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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

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P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The  
Senate will come to order.

I ask 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.

1                   We ask You this through God. Amen.

2                   ACTING PRESIDENT MORAHAN:     Thank  
3     you, Reverend Young.

4                   Reading of the Journal.

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

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

13                  Presentation of petitions.

14                  Messages from the Assembly.

15                  Messages from the Governor.

16                  Reports of standing committees.

17                  Reports of select committees.

18                  Communications and reports from  
19     state officers.

20                  Motions and resolutions.

21                  Senator Robach.

22                  SENATOR ROBACH:     Yes,

23     Mr. President. These amendments are offered  
24     on the following Third Reading Calendar bills:

25                  Senator Fuschillo, on page 17,

1 Calendar Number 136, Senate Print Number  
2 2360A;

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

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

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

9 And lastly, Senator Nozzolio,  
10 page 37, Calendar Number 682, Print Number  
11 4118.

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

16 Senator Bonacic.

17 SENATOR BONACIC: Thank you,  
18 Mr. President.

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

23 ACTING PRESIDENT MORAHAN: The  
24 Secretary will read.

25 THE SECRETARY: Calendar Number

1 550, by Senator LaValle, Senate Print 3821, an  
2 act to amend the Alcoholic Beverage Control  
3 Law.

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

7 ACTING PRESIDENT MORAHAN: Call  
8 the roll on reconsideration.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 42.

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

13 ACTING PRESIDENT MORAHAN: The  
14 amendments are received and adopted.

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

21 ACTING PRESIDENT MORAHAN: So  
22 ordered.

23 SENATOR BONACIC: Thank you,  
24 Mr. President.

25 ACTING PRESIDENT MORAHAN: You're

1 welcome, Senator.

2 Senator Skelos.

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

8 ACTING PRESIDENT MORAHAN: The  
9 Secretary will read.

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

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

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

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

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

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

15 "WHEREAS, After shooting a dismal  
16 eight for 32 from the field, Hammond trailed  
17 34-22 at halftime. The Lady Red Devils then  
18 made serious adjustments to get back into the  
19 game; and

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

25 "WHEREAS, The athletic talent

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

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

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

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

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

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

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

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

1                   ACTING PRESIDENT MORAHAN:

2           Senator Wright.

3                   SENATOR WRIGHT:       Thank you,  
4           Mr. President.

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

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

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

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

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

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

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

21 Well done. Congratulations.

22 (Applause.)

23 ACTING PRESIDENT MORAHAN: Thank  
24 you, Senator Wright.

25 Senator Volker.

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

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

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

16                  ACTING PRESIDENT MORAHAN:     Thank  
17     you, Senator Volker.

18                  The resolution was adopted on March  
19     27th.

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

24                  SENATOR SKELOS:     Mr. President.

25                  ACTING PRESIDENT MORAHAN:

1 Senator Skelos.

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

5 ACTING PRESIDENT MORAHAN: The  
6 Secretary will read.

7 THE SECRETARY: Calendar Number  
8 232, by Senator Farley, Senate Print 2864, an  
9 act to amend the Banking Law, in relation to  
10 enforcement.

11 ACTING PRESIDENT MORAHAN: Read  
12 the last section.

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

15 ACTING PRESIDENT MORAHAN: Call  
16 the roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MORAHAN:  
19 Announce the results.

20 THE SECRETARY: Ayes, 56.

21 ACTING PRESIDENT MORAHAN: The  
22 bill is passed.

23 THE SECRETARY: Calendar Number  
24 475, by Senator Rath, Senate Print 1756A, an  
25 act to amend the Vehicle and Traffic Law and

1 the Penal Law, in relation to suspension.

2 ACTING PRESIDENT MORAHAN: Read  
3 the last section.

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

7 ACTING PRESIDENT MORAHAN: Call  
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT MORAHAN:  
11 Announce the results.

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

15 Ayes, 54. Nays, 2.

16 ACTING PRESIDENT MORAHAN: The  
17 bill is passed.

18 THE SECRETARY: Calendar Number  
19 537, by Senator Volker, Senate Print 3910, an  
20 act to amend the Criminal Procedure Law, in  
21 relation to a sentence of parole supervision.

22 ACTING PRESIDENT MORAHAN: Read  
23 the last section.

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

1                   ACTING PRESIDENT MORAHAN:     Call  
2     the roll.

3                   (The Secretary called the roll.)

4                   ACTING PRESIDENT MORAHAN:  
5     Announce the results.

6                   THE SECRETARY:     Ayes, 56.

7                   ACTING PRESIDENT MORAHAN:     The  
8     bill is passed.

9                   THE SECRETARY:     Calendar Number  
10    610, by Senator Larkin, Senate Print 2721, an  
11    act to amend the Racing, Pari-Mutuel Wagering  
12    and Breeding Law, in relation to the  
13    imposition of fines.

14                  ACTING PRESIDENT MORAHAN:     Read  
15    the last section.

16                  THE SECRETARY:     Section 3. This  
17    act shall take effect immediately.

18                  ACTING PRESIDENT MORAHAN:     Call  
19    the roll.

20                  (The Secretary called the roll.)

21                  ACTING PRESIDENT MORAHAN:  
22    Announce the results.

23                  THE SECRETARY:     Ayes, 56.

24                  ACTING PRESIDENT MORAHAN:     The  
25    bill is passed.

1 THE SECRETARY: Calendar Number  
2 639, by Senator Golden, Senate Print --

3 SENATOR DUANE: Lay it aside,  
4 please.

5 ACTING PRESIDENT MORAHAN: The  
6 bill is laid aside.

7 THE SECRETARY: Calendar Number  
8 642, by Senator Libous, Senate Print --

9 SENATOR DUANE: Lay it aside,  
10 please.

11 ACTING PRESIDENT MORAHAN: The  
12 bill is laid aside.

13 THE SECRETARY: Calendar Number  
14 644, by Senator DeFrancisco, Senate Print  
15 2739, an act to amend the Penal Law, in  
16 relation to establishing.

17 ACTING PRESIDENT MORAHAN: Read  
18 the last section.

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

22 ACTING PRESIDENT MORAHAN: Call  
23 the roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT MORAHAN:

1           Announce the results.

2                   THE SECRETARY:       Ayes, 56.

3                   ACTING PRESIDENT MORAHAN:       The  
4 bill is passed.

5                   THE SECRETARY:       Calendar Number  
6 655, by Senator Volker, Senate Print 4146, an  
7 act to amend the Criminal Procedure Law, in  
8 relation to final orders of observation.

9                   ACTING PRESIDENT MORAHAN:       Read  
10 the last section.

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

13                   ACTING PRESIDENT MORAHAN:       Call  
14 the roll.

15                   (The Secretary called the roll.)

16                   ACTING PRESIDENT MORAHAN:  
17 Announce the results.

18                   THE SECRETARY:       Ayes, 56.

19                   ACTING PRESIDENT MORAHAN:       The  
20 bill is passed.

21                   THE SECRETARY:       Calendar Number  
22 707, by Senator Flanagan, Senate Print 796, an  
23 act to amend the Tax Law, in relation to  
24 exemptions.

25                   ACTING PRESIDENT MORAHAN:       There

1 is a local fiscal impact note at the desk.

2 Read the last section.

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

6 ACTING PRESIDENT MORAHAN: Call  
7 the roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT MORAHAN:  
10 Announce the results.

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

13 ACTING PRESIDENT MORAHAN: The  
14 bill is passed.

15 THE SECRETARY: Calendar Number  
16 716, by Senator Young, Senate Print 3714, an  
17 act to amend the Agriculture and Markets  
18 Law --

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

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

23 THE SECRETARY: Calendar Number  
24 734, by Senator C. Kruger, Senate Print 4541,  
25 an act to amend the Family Court Act and the

1 Domestic Relations Law, in relation to orders  
2 of protection.

3 ACTING PRESIDENT MORAHAN: Read  
4 the last section.

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

7 ACTING PRESIDENT MORAHAN: Call  
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT MORAHAN:  
11 Announce the results.

12 THE SECRETARY: Ayes, 56.

13 ACTING PRESIDENT MORAHAN: The  
14 bill is passed.

15 THE SECRETARY: Calendar Number  
16 752, by Senator Fuschillo, Senate Print 4964,  
17 an act to amend the General Business Law, in  
18 relation to mail order and telephone order  
19 merchandise.

20 ACTING PRESIDENT MORAHAN: Read  
21 the last section.

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

24 ACTING PRESIDENT MORAHAN: Call  
25 the roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT MORAHAN:

3 Announce the results.

4 THE SECRETARY: Ayes, 56.

5 ACTING PRESIDENT MORAHAN: The  
6 bill is passed.

7 THE SECRETARY: Calendar Number  
8 757, by Senator Marcellino, Senate Print 4368,  
9 an act to amend the Tax Law, in relation to  
10 making technical corrections.

11 ACTING PRESIDENT MORAHAN: Read  
12 the last section.

13 THE SECRETARY: Section 4. This  
14 act shall take effect immediately.

15 ACTING PRESIDENT MORAHAN: Call  
16 the roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MORAHAN:

19 Announce the results.

20 THE SECRETARY: Ayes, 56. Nays,  
21 0.

22 ACTING PRESIDENT MORAHAN: The  
23 bill is passed.

24 THE SECRETARY: Calendar Number  
25 758, by Senator DeFrancisco, Senate Print 53,

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

3 ACTING PRESIDENT MORAHAN: Read  
4 the last section.

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

8 ACTING PRESIDENT MORAHAN: Call  
9 the roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT MORAHAN:  
12 Announce the results.

13 THE SECRETARY: Ayes, 56.

14 ACTING PRESIDENT MORAHAN: The  
15 bill is passed.

16 THE SECRETARY: Calendar Number  
17 762, by Senator Griffio, Senate Print 880, an  
18 act to amend the Highway Law, in relation to  
19 designation of the "Griffiss Veterans'  
20 Memorial Parkway."

21 ACTING PRESIDENT MORAHAN: Read  
22 the last section.

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

25 ACTING PRESIDENT MORAHAN: Call

1 the roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT MORAHAN:

4 Announce the results.

5 THE SECRETARY: Ayes, 56.

6 ACTING PRESIDENT MORAHAN: The  
7 bill is passed.

8 THE SECRETARY: Calendar Number  
9 769, by Senator Winner, Senate Print 3237, an  
10 act to amend the Highway Law, in relation to  
11 authorizing.

12 ACTING PRESIDENT MORAHAN: Read  
13 the last section.

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

16 ACTING PRESIDENT MORAHAN: Call  
17 the roll.

18 (The Secretary called the roll.)

19 ACTING PRESIDENT MORAHAN:

20 Announce the results.

21 THE SECRETARY: Ayes, 56.

22 ACTING PRESIDENT MORAHAN: The  
23 bill is passed.

24 THE SECRETARY: Calendar Number  
25 777, by Senator LaValle, Senate Print 4299, an

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

3 ACTING PRESIDENT MORAHAN: Read  
4 the last section.

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

7 ACTING PRESIDENT MORAHAN: Call  
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT MORAHAN:  
11 nounce the results.

12 THE SECRETARY: Ayes, 56.

13 ACTING PRESIDENT MORAHAN: The  
14 bill is passed.

15 THE SECRETARY: Calendar Number  
16 790, by Senator Maziarz, Senate Print 21, an  
17 act to authorize the First Volunteer Fire  
18 Company of Bergholz, Inc.

19 ACTING PRESIDENT MORAHAN: Read  
20 the last section.

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

23 ACTING PRESIDENT MORAHAN: Call  
24 the roll.

25 (The Secretary called the roll.)

1                   ACTING PRESIDENT MORAHAN:

2           Announce the results.

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

5                   ACTING PRESIDENT MORAHAN:     The  
6           bill is passed.

7                   THE SECRETARY:     Calendar Number  
8           795, by Senator Morahan, Senate Print 1475, an  
9           act authorizing Northeastern Conference  
10          Corporation of Seventh Day Adventists.

11                   ACTING PRESIDENT MORAHAN:     Read  
12          the last section.

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

15                   ACTING PRESIDENT MORAHAN:     Call  
16          the roll.

17                   (The Secretary called the roll.)

18                   ACTING PRESIDENT MORAHAN:  
19          Announce the results.

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

23                   ACTING PRESIDENT MORAHAN:     The  
24          bill is passed.

25                   THE SECRETARY:     Calendar Number

1 803, by Senator Trunzo, Senate Print 3260, an  
2 act in relation to authorizing the assessor of  
3 the Town of Brookhaven.

4 ACTING PRESIDENT MORAHAN: Read  
5 the last section.

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

8 ACTING PRESIDENT MORAHAN: Call  
9 the roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT MORAHAN:  
12 Announce the results.

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

16 ACTING PRESIDENT MORAHAN: The  
17 bill is passed.

18 THE SECRETARY: Calendar Number  
19 805, by Senator Trunzo, Senate Print 3262, an  
20 act in relation in authorizing the assessor of  
21 the Town of Islip.

22 ACTING PRESIDENT MORAHAN: Read  
23 the last section.

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

1                   ACTING PRESIDENT MORAHAN:     Call  
2     the roll.

3                   (The Secretary called the roll.)

4                   ACTING PRESIDENT MORAHAN:  
5     Announce the results.

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

9                   ACTING PRESIDENT MORAHAN:     The  
10    bill is passed.

11                  THE SECRETARY:     Calendar Number  
12    817, by Senator Flanagan, Senate Print 4175,  
13    an act to amend the Public Authorities Law, in  
14    relation to powers.

15                  ACTING PRESIDENT MORAHAN:     Read  
16    the last section.

17                  THE SECRETARY:     Section 3.   This  
18    act shall take effect immediately.

19                  ACTING PRESIDENT MORAHAN:     Call  
20    the roll.

21                  (The Secretary called the roll.)

22                  ACTING PRESIDENT MORAHAN:  
23    Announce the results.

24                  THE SECRETARY:     Ayes, 56.

25                  ACTING PRESIDENT MORAHAN:     The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 825, by Senator LaValle, Senate Print 3922, an  
4 act to amend the Education Law, in relation to  
5 disclosure of gifts.

6 ACTING PRESIDENT MORAHAN: Read  
7 the last section.

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

10 ACTING PRESIDENT MORAHAN: Call  
11 the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT MORAHAN:  
14 Announce the results.

15 THE SECRETARY: Ayes, 56.

16 ACTING PRESIDENT MORAHAN: The  
17 bill is passed.

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

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

24 ACTING PRESIDENT MORAHAN: The  
25 Secretary will ring the bells.

1                   The Secretary will read.

2                   THE SECRETARY:       Calendar Number  
3                   639, by Senator Golden, Senate Print 319, an  
4                   act to amend the Penal Law and the Criminal  
5                   Procedure Law.

6                   SENATOR DUANE:       Explanation,  
7                   please.

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

11                  SENATOR GOLDEN:       Thank you,  
12                  Mr. President.

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

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

25                  And even though we put nobody to

1 death in this state between 1995 and 2003,  
2 when they took out -- when the Supreme Court  
3 found that it was not justified on the jury  
4 sentencing portion of it, we've seen crime  
5 come down across this state drastically, to  
6 below 300,000 crimes committed across this  
7 state, to less than 600 homicides in 2005 and  
8 2004.

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

18 And the question is why do we do  
19 that today. Well, we do it today because  
20 we've seen over 10 police officers and  
21 troopers killed in the past year and a half, a  
22 rise in numbers that we haven't seen since the  
23 '70s, an outstanding number of police officers  
24 and state troopers being assassinated. One  
25 most recently in Utica, where they walked up

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

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

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

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

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

1 officers and state troopers coming down. We  
2 see in 1995 where you had 10 to 14 murders per  
3 100,000 people, and you seen that drop to 8.5  
4 in 1995, and you seen a drop to 4.5 per  
5 100,000 in 2005. That's not coincidence.  
6 Those are direct statistics that prove that  
7 this is a deterrent.

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

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

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

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

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

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

1 officers and troopers in the line of duty.

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

7 And I'm hoping that my colleagues  
8 in the Assembly -- and if this bill gets to  
9 the floor of the Assembly, you would have over  
10 100 votes in that Assembly for this bill. We  
11 need this bill. We need this legislation.  
12 And we would have unanimous support in the  
13 Assembly if this bill were to hit the floor.

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

21 ACTING PRESIDENT MORAHAN:

22 Senator Bruno.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We have to be prepared to do what

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT MORAHAN: Thank  
9 you, Senator Bruno.

10 Senator Bonacic.

11 SENATOR BONACIC: Thank you,  
12 Mr. President.

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

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

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

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

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

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

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

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

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

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

1 no, that wasn't the time.

2 Maybe it was March 13, 2007.

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

11 If that is not the right time,  
12 maybe we should have done it on February 28,  
13 2006, because that's when Trooper Sperr was  
14 killed. Now, Trooper Sperr, when he was  
15 killed, he had surviving four brothers, six  
16 sisters and parents. And that killer is  
17 getting medical treatment from the state for  
18 his wounds. Do you think they think life  
19 without parole is just punishment?

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

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

1           deterrence and protection for our families.

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

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

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

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

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

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

13 Thank you, Mr. President.

14 ACTING PRESIDENT MORAHAN: Thank  
15 you, Senator Bonacic.

16 Senator Schneiderman.

17 SENATOR SCHNEIDERMAN: Thank you,  
18 Mr. President.

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

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

1                   SENATOR SCHNEIDERMAN:     Thank you,  
2     Mr. President.

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

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

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

25                  Senator Volker, indeed, is a

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

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

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

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

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

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

14 SENATOR SCHNEIDERMAN: Yes,  
15 Mr. President.

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

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

21 ACTING PRESIDENT MORAHAN:  
22 Senator Schneiderman, will you yield?

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

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

3 ACTING PRESIDENT MORAHAN:  
4 Continue, Senator.

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

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

13 We have had cases -- and I met  
14 several weeks ago with a man who did 22 years.  
15 And despite repeated requests that they find  
16 his DNA and test it, the DNA warehouse in  
17 New York City responded they couldn't find it,  
18 it was lost, it was lost. When they finally  
19 found it, he was exonerated. He got out after  
20 22 years.

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

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

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

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

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

25 Keep in mind that every time

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

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

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

1 a system of justice for all.

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

11 The FBI did the only study that I  
12 know of where they examined DNA exclusions of  
13 defendants in cases for all arrests and  
14 indictments of people in violent crimes -- and  
15 this was written up back in 1996 -- and they  
16 found that for arrests and indictments,  
17 24 percent of those arrested and indicted were  
18 later excluded by DNA evidence.

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

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

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

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

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

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

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

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

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

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

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

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

11 SENATOR WINNER: Will Senator  
12 Schneiderman yield for a question?

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

16 (Laughter.)

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

20 ACTING PRESIDENT MORAHAN:  
21 Proceed.

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

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

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

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

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

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

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

4                   (Laughter.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                ACTING PRESIDENT MORAHAN:  
17       Proceed, Senator.

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

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

25                But I do believe that with or

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

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

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

15 Thank you, Mr. President.

16 ACTING PRESIDENT MORAHAN: Thank  
17 you, Senator.

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

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

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

3 ACTING PRESIDENT MORAHAN: The  
4 amendment is not agreed to.

5 Senator Diaz.

6 SENATOR DIAZ: Thank you,  
7 Mr. President.

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

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

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

1 police officers.

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

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

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

25 And what is the irony of this?

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT MORAHAN:

11 Senator, will you suffer an interruption?

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

14 ACTING PRESIDENT MORAHAN:

15 Senator Montgomery, why do you rise?

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

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

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

25 SENATOR DIAZ: Partial birth

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

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

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

1           that is wrong.

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

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

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

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

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

25                         ACTING PRESIDENT MORAHAN:

1 Senator Diaz, do you choose to answer the  
2 question?

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

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

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

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

25 So thank you. Another question?

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Thank you, Mr. President.

16 ACTING PRESIDENT MORAHAN: Thank  
17 you, Senator.

18 Senator Winner.

19 SENATOR WINNER: Thank you,  
20 Mr. President.

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

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

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

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

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

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

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

13                   Now, there's been some reference to  
14      the fact of the testimony in that proceeding  
15      in the Chemung County Court in September of  
16      2006. And you know, there's always been a lot  
17      of allegations that there's no deterrence  
18      effect with regard to capital punishment. And  
19      certainly we've heard that over and over and  
20      over from the opponents. And sometimes they  
21      can be very persuasive, because it's been  
22      difficult to get your hands on direct  
23      empirical knowledge of the existence of the  
24      deterrence of capital punishment in a specific  
25      action.

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

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

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

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

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

25                 "Answer: Do I want to do a little

1 bit of time or a lot of time."

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

4 "Answer: Not at that point."

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

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

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

11 "Answer: Yes."

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

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

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

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

25 "Answer: Yes."

1                   "Question: And where did you see  
2                   him?"

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

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

7                   "Answer: Laying on his back."

8                   "Question: Okay. Was he  
9                   shooting?"

10                  "Answer: No."

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

14                  "Answer: Yes."

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

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

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

22                  "Answer: They were up in the air."

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

25                  "Answer: Yes. His feet were on

1 the ground."

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

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

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

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

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

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

25 Now, I know that Senator Bruno

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

4 ACTING PRESIDENT MORAHAN: Excuse  
5 me, Senator.

6 Senator Serrano, why do you rise?

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

9 ACTING PRESIDENT MORAHAN:  
10 Senator Winner, will you yield?

11 SENATOR WINNER: Yes, I'll yield.

12 ACTING PRESIDENT MORAHAN: The  
13 Senator yields.

14 SENATOR SERRANO: Thank you very  
15 much.

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

19 SENATOR WINNER: No, I have not,  
20 Senator.

21 SENATOR SERRANO: Okay. Would  
22 you agree that --

23 SENATOR WINNER: Are you asking  
24 me to yield again?

25 ACTING PRESIDENT MORAHAN:

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

3 SENATOR SERRANO: Will he yield?

4 ACTING PRESIDENT MORAHAN:

5 Senator, do you yield?

6 SENATOR WINNER: Yes.

7 SENATOR SERRANO: Thank you.

8 Through you, Mr. President, I apologize.

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

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

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

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

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

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

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

22 SENATOR SERRANO: No.

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

25 SENATOR SERRANO: Okay.

1 Mr. President, will the Senator continue to  
2 yield?

3 ACTING PRESIDENT MORAHAN:

4 Senator Winner, will you continue to yield?

5 SENATOR WINNER: Yes, I yield.

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

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

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

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

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

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

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

19 SENATOR WINNER: Sure.

20 ACTING PRESIDENT MORAHAN: The  
21 Senator yields.

22 SENATOR SERRANO: Thank you.

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

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

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

6 SENATOR SERRANO: Vengeance, are  
7 you addressing --

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

11 SENATOR SERRANO: Okay.

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

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

25 SENATOR WINNER: Senator, in

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

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

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

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

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

25 SENATOR WINNER: Sure.

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

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

11                  SENATOR WINNER:     If I may  
12    respond, Senator.

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

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

1 little higher authority to deal with than  
2 myself.

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

12 ACTING PRESIDENT MORAHAN: Thank  
13 you, Senator.

14 SENATOR SERRANO: Thank you. No  
15 further questions.

16 ACTING PRESIDENT MORAHAN: Thank  
17 you, Senator.

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

20 ACTING PRESIDENT MORAHAN:  
21 Senator Winner.

22 SENATOR WINNER: Thank you,  
23 Mr. President.

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

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

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

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

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

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

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

17 Mr. President, thank you for your  
18 indulgence.

19 ACTING PRESIDENT MORAHAN: Thank  
20 you, Senator.

21 Senator Volker.

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

1 penalty.

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

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

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

1 to find what the sentence should be.

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

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

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

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

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

17           So what we're doing today is  
18 basically saying instead of after the deadlock  
19 provision the sentence would be life, meaning  
20 50 to 25 to life, it will be life without  
21 parole. That's what we're doing today.  
22 That's it. That's the big deal. That's it.

23           Now, why is this bill -- and this  
24 bill, by the way, is interesting because in  
25 1973 -- and let me just give you a quick

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22                  ACTING PRESIDENT MORAHAN:

23                  Senator Diaz, why do you rise?

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

1                   ACTING PRESIDENT MORAHAN:

2           Senator Volker, will you yield for one  
3           question?

4                   SENATOR VOLKER:       One question.

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

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

12                   SENATOR DIAZ:       Just --

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

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

22                   ACTING PRESIDENT MORAHAN:       Thank  
23          you, Senator.

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

1 SENATOR VOLKER: Yes.

2 ACTING PRESIDENT MORAHAN: The  
3 Senator continues to yield.

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

7 SENATOR VOLKER: Yes.

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

10 SENATOR VOLKER: That's next  
11 week.

12 SENATOR DIAZ: Next week?

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

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

18 SENATOR VOLKER: Yes.

19 ACTING PRESIDENT MORAHAN: The  
20 Senator will continue to yield.

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

25 SENATOR VOLKER: Yeah, it is.

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

5                         SENATOR DIAZ:       Who said that?

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

10                        SENATOR DIAZ:       Will the Senator  
11           still yield?

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

14                        SENATOR VOLKER:       Yes.

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

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

3                   ACTING PRESIDENT MORAHAN:     Excuse  
4     me, Senator Volker.

5                   Senator, was that a question?

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

8                   Mr. President, you know, we have to  
9     stop with the ironies here. This is serious  
10    business here. We're talking about life.

11    We're talking about that any life in the State  
12    of New York is the same. To say that the life  
13    of a police officer is worth more --

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

17                   SENATOR DIAZ:     Okay.

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

22                   SENATOR VOLKER:     Yes, I am  
23    finished.

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

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

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

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

22                  ACTING PRESIDENT MORAHAN:     Thank  
23    you, Senator.

24                  Senator Little.

25                  SENATOR LITTLE:     Thank you,

1 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Thank you.

24 ACTING PRESIDENT MORAHAN: Thank  
25 you, Senator Little.

1                   Senator Duane.

2                   SENATOR DUANE:       Thank you,  
3                   Mr. President.

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

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

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

1 me on the right side of Mom."

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

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

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

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

25                  Justin Fuller, when he was asked if

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

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

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

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

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

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

25 So I feel like saying, you know,

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

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

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

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

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

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

9 Thank you.

10 ACTING PRESIDENT MORAHAN: Thank  
11 you, Senator Duane.

12 Senator Krueger.

13 SENATOR LIZ KRUEGER: Thank you,  
14 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Reinstating the death penalty for  
11 any subuniverse of violent criminals or any  
12 subcategory of crime doesn't change the  
13 fundamental questions of whether or not we  
14 should have a death penalty, whether or not we  
15 need to have a death penalty, or whether we  
16 could justify under our existing systems of  
17 law the fact that we have proven one thing  
18 with our death penalty in the 1800s and the  
19 1900s -- and I hope no longer in the 21st  
20 century -- that mistakes are made, they will  
21 continue to be made. This is a model of  
22 criminal justice that has no place in the  
23 state of New York, and there's no  
24 justification for it.

25 And I suppose last, because a great

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

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

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

1 priority.

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

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

22 Thank you, Mr. President. I vote  
23 no.

24 ACTING PRESIDENT MORAHAN: Thank  
25 you, Senator Krueger.

1 Senator Marcellino.

2 SENATOR MARCELLINO: Thank you,  
3 Mr. President.

4 We've heard a lot of discussion  
5 lately about statistics, pro and con: is the  
6 death penalty a deterrent, is it not.

7 Mr. President, I wonder if Senator Golden  
8 would yield for a question.

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

11 SENATOR GOLDEN: I do.

12 ACTING PRESIDENT MORAHAN: The  
13 Senator yields.

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

22 Could you please repeat those  
23 statistics for us?

24 SENATOR GOLDEN: Certainly.

25 The numbers between 1977 and 1995,

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

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

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

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

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

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

6 SENATOR MARCELLINO: Thank you,  
7 Senator Golden.

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

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

20 Thank you, Mr. President.

21 ACTING PRESIDENT MORAHAN: Thank  
22 you, Senator.

23 Senator Schneiderman.

24 SENATOR SCHNEIDERMAN: Thank you,  
25 Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ACTING PRESIDENT MORAHAN: Thank  
21 you, Senator Schneiderman.

22 Senator Nozzolio.

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

25 Senator Schneiderman is right,

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

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

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

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

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

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

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

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

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

1 Inmates murder inmates all the time in  
2 New York State.

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

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

15 ACTING PRESIDENT MORAHAN: Thank  
16 you, Senator Nozzolio.

17 Senator Connor.

18 SENATOR CONNOR: Thank you,  
19 Mr. President.

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

25 And I first engaged in a debate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12                    So what are we left with? Well,  
13      the death penalty, I guess, is a certain raw  
14      justice. A certain raw justice, if you go by  
15      the Code of Hammurabi or the Old Testament --  
16      an eye for an eye, a tooth for a tooth, a son  
17      for a son, a father for a son. That strikes  
18      people. But you know what? Legal codes 2,000  
19      and 3,000 years old, aren't we better than  
20      that now? Don't we proclaim we have a more  
21      civilized society today than 2500 years ago or  
22      3,000 years ago? I would hope so, you know.

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

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

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

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

15 ACTING PRESIDENT MORAHAN: Thank  
16 you, Senator Connor.

17 Senator Parker.

18 SENATOR PARKER: Mr. President,  
19 on the bill.

20 ACTING PRESIDENT MORAHAN:  
21 Senator Parker, on the bill.

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

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

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

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

25 So we talk about gang violence, but

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 want that for my police officers in the 66 in  
2 my district, in the 63 in my district, in the  
3 67 in my district, in the 79 in my district,  
4 in the 70 in my district. I have the largest  
5 command in New York City in my district. And  
6 we are, in that command, almost a hundred cops  
7 less than we were the morning of 9/11.

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

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

25 And I'm going to quote Roger Hood

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

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

1 situation.

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

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

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

24 You can applaud.

25 The other issue that really is

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

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

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

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

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

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

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

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

13                        And frankly, my Republican  
14          colleagues here are nothing but a microcosm of  
15          what we see on the national level with, you  
16          know, the bloodletting in Iraq. It's that,  
17          you know, in the first year that the federal  
18          government put \$89 billion into Iraq, the  
19          fifty states of the United States were in over  
20          \$70 billion worth of debt, including the State  
21          of New York, who had \$12 billion worth of  
22          debt. And in that year that we had  
23          \$12 billion of debt, our Republican governor  
24          could not get a dime from the Republican  
25          president of this country to in fact deal with

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

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

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

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

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

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

5 ACTING PRESIDENT MORAHAN: Thank  
6 you, Senator Parker.

7 Senator Maziarz.

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

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

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

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

4                        We don't have the last words of an  
5           80-year-old widow living alone as a burglar  
6           didn't find what he wanted and put the gun in  
7           front of her face and pulled the trigger. We  
8           don't know what her last words.

9                        We don't know the last words of the  
10          7-year-old child who was raped and beaten to  
11          death. We don't know what that child's last  
12          words were.

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

25                      You know, we talked about the death

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

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

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

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

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

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

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

11 ACTING PRESIDENT MORAHAN: Thank  
12 you.

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

16 Senator Golden, to close.

17 SENATOR GOLDEN: Thank you,  
18 Mr. President.

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

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

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

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

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

25 Is that what we're going to tell

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

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

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

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

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

12 The right thing to do here is to  
13 vote for this bill. The right thing is to  
14 send a message across this state that we care  
15 for our officers and we care for the people  
16 that live in this state. The right thing to  
17 do here is to vote yes and to send this over  
18 to the Assembly and then to the Governor for  
19 his signature, and send the right message to  
20 the 19.5 million people that live here in this  
21 great state and to each and every police  
22 officer and state trooper across the cities  
23 and state of New York.

24 I vote aye, Mr. President. Thank  
25 you.

1                   ACTING PRESIDENT MORAHAN:     Thank  
2     you, Senator Golden.

3                   Read the last section.

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

6                   ACTING PRESIDENT MORAHAN:     Call  
7     the roll.

8                   (The Secretary called the roll.)

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

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

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

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

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

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

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

21 Mr. President, I vote aye.

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

25 Announce the results.

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

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

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

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

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

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

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

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

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

22 Brooklyn Law School, Ursula  
23 Bentele.

24 Mr. President, I will be voting no.

25 ACTING PRESIDENT MORAHAN: Thank

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

3 Announce the results.

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

12 Ayes, 37. Nays, 24.

13 ACTING PRESIDENT MORAHAN: The  
14 bill is passed.

15 Senator Robach.

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

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

20 Senator Robach.

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

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

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

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

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

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

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

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