, but decreases it by three murders instead of five.

So we see crimes of passion coming down. We see homicides and murders of police

officers and state troopers coming down. We see in 1995 where you had 10 to 14 murders per 100,000 people, and you seen that drop to 8.5 in 1995, and you seen a drop to 4.5 per 100,000 in 2005. That's not coincidence. Those are direct statistics that prove that this is a deterrent.

So what we've done is presently, in the case where the jury is deadlocked and the defendant is automatically sentenced to an indeterminate term with a minimum of 20 to 25 years to life, we've changed that. In a deadlock provision, we've changed it to life imprisonment without parole. And we've reduced it and been more specific as to who it would apply to, and that's to peace officers, police officers and correction officers across the state of New York.

The states that have this, in Texas and North Carolina, we see two police officers dying by gunshot. We see the same in South Carolina and Florida. And here in New York, just since the beginning of 2007, we have four officers fallen by gunshot. Fifty-seven law enforcement officers across the country since

the beginning of this year, and 23 of them have died by gunfire.

Thirty-eight states have the death penalty, and the United States government has it. And in all these cases we see -- in a majority of the cases we see a remarkable drop in crime and a remarkable drop in homicides and deaths against police officers.

So today we're asking our colleagues in the State Senate here to vote, to vote for those that have died, for those families that have lost loved ones across this great state, and to tell them that we are going to do what's right for the police officers and the state troopers, for the correction officers and peace officers, for their families here in this great state.

We need to stop this open season on troopers and police officers. And this, ladies and gentlemen, is exactly what it is -- it's an open season to kill law enforcement. The majority of this state is in favor. In recent polling, 76 percent across the state of New York believe that we should have a death penalty for those that would kill police

officers and troopers in the line of duty.

So I ask my colleagues on both sides to search their conscience and to vote for a piece of legislation that will save lives and at the same time bring down crime across the State of New York.

And I'm hoping that my colleagues in the Assembly -- and if this bill gets to the floor of the Assembly, you would have over 100 votes in that Assembly for this bill. We need this bill. We need this legislation. And we would have unanimous support in the Assembly if this bill were to hit the floor.

So we're hoping here that colleagues on the other side will join us and vote their conscience for all those troopers, all those officers, all those correction officers and all those peace officers that go out each and every day and put their lives on the line for us.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. And thank you, Senator. And thank you, Senator Golden. Thank you for

introducing this legislation; thank you for your explanation on the reasons why the passage of this is so compelling.

And no one takes pleasure in proposing a death penalty for anyone. No one takes any pleasure in that. It's tragic that it's necessary. But as the Senator may have reviewed, this year, the last several months, four police officers killed. The last year, 10 law enforcement personnel killed.

As you heard in testimony, with one of the killers who stepped out of his car and shot a law enforcement person right in the face, say to his colleague in the car before he stepped out: "New York State doesn't have a death penalty?" He said no. "Well, then, it's just a question of how much time you get -- short time, long time." Now, that's testimony in a deposition. He goes out and shoots a cop.

Now, I would ask anyone here who doesn't want to be supportive, when a person who kills a police officer is incarcerated for a length of time, for life, would you guard him? Like Lemuel Smith killed corrections

officers. Why? Couldn't get two life sentences. Right? So you could kill a corrections officer with impunity, and held harmless. Now, think about that. Would you go in and guard that person? I don't think so.

Would you want your son or your daughter, your father or your mother, your grandfather or your grandmother to have to do that? I don't think so. I don't think so.

So we're asking that this bill be supported and sent to the Assembly. Governor Spitzer, in his wisdom, has indicated public support for passage of this legislation. So we're appealing to Governor Spitzer, who uses his bully pulpit very effectively when he wants to, to stand up, speak up, speak out, travel this state and go into the Assembly districts and go into the districts where people are reluctant or unwilling to stand up for people who are in law enforcement.

We're asking the Governor to do that, because he says he supports it. And I believe him. I believe this Governor. And for the people that are here, the young

people, if this Governor wants to make this law, he can do it. He is extremely persuasive.

So we're appealing to the Governor. The Assembly, they've had their opportunities since this law, parts of it were struck down as unconstitutional. They have not addressed this issue, and they're indicating uncertainty.

Senator Golden, you're right. This bill on the floor would pass in an overwhelming way. Why? Because the great majority of people in the Legislature want to protect people who dedicate their lives to protecting the innocent, to protecting women, children, innocent people. They get up in the morning, they answer calls. They're cruising, walking, in their cars, never knowing what circumstance is going to take place.

We attended the funeral of Trooper Brinkerhoff and saw his 29-year-old wife, a widow, 7-month-old baby. Killed. Trooper Longobardo, my district, killed. Young widow; young child, I think a year old. Think about their lives and how their lives have changed.

Think about the 10 police officers killed in the last year. Think about their lives when their families get up every morning, they go to bed every night, and there's empty space. Think about a mother on Mother's Day, with a son killed. Killed by whom? By animals, by people who are truly demented, to look at someone and shoot them right in the face. Think about that.

So we're appealing for support. We're asking you to examine yourselves. And again, I'll close and say no one takes pleasure in proposing a death penalty for a killer. But if it's ever valid, it is to protect people who are peace officers, who are there to protect all of the innocent people who can't protect themselves.

I would not be in the chamber smiling. I wouldn't be doing that. I would be thinking and praying for the people who have departed who were in law enforcement, whose names are numbered over there in that monument.

This is Law Enforcement Week this week. We're going to go over there to that

monument, and we're going to be adding in engraved way to that monument there. And I've been there for the last 12 years, and it almost brings you to tears when you see the children, you see the fathers and the mothers and the wives and the husbands of someone that has been killed by a criminal -- and, more times than not, who have killed before.

The father of a slain officer was in here two weeks ago. The person that killed his son had killed someone 12 years before. Went to prison and got out, killed a young man. Think about that.

And what does a parent say as they are describing what took place in their families? What do they say? They're in appealing for support and for help from all of us. And we owe it to them. We owe it to them, to the families, to the survivors, to those that are out there every day, in or out of uniform, protecting us, protecting you. Protecting you. Protecting me. Protecting all of us. That's that they do. And they're prepared to give their lives.

We have to be prepared to do what

we're elected to do, and that's help protect those that are in law enforcement and who are peace officers. I urge you to join us in supporting this legislation, send it to the Assembly. And with the support of the Governor, hopefully we'll see it become law.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bruno.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

I think that this should be the number-one legislative priority before session ends. What could be more important than public safety for our families that results in protecting the first line of defense that protects our families? And that is our law enforcement communities.

I know that the anti-death penalty advocates were up here last week and they spoke of why we should not do a death penalty for cop killers. I heard things like the cost of prosecution. I heard the delays that it will take to prosecute. I heard arguments

about gun control. I heard so many other arguments that have nothing to do with us tackling the issue of a death penalty for cop killers.

Now, when Trooper Brinkerhoff was killed, the latest, two weeks ago, there was rage. There was a lot of emotion. And everyone said, Well, that's a knee-jerk reaction, talking about a death penalty for cop killers. I say that it's about justice, just punishment, and deterrence.

You've heard from Senator Golden who himself was a detective, who's a wounded police officer, who knows a little bit about what police officers do. You heard Senator Bruno speak about how we have to protect our law enforcement community, peace officers, correction officers.

You heard a story when Anthony Horton, they took his testimony of a witness, an accomplice, and he said before they killed a cop approaching the car, that if New York State does not have a death penalty. Do you honestly believe that a death penalty for cop killers is not a deterrence when there are

statistics that show that homicides against police officers and murderers -- they fall down, the statistics, if a death penalty for cop killers is in place.

Now, I'm one of those that listens to my constituents, that doesn't think life imprisonment with parole is just punishment when you take a police officer's life. Talk to that police officer's wife, talk to that police officer's parents, speak to the children of that police officer about what is just punishment. And there are a majority of people in the state of New York that feel life imprisonment without parole is not just punishment. It's not a picnic, but for some three meals a day, a bed and cable TV is not that bad.

Now, when is the time that we should act on a death penalty legislation? When? Two weeks ago, before Trooper David Brinkerhoff was killed, was that the appropriate time?

Maybe it was April 11, 2007. Maybe that was the date. Because that's when Utica police officer Tom Lindsey was killed. No,

no, that wasn't the time.

Maybe it was March 13, 2007. That's when two New York City police officers, Eugene Marshalik and Nicholas Pekearo, were killed, gunned down by evil cowards. Wait. Was that a knee-jerk reaction that we talked -- no, let's go back. Let's go to August 31, 2006. Trooper Joseph Longobardo was killed. And he has a son now that's 20 months old.

If that is not the right time, maybe we should have done it on February 28, 2006, because that's when Trooper Sperr was killed. Now, Trooper Sperr, when he was killed, he had surviving four brothers, six sisters and parents. And that killer is getting medical treatment from the state for his wounds. Do you think they think life without parole is just punishment?

But wait. Maybe February 27, 2006, was appropriate. That's when New Hartford police officer Joseph Corr was shot and killed, leaving a wife and daughter.

This isn't about compassion politics. This is about justice and

deterrence and protection for our families.

Now, I can go on and on and on and give you more police officers' names and dates. But you know the time that we should have been debating the death penalty and talking about it? That was June 25, 2004. And you know why that day was the appropriate time? Because that was the day after the Court of Appeals said that our death penalty legislation was unconstitutional.

So I ask you, had we talked about the death penalty then and implemented it, maybe these 10 officers would still be alive today.

I think we have to give juries and judges an alternative to see when the punishment fits the crime. A terrorist cop killer, undisputed evidence, no chance of nailing the wrong defendant? It is just to take that evil person's life.

The time for justice is now, not to keep talking about the death penalty when the next police officer gets killed. I know this chamber will be generally supportive. And, you know, there's something morally and

ethically wrong with our system when a power broker in the Assembly like Sheldon Silver can put his thumb on a bill and not let it come to the floor, when the majority of the people in the state of New York want their elected legislators to vote up or down.

We know where law enforcement stands. We know where peace officers stand, we know where correction officers stand. And everyone knows where the majority of this Senate stands, and that's with the law enforcement community. I vote aye.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bonacic.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I believe there's an amendment at the desk. I ask that the reading of the amendment be waived and that I be heard on the amendment.

ACTING PRESIDENT MORAHAN: The reading is waived, and you may be heard on the amendment.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This is as serious an issue as any we deal with here in the Senate. The decision as to whether or not we will impose the ultimate sanction of a state-imposed death penalty is a profound and serious decision. I know everyone here takes it with the gravity that it deserves.

This amendment has a very simple purpose, and I hope that we can get truly bipartisan support for it. Because if anything, I think it makes the case of those who argue for stiffer sentences and argue for the death penalty a stronger case. This is an amendment that ensures that before we pass a bill to impose this ultimate sanction, we take every step possible to ensure that innocent people are not wrongfully convicted.

Now, we know through the work of the Innocence Project at Cardozo Law School and others that innocent people are convicted of serious crimes of murder, of attempted murder, of rape in the state of New York.

Senator Volker, indeed, is a

sponsor of a bill that would move the claims for compensation for people who are wrongfully convicted in New York to the front of the line, as it were, when they're seeking to get into the judicial system after being locked up for crimes they didn't commit.

We also know that there are people who are put on death row in states that have the death penalty who are wrongfully convicted. May 11, 2007, saw this headline: "Breaking News, Oklahoma Man Freed, 124th death penalty exoneration."

So, ladies and gentlemen, with all due respect to my colleagues' assertion of facts and statistics, the one fact that is unassailable is that we convict innocent people in this state. This amendment contains several components that would enable us to at least say as a Senate, as a body, we are taking every step possible with the technology that is now available to us to ensure that no innocent person is executed in this state.

First, this amendment would ensure that our advanced DNA technology is applied to every single case. Currently in the state of

New York, it is not. We would preserve DNA evidence, we would require that every defendant have access to DNA screening of their crime. We would enable people who plead guilty -- and many people who plead guilty to crimes they did not commit, whether you like to believe it or not, the DNA evidence has shown that in case after case. This would enable people who plead guilty and are later exonerated by DNA evidence to have the opportunity to get out.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, may I interrupt you?

SENATOR SCHNEIDERMAN: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Winner, why do you rise?

SENATOR WINNER: Senator Morahan, would Senator Schneiderman yield to a question?

ACTING PRESIDENT MORAHAN: Senator Schneiderman, will you yield?

SENATOR SCHNEIDERMAN: If I might just finish my very brief overview summary, I am always glad to engage Senator Winner in a

dialogue, and I look forward to doing so on this issue.

ACTING PRESIDENT MORAHAN: Continue, Senator.

SENATOR SCHNEIDERMAN: But just to finish this paragraph, if I may.

It is amazing that we do not already have rules requiring the preservation -- not just the preservation of evidence; we preserve DNA evidence. But there is no law requiring that it be catalogued and organized so that you can find it.

We have had cases -- and I met several weeks ago with a man who did 22 years. And despite repeated requests that they find his DNA and test it, the DNA warehouse in New York City responded they couldn't find it, it was lost, it was lost. When they finally found it, he was exonerated. He got out after 22 years.

This amendment would ensure that people who make false confessions have the opportunity to have those reviewed. It would require the videotaping of confessions and overrule the Second Department's ruling in

People v. Birdsong, which indicates that even if DNA evidence exonerates someone, if they pled guilty they can't get out.

And this amendment would correct the woeful procedure for eyewitness testimony that operates in many jurisdictions in this state. Seventy-five percent of the cases in which people were wrongfully convicted and later exonerated by DNA evidence involve eyewitness testimony.

Everyone here who's tried a criminal case knows how shaky eyewitness testimony is. People testify to remembering all sorts of things that they may or may not have seen. It is a very dangerous straw on which to build a prosecution for the death penalty.

So I would urge all of you, my colleagues, whether you support the death penalty or oppose the death penalty, let us not take this step, let us not send to the Assembly a bill for this ultimate sanction that does not also include the provisions to ensure that no person is wrongfully convicted.

Keep in mind that every time

someone is wrongfully convicted, the real perpetrator is still out there. This is a pro-law enforcement move, in my view. This ensures that the innocent stay out and that the guilty are apprehended.

In the Governor's proposed expanding of the DNA database, there's no point in expanding it -- I support expansion of the database, but there's no point in expanding it unless we pass this amendment requiring that it all be cataloged and organized so we can use it. There's no point in expanding it unless we change the laws to require that every crime scene get the DNA evidence and the fingerprint evidence into the system that our technology provides for.

Ladies and gentlemen, let us not execute one innocent person in this state. We have the technology and the ability to make sure that we at least do everything possible to ensure that that does not take place. And by supporting this amendment, you would provide support, I believe, to one of the most important things that we can do in the New York State Senate, which is to provide for

a system of justice for all.

I assure you the people who suffer wrongful convictions are not a lot of rich white people. We all know that the imposition of the death penalty in the criminal justice system in general has discriminatory aspects to it by class, by race. People with developmental disabilities more likely to suffer. People with low intelligence are more likely to suffer.

The FBI did the only study that I know of where they examined DNA exclusions of defendants in cases for all arrests and indictments of people in violent crimes -- and this was written up back in 1996 -- and they found that for arrests and indictments, 24 percent of those arrested and indicted were later excluded by DNA evidence.

Now, most of those people were poor people of color. And I'd urge all of you when you say, Well, people doubt the validity of the criminal justice system, people are questioning the police, people aren't cooperating with the police -- maybe we should pass this amendment, add this to your bill and

restore the confidence that the innocent are not convicted and that people are not discriminated against based on class and race by our criminal justice system.

This would go a long way, ladies and gentlemen. I hope we can get bipartisan support for this amendment. The Governor has just introduced his own DNA bill, which includes some of these provisions but not all of them. Let us work together. If for some bizarre reason this amendment does not pass this house today and become added to this legislation, let us work together to come up with a solid proposal so that every step is taken.

We are joined today by Douglas Warney, who is someone who served nine years for a crime he did not commit in Rochester, New York. He has a history of mental health issues. He knew the victim. There was a lot of circumstantial evidence. He was convicted. Nine years later, he was exonerated.

Now, that's the kind of thing that should not ever take place in the state of New York, where we have the technology

available, if this house will act, to ensure it doesn't take place.

You all know -- and I know my colleagues from Western New York know the situation regarding Anthony Capozzi. That's why Senator Volker sponsored the bill to move the claims for compensation for those wrongfully imprisoned to the front of the line.

We all have heard of Jeffrey Deskovic, made famous in last year's attorney general race because one of the candidates for attorney general, when she was the district attorney in Westchester County, refused his request to run a DNA check. And when the new DA came in and ran the DNA check, he was exonerated.

Let's not let that happen. Let's not let one person go to death row in this state for a crime they didn't commit. And until you enact the provisions in this amendment into law, you cannot give that assurance to the public.

So I hope everyone here will support this amendment and we can get on to

the debate. Whether you're for the death penalty or against the death penalty, I would hope that there's no one here who believes that the death penalty should be applied to innocent people. And it's incumbent on us to ensure that it never, ever is. I hope that everyone here will support the amendment.

And with that, if he still wants to talk with me, I'm happy to chat with the man with the plan, Senator George Winner.

SENATOR WINNER: Will Senator Schneiderman yield for a question?

ACTING PRESIDENT MORAHAN: Senator Schneiderman, after that short paragraph, would you yield to a question?

(Laughter.)

SENATOR SCHNEIDERMAN: Yes. That was just the intro to my lengthy answer to the question. But I'd be happy to yield.

ACTING PRESIDENT MORAHAN: Proceed.

SENATOR WINNER: Senator Schneiderman, you made reference repeatedly to the DNA availability. And certainly those that have been exonerated for certain crimes

is a result of, in many instances if not most of the instances, the availability of advanced DNA availability and testing.

Can you tell me why, Senator Schneiderman, there is such a reluctance on the part of all of your buddies in the Assembly to expand the DNA database so that more of those types of discoveries of innocence can be accomplished, not only in this instance, in the instance of capital-punishment crimes, but in the instance of all of the variety of crimes that DNA evidence would be able to uncover?

Can you tell me why? And also whether or not you're in support of Governor Spitzer's proposal to expand that base.

Because in fact I think your conference has been largely in opposition to that in the past. And that as a result, I think that that in and of itself, that type of action has resulted in a number of innocent people not being released from prison.

SENATOR SCHNEIDERMAN: I'd like to thank the Senator for his question. It's a good question.

As to all my buddies in the Assembly, both of them actually support the expansion of the DNA database.

(Laughter.)

SENATOR WINNER: Well, that's one more than you had last year.

SENATOR SCHNEIDERMAN: That's right, I've doubled the number.

As to the rest of the issue, this is a very serious issue. I would urge you, though, to take a look, in all seriousness, at the provisions in the amendment and at the provisions in bills that are sponsored now by Assemblyman Lentol, the chair of the Assembly Codes Committee, who is a supporter, as I am, of expanding the DNA database.

The problem that many people have identified is if there is not -- if we don't pass the bill that's again in this amendment to require the organizing, the cataloging of DNA evidence, to require that it be secured so that it cannot be used for any other purpose except criminal justice purposes -- there has been a tremendous concern about it being used for other things; for example, discrimination

in employment. The DNA evidence is held after it shouldn't be held and can be available to be used for other purposes.

The issue is the management of this powerful but potentially tremendously dangerous tool. This exposes all of us, from the inside out, to scrutiny that many people have been concerned about. There's some civil liberty issues that have been raised.

Now again, I do support the expansion of the DNA database. And I think you're actually incorrect. I think most of the people in my conference have supported expansions of the DNA database. But how, given your desire to expand it, can we not pass this amendment and ensure that everyone has access it, to require that every crime-scene piece of evidence that is susceptible to DNA testing be tested?

I mean, DNA evidence should not be available only to those who can hire their own experts. Everyone who is being prosecuted for a serious crime in this state should have access to it. Even people who plead guilty, even people who have eyewitnesses testify

against them. We have to ensure that everyone has access to the proof of guilt or the proof of innocence.

So I would urge you that expansion of the database I don't think is that serious a problem right now, because, Senator Winner, as everyone knows, we haven't cataloged the DNA we've already got in the database. We are years behind.

So I'm in favor of expanding the database, but let's be real about this. This house will not pass the legislation -- and I'm not singling us out. We need the Assembly to pass this legislation too. But it has been introduced by the chair of Codes Committee. This house will not pass the legislation to provide that DNA evidence be cataloged, be organized, be used in every case where it's possible to exonerate or to convict.

Let's do that first, and let's do that today. Let's add this to this death penalty bill, which I have a sneaking suspicion may pass this house. And if it does, what a strong message you will be sending to the Assembly and to the Governor --

whose bill I think is a good start but needs some work -- that we don't ever want to see an innocent person put to death in New York State, and we don't want to see any innocent people locked up, as Mr. Warney was, because of the failure of this Legislature to provide the guidelines and the resources to our criminal justice system to keep innocent people out of jail.

SENATOR WINNER: Mr. President, will Senator Schneiderman yield to a question?

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

SENATOR SCHNEIDERMAN: I will be happy to yield for another question.

ACTING PRESIDENT MORAHAN: Proceed, Senator.

SENATOR WINNER: Senator Schneiderman, in the event that your amendment were to prevail, would you then support the bill?

SENATOR SCHNEIDERMAN: Through you, Mr. President, I would not, because of issue that I will raise later.

But I do believe that with or

without my support, there's a significant possibility that it will pass.

And I would urge all of my colleagues that before you take the step to impose the state-sanctioned death penalty, you have to take every step possible to ensure that no innocent person is ever subject to it.

So there will be people voting for and against this bill who are in support of my amendment. I would think that in good conscience every member of this house should support an amendment to provide every step possible to ensure that New York State never executes an innocent man or woman.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

On the amendment, those Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Adams, Breslin, Diaz, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Oppenheimer, Perkins, Sabini, Sampson, Savino, Schneiderman,

Serrano, Smith, Stavisky, Stewart-Cousins, Thompson and Valesky.

ACTING PRESIDENT MORAHAN: The amendment is not agreed to.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

I rise to express my opposition to this bill. And what I base my opposition is two -- for two reasons. First, it is morally wrong, and, second, it is humanly and socially unjust.

First I have to tell you that I am the father, the proud father of a daughter who happens to be a police sergeant in the City of New York, and her husband is a retired police is the too. So if we look at this bill from that side of the story, I have reason to support the bill. But I'm not.

As a father, I see the anguish, the agony, the desperation of parents of police officers when they go out on their duties and you don't even know if they're going to come back. So yes, I understand the intent of the piece of legislation to protect the life of

police officers.

But one of the fellow Senators here gave us so many dates and so many reasons why to support the legislation, and he gave me about four or five cases where a police officer was shot and killed. I have to tell you that for any one of those cases of a police officer being shot, I could give you 15 or 20 cases of a bodeguero being shot, of a taxi driver being shot, of a senior citizen being shot, of those young children that have been raped and killed.

So for every police officer that gets shot -- and my daughter is a police officer -- which I understand, I understand the agony and the anguish of the parent. I don't ever want that to happen to my daughter or to any other police officer.

But so many other people have been killed. As I said before, bodegueros, store owners, taxi drivers, children, young guys, women, women being marked for death by their husbands sometimes, or vice versa. So there are many other people that die.

And what is the irony of this?

That the bill only calls for the death penalty on those who kill police officers or peace officers. That is sending a message, sending a message to the criminals out there that if you are looking for someone to kill, you're better off killing a bodeguero or you're better off killing a woman or you're better off killing a child or you are better off killing a senior citizen. Or killing a taxi driver, you're better off. So don't go and kill a police officer, because you're going to get the death penalty. Go kill somebody else, and you might go free.

So the bill, the bill is sending a message, is humanly wrong, sending a message that the life of a police officer is worth more than the life of a child and than the life of any other human being, of any other resident of New York State.

If you're going to do that, be fair to everybody. Every single life is sacred. Life is precious. Not only police officers -- I understand my daughter, it's my only daughter. Can you imagine what would happen if somebody killed my daughter? God forbid.

God bless her wherever she is. I know what's going to happen. I know the agony. I know what would go through me.

So yes, I want the police officers to be protected. But not saying that their life is worth more than the bodegueros in my district and in the city of New York, and the taxi drivers, the gypsy drivers, and the young people in our district that have been killed, they have been killed from left to right.

So it is humanly wrong for me to support this bill. But it's not only for that reason that I'm opposing this bill; it's also because I am a pastor. I am a preacher, an evangelical Pentecostal minister. And my religion teaches that life is sacred everywhere.

What I don't understand, I don't understand that, I want somebody here to explain to me is that we don't know what is late-term abortion, or what they call partial birth abortion. We all know what it means. We all know what it is.

Partial birth abortion is when a woman gives birth after nine months and they

take out the baby halfway and then if they decide that they don't want the baby, they kill the baby. But because the baby has not been born completely, only partial, so they say it's okay, it was not alive.

That's alive. That is alive. And I don't understand how come some people oppose the death penalty and are in favor of partial birth abortion. That doesn't make sense.

ACTING PRESIDENT MORAHAN: Senator, will you suffer an interruption?

SENATOR DIAZ: No, no, after I finish. I am --

ACTING PRESIDENT MORAHAN: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, would Senator Diaz answer a question?

SENATOR DIAZ: I will answer all the questions that Senator Montgomery want to ask me, or anybody else, after I finish my exposition on partial birth abortion.

ACTING PRESIDENT MORAHAN: The Senator will not yield at this time.

SENATOR DIAZ: Partial birth

abortion is a crime. It's killing. It's murder. So if you are against partial birth abortion, you're supposed to be against the death penalty. But if you are in favor of the death penalty, you're supposed to be against partial birth abortion.

So it doesn't make sense. That's why I'm opposing this bill, because it's humanly wrong and because it's morally wrong. Life is sacred everywhere, at all stages of life. See those children there that just came? Look at those children. So that bill says that if anybody kills one of those children, if anybody kills one of those children, they don't get the death sentence. But if somebody kills a police officer, then they get the death sentence.

No. It's wrong. So, ladies and gentlemen, I'm here to say that yes, I'm the father of a police officer, a sergeant, a woman, my daughter, my only daughter. And I understand the basis or the intent of the bill. But I have to oppose, strongly oppose the bill, because it does not cover everybody. It makes some life worth more than others, and

that is wrong.

And also I oppose the bill because I believe -- I'm pro-life, I believe in life. Life is sacred from conception to the end. So if you kill somebody, if you kill somebody, then you kill everybody. If you oppose some kind of murder, then you have to oppose the whole life.

So, Mr. President, I thank you for your attention. And if Senator Montgomery wants to ask me any question, I am willing and able to answer whatever questions she wants to ask me.

ACTING PRESIDENT MORAHAN: Senator Montgomery, do you still wish to ask the Senator to yield?

SENATOR MONTGOMERY: Mr. President, through you, I know that Senator Diaz identified his credentials as a minister, and certainly we're appreciative of that.

I just also wanted to inquire of him what are his credentials as a physician. Because he was describing a medical procedure, and I just wondered if he also is a physician.

ACTING PRESIDENT MORAHAN:

Senator Diaz, do you choose to answer the question?

SENATOR DIAZ: I am not a physician. I am not a doctor.

I only know that partial birth abortion is when the baby is almost fully born, halfway out -- halfway out -- and the mother has the opportunity to check the baby and if the mother decides that she doesn't want the baby, then they kill the baby.

I don't have to be a doctor -- I don't have to be a doctor to know that that's a fully life -- all fully, completely life. So I don't have to be a doctor to know that.

And now you're going to tell me, Oh, that's to protect the life of the woman. To protect the life of the woman if the baby is already halfway out, tell me that the woman has been already -- and by the way, in every other stage of birth, the life of the woman has been protected. You don't need partial birth abortion to protect the life of the woman. The life of the woman is always taken -- always taken first.

So thank you. Another question?

ACTING PRESIDENT MORAHAN:

Senator Diaz, let me just respectfully remind you and Senator Montgomery that that is really not on the bill that's on the floor. And I'm not about to tell you what to do, what not to do. But if she has no more questions, you now can sit down.

SENATOR DIAZ: Thank you, sir.

ACTING PRESIDENT MORAHAN:

Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

Did you know that 1,533 law enforcement officers were killed in the last 10 years? That's an average death of one every 58 hours. Approximately during the hours of 8:00 to 10:00 every night, some of the most concerned hours -- because during that period we see the most killings of police officers, 8:00 to 10:00 each evening.

The average age of those police officers that were killed over the last century is about 38 years old. The youngest of them, seven of them, were 19 years of age. And since the court ruling, if we look at the

four years prior to the Court of Appeals ruling, there were five officers killed in the line of duty. Since the court made its decision in 2004, over 13 officers have been killed, almost three times the amount prior to the ruling of the Court of Appeals.

Across this state, men and women who serve and protect us are in danger as never before. The chief of police from Utica, a long-time state police officer and public servant, echoed what Senator Golden said. He called it open season. Because never before have individuals in this society been so willing and ready to pull the trigger, because there's an absence of fear and respect of laws that govern each and every one of us.

In the last year I have attended two funerals for police officers in my community, a community that really cares and has a good quality of life. Both of these young police officers, Officer Corr from New Hartford and Officer Lindsey from Utica, were in the prime of their lives. They did nothing wrong but serve the public to the best of their ability.

Officer Lindsey was assassinated about a month ago, shot directly and killed in cold blood. Officer Corr responded to a robbery, from an individual who had 50 prior arrests, and was killed in a gun battle.

Officer Corr as well as Officer Lindsey had families, and many of those family members, whether they were parents or children, when they said goodbye to their loved one, knowing that there was a risk, did not expect that they would not see them again.

In fact, in Officer Corr's situation, a young child under five, this young girl, when she sees police officers gather a year later, still looks to see if her daddy is in that line.

I can tell you today, as I have spoken to families and as I have talked to law enforcement officials within my community, that they believe it is imperative that we not only give them equipment and resources but we put into law protection that is necessary as they go out and do their jobs. As we debate this bill in this chamber, hundreds and hundreds of men and women are on the street to

protect us, men and women of law enforcement, and they expect that we do what we can to ensure that we protect them.

And I do believe that this capital punishment bill will be a deterrent and does provide for the ultimate sanction because of the act of violence that is committed by these criminals upon these good law enforcement officers who serve and protect us on a regular basis.

I applaud Senator Golden for his initiative. And I want to thank Senator Volker for his long-time career as a champion for the rights of law enforcement and trying to protect them in doing the right thing. And this legislation, in my opinion, is the right thing.

I hope today that we cannot only stand here together and bring this bill to passage, but that we can use everything within our resources to continue to convince our colleagues in the other house and the leadership in that house that they should do likewise, that they should allow this vote to take place so that the elected representatives

of the people have an opportunity to express their opinion to represent the will of the majority of the people of this state.

There are many graves along hillsides that cry out for justice. We have the opportunity today to begin to take a step to do what's right to ensure that we continue to send the message that is necessary that we will put in place laws to protect law enforcement, that they will serve as a deterrent, and that you will suffer the ultimate sanction if you commit this act of reckless, cowardly violence against those who have been sworn to protect us.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Winner.

SENATOR WINNER: Thank you, Mr. President.

On March 1 of 2006, Trooper Andrew Sperr was on a routine patrol in the town of Big Flats in Chemung County in the Southern Tier of New York when he came upon a vehicle turning off of a road on to a more remote area

and thought that there was something amiss because the license plate on the back of the vehicle was hanging down.

Little did he know that only minutes before that vehicle was apprehended by Trooper Sperr that the two men inside had been participating in a robbery of a branch of a local bank in Big Flats, and as a result they were attempting to drive away and change vehicles a short distance away from where Trooper Sperr put on his lights and pulled that vehicle over.

Trooper Sperr was totally unaware of what would befall him subsequent to that, when in fact an individual by the name of Andrew Horton opened fire on Trooper Sperr as he approached the vehicle, striking him a couple of times, and Trooper Sperr returned fire, wounding both of the people in the vehicle.

But at the same time, Trooper Sperr also fell to the ground. And then unfortunately, before the individuals left the scene, Andrew Horton went back over to Trooper Sperr as he's lying on the ground with his

knees up, obviously severely wounded, and executed him right there.

I don't know -- you know, I'm not really worried about whether or not the DNA was right, I'm not really worried about whether or not there was an Innocence Project in place, I'm not worried about any of all these wonderful pronouncements as far as we're concerned about those defendants. In fact, they admitted fundamentally their crimes and were convicted, both of them, of their participation in that act.

Now, there's been some reference to the fact of the testimony in that proceeding in the Chemung County Court in September of 2006. And you know, there's always been a lot of allegations that there's no deterrence effect with regard to capital punishment. And certainly we've heard that over and over and over from the opponents. And sometimes they can be very persuasive, because it's been difficult to get your hands on direct empirical knowledge of the existence of the deterrence of capital punishment in a specific action.

So you can see how astonished I was when I picked up a newspaper one day, the day after the testimony of Andrew Horton's driver in that vehicle, a guy named Brian Adams, another real great citizen, who in his trial made some rather startling representations as to what went on and what Andrew Horton did in fact tell him.

And just for the record, I think it might be helpful if I just repeated a couple of those questions so that you can see for yourself whether or not Andrew Sperr, Trooper Andy Sperr might be alive today if in fact we had capital punishment in New York State. The questions go as follows.

Question -- these are to Brian Adams, the defendant in that -- or, excuse me, a witness in that proceeding, the trial of Andrew Horton for the murder of Andrew Sperr.

Brian Adams: "I thought it was a regular traffic stop." That's the answer.

"All right. Now, as the lights are on and he's behind you and before you pull over, what does Tony say to you?"

"Answer: Do I want to do a little

bit of time or a lot of time."

"Question: Okay. Did that mean anything to you at that point?"

"Answer: Not at that point."

"Question: All right. What else did he tell you?"

"Answer: That he was going to shoot the cop."

"Question: All right. Did he mention the death penalty?"

"Answer: Yes."

"Question: What did he say about the death penalty?"

"Answer: That New York don't have the death penalty, that they can just give him life in prison."

Now, we all know that he went on and shot that officer, and gunfire was exchanged. And I also made representations to you as to what occurred in the final moments of Andrew Sperr's life.

And here's the question: "All right. At some point did you attempt to see where the trooper was?"

"Answer: Yes."

"Question: And where did you see him?"

"Answer: Laying on the ground by his vehicle."

"Question: Okay. And at that point, what was he doing?"

"Answer: Laying on his back."

"Question: Okay. Was he shooting?"

"Answer: No."

"Question: Did there come a time in which you and Mr. Horton made a run for the Taurus?"

"Answer: Yes."

"Question: Now, as you made a run for the Taurus, did you look to your left to see the condition of the trooper?"

"Answer: Yes. I looked over and he was laying on the ground not moving."

"Question: Okay. What about his knees, legs?"

"Answer: They were up in the air."

"Question: When you say 'up in the air,' you mean bent?"

"Answer: Yes. His feet were on

the ground."

"Question: Okay. Then at some point when you reached the Taurus, did something happen?"

"Answer: Yes. Mr. Horton fired at the trooper again."

"Question: Okay. Did he say something after he fired at the trooper?"

"Answer: Yes, he said he killed the mother -- you know what."

Now, my heart really bleeds for that guy. And I'm sure that he had all the due process in the world. But one thing he would have had if we had capital punishment on the books was the appropriate punishment for that behavior. And that's unfortunate that we don't have it.

Not only do we have empirical evidence of the fact that Andrew Sperr may be alive if we had capital punishment in this state, we also have a clear indication of an individual who would have deserved to receive the ultimate punishment for the actions that he committed.

Now, I know that Senator Bruno

mentioned that it's unfortunate that the Governor does not put in the same amount of effort that he put in --

ACTING PRESIDENT MORAHAN: Excuse me, Senator.

Senator Serrano, why do you rise?

SENATOR SERRANO: Will Senator Winner yield for a question, please.

ACTING PRESIDENT MORAHAN: Senator Winner, will you yield?

SENATOR WINNER: Yes, I'll yield.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SERRANO: Thank you very much.

Senator, very quickly, have you ever witnessed an execution, whether live or on videotape?

SENATOR WINNER: No, I have not, Senator.

SENATOR SERRANO: Okay. Would you agree that --

SENATOR WINNER: Are you asking me to yield again?

ACTING PRESIDENT MORAHAN:

Senator, do you wish the Senator to continue to yield?

SENATOR SERRANO: Will he yield?

ACTING PRESIDENT MORAHAN: Senator, do you yield?

SENATOR WINNER: Yes.

SENATOR SERRANO: Thank you. Through you, Mr. President, I apologize.

Would you say that a person who is deranged in the manner in which you're expressing so eloquently would have any regard for any human life, including their own?

SENATOR WINNER: Senator, I can only tell you that in fact the testimony of Brian Adams indicated that Mr. Horton specifically, in a lucid moment, indicated -- without any way, shape or form of being in doubt -- that he was going to kill that trooper, particularly because there wasn't capital punishment in New York State.

And that was the testimony in court, under oath, for -- obviously not by a particularly wonderfully credible individual as far as his character, however. But he had no reason to make that story up. There was no

offer with regard to testimony to elicit any kind of representations with regard to any plea bargaining, as far as making any representations as far as the existence of capital punishment. It made absolutely no sense.

He offered what is very, very credible as far as the motive of Mr. Horton in killing that trooper at that time, and that was because he wanted -- he thought that that would be the way to get away and also he would not suffer capital punishment as a result.

And also I can tell you, Senator, that there was no allegations of any incompetency of Andrew Horton with regard to his ability to stand trial and no evidence of mental defect or the like. He was a perfectly rational, deliberate, terrible person.

And I might also ask you, parenthetically, Senator, in response also, have you ever witnessed a cop killing?

SENATOR SERRANO: No.

SENATOR WINNER: Well, I haven't witnessed an execution either.

SENATOR SERRANO: Okay.

Mr. President, will the Senator continue to yield?

ACTING PRESIDENT MORAHAN: Senator Winner, will you continue to yield?

SENATOR WINNER: Yes, I yield.

SENATOR SERRANO: Okay. So would you say that a person who is a killer in the fashion in which you've just described, the horrific fashion -- you used the word "lucid." Would you consider that person who can engage -- who can bring themselves to do something that no one else here really could, would you really consider them to be lucid people?

SENATOR WINNER: Senator, I don't even know whether or not -- there are standards in the law as far as determinations as to whether or not someone is competent to stand trial or whether the actions that someone had committed were in fact as a result of extreme emotional distress and/or certainly whether or not they had some mental defect or inability to understand right or wrong.

Those are not the standards that were applicable in this particular instance.

None of those were ever raised as far as the actions of Andrew Horton.

Andrew Horton's just a bad person who deserved capital punishment as a result of the action that he committed. And as a result, I think that under those circumstances the punishment for his act of murdering Trooper Andrew Sperr certainly warranted capital punishment. And not only as a punishment, but certainly would have -- as I indicated, the existence of capital punishment may very well have acted as a deterrent to have prevented his death.

SENATOR SERRANO: Mr. President, through you, will the Senator continue to yield?

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

SENATOR WINNER: Sure.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SERRANO: Thank you.

So you're saying two different things, Senator. On the one hand you're saying that this person deserved capital

punishment, and then on the other hand you're saying that it would be a deterrent. You seem to be mixing apples and oranges.

SENATOR WINNER: I don't know why I'm not --

SENATOR SERRANO: Vengeance, are you addressing --

SENATOR WINNER: I don't know why -- never mind, I'll let you ask your question.

SENATOR SERRANO: Okay.

Vengeance and deterrence really are not necessarily the same thing. So would you say that having a death penalty would be a deterrent for someone who is so depraved and so obviously willing to die, if they're willing to kill someone, how would it make them -- if they have no regard for human life, how will saving their own life mean anything to them?

For you and I, it would. But the question I'm trying to ask, do you really believe that it's a deterrent if someone is so sick that they would kill a police officer?

SENATOR WINNER: Senator, in

response to your question, I don't want to reread the testimony. I'm only giving you the words of Andrew Horton as expressed to Brian Adams, who was his co-bad guy.

And, you know, you can say all you want, this is what he said and this is -- and what he said was that he asked, inquired whether or not New York had a death penalty. And implied, without any question, that his intention was to kill that trooper because there was no death penalty in New York State.

That's what he said. You can try to twist it around whatever way you want to, but I'm reading it and -- I almost fell off the chair when I saw this testimony myself, but there it is. And it says without any hesitation whatsoever that that was a motivation of Andrew Horton to kill Trooper Andrew Sperr.

Therefore, it only is logical that if in fact we had capital punishment, that he might not have done it.

SENATOR SERRANO: Mr. President, will the Senator yield for another question?

SENATOR WINNER: Sure.

ACTING PRESIDENT MORAHAN: The Senator will yield for another question.

SENATOR SERRANO: So, Senator Winner, since the data that we have from other states in our nation regarding the death penalty does not support your assertion that it is a deterrent, would you then conclude that imposing a death penalty is more of a need for vengeance or it is really a deterrent? Honestly.

SENATOR WINNER: If I may respond, Senator.

I didn't say and I don't agree that the evidence from other states does not demonstrate that having capital punishment is not a deterrent. Senator Golden I think amply pointed out the statistics with regard to other states that have capital punishment, indicating that in fact there is a significantly lower amount of assaults and murders of police officers in those states that have capital punishment. So therefore I don't accept your premise.

As far as vengeance is concerned, I can only say that that's for someone of a

little higher authority to deal with than myself.

All I can tell you is that in this instance, I can tell you that there is no question that this evidence is that capital punishment is a deterrent in this particular case. And that's why I cited it as being as startling with regard to its demonstration of deterrent fact. And therefore, under those circumstances, I think the testimony speaks for itself.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

SENATOR SERRANO: Thank you. No further questions.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

SENATOR WINNER: I just want to continue briefly on the bill.

ACTING PRESIDENT MORAHAN: Senator Winner.

SENATOR WINNER: Thank you, Mr. President.

Again, I think that Senator Bruno indicated that it would be helpful if the

Governor, who purports to be in support of this measure, would utilize the same amount of energy in establishing priorities that he has used on some other issues that are certainly, I think, vastly less significant as far as their impact and importance to the people of the state of New York than having a deterrent measure in place to provide for protection for our police officers.

And then lastly, Mr. President, you know, the Assembly has been playing an interesting cute little game here of having it both ways. On the one hand, they have voted and put in place capital punishment in 1995, as this house did as well and was signed into law by Governor Pataki, yet some of the same people that voted for that and put it in place are out there now purportedly changing their minds and not willing to correct that which the Court of Appeals determined in its decision in People v. LaValle that set forth the provisions that the instructions were invalid.

You know, the problem I have is that if you want to be intellectually honest

with regard to that position, repeal, have the courage to repeal capital punishment. If you want to fix it, it's on the books, it has a technical glitch, then repeal it. It's still there. It just needs to be fixed as far as the instructions are concerned.

There has never been any attempt to try to take it off the books. In fact, I don't think such a measure, if it were put on the floor of the Assembly, would have a ghost's chance of passage.

In fact, as has been pointed out, if you put this provision on the floor of the New York State Assembly, a body that I served in for 26 years, I can tell you that without a doubt this bill would pass overwhelmingly.

Mr. President, thank you for your indulgence.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: Mr. President, let's understand what we're talking about. We're not talking about, by the way, voting for the death penalty or against the death

penalty.

I mean, the problem I think is -- and Eric, you made all the arguments for southern states and all that stuff about race and so forth, which we have refuted on this floor year after year after year. This has state has one of the best records for not only executions but for any kind of criminal proceedings on race and so forth in the country.

Senator Diaz, I just want to tell you, if your daughter is a police officer, she's a thousand times more likely to be murdered than the average person. Police officers are -- I forget -- the numbers are incredible on assaults. I only say that because you should be aware of that.

But let me just say what this is about. What this is about is -- and I'll go into a little bit of the history before this. We are voting, and it comes in about three lines. It says the deadlock provision. And this happens when somebody has already gone through two trials. The first trial is to find guilt or innocence. The second trial is

to find what the sentence should be.

If the jury cannot agree, then presently the law, which by a four-to-three vote by the Court of Appeals -- which I think most scholars truly believe was just a way for them to get out of doing the death penalty -- was that the person would be sentenced to 20 to 25 years to life.

Now, it would seem to me that logically, frankly, the person -- if they're that avid to keep them in jail, they would say either life without parole or the death penalty. But the court, looking for an out -- and unfortunately that out came right here. Rick Dollinger was standing right over there, Senator Dollinger, when we debated the death penalty. And they were desperately looking for something to get on us. Remember, the vast majority of people -- in fact, I think Rick voted for it, if I'm not mistaken. I'm pretty sure he was one of them who voted for it.

But he argued that provision. And I said: "Rick, you mean to tell me that you really believe" -- and by the way, we were

both quoted in the decision, the People v. LaValle decision. That's one of the few times I've ever been quoted in a Court of Appeals decision. I would have been impressed if they had have found in my behalf, but they didn't find in my behalf.

They said that somehow it might influence the jury, because by deadlocking they would then look to the death penalty instead of letting him out. I am not exactly sure -- that kind of logic, to me, it's jury nullification logic is what it is. It's a Court of Appeals that didn't trust juries. Except they really didn't -- it wasn't they didn't trust the jury, they just were afraid to go through with the death penalty.

So what we're doing today is basically saying instead of after the deadlock provision the sentence would be life, meaning 50 to 25 to life, it will be life without parole. That's what we're doing today. That's it. That's the big deal. That's it.

Now, why is this bill -- and this bill, by the way, is interesting because in 1973 -- and let me just give you a quick

resume. My father was on the Bartlett Commission in 1965 when the murder rate was very low and the violent crime rate was very low. There wasn't a lot of drugs around then, either. Nelson Rockefeller was the governor, very liberal governor. New York at the time, the city, had a very low crime rate.

So the governor asked Dick Bartlett, who later became the head of Albany Law School, to do the Bartlett Commission to recommend getting rid of the death penalty. So they did. They recommended getting rid of the death penalty.

My father did the minority report. He came home -- and I can remember it like it was yesterday -- he slumped in his chair and said, "Well, now the murder rate will begin to rise and the violent crime rate eventually will rise with it, and on will come abortion, just as day follows night."

Because once the death penalty goes, abortion will come right afterwards. The death penalty is sort of an acknowledgment -- the lack of death penalty -- that we don't really care that much, whether

we like it or not, that we are willing to not punish criminals to the greatest extent.

Now, none of us want to believe that, but it's a fact. So the murder rate soared. And then he said, by the way, before he died: "Dale, someday -- and I hope you're one of the people that restores it -- someday the murder rate will get so bad, and the violent crime rate, that it will be restored. And the violent crime rate and the murder rate will then drop off, and then -- I hope you're not there -- someday then people will want to get rid of it again."

And he said it might even be the courts, because our courts have not reacted well to this. Because we have a nature here in New York that has tough laws but not the strongest judges in the world as far as enacting it.

In 1973 I did what amounts to this bill, without the two juries and so forth. And I did it because the Supreme Court of the United States said this was the way to do it. We did it, it was signed into law. Within a year, they reversed themselves and said no.

And the Supreme Court -- and then in the Fitzpatrick case -- Fitzpatrick was a wonderful guy. He murdered a Boy Scout leader, a Boy Scout and the Boy Scout's father. He looked like a studious-looking guy. You see him, I mean you wouldn't believe it. Very bright fellow. But he was a murderer.

Anyways, after that we kept -- then it was reversed again in the Fitzpatrick case. Lemuel Smith, who killed five people and eventually murdered Donna Payant in the prison system, he got -- he's still in prison, by the way. One of the most dangerous inmates you're ever going to see, because he's at least a six-time killer.

And this bill, by the way, will at least remedy that, so at least he got -- something you could do with him. He could kill ten people and there's not a darn thing you can do unless this provision is put back into law.

So anyways, we went to '94, we restored the death penalty by a huge vote. The murder rate dropped off dramatically. I

find it very hard to believe -- anybody that does not believe in deterrence had better take a look. At one of the police memorials here about five years ago, not one police officer was killed. Not one. And we were amazed. That was unusual. But police officer killings dropped off dramatically all over this state after we restored the death penalty.

The one thing we know -- and by the way, the other states, that's all hogwash. I mean, it all fluctuates all over the place. And by the way, New York has had the best record on innocence and guilty of any state in the union.

And one of the things they don't tell you, you talk about the Capozzi case. The Capozzi case was a rape case. If it had been a death penalty case, I think he probably would have got off, almost certainly. Because we look at these cases so closely.

There's never been a person in this state executed -- and we've looked into them back and forth and, I mean, you can't imagine -- where there's ever been strong evidence. Oh, there's been allegations.

By the way, there's one thing I want to tell you about Illinois, the 11 people that were exonerated because of DNA. We know one, for sure, murdered the guy. Remember, what DNA does, it eliminates the evidence. It doesn't necessarily mean the person didn't commit the crime. In fact, some people that looked at these cases have told me that seven of those 11 people actually committed the crimes, it's just the evidence was bad.

In the "wilding" case in New York City, I mean, the problem was they came up with a DNA they couldn't account for, so they found these people innocent. They confessed publicly. That's a problem.

The Innocence Project has this big problem. They want to find people innocent. I understand that. But they don't want to find people guilty. They have always fooled around with DNA and attacked DNA on the basis of the fact that it might be used in criminal cases against people who are guilty. I've always had a problem with that.

Listen, I'm the guy that started DNA. I'm the guy that did the first bills.

And I remember the defense attorneys were all against it. Why? Because they thought people were going to be prosecuted. And I said, "Well, what about innocent people? We're going to find some people innocent." That didn't matter at the time, because they didn't realize how extensive this could be.

By the way, the provision that Senator Schneiderman talked about, a little modified version is in a bill which we're going to pass. I just want you to know. I mean, we're concerned about that. We're going to do that. We're never going to let the possibility of somebody be executed here go by the boards. That's not going to happen.

It's a little different than -- in fact, I was just talking to Joe Massena, who's our criminal justice guy, and I said, Is that the same, pretty well the same one? And he said pretty well. It's a little bit different.

But don't worry, we're concerned about DNA quality just as you are. I mean, the last thing in the world I ever want, I'll tell you that right now -- and probably I

could have if I put enough heat on, because -- is get the death penalty defense people out of the budget. I probably could have, because the Pataki people wanted to. The reason we didn't was I knew we were going to restore the death penalty ultimately.

And you know we have the best defense operation in the country in this state. Even though we don't actually have a death penalty now, we still have an operation going that moves along while we're waiting for it to be restored, which I believe will be this year. I'm one of those foolish people, maybe -- I'm not foolish. This bill is going to become law, I'll tell you right now.

Why is it just for police and correction officers? Because it's the fastest way to get it through the Assembly. I'm not kidding anybody.

I think that Governor Spitzer eventually will put the pressure on the Assembly, as he did on workers' comp, civil confinement. You wait and see.

So what you're voting today is to decide whether you want to be part of a change

in this bill. The next thing you should know is there's a new person in town on the Court of Appeals. He's a solid guy who is -- I'm not telling you that he's pro-death penalty necessarily, but I know him very well and I believe he'll do the right thing. And I can't imagine him not voting in favor of this change.

By the way, the reason we haven't had these bills before this is because we were waiting for the Taylor case to be decided. I won't get into the detail. There's a case before the Court of Appeals called Taylor where the judge and the prosecutor anticipated the Court of Appeals was going to do what they did on this, and actually they charged what the Court of Appeals said should be charged. In other words, they told the jury the right language.

And we were hoping to get that case before the Court of Appeals before we had a chance to do this bill, because at least what they could have said is you're correct, that bill -- even if they didn't actually move ahead with the case.

The final thing I want to say to you is that if the Court of Appeals had declared our statute unconstitutional, the DAs and the attorney general in this state were prepared to go to the Supreme Court of the United States to overturn it. The only way they could avoid that happening for sure was the way they did it. It was pretty clever, I'm the first to admit. But remember, you'd have a constitutional challenge then.

This bill and the death penalty has been tested over and over and over again. And I think it's the right thing to do. But I think the first thing we have to do is deal with the problem of police officers, police killings. As was said here, I think there's seven troopers and three or four other police officers. Actually, I think it might be 11 now. One guy was on the -- he was not a police officer, he was an auxiliary. Eleven people were killed.

And, Senator Diaz, the other thing I want to tell you is remember that our prison system now has umpteen numbers of people who are in prison for life without parole.

Then there's the fellow that almost killed me. That fellow is in for 50 years to life. You talk about a dangerous guy. He murdered somebody in Texas. When I was a police officer -- I won't get into the details -- I ended up -- he reached for a .45, but fortunately I got to him before he pulled the .45 out and I stuck the gun in his ear.

He said, I was going to give you the bill -- the gun, I'm sorry. And I said yeah, bullet by bullet. He then murdered two people. So he's in jail for 50 years to life. He writes me every once in a while asking me to help him get out, but obviously I don't pay much attention to him.

But there's the kind of guy -- that guy killed three people, almost killed four people. The point is these are the people we're trying to deal with, because those people will also very possibly think before they do anything.

ACTING PRESIDENT MORAHAN: Senator Diaz, why do you rise?

SENATOR DIAZ: Mr. President, will the Senator yield for a question.

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield for one question?

SENATOR VOLKER: One question.

SENATOR DIAZ: Senator Volker, do you really believe that the death penalty is a deterrent?

SENATOR VOLKER: Absolutely. There's no question in my mind. And let me just tell you that the proof is in the pudding --

SENATOR DIAZ: Just --

SENATOR VOLKER: Wait a minute. No, no, I get to answer.

Every time the death penalty has been found against, the murder rate has soared, particularly among law enforcement people. And every time we restore it, the murder rate goes down. It's a fact. It's very difficult to deal with because we don't want to believe it, but it's a fact.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

SENATOR DIAZ: Mr. President, will the Senator still yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR DIAZ: So if the death penalty is a deterrent, as you say, wouldn't you like it to be a deterrent for everybody?

SENATOR VOLKER: Yes.

SENATOR DIAZ: So why not include everyone in the bill?

SENATOR VOLKER: That's next week.

SENATOR DIAZ: Next week?

SENATOR VOLKER: Well, next week or the week after. We're going to do that, yes, absolutely. That's my bill.

SENATOR DIAZ: Mr. President, will the Senator yield for another question?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MORAHAN: The Senator will continue to yield.

SENATOR DIAZ: Wouldn't you say that this bill is sending a message that the life of a police officer is worth more than the life of other people?

SENATOR VOLKER: Yeah, it is.

Because the police officer is so much more likely to be killed. It's not that it's more, it's just that they're more likely to be killed, so you need a bigger deterrent.

SENATOR DIAZ: Who said that?

SENATOR VOLKER: The statistics show it's a thousand times more likely that a police officer is to be killed than an average person.

SENATOR DIAZ: Will the Senator still yield?

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

SENATOR VOLKER: Yes.

SENATOR DIAZ: I would like to bring you to my district and show you some statistics on police officers and the people that get killed. And I'll show you, Senator, and I assure you, Senator, that you're wrong. When you say that the life of a police officer is worth more than any other life in the State of New York, you're wrong on that. And that you are wrong by saying that a police officer is more likely to get killed than any other citizen.

SENATOR VOLKER: You can say it's wrong, and you'll be totally wrong.

ACTING PRESIDENT MORAHAN: Excuse me, Senator Volker.

Senator, was that a question?

SENATOR DIAZ: I don't know what it was. It was a statement, maybe.

Mr. President, you know, we have to stop with the ironies here. This is serious business here. We're talking about life. We're talking about that any life in the State of New York is the same. To say that the life of a police officer is worth more --

ACTING PRESIDENT MORAHAN: Senator Diaz, just to keep order for a moment --

SENATOR DIAZ: Okay.

ACTING PRESIDENT MORAHAN: Senator Volker has the floor. You're not asking him to yield any longer. Senator Volker is just about finished --

SENATOR VOLKER: Yes, I am finished.

ACTING PRESIDENT MORAHAN: -- and we'll go to the next speaker.

SENATOR VOLKER: Except to say, Senator, I never said it was worth more. I'm telling you -- Senator, please. I meant -- and I said this -- and I think because you have decided that police officers are not as likely to get killed as other people, you are wrong.

Every statistic in this nation shows that the most dangerous job in the world is being a police officer. And next is being a fireman, by the way. Do you think your average citizen is more likely to be killed than a fireman? Of course not. This is fact. You're saying a lot of people are killed. You're right. We'll pass a death penalty bill and then it will be better.

But I'm going to finish by saying that you can say all you want that a police officer is not a dangerous occupation, but it is. And it's been proved. And it's time to pass Senator Golden's bill right now.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Little.

SENATOR LITTLE: Thank you,

Mr. President.

I too rise in support of this piece of legislation, because I think it's a very important piece of legislation.

I also agree that the killing of a police officer, a person who has been willing to risk their lives in order to protect the community, is an assault on the community. If you're willing to commit a murder against a police officer in uniform, or knowingly knowing that that is a police officer, you are willing to kill just about anyone in the community.

And I think that having this death penalty option, which is something we are trying to correct since the Supreme Court showed that we needed to change, certainly will help not only as a deterrent but also as a means of punishment and injustice.

I also believe that this is the time to do it. The tragedies that we have heard talked about today are real tragedies, and it's unfortunate that we cannot change any of those. We cannot restore life to any of those lost lives. But hopefully we can pass

this piece of legislation that will prevent someone else from being killed.

The numbers are rising, and it's alarming. The disrespect or the disregard for a person who is a law enforcement person is something that we need to address and do so with this piece of legislation.

But I also would like to speak about this in regard to not only those law enforcement officers who work to protect our neighborhoods to make them safer, but for those correction officers who work in some of the most dangerous neighborhoods in the country.

I happen to represent 12 facilities within my district, and over 5,000 correction officers who spend each and every day working in a correctional facility, taking risks but doing it in order to protect our communities.

Many of these inmates are serving life without parole. We have a case going on in one of our courts in one of the counties that I represent where an inmate assaulted a correction officer and he also, through his civil rights, insisted on a trial. So there's

a trial going on right now about the assault of this correction officer. This inmate is serving life without parole.

Now, the results of the trial, if they prove him guilty -- and they have substantial evidence against this person -- what are they going to add as a punishment to this crime? More life without parole? What happens when an inmate kills a correction officer, and it has happened, and that person has life without parole? Do we give them a second life without parole?

We need something not only as a means of punishment and justice, but we need it as a deterrent for many of these people who are serving life without parole in our correctional facilities and have no incentive to do anything any differently.

So I am very proud to stand here today in support of this piece of legislation, and I look forward to it moving through the Assembly and being signed by the Governor.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Little.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

I understand that there's probably not too much more to be said about the death penalty. But I would be remiss if I didn't just say that I believe that it's morally and ethically wrong. I don't think the State of New York has the right to take a life away, any more than anyone else has the right to take a life away.

I want to just, since Texas has been brought up a few times here, just to talk about some of the things that people in Texas have said just right before they were going to be put to death.

"The reason it took them so long is because they couldn't find a vein. You know how I hate needles. I used to stay in a doctor's office. Tell the guys on death row that I'm not wearing a diaper. I can't think of anything else. You all stay strong. Now you can put all this aside. Don't bury in me in the prison cemetery, bury me right beside Momma. Don't bury me to the left of Dad, bury

me on the right side of Mom."

"All praises be to God. I would like to say to the Garza family, see my smile? It is not from happiness. I took a father. It wasn't my fault, it was an accident. God knows the truth. If my life could bring your father back, then let it be. Don't take my smile for disrespect. If I see your father, I will ask his forgiveness. I told the judge the truth, it was an accident. I'll smile and I'm not sad. If my life could make you happy, be free. I'll say when I see him I'm sorry. I have no anger nor fear. Mom, have no fear. Mommy, I will be home when I get there."

Another one: "To my family, first and foremost, I love you all. The calmness that I was just telling you about, I still have it. You are Mario's uncle, correct? I just wanted you to know that I wronged your family. I received nothing. I was not paid. I took his life for the love of a friend. I love you all. I just want you to know that. I know he does, I feel it. I'm all right. Make sure Momma knows, all right? Jermaine, I love you too, man."

"Yes, sir, I do" -- this is when they're all being asked if they had a final statement. "I'd like to say I love my mother, brother, sister, grandmother, cousins and nieces and my brothers and sisters I have never met. I do apologize to the Service family. I am responsible for them losing their mother, their father and their grandmother. I never meant for them to be taken. I'm sorry for what I did, and I take responsibility for what I did. That's all, Warden."

When asked, another person, right before they were put to death: "I do. I would like to tell everybody that I'm sorry about the situation that happened. My bad. Everybody is here because of what happened. I'd like to thank everybody that's been here through the years. The little kids overseas, they really changed me. Sister Doris, mom, brother, sisters, Dad, I love you all. My brother, where is my stunt double when you need one? My Lord is my life and savior, nothing shall I fear."

Justin Fuller, when he was asked if

he wanted to make a last statement: "Yes, I do. I'd like to tell my family thank you for your support, and my friends, and let everyone know that you must stay strong for each other. Take care of yourselves. That's it, Warden."

And James Clark, this is what he had to say right before he was put to death: "Uh, uh, I don't know. Uh, I don't know what to say. I don't know. I didn't know anybody was there" -- meaning the people on the other side of the window. "Howdy," as he waved to them. He was put to death.

"Yes, sir. I charge the people of the jury, trial judge, the prosecutor that cheated to get this conviction, I charge each and every one of you with the murder of an innocent man. All the way to CCA, federal court, Fifth Circuit of the Supreme Court. You will answer to your maker when God has found out that you executed an innocent man. May God have mercy on you. My love to my son, my daughter, Nancy, Cathy, Randy and my future grandchildren. I ask for forgiveness for all of the poison I brought into the U.S., the country I love. Please forgive me for my

sins. If my murder makes it easier for everyone else to get the forgiveness, please be a part of the healing. Go ahead, Warden, murder me. Jesus, take me home."

And finally, from Derrick O'Brien: "I do. I'm sorry. I have always been sorry. It's the worst mistake that I ever made in my whole life, not because I am here but because of what I did. I hurt a lot of people, you and my family. I am sorry. I have always been sorry. I am sorry. You look after each other. I love you all. Be there for one another, all right? But I am sorry, very sorry. I love you too. All right?"

Well, we don't live in Texas. And even though we've had a ten-year experiment with the death penalty, no one has been put to death here. Although I have to say, you know, I wasn't here, but the Legislature was in such a hurry to pass a death penalty bill that they drafted it poorly. Not unusual, unfortunately, here in the Legislature. But that was one of the reasons why it was thrown out by the Court of Appeals.

So I feel like saying, you know,

you had your chance, you blew it. Right? And the world has changed and moved on since then, and more and more people realize the immorality of the death penalty.

You know, I just, you know, I could argue -- you know, I know what the other side is going to say. I can argue it as well -- better than some of them. And somehow I think that it's not really a productive use of our time to do this. I mean, I am virtually certain the Assembly is not going to pass this bill.

So, you know, for people who are the victims or their family members were the victim of a terrible crime and who support the death penalty, I mean this kind of gives them false hope. Right? And that's not fair to the police either, by the way.

So ten years of an experiment that failed here in New York State. You're going to hear statistics -- some people will make them up, some people actually have backup for their statistics. But, you know, let's do some meaningful legislation. Let's do other things like make sure that our law enforcement

people have the best possible training and the best possible defense against violent criminals. Let's do things like that. Let's spend our time productively that way.

You know -- you know, been there, done that, didn't work. Let's move on to things that will really help the people of the State of New York.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I rise to speak on the bill. And a lot of people have spoken, and there's been a lot of misinformation given, so I will start with some facts.

The case against the death penalty has already been made over the years in New York. Actually, in 1841 the New York State Assembly -- that was 1841 -- recommended abolition of the punishment of death by law. Among other things, the report said that "the uncertainty of conviction by juries for

capital offenses has grown almost into a proverb. In the clearest case, it is constantly seen they will not convict."

More than a century later, in 1965, the Temporary Commission on the Revision of the Penal Law and the Criminal Code, chaired by Republican Richard Bartlett of Glens Falls, concluded: "The death penalty was a barbarism which had a seriously baneful effect on the administration of criminal justice." The commission observed that erroneous convictions and executions were inevitable and would destroy the moral force of the entire penal law, that the death penalty could not be administered in the United States with even rough equality, and that the number of cruel and repulsive murders never will be greatly influenced by abolition of the death penalty.

U.S. Supreme Court Justice Ruth Bader Ginsberg has stated she's never seen a death penalty case on appeal in front of the U.S. Supreme Court in which the defendant was well represented at trial.

There are approximately 20,000 criminal homicides in this country each year,

and only about 50 result in a death penalty execution. Fifty out of 20,000. Were those people each year really the most evil of all? Senator Duane just read from some of them. It appears we are executing the criminals with the worst lawyers, not the worst criminals.

And capital punishment has proved not to protect our police officer or our other citizens, although passing a bill today may allow us to believe we're doing something. But we're not assuring justice, and we're not protecting our citizens or our police. We've seen the data over and over and over again.

The Assembly held hearings when our death penalty law was not upheld by the courts, and a Republican Senator named John Dunne testified at those hearings. And he testified about having been a supporter of the death penalty and having been named by Senate Majority Leader Joe Bruno as one of the first members of the Capital Defender Board. And he said that that experience, which he felt he was prepared for, opened his eyes as to how impossible it was to implement a fair death penalty statute.

And he talked about a specific case in his testimony, the case of a man named Lemuel Smith in the '80s who was tried and sentenced to death for the murder of a prison guard, and a year and a half later he was spared the death sentence when the mandatory death penalty for lifers who kill was ruled unconstitutional.

And Smith, according to Senator John Dunne, was already a despised and legally vulnerable lifer at the time of the alleged homicide. He unsuccessfully sought counsel for two weeks and for nine days he was interrogated, implicated on television as the murderer. He was locked in special housing. His teeth were seized from him. And 22 days after the murder, he finally secured defense counsel. And thereafter he was deprived in any real sense of the effective assistance of that counsel for a period of 15 months, 26 weeks of which were involved in defense applications for compensation.

The prosecution received approximately $10 for every dollar given to the defense. Much that needed to be done by

defense counsel in a death penalty case was simply never attempted. The case was improperly investigated, leads were ignored, and much evidence was overlooked.

And there's been other research done about the fact that the death penalty can be applied erroneously just as likely in capital cases against private citizens as against police officers or peace officers or prison guards.

And there's documentation of the fact that, despite one of my colleagues' earlier statement that there's a lower rate of death of police and correction officers in states with the death penalty, that actually the data is just the opposite. The data is that states without the death penalty have lower criminal homicide rates, including police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death penalty states.

And lethal assaults against police were significantly less frequent in abolition states than in death penalty states, and that

there is no support for the view that the death penalty provides a more effective deterrent to police homicides than alternative sanctions. Not a single year has there been evidence found that police are safer in jurisdictions that provide for capital punishment.

And prisoners and prison personnel do not suffer a higher rate of criminal assault or homicide from life-term prisoners in abolition states than they do in all death penalty states. Between 1984 and 1989, 17 prison staff were murdered by prisoners in 10 states. And of these murders, 88 percent occurred in death penalty jurisdictions, just as about 88 percent of all the prisoners in those 10 states were in death penalty jurisdictions.

Evidently the threat of the death penalty does not exert even an incremental deterrent effect over the threat of a lesser punishment in the abolitionist states.

And there's data from our own district attorneys and prison wardens here in New York State that correctional workers from

across the country feel that lifers presented fewer disciplinary problems than the general population, and 92 percent said lifers were more cooperative than the rest of the population.

And there's the data from the Innocence Project, from the Columbia professors, from New Yorkers Against the Death Penalty, from the moratorium states, from the Governor of Illinois, pages and pages of documentation and statistics and reports showing us that the death penalty will not make us safer.

The death penalty is not a perfect system. To put one innocent person to death challenges all of us in our society as to what our rule role is as government. It makes us a lesser people. It encourages a culture of violence. It is always irrevocable. There's no degree of due process that is sufficient to correct the state's execution of an innocent person.

And over and over again, over a hundred times we have seen innocent people on death row being released. And yet over and

over again, we don't do the research on people who are executed to find out how many of them, if they'd had the right lawyers, if they'd had the right due process would have also been found to be innocent.

We have a solid system of criminal justice. We have the ability to put people in jail for life without parole to protect our citizens from evil people.

Reinstating the death penalty for any subuniverse of violent criminals or any subcategory of crime doesn't change the fundamental questions of whether or not we should have a death penalty, whether or not we need to have a death penalty, or whether we could justify under our existing systems of law the fact that we have proven one thing with our death penalty in the 1800s and the 1900s -- and I hope no longer in the 21st century -- that mistakes are made, they will continue to be made. This is a model of criminal justice that has no place in the state of New York, and there's no justification for it.

And I suppose last, because a great

deal has been discussed about the horrors of when a police officer is killed on duty, or the pain to their families, well, the same data is true from all of the research that putting someone to death for a criminal act solves none of the problems for the victim's families who are left behind. And in fact, as we see over and over again, large numbers of victims' families have come forward to urge us not to have a death penalty.

So I don't believe it's a different story for the victims, whether or not their spouse was in law enforcement. It's a dangerous job. We can and should do much more to address the underlying risks of being a police officer.

But again the data shows that when you ask district attorneys and police chiefs what they think we should do to protect officers, they don't talk about the death penalty. They talk about gun control, they talk about swifter trial procedures, they talk about better training, they talk about the need to have more officers on the streets. They're not the ones saying this is their

priority.

And so it is terrible when anyone is murdered. It is terrible when a police officer or a peace officer or a corrections officer is murdered in the line of duty. But it doesn't change the fundamental flaws in any modern-world construction of the death penalty. It doesn't give their lives back to us. And it doesn't solve their families' loss.

So I will vote no on this bill. I am very glad I currently live in a state without the death penalty. I am not a minority. The majority of New Yorkers do not want a death penalty, because they understand the facts as I have described them and as so many of my colleagues today have already spoken about. The death penalty will not make us safer, it will not make our police officers safer, but it will perhaps make us lesser as a moral society doing right.

Thank you, Mr. President. I vote no.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

We've heard a lot of discussion lately about statistics, pro and con: is the death penalty a deterrent, is it not. Mr. President, I wonder if Senator Golden would yield for a question.

ACTING PRESIDENT MORAHAN: Senator Golden, will you yield for a question?

SENATOR GOLDEN: I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MARCELLINO: Senator Golden, you at the beginning of the statement of your opening remarks issued some statistics on the number of police officer deaths or the number of homicides before the death penalty was instituted and after it and then before the current problem with the death penalty law and then subsequent to its knocking off.

Could you please repeat those statistics for us?

SENATOR GOLDEN: Certainly.

The numbers between 1977 and 1995,

it was consistent, between 10 and 14 murders per 100,000 people. And then it goes on to say only once did it drop to 10 or right below 10. And in 1995, the year the death penalty was reinstated, the murder rate dropped to 8.5 per 100,000 and has steadily decreased to a low of 4.35 per 100,000 in 2005.

Even without a single execution taking place, the presence of the death penalty here in New York has coincided with much of the lower murder rates that we see today that exist.

So the numbers are outstanding and the studies -- that's the U.S. government numbers. University of Chicago, the study of Mocan and Gittings, that each individual execution resulted in a decrease of about five murders. And on the flip side, they found when a death sentence was reduced, there was an increase of five murders, an increase.

So the study of Shepherd, a similar study that verifies the research but says that it decreases by three murders, not five murders. And these are crimes of passion. And we thought that we couldn't do anything

about crimes of passion, but crimes of passion were decreased as well.

These are statistics by both the U.S. government and by the University of Chicago.

SENATOR MARCELLINO: Thank you, Senator Golden.

Mr. President, I believe the statistics speak for themselves. Despite all philosophical pros and cons one way or the other, the statistics are there. When the death penalty is in existence, the murder rate drops. When the death penalty is not in existence, the murder rate rises.

Senators, the numbers were just recited to you. Nothing anyone has said has called those numbers into question. They are a fact. You might not like the facts, but they're the facts.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I appreciate Senator Marcellino teeing up my commentary. In fact, those statistics have been completely undercut by the January 2007 New Jersey Death Penalty Study Commission report, which examined the very studies Senator Golden has cited and the studies that refuted them.

A thorough inquiry was undertaken into the literature on the death penalty in this state, but not by the Senate, by the New York State Assembly in April 2005. And the last time we debated the death penalty in this house, my colleagues and I cited numerous studies consistently demonstrating the lack of a deterrent effect -- or, excuse me, let me state this carefully, the lack of any credible empirical evidence of a deterrent effect in states that have the death penalty.

Indeed, all these citations of the numbers of peace officers and police officers killed by my colleagues on the other side of the aisle have omitted one salient fact, which is that most of them have been in states where they have the death penalty. There is no deterrent effect.

If you don't want to do this as we're doing it today, anecdotally, with people citing one study or another study or facts like the testimony that I see that you credit by Mr. Adams, the codefendant in this horrendous crime -- who was, in fact, a prosecution witness testifying under an agreement with the prosecutors when he said that the murderer had said, "Oh, is there a death penalty in New York State?"

I spent two years working in a prison. I never met a street criminal who said before a crime: "Excuse me, Jerome, what is the status of the death penalty in our state now, or do you get life without parole?" And he says: "No. Actually, in fact, recently there's been a decision of the U.S. Supreme Court invalidating it." "Oh, in fact, then I think I'll go out and commit this heinous blood-lust crime."

That's not the way they operate. If you spend any time at all with dangerous street criminals, you know that these are not the kinds of people who are deterred through this sort of logical process.

I will concede that it may be true for people like ourselves, for white-collar criminals, which I used to defend. And as I've said often, you know, you want to see -- I'm not in favor of the death penalty, but if you want to put in effect the death penalty for securities fraud, you will have the cleanest markets in the world, I assure you of that.

But the people who commit the crimes we're talking about, crimes of violence, are not deterred.

And, ladies and gentlemen, last time we were here debating this and I offered up and others offered up all of the testimony, all of the studies that were adduced and brought forth in the Assembly hearings and that have been updated by the recent New Jersey study and hearings, my colleagues on the other side of the aisle said, We will hold hearings.

And, you know, my friend and personal hero Senator Volker stated we will -- "I want to tell you, if the Assembly does not pass this bill this year" -- I'm quoting --

"they're going to get their hearings. We're going around the state then."

Now, let's not do this in a haphazard way. Let's not make up facts. Just because you say it doesn't make it so.

And I respectfully submit -- and I've been studying this for years, I spent two years working in a prison before I went to law school and I've been looking at sentencing and at issues related to sentencing and the death penalty for most of my adult life -- I have never seen a peer-reviewed study survive scrutiny that has found that the death penalty is a deterrent.

It doesn't work on the people you're concerned about, ladies and gentlemen. The stuff that's being cited here are studies that in some cases have been directly refuted.

And if we're not going to have a hearing and we're not going to really look at all the evidence, I don't think we're doing our job.

So I would respectfully urge my colleagues that we do what we said we were going to do in 2005. Let's hold hearings,

let's get all the evidence out. And I really do believe that some of you who are in favor of this bill will change your minds as Republican governors, senators, our colleague, Senator Dunne, the Republican governor of Illinois, who imposed a moratorium, the Republican governor of Massachusetts, others -- jurists, members of the courts -- have changed their mind about the death penalty.

We know from the presence of the folks here from the Innocence Project that innocent people are put on death row. I wish I should share the overwhelming confidence my colleagues express that no innocent person has ever been executed in New York State. I don't see how you can possibly say that.

Thank you, Mr. President. I'm urging everyone to vote no.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. Mr. President, on the bill.

Senator Schneiderman is right,

innocent people are being put to death each and every day all across this state. And those people are wearing badges and are protecting us and are putting themselves in harm's way and are risking their lives and are being executed in a war that's being waged against police officers across New York State. That is undeniable.

Senator Golden's bill is putting forth, hopefully, a component that will help end that war. At the very least, provide additional protection so that those who may be thinking about getting away with a crime, not doing the time by perpetrating a murder against a police officer -- that's the innocent victim in this case, the police officer.

It's not, as Senator Schneiderman suggests, and others have suggested, that our focus is about an innocent person being put to death because of a conviction, while that's certainly a concern. But our primary concern needs to be placed about the innocent police officers that are being put to death by this war.

That's why I rise, Mr. President, in support of this measure. That's why I say to my colleagues on the other side of the aisle, certainly everyone is entitled to due process. The conviction of the wrong person is something that our criminal justice system has been for centuries trying to prevent. The technology available today, with the DNA database to establish everyone who's been convicted of a crime, be it a misdemeanor or a felony, supply their DNA so that we will have, as DNA has proven, that there are some people who were not guilty of crimes, that those people should be let out of jail because they're innocent.

DNA can help us find the innocent, but it also can help us find the guilty. And that's something that this Senate Republican body has fought for and pushed for and will continue to fight for until we have an adequate DNA database in New York State.

I'd like to just in a few short moments discuss an element that's been missing from the debate, a lengthy debate, a good debate. I applaud the sponsors of this

legislation, particularly Senators Golden and Volker, who have stood so tall against this war being waged against the innocent of our state.

We have incarcerated in New York State well over 60,000 people in our state correctional facilities and tens of thousands more across the rest of our correctional system. If you put an individual -- and opponents of this legislation are saying that an individual should have life without parole. Well, I say to the advocates who are pushing life without parole, how many life without parole sentences can you serve?

Putting those individuals that are incarcerated in a jail facility places our correction officers, our other correctional personnel at tremendous risk. What is to deter a murderer already serving life without parole behind the walls of a correctional facility from murdering a correction officer, murdering a correctional employee, murdering a teacher, someone who's in the jail system entrusted with the custodianship for that system -- or, for that matter, another inmate?

Inmates murder inmates all the time in New York State.

What type of deterrent is life without parole to a person who's already sentenced to life without parole? That person will be a time bomb within the correctional system, will murder and seek to murder additional inmates, will put at tremendous risk our correction officers of this state.

That's where the opponents' logic is faulty on this legislation, Mr. President. And I respectfully appreciate the opportunity to speak on this measure and certainly support it, urge my colleagues to do likewise.

ACTING PRESIDENT MORAHAN: Thank you, Senator Nozzolio.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

You know, I look around and I realize that of the members currently serving, since Senator Marchi retired, I have served and been in opposition to the death penalty longest of any member in this chamber.

And I first engaged in a debate

against the death penalty within weeks of arriving here in 1978. And what was interesting then is I debated against some -- because I notice previous speakers seem to say this is a partisan issue. It's not. When I first arrived here, there were at least four or five Republican members who were in opposition to the death penalty. One persisted; Senator Marchi. Four or five others changed their position.

I saw a couple of Democrats that I served with in those early days change from opposition to being pro-death penalty. And indeed one member, after the 1982 redistricting, switched from being for the death penalty to being against the death penalty, having left the more conservative parts of his district to me.

When I first arrived here, I would without a doubt say that my district overwhelmingly supported the death penalty, a product of two things: the nature of the then district -- and that's before I got the other Senator's more conservative parts -- and a product of the times. Some of the members

against whom I debated then, Long Island Republicans, had once in the '60s proudly led the effort to repeal the death penalty in this state and had subsequently, in the early '70s, switched. That's apart from the ones who switched in the late '70s.

So I've seen this issue go back and forth. I have to say that in some cases perhaps the switch involved a conscientious change on the part of the members. Most often it reflected the politics of their district, the changing attitudes of the public.

In the late '70s a colleague of mine told the story of chatting with a priest from his district. This colleague was not Catholic, but he was talking to a monsignor, and he said, "What do you think of the death penalty?" And the pastor said to him: "Vox populi, vox Dei." The voice of the people is the voice of God. My colleague said, "Yes Monsignor, but does God change his mind every ten years?"

The fact is I've seen the public mood shift. Today I have no doubt that the majority of the voters in my district are

opposed to the death penalty. For the first twenty years I opposed it, I had no doubt -- and I think I was right -- that a substantial majority supported it. Things change. The public attitude changes.

You know, in the late '70s and through the '80s, crime was enormously high. People were fearful, and they naturally lashed out at the sociopaths who were inflicting so much harm and damage by committing crimes.

But through all these debates, there's one thing I'm sure of. And I've heard the statistics against the death penalty. I don't believe most of them. And I've heard the statistics to justify the death penalty, and I don't believe most of them. Because they're just statistics. They lack any real evidence of causation.

We heard earlier murders were down in the last 12 years. Well, so are robberies and car thefts and rapes and every category of crime is down, crimes for which there was no death penalty in effect.

So I don't doubt Senator Golden's statistics, I just doubt the imputation to

them of any kind of causation or relationship between the penalty or not. In my gut I've always believed when people said it's a deferent that the kind of sociopaths who commit these crimes -- and someone mentioned crimes of passion. Certainly there's no deterrent there, I don't care what the statistics say.

But the kind of lawless sociopath who would shoot at a police officer obviously not only has a total disregard for the sanctity of life, for the societal role that police officers play as our protectors and as our servants and the servants of the peace, but they have a total disregard for their own life.

You know, if being a police officer is one of the most dangerous occupations, being a criminal who shoots at police officers has got to rank up there as one of the more dangerous things for one to do for one's own personal safety. Because if you're not killed in that gun battle and the standoff and the manhunt that will result, you're in high likelihood of being killed. And, you know,

maybe the number of murders are down in the last 12 years because the number of robberies are down. But I don't impute causation.

And I don't believe that these kind of vicious, vicious sociopaths are deterred by any consideration of law, order, their own safety, their own future. They either think they're going to get away with it or they don't care. They're committing suicide by shooting at police officers.

So I just don't buy deterrence. I wish there was -- I wish I could be convinced that there was a deterrent, whether it be the death penalty or something else. I just don't buy it. It's not there.

The closest argument that I always listen to is the one Senator Nozzolio made about the safety of correction officers when you have people incarcerated for life without parole who have proven by their past conduct that they are killers. And that argument, I listen to that. That does concern me. There's some concern there.

But I think there are measures we can take to ensure that such people don't harm

either other inmates or personnel in our correctional facilities. You know, we know who they are and we know how dangerous they are. And I've got to believe there are just ways -- you know, those kind of prisoners, no one suggests that they should be moved from cell to cell without being chained, handcuffed, and appropriately guarded. They certainly aren't given -- they shouldn't be given the run of the yard, so to speak, in the prisons.

So what are we left with? Well, the death penalty, I guess, is a certain raw justice. A certain raw justice, if you go by the Code of Hammurabi or the Old Testament -- an eye for an eye, a tooth for a tooth, a son for a son, a father for a son. That strikes people. But you know what? Legal codes 2,000 and 3,000 years old, aren't we better than that now? Don't we proclaim we have a more civilized society today than 2500 years ago or 3,000 years ago? I would hope so, you know.

And back then they didn't have correctional facilities if they did have a raw sense of justice or blood for blood. Today we

have better ways of dealing with virtually every problem than they did then, and certainly we have a better way of dealing now.

The political punch is not there for the death penalty. You can try and revive it all you want. It's not there now. Ten years from now it may be different. Ten years ago it was different, and 15 years before that it was the other way. That's politics.

My opposition to the death penalty is simply fundamental. It is unworthy of the civilized society we hope to be living in in this, the 21st century. That's why I'm opposed to the death penalty.

ACTING PRESIDENT MORAHAN: Thank you, Senator Connor.

Senator Parker.

SENATOR PARKER: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Parker, on the bill.

SENATOR PARKER: Let me begin by saying this is a well-intentioned bill. And let me thank Senator Golden for his interest in this issue, for his courageousness in

bringing this to the floor. Because this is a truly important issue. I don't think there's one member of this body who is not concerned with safety in their community.

And all of us have police officers who live amongst our districts. We count on police officers for our safety, and we count on corrections officers as well. My nephew is a corrections officer. I have a brother-in-law who's a corrections officer. We want them protected. We don't want anything to happen to them. However, this bill is not the way to protect them.

We oftentimes talk about how to protect communities by raising penalties. That becomes kind of the ongoing theme in this body. Because every time we want to protect a class of people, we give the death penalty, we subscribe more jail time, we raise penalties and raise penalties and raise penalties. But never do we actually do the real kind of programmatic things that it takes to in fact deal with the issues that we attempt to address in this body.

So we talk about gang violence, but

never do we come up with programmatic dollars to in fact engage our young people after school. We talk about drugs in our community, but we never, ever come up with dollars to develop programs to both prevent people from getting on drugs but then also to do serious intervention with people after they get on to help them get off.

And this is the same kind of road that we're -- down the primrose path that we're going down now that doesn't really lead us to where we ought to be going. We all want safe communities. We want our neighbors, our friends, our families safe. We want police officers safe. We want peace officers safe. We want corrections officers safe. But unfortunately, this bill is not going to do that.

Just like when we talked about raising penalties for people who sell drugs in schoolyards. The reality is if you want to stop people from selling drugs in schoolyards, put a cop there and people won't sell drugs in school yards. It's really not that hard. The reality is anybody who is selling drugs in a

schoolyard is not saying what the penalty is, especially if they don't think they're going to get caught because there's no prevention.

I've been recently talking to nurses, I have lots of nurses in my district. And I've been talking to folks from the New York State Nurses Association, and they're really concerned about violence against two nurses. A really serious issue, and this body ought to take that up at some point. And they really want to raise the penalties specifically for people who assault nurses.

I certainly think we ought to protect nurses. But really what I've said to them is that, you know, we ought to consider the bill, but the reality is that what we ought to do if we want to protect nurses is work and develop a hospital safety bill that in fact requires a certain level of security or police presence on the floors where this stuff is in fact happening.

We know where it's happening. Because essentially at the end of the day, if you in fact assault a nurse or if you kill a cop -- this bill is not going to stop anybody

from killing cops. We will get some justice. Vengeance will be ours, sayeth the New York State Senate. But this is certainly not going to lead us to less occurrences of police officers, peace officers and corrections officers being killed or harmed.

The only way that's going to happen is in fact if we take some serious programmatic steps that we know work in terms of dealing with this issue. And people can claim that they don't really know the numbers, they can say, oh, this study and that study. You can always find a study that says what you want it to say.

We want our communities safe. We want our police officers safe. We want our children safe. But this bill is not the way that we in fact get it done.

If we want to protect peace officers and police officers and Department of Corrections officers, we need to provide more training. We need to make sure they have the right equipment. We need to make sure there are staffing levels that are appropriate in Department of Corrections facilities. We need

to make sure that our police are staffed in a way that you don't have one and two cars out in sectors the way we have in New York City right now. You know, you go to a midnight tour and, you know, most of our communities have only got two cars out, two sector cars.

And the reality is that, you know, we have not even returned to the level of staffing in the New York City Police Department that we were the morning of 9/11. So here we are, six years later, in a brand-new world where we say to ourselves that we understand the reality of terrorism and where we understand that first responders are going to be critical in both preventing and responding to a possible terrorist attack, and we still haven't even gotten our police department up to a staffing level where we can even pretend to respond to these things let alone, you know, prevent something catastrophic from happening.

If you want to in fact protect police officers or you want to protect Department of Corrections officers, you want to protect peace officers -- which we all want

to do -- let's in fact put some money where our mouths are.

Where is the bill that in fact will bring the New York City Police Department, put their pay in parity with police officers from around the state? Senator Golden, where is that bill? I would love to see that bill. It's rhetorical, but I would love to see a bill, you being a former police officer in New York City, that says it's not enough to today pay starting police officers in New York City $25,000.

We can't get the best and brightest in our police department paying them $25,000. Particularly when we raised the standard to now requiring 60 credits of college to in fact make that happen, and we're going to give people $25,000. To do what you have described yourself as being, you know, the most dangerous job in America.

So let's put more money into making sure that we get the best and the brightest, that we get people who have the proper training, that we make sure we have the best equipment for our police officers. Because I

want that for my police officers in the 66 in my district, in the 63 in my district, in the 67 in my district, in the 79 in my district, in the 70 in my district. I have the largest command in New York City in my district. And we are, in that command, almost a hundred cops less than we were the morning of 9/11.

In a world where we're clear that terrorism can happen, in fact, at any moment, where amber, orange alerts and red alerts and all kinds of things are the order of the day, we still have not gotten back to where we need to in terms of staffing. Let's in fact bring a bill there that would encourage more people and encourage retention into the police department.

Now, being that we have some agreement, I'm going to assume, in making sure that we have proper staffing levels because we all want to make our police officers safe, the problem with this bill is that this bill unfortunately does not make us safe. Because in fact we do know that the death penalty is not a deterrent for people committing crimes.

And I'm going to quote Roger Hood

in a book called "The Death Penalty: A Worldwide Perspective." This is from the Oxford Clarion Press, third edition, 2002, page 230. And it reads: "Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relationship between the death penalty and homicide rates conducted for the United Nations in 1988 and updated in 2002 concluded, and I quote, 'It is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.'"

We know it doesn't work. And we talk about, you know, as my colleague Senator Connor has alluded to, you know, what we're hearing from Senator Golden, at least with his statistics, is what we call a spurious relationship. It is that we are not in fact accounting for all of the variables that in fact might be impacting a particular

situation.

We know that over the last 12 years as crime has gone down, again, as Senator Connor has indicated, the economy has been up. And there's far more of a relationship between a good economy and deterring crime than there is in the death penalty.

So if you in fact want to really stop crime in our communities, what we need to be passing -- and I would love to work with you to pass this -- is a full employment law in the State of New York. Why don't we have a full employment law? Last time there was full employment for black folks in this state, it was slavery.

We need a full employment law. Where you have an economic theory that is based on an optimal level of unemployment, so you create a reserve pool of labor, you are certainly by definition relegating some people to the informal economy and the underground economy. Let's have a full employment law, and let's get rid of crime.

You can applaud.

The other issue that really is

important for us to deal with is the issue of race and class as it relates to the death penalty. That without a doubt -- and this is not even up, really, for debate. This is just a matter of fact -- that African-Americans and Latinos are more likely to be subject to the death penalty than whites. Those killing whites are more likely to be subject to the death penalty than those killing blacks. Point blank, period, end of story. There's not even a debate.

However, if you want to hear some of the numbers -- and this is from the Death Penalty Information Center. This is exonerations by race since 1973, exonerations. And this is actually in New York State. Blacks, 62; whites, 48; Latinos, 12; and others, 1.

We know, by and large -- and not because, you know, every single police officer is racist. But let's be clear, there's racism in our criminal justice system at almost every single level. I mean, nobody in our districts. In other districts, though, that happens.

And so the reality is we have to compensate for the failures of what happens on the ground. And we certainly cannot continue to let African-Americans and Latinos be the overwhelming victims of an unjust and racist criminal justice system.

And we also need to just look at the issue of how many innocent people -- and we'll never really know this -- over the years, how many innocent people have actually been killed by the death penalty. With all the number of exonerations, with the Innocence Project, with all the DNA testing that we're seeing now, almost daily we're seeing people being released based on new DNA tests. And the only thing that's keeping it from happening more often is literally we are not putting more money into things like the Innocence Project to in fact make sure that these tests are going to last.

And so I've seen lots of bills come across my desk here in the Senate that talk about using DNA testing. And we ought to use it, but we ought to in fact use it as well, just like we use it to convict people, we

ought to be also using it to exonerate people. And so let's put some money into making sure innocent people aren't the victims of the death penalty in this state.

And my last point -- and I know you've all been waiting for this, not because you're so interested, but just because it's my last point -- is really the expense of this. In a body that is so cognizant of how much money we're spending, it is interesting that when we talk about blood killing and revenge, the sky is the limit.

And frankly, my Republican colleagues here are nothing but a microcosm of what we see on the national level with, you know, the bloodletting in Iraq. It's that, you know, in the first year that the federal government put $89 billion into Iraq, the fifty states of the United States were in over $70 billion worth of debt, including the State of New York, who had $12 billion worth of debt. And in that year that we had $12 billion of debt, our Republican governor could not get a dime from the Republican president of this country to in fact deal with

Medicaid, deal with housing, deal with education, deal with transportation.

And this is the same thing we're falling into now. You want to, you know, ramp up the death penalty, you want to pour all this money into executing people, but where's the money to live? So, you know, we don't fully fund schools, we don't fully fund housing.

I'm getting letters now from the New York City Housing Authority about the fact that they're about to go bankrupt and we have no money for affordable housing for people -- many of which, if they're forced out of this housing, will probably wind up on death row. So I guess they'll wind up with state-subsidized housing either way. Maybe that's the plan.

But we don't have any money to subsidize affordable housing, but we can put more money, good money after bad into this. This is simply not the way. I want my community to be safe, like I know everybody here wants that we want our communities to be safe. We want our police officers safe, we

want our peace officers safe, we want our corrections officers safe.

But unfortunately, Mr. President, this isn't the way. I'll be voting nay.

ACTING PRESIDENT MORAHAN: Thank you, Senator Parker.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President. Hopefully to close.

Mr. President, this is a great emotional debate. And really what I think we're debating is not the death penalty for those who would kill police officers, although that's specifically what this bill is about. But we know -- and the conversation kind of drifts off here -- this is really a debate about whether there should be a death penalty in the state of New York.

And my good friend and colleague Senator Duane read some very emotional statements about individuals just before they were being executed. Unfortunately, we don't have any testimony here about the last words of a 20-year-old college student, young woman, life ahead of her, doing great in life, while

some perpetrator has his hands around her neck and is choking her last breath out of her body and killing her.

We don't have the last words of an 80-year-old widow living alone as a burglar didn't find what he wanted and put the gun in front of her face and pulled the trigger. We don't know what her last words.

We don't know the last words of the 7-year-old child who was raped and beaten to death. We don't know what that child's last words were.

You know, one reference was made, and it's always made, to the Assembly having hearings. You know, I asked Jill Cahill's sister -- I have referenced Jill Cahill on this floor many times, and will until the day I don't serve here anymore -- she wanted to testify at those Assembly hearings. And they told her, no, not really, your side will be well represented and your testimony will be too graphic when you talk about how her husband poured arsenic down her throat. Poured arsenic down her throat.

You know, we talked about the death

penalty being a deterrent. And, you know, again statistics and citing that it's not a deterrent. I don't know, I think it's a deterrent.

There was an individual by the name of Arthur Shawcross in Monroe County, the city of Rochester. Arthur Shawcross raped, beat and murdered two young children in the 1960s. And of course with our liberal laws and our liberal judges that we have in the Court of Appeals, eventually Arthur Shawcross gets out of jail. Arthur Shawcross, shortly after he got out of jail, proceeded to murder women in the city of Rochester and in Monroe County.

Arthur Shawcross was convicted of murdering 12 women in Monroe County. You know who they were? Drug dealers, prostitutes. He murdered them -- and by the way, he said -- he was convicted of murdering 12; it was more like 20, was one of the comments he made.

You know what Arthur Shawcross would do? He would dump the bodies in remote areas of Monroe County, and he would come back days later and sometimes weeks later and he would urinate on the bodies. That's how he

got caught, by returning to the scene of where he dumped those bodies.

Is the death penalty a deterrent? I'll tell you this much. If Arthur Shawcross had been executed for murdering, beating and raping those two young children, there would be 12 to 24 women in the city of Rochester maybe alive today.

Mr. President, I wholeheartedly support this bill. Thank you.

ACTING PRESIDENT MORAHAN: Thank you.

Is there any other Senator wishing to be heard? Any other Senator wishing to debate? The debate is closed.

Senator Golden, to close.

SENATOR GOLDEN: Thank you, Mr. President.

I have listened to this debate here today and have heard that the statistics that were used were debunked in January of 2007. Well, I wish my colleague had further went down in LexisNexis to March 29th of 2007, in the Supreme Court, which said most recent -- the study that I've quoted -- the most recent

and most methodical, advanced scholarship on the issue. And it did say, though, that the debate will continue.

I listened to Senator Duane read off a number of letters. And each one of the letters said that they were sorry, most of them, and said that they were responsible for their actions. Well, they're darn right they were responsible for their actions. They took a life and they paid for it with their lives.

I've listened to -- the most disingenuous portion of this debate was putting forward a 22-page bill, which of course was to create an issue so the Senate Democrats wouldn't have to vote on the death penalty. And then, in their own statement, said they weren't going to vote for the death penalty anyway.

It's a joke. Officers are dying across this state, and my colleagues think this is a joke, that we can pass all sorts of legislation with no intention of voting for it. Even if we had voted for your amendment, you would not have voted for the bill.

Is that what we're going to tell

the officers and the state troopers, the correction officers? Is that what we're going to all the people that work for government? Is that what we're going to tell them, it's a joke? It's not a joke.

Then I heard it was black and white issues. Of course I guess nobody wanted to do their homework on that either. Because when you see the numbers on that in 2005, 60 people were executed in this country. Thirty-eight were white, 19 were black, the rest were Hispanic. In 2006, 53 inmates were executed. Thirty-two were white, 21 were black. And since 1977 to 2005, 1,000 people have been executed. Fifty-eight percent were white, 34 percent were black, and 7 percent were Hispanic.

I've listened to every argument possible here today, and not one of them, not one of them is legitimate. And the only thing I do know is that we buried 10 officers in a year and a half, five already this year -- five this year -- and 57 across the nation. Fifty-seven officers across the nation. We must think we're somebody different here.

Thirty-eight states have the death penalty, and the United States government has the death penalty. But we think we're different.

And that's why we're going to see the deaths of police officers and the deaths of state troopers continue to go up, we're going to see homicides across this state continue to go up, and we're going to start to see crime go out of control here in this state again. Because nobody here wants to take responsibility for their actions.

The right thing to do here is to vote for this bill. The right thing is to send a message across this state that we care for our officers and we care for the people that live in this state. The right thing to do here is to vote yes and to send this over to the Assembly and then to the Governor for his signature, and send the right message to the 19.5 million people that live here in this great state and to each and every police officer and state trooper across the cities and state of New York.

I vote aye, Mr. President. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Golden.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Maltese, to explain his vote.

SENATOR MALTESE: Mr. President, I've listened to the debate this year and I've listened to the debate over many of these years. I have not heard a single argument from the opposition to this bill that really would explain the lack of a death penalty to the widows and the families of those law enforcement officers that would be protected to some extent by this bill.

I heard my good colleague Senator Schneiderman say that in his experience he has not come across people who would be deterred from committing a grievous crime because of the death penalty.

Well, I can say in my 3 1/2 years

as a prosecutor, as deputy chief of the homicide bureau, that I spoke to perpetrators and would-be perpetrators who explained how they did not carry a deadly weapon or did not load their firearms because they were concerned that they might be subject to a death penalty.

I disagree with those that would say that our correction officers would not be somewhat protected because those same felons, those same perpetrators within the correctional institution would know full well that they would face the ultimate penalty rather than adding a life sentence onto a life sentence onto a life sentence.

Mr. President, this bill should be passed here and now so that we can at least say we have attempted to do something and we have done something to protect the lives of our law enforcement officers.

Mr. President, I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator. Senator Maltese will be recorded in the affirmative.

Announce the results.

I'm sorry. Senator Hassell-Thompson, please, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. To explain my vote. Just very quickly. I'll read this because it will go faster.

I'm voting no because I believe sincerely that the system of capital punishment violates the constitutional guarantee of equal protection under the law under the 14th Amendment of the State Constitution.

Equal protection requires that the state laws treat an individual in the same manner as others in similar conditions and situations.

The death penalty is imposed in a manner that differentiates among defendants based on their race or the race of the victim. The death sentence is disproportionately imposed on minority defendants and in cases where the victim is white.

The New York State Constitution provides greater protection against discrimination than the federal Constitution.

And because of that, the death penalty would and should fail under state equal-protection constitutional analysis.

The antidiscrimination clause of the State Constitution explicitly outlaws discrimination, no matter what the source, on the basis of race, color or religion.

The broader scope of equal protection provided under the New York State Constitution could not countenance a pattern of unequal application of the death penalty where defendants charged with killing white victims are 4.3 times more likely to be sentenced to death as defendants charged with killing blacks, where it is more likely than not that the race of the victim will determine whether a defendant receives a death sentence, and where cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial combination of defendant and victim.

Brooklyn Law School, Ursula Bentele.

Mr. President, I will be voting no.

ACTING PRESIDENT MORAHAN: Thank

you, Senator Hassell-Thompson. You will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 639 are Senators Adams, Breslin, Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Oppenheimer, Parker, Perkins, Sabini, Sampson, Savino, Schneiderman, Serrano, Smith, Stavisky, Stewart-Cousins, Thompson and Valesky.

Ayes, 37. Nays, 24.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Robach.

SENATOR ROBACH: We're going to lay 642 aside for the day, Mr. President.

ACTING PRESIDENT MORAHAN: Calendar Number 642 is laid aside for the day.

Senator Robach.

SENATOR ROBACH: Yes, Mr. President. Is there any further business at the desk?

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

SENATOR ROBACH: One quick announcement. There will be an immediate meeting of the Senate Committee on Conference Committees in Room 332.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Senate Committee on Conference Committees in the Majority Conference Room, 332.

SENATOR ROBACH: There being nothing else, I recommend that we adjourn until Tuesday, May 15th, at 3:00 p.m. Move and also recommend it, Mr. President.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Tuesday, May 15th, at 3:00 p.m.

(Whereupon, at 6:30 p.m., the Senate adjourned.)