

1 NEW YORK STATE SENATE

2  
3  
4 THE STENOGRAPHIC RECORD

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7  
8 ALBANY, NEW YORK

9 January 31, 2012

10 11:25 a.m.

11  
12  
13  
14 REGULAR SESSION

15  
16  
17  
18 SENATOR JOSEPH E. ROBACH, Acting President

19 FRANCIS W. PATIENCE, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT ROBACH: The  
3 Senate will come to order.

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

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

8 ACTING PRESIDENT ROBACH: In the  
9 absence of clergy, may we all please bow our  
10 heads in a moment of silence.

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

13 ACTING PRESIDENT ROBACH: The  
14 reading of the Journal.

15 THE SECRETARY: In Senate, Monday,  
16 January 30th, the Senate met pursuant to  
17 adjournment. The Journal of Sunday,  
18 January 29th, was read and approved. On motion,  
19 Senate adjourned.

20 ACTING PRESIDENT ROBACH: Without  
21 objection, the Journal stands approved as read.

22 Presentation of petitions.

23 Messages from the Assembly.

24 Messages from the Governor.

25 Reports of standing committees.

1 Reports of select committees.

2 Communications and reports from  
3 state officers.

4 Motions and resolutions.

5 Senator Libous.

6 SENATOR LIBOUS: Mr. President, I  
7 believe Senator Breslin, if you could call on  
8 him, has a motion.

9 ACTING PRESIDENT ROBACH: Senator  
10 Breslin.

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

13 On behalf of Senator Duane, I move  
14 that the following bill be discharged from its  
15 respective committee and be recommitted with  
16 instructions to strike the enacting clause: Bill  
17 Number 2873.

18 ACTING PRESIDENT ROBACH: So  
19 ordered.

20 SENATOR BRESLIN: Thank you,  
21 Mr. President.

22 ACTING PRESIDENT ROBACH: Thank  
23 you.

24 Senator Libous.

25 SENATOR LIBOUS: Thank you,

1 Mr. President.

2 At this time could we please adopt  
3 the Resolution Calendar, with the exception of  
4 Resolutions 3118, 3124 and 3127.

5 ACTING PRESIDENT ROBACH: All in  
6 favor of adopting the Resolution Calendar, with  
7 the exceptions noted, please signify by saying  
8 aye.

9 (Response of "Aye.")

10 ACTING PRESIDENT ROBACH: Those  
11 opposed, nay.

12 (No response.)

13 ACTING PRESIDENT ROBACH: The  
14 Resolution Calendar is adopted.

15 Senator Libous.

16 SENATOR LIBOUS: Thank you,  
17 Mr. President.

18 I believe there's a resolution at  
19 the desk by Senator Farley, Number 3118. And I  
20 ask that we read it in its entirety and then call  
21 on Senator Farley, please.

22 ACTING PRESIDENT ROBACH: The  
23 Secretary will read.

24 THE SECRETARY: Legislative  
25 Resolution Number 3118, by Senator Farley,

1 congratulating the Schalmont Girls Soccer Team  
2 upon the occasion of capturing the New York State  
3 Class B Championship.

4                   "WHEREAS, The State of New York  
5 takes great pride in acknowledging the  
6 outstanding achievements of its student athletes;  
7 and

8                   "WHEREAS, The Schalmont Girls  
9 Soccer Team exhibited remarkable athletic  
10 ability, inspirational sportsmanship, and  
11 extraordinary teamwork in winning the New York  
12 State Class B Championship; and

13                   "WHEREAS, The team, led by Head  
14 Coach Angelo Caschera and Assistant Coaches  
15 Alaina Lange and Karen Ryder, consists of Karley  
16 Murray, Angelina Gazzillo, Katie Saccocio, Hannah  
17 Saccocio, Madeline Saccocio, Nicoletta Cuttita,  
18 Hailee Metzold, Rachael Gac, Jenna Saccocio,  
19 Ciara Vitallo, Megan Strijek, Amanda Mascitelli,  
20 Allie Gallo, Isabella Borini, Taylor Florio,  
21 Shanna Reagan, Alexandra Cardinal, Diana DiCocco,  
22 and Gabrielle Juers; and

23                   "WHEREAS, The Sabres finished their  
24 season with an impressive 23-0 record; and

25                   "WHEREAS, The team scored 131 goals

1 in those games, while allowing only seven goals.

2 They shut out their opponents 17 times; and

3 "WHEREAS, on November 19, 2011, the  
4 Sabres defeated defending champions Bronxville by  
5 a score of 4-0 in the semifinal; and

6 "WHEREAS, The following day, they  
7 defeated Greece-Odyssey by a score of 4-0 at the  
8 Class B State Championships held at Tompkins  
9 Cortland Community College; and

10 "WHEREAS, Forward Megan Strijek was  
11 named one of the tournament's Most Outstanding  
12 Players, and the Sabres were awarded the  
13 Sportsmanship Award; and

14 "WHEREAS, The team is an  
15 inspiration to student athletic teams across  
16 New York State; now, therefore, be it

17 "RESOLVED, That this Legislative  
18 Body pause in its deliberations to congratulate  
19 the Schalmont Girls Soccer Team upon the occasion  
20 of capturing the New York State Class B  
21 Championship; and be it further

22 "RESOLVED, That copies of this  
23 resolution, suitably engrossed, be transmitted to  
24 the members of the Schalmont Girls Soccer Team."

25 ACTING PRESIDENT ROBACH: Senator

1 Farley on the resolution.

2 SENATOR FARLEY: Thank you very  
3 much, Mr. President.

4 I'm very pleased to rise to  
5 acknowledge up in the gallery the New York State  
6 Champion Class B Girls Soccer Team. You know,  
7 they're a remarkable group, this Schalmont  
8 School.

9 And incidentally, before I go on to  
10 their remarkable accomplishment, I must say that  
11 Schalmont High School is one of the finest  
12 academic institutions in my district, and  
13 certainly in Schenectady County, and truly a fine  
14 school.

15 You know, we're pleased to have  
16 with us today in the gallery the head coach,  
17 Angelo Caschera, and the Schalmont athletic  
18 director, John Gallo, and of course assistant  
19 coaches, and many of the team's more important  
20 parents who are up there on behalf of their  
21 charges.

22 Now, this remarkable team was able  
23 to shut out their points on 17 different  
24 occasions. The Sabres, as they're called,  
25 finished with a 23-0 record, one of the finest of

1 any champion that was ever nominated. This  
2 special recognition was given to Megan Strijek,  
3 who was featured -- she was also named the Most  
4 Outstanding Player. And, you know, this team,  
5 besides being outstanding, was given the  
6 Sportsmanship Award.

7               The sportsmanship, the teamwork,  
8 the academic ability that is attributed to this  
9 school makes everybody very proud. I'm proud to  
10 represent them, and in a few moments I'm going to  
11 have a picture taken with them out of the  
12 staircase. We're honored to have them in this  
13 chamber.

14               And, Mr. President, if you would  
15 please acknowledge their presence.

16               ACTING PRESIDENT ROBACH: Thank  
17 you.

18               On behalf of Senator Farley and all  
19 of us, congratulations. It's extra hard for me,  
20 having a daughter at Greece-Odyssey who you beat.

21               (Laughter.)

22               ACTING PRESIDENT ROBACH: But  
23 congratulations, you've earned it. The day is  
24 yours. Welcome to the chamber.

25               (Applause.)



1                   SENATOR FARLEY:    Mr. President,  
2 I'd like to pass that resolution also.

3                   ACTING PRESIDENT ROBACH:    On the  
4 resolution, all those in favor signify by saying  
5 aye.

6                   (Response of "Aye.")

7                   ACTING PRESIDENT ROBACH:    Any  
8 opposed, nay.

9                   (No response.)

10                  ACTING PRESIDENT ROBACH:    The  
11 resolution is adopted.

12                  Senator Libous.

13                  SENATOR LIBOUS:    Mr. President, I  
14 believe there's a resolution at the desk by  
15 Senator Sampson, Number 3124. I ask that you  
16 please read it in its entirety, and I believe you  
17 should call on Senator Sampson immediately  
18 following the reading of the resolution.

19                  ACTING PRESIDENT ROBACH:    The  
20 Clerk will read.

21                  THE SECRETARY:    Legislative  
22 Resolution Number 3124, by Senator Sampson,  
23 memorializing Governor Andrew M. Cuomo to  
24 proclaim February 2012 as Black History Month in  
25 the State of New York.

1                   "WHEREAS, Black History Month,  
2 previously known as Negro History Week, was  
3 founded by Dr. Carter G. Woodson, and was first  
4 celebrated on February 1, 1926. Since 1976, it  
5 has become a nationally recognized month-long  
6 celebration, held each year during the month of  
7 February, to acknowledge and pay tribute to  
8 African-Americans neglected by both society and  
9 the history books; and

10                   "WHEREAS, The month of February  
11 observes the rich and diverse heritage of our  
12 great state and nation; and

13                   "WHEREAS, Black History Month seeks  
14 to emphasize black history is American history;  
15 and

16                   "WHEREAS, Black History Month is a  
17 time to reflect on the struggles and victories of  
18 African-Americans throughout our country's  
19 history and to recognize their numerous valuable  
20 contributions to the protection of our democratic  
21 society in war and in peace; and

22                   "WHEREAS, Some African-American  
23 pioneers whose many accomplishments, all of which  
24 took place during the month of February, went  
25 unnoticed, as well as numerous symbolic events in

1 February that deserve to be memorialized  
2 include:

3                   "John Sweat Rock, a noted Boston  
4 lawyer, who became the first African-American  
5 admitted to argue before the U.S. Supreme Court  
6 on February 1, 1865, and the first  
7 African-American to be received on the floor of  
8 the U.S. House of Representatives;

9                   "Jonathan Jasper Wright, the first  
10 African-American to hold a major judicial  
11 position, who was elected to the South Carolina  
12 Supreme Court on February 1, 1870;

13                   "President Abraham Lincoln submits  
14 the proposed 13th Amendment to the U.S.  
15 Constitution, abolishing slavery, to the states  
16 for ratification on February 1, 1865;

17                   "Civil rights protester Jimmie Lee  
18 Jackson dies from wounds inflicted during a  
19 protest on February 26, 1965, leading to the  
20 historic Selma, Alabama, civil rights  
21 demonstrations, including Bloody Sunday, in which  
22 600 demonstrators, including Martin Luther King,  
23 Jr., were attacked by police;

24                   "Autherine J. Lucy became the first  
25 African-American student to attend the University

1 of Alabama on February 3, 1956. She was expelled  
2 three days later 'for her own safety' in response  
3 to threats from a mob. In 1992, Autherine Lucy  
4 Foster graduated from the university with a  
5 master's degree in education, the same day her  
6 daughter, Grazia Foster, graduated with a  
7 bachelor's degree in corporate finance;

8 "The Negro Baseball League was  
9 founded on February 3, 1920;

10 "Jack Johnson, the first  
11 African-American World Heavyweight Boxing  
12 Champion, won his first title on February 3,  
13 1903; and

14 "Reginald F. Lewis, born on  
15 December 7, 1942, in Baltimore, Maryland,  
16 received his law degree from Harvard Law School  
17 in 1968. He was a partner in Murphy, Thorpes &  
18 Lewis, the first black law firm on Wall Street,  
19 and in 1989 he became president and CEO of  
20 TLC Beatrice International Food Company, the  
21 largest black-owned business in the United  
22 States; and

23 "WHEREAS, In recognition of the  
24 vast contributions of African-Americans, a joyful  
25 month-long celebration is held across New York

1 State and across the United States, with many  
2 commemorative events to honor and display the  
3 cultural heritage of African-Americans; and

4 "WHEREAS, This Legislative Body  
5 commends the African-American community for  
6 preserving, for future generations, its  
7 centuries-old traditions that benefit us all and  
8 add to the color and beauty of the tapestry which  
9 is our American society; now, therefore, be it

10 "RESOLVED, That this Legislative  
11 Body pause in its deliberations to memorialize  
12 Governor Andrew M. Cuomo to proclaim February  
13 2012 as Black History Month in the State of  
14 New York; and be it further

15 "RESOLVED, That copies of this  
16 resolution, suitably engrossed, be transmitted to  
17 the Honorable Andrew M. Cuomo, Governor of the  
18 State of New York, and to the events  
19 commemorating Black History Month throughout  
20 New York State."

21 ACTING PRESIDENT ROBACH: Senator  
22 Sampson.

23 SENATOR SAMPSON: Thank you very  
24 much, Mr. President.

25 Each February -- it starts

1 tomorrow, February 1st. Today is January 31st.  
2 And I've always said that Black History Month is  
3 not only confined to the month of February but,  
4 every day, history is being completed.

5           Our nation designates this  
6 month-long period of time to pay tribute to the  
7 vast and unique cultural and historical  
8 contributions made by African-Americans. Black  
9 History Month is a time of great celebrations.  
10 It is also a time of reflection, a time to look  
11 back and appreciate the struggles and victories  
12 of African-Americans throughout this country and  
13 throughout history.

14           But it is more than just  
15 celebrating African-American community; it's  
16 about celebrating diversity. It's about  
17 celebrating all communities, not just one  
18 community. And it also must be a time to promote  
19 fairness and equity. This month-long celebration  
20 shows what is possible for any culture to do when  
21 you remove the barriers that exist and give them  
22 the opportunity to excel to their greatest  
23 potential.

24           This unique heritage of the  
25 African-American community must never be

1 forgotten. And we must honor this and honor  
2 those distinguished men and women who have done a  
3 great deal not only in promoting balance in their  
4 own communities but balance throughout this  
5 country.

6                   So I want to thank my colleagues,  
7 but most of all I want to thank this body for  
8 recognizing the historical significance not only  
9 of African-Americans but all cultures.

10                   Thank you very much, Mr. President.

11                   ACTING PRESIDENT ROBACH: Thank  
12 you, Senator Sampson.

13                   Senator Hassell-Thompson.

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

16                   I rise to thank our leader Senator  
17 Sampson for putting forth this resolution this  
18 morning. I'm a lot older than he, and therefore  
19 remember when we celebrated Black History Month  
20 for only a week. And at that time, while it was  
21 never a struggle to find heroes and sheroes from  
22 that era, it was harder to find people who would  
23 support the fact that African-Americans in this  
24 country had made substantial contributions to the  
25 building, development, and growth of the United

1 States of America.

2                   And now, across the country, in  
3 most places we celebrate one month of Black  
4 History Month. I look forward to the day when we  
5 become so engrained into this society, in our  
6 textbooks and in every piece of literature that  
7 allows us to be reflected as the true citizens of  
8 the world that we are, that we will not need to  
9 have to celebrate a month, but that people will  
10 accept and acknowledge that African-Americans are  
11 here to stay.

12                   Thank you, Mr. President.

13                   ACTING PRESIDENT ROBACH: Thank  
14 you, Senator Hassell-Thompson.

15                   Senator Larkin.

16                   SENATOR LARKIN: Thank you,  
17 Mr. President.

18                   You know, every year we go through  
19 Martin Luther King's Day and Black History  
20 Month. You know, I take pride in it. I had the  
21 distinct honor of being selected in May of 1949  
22 to command an all -- in those days they were  
23 called black or Negro. Today we honor them by  
24 calling them African-Americans.

25                   These are people that half of my



1 company were told by a judge "Go to the army or  
2 go to jail." We took over, five new officers,  
3 all white, all young lieutenants. Four of them  
4 well-educated -- one was drafted by the Giants,  
5 but he served his Army career and never got back  
6 to the Giants -- and myself.

7                   The first thing we did, we sat down  
8 and we said, Look, your unit, our unit was moved  
9 15 miles away from the rest of the battalion  
10 because of what we did wrong. We were rated the  
11 last in all of training in the Eighth Army,  
12 700,000 troops. We sat down and we said, This is  
13 the end of the road. Nobody will call us  
14 Number 10, no one will do it. And we built pride  
15 and esprit.

16                   The first time these men ever  
17 played a football or a basketball game against a  
18 white unit, they didn't know what. And as  
19 Sergeant Burchini said to me, from West Virginia,  
20 he said, "What do I do when I tackle him?" I  
21 said, "Drop him." He said, "From up here or down  
22 here." I said, Any place. But don't let me look  
23 at it."

24                   We won. We won the battalion  
25 championship. And to summarize, in May of 1950

1 we were selected the number-one training and  
2 maintenance unit in Eighth Army. General  
3 Eichelberger come down to present the awards,  
4 commanding general of Eighth Army, and he said,  
5 "How did you turn this around from zero to 100?"  
6 We said: "Very simple. We treated these  
7 individuals as men, not as just another piece of  
8 a soldier."

9                   We treated these men with something  
10 of pride. We took the wives of the NCOs and  
11 said, "Come to the mess hall and show us what we  
12 should bring to these people."

13                   I remember Sergeant Dobson's wife  
14 saying to a young soldier who was dating a  
15 Japanese girl: "I know your mother, and I'm  
16 going to write her and tell her."

17                   And it built supreme prestige,  
18 because they all felt they were part of  
19 something. Nobody was downgrading them. All of  
20 the bad that we had, we corrected it within a  
21 year. Somebody said to me, "You felt good." I  
22 said "Damn good."

23                   We went to Korea. My first  
24 killed-in-action was August 4th at 2:30 in the  
25 afternoon: Bobby Maples, from Savannah,

1 Georgia. And when he got killed, everybody in  
2 that unit took a few tears, because they said  
3 this wasn't a black man, this was an Army  
4 sergeant, the pride and joy of the 212th.

5 And you know our nation is not going  
6 to go up when we talk down. Our nation is going  
7 to get up when we start to say we are not afraid  
8 to deal with you, you shouldn't be afraid to deal  
9 with us.

10 Black History Month isn't something  
11 we should celebrate once a year, but Black  
12 History Month has to be included in all of the  
13 rest of what we're doing. Because we're one  
14 nation: United we stand, divided we fall.

15 Thank you.

16 ACTING PRESIDENT ROBACH: Thank  
17 you.

18 Senator Perkins.

19 SENATOR PERKINS: Thank you very  
20 much.

21 I'm going to be brief because the  
22 resolution in and of itself is eloquent and  
23 speaks well for all of us.

24 And for me, you know, this is a  
25 month in which we not only recognize the great

1 contributions of the African-American black  
2 community and that history of struggle, but it  
3 also reminds us of a struggle of a community that  
4 was opening doors not just for themselves but for  
5 others as well.

6                   And I say that because I want to  
7 recognize some young people for whom we're hoping  
8 doors will be opened for them. These are young  
9 people from the New York State Youth Leadership  
10 Council that join us in the seating above.

11                   And I want to just make sure that  
12 they understand that the dreams that we have  
13 fulfilled and recognize in Black History Month,  
14 we will also recognize that those are the dreams  
15 that you as Dreamers, as you're called, will also  
16 be able to share in as this body moves forward in  
17 the spirit of Black History Month, in the spirit  
18 of Dr. King, in the spirit of all those leaders  
19 that this country has been able to bring forth  
20 that opened up those doors.

21                   So for me, Black History Month is  
22 an opportunity to remind all of us that this is a  
23 door-opening kind of a society, a welcoming kind  
24 of a society. And these Dreamers are next, we  
25 hope, in terms of that welcoming opportunity.

1                   Thank you.

2                   ACTING PRESIDENT ROBACH:    Thank  
3 you, Senator Perkins.

4                   Senator Diaz.

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

7                   I also would like to join Senator  
8 Sampson in supporting this resolution.

9                   As a black Puerto Rican, with kinky  
10 hair and broken English, I would like to say that  
11 the African-American community in New York City,  
12 in the state, but especially in Bronx County, has  
13 been one of the strongest things that we have  
14 gotten. It's well-known that to get elected,  
15 Bronx-wide, citywide, any minority has to be  
16 together, Hispanic and African-American.

17                  And without the African-American  
18 support in our communities, it's difficult for  
19 any candidate to get elected. And they have been  
20 a strong force politically, culturally, any which  
21 way.

22                  Since I became Senator, I have  
23 taken it upon myself to honor those communities.  
24 For example, in Puerto Rico we call it "abrazo."  
25 An abrazo means an embrace. And I have done

1 every year the Abrazo Dominicano for the  
2 Dominican community. And I do Abrazo Boricua for  
3 the Puerto Rican community. I also do Abrazo  
4 Garifuna for the people from Honduras.

5                   And today, now, on February 24th,  
6 for the first time ever we are having the first  
7 abrazo, African-American Abrazo, embrace, in the  
8 Maestros Restaurant. And we are honoring five  
9 categories, in education, heroism, youth,  
10 religion, and community service.

11                   And we do that to recognize that  
12 this community, the African-American community,  
13 has been -- I mean, we owe too much to them. We  
14 owe too much to them, and we have to recognize  
15 they have been the force.

16                   The only sad thing that I have to  
17 say, that Harlem was once the bastion of the  
18 African-American community. And Harlem now is  
19 beautiful, Harlem now has many businesses, but  
20 the leadership in Harlem allowed their residents  
21 to be pushed out. And now Harlem is no longer  
22 the Harlem that it used to be. Even though it's  
23 beautiful, even though it has a lot of business,  
24 even though the 125th Street is excellent. But  
25 President Bill Clinton came with all his business

1 colleagues and took over.

2                   And I hope that we learned that  
3 lesson and that we in the Bronx County and in  
4 other areas continue to build, continue to fight  
5 to build houses and business, but do not allow  
6 our community to be pushed out as happened in  
7 Harlem.

8                   Congratulations to the  
9 African-American community in their month, and I  
10 again am proud to join Senator Sampson in this  
11 resolution.

12                   Thank you.

13                   ACTING PRESIDENT ROBACH:   Seeing  
14 no other Senator wishing to be heard, on the  
15 resolution, all those in favor signify by saying  
16 aye.

17                   (Response of "Aye.")

18                   ACTING PRESIDENT ROBACH:   Opposed,  
19 nay.

20                   (No response.)

21                   ACTING PRESIDENT ROBACH:   The  
22 resolution is adopted.

23                   Senator Libous.

24                   SENATOR LIBOUS:   Mr. President, I  
25 believe there's another privileged resolution at

1 the desk, by Senator Squadron. It's Number  
2 3127. At this time could we read it in its  
3 entirety and then call on Senator Squadron.

4 ACTING PRESIDENT ROBACH: The  
5 Secretary will read.

6 THE SECRETARY: Legislative  
7 Resolution Number 3127, by Senator Squadron,  
8 mourning the untimely death of Police Officer  
9 Alain Schaberger of the New York Police  
10 Department 84th Precinct on March 13, 2011.

11 "WHEREAS, It is the sense of this  
12 Legislative Body to convey its grateful  
13 appreciation and heartfelt regret in recognition  
14 of the loss of a courageous police officer who  
15 dedicated his purposeful life and career in  
16 faithful service to his family and to the  
17 residents of the 84th Precinct; and

18 "WHEREAS, It is with profound  
19 sadness that this Legislative Body records the  
20 passing of Police Officer Alain Schaberger, who  
21 made the ultimate sacrifice on March 13, 2011,  
22 while faithfully executing his responsibilities,  
23 serving with dedication, loyalty and compassion,  
24 and who devoted his life and career to serve and  
25 protect; and



1                   "WHEREAS, Alain Schabberger proudly  
2 served his country as a member of the United  
3 States Navy from 1991 to 1995; and

4                   "WHEREAS, On July 2, 2001, Police  
5 Officer Alain Schabberger was appointed to a  
6 Midtown Manhattan precinct. Five years later, he  
7 was assigned to the 84th Precinct in Brooklyn,  
8 New York, working the midnight shift with  
9 enthusiasm and dedication; and

10                  "WHEREAS, Alain Schabberger was a  
11 decorated police officer, having earned an  
12 Excellent Police Duty medal. Residents of the  
13 84th Precinct truly benefited from his loyalty  
14 and commitment to the safety of the community;  
15 and

16                  "WHEREAS, On the morning of  
17 March 13, 2011, Police Officer Alain Schabberger  
18 was among the officers who responded to a  
19 domestic violence dispute in Boerum Hill,  
20 Brooklyn. It was on this morning that he gave  
21 the ultimate sacrifice while serving the  
22 community; and

23                  "WHEREAS, Police Officer Alain  
24 Schabberger's exemplary life was cut short by the  
25 violence he sought to combat; and

1                   "WHEREAS, The loving son of Paul  
2     and May Schabberger, Police Officer Alain  
3     Schabberger exemplified what it means to give of  
4     himself in providing vital police services in  
5     keeping with the noble mission of the 84th  
6     Precinct; and

7                   "WHEREAS, Police Officer Alain  
8     Schabberger leaves behind a legacy which will long  
9     endure the passage of time and will remain as a  
10    comforting memory to all he served and  
11    befriended. He will be deeply missed and truly  
12    merits the grateful tribute of this Legislative  
13    Body; now, therefore, be it

14                  "RESOLVED, That this Legislative  
15    Body pause in its deliberations to mourn the  
16    untimely death of Police Officer Alain  
17    Schabberger, noting the significance of his  
18    contributions on behalf of the citizens of this  
19    noble Empire State, and expressing its deepest  
20    condolences to his family; and be it further

21                  "RESOLVED, That copies of this  
22    resolution, suitably engrossed, be transmitted to  
23    Paul and May Schabberger and to Captain Mark  
24    DiPaolo, 84th Precinct Commanding Officer."

25                  ACTING PRESIDENT ROBACH:     Senator

1 Squadron.

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

4 As the resolution says, Police  
5 Officer Alain Schaberger dedicated his life to  
6 public service. For those of us in this chamber  
7 who ourselves are committed to public service,  
8 the sort of service that Police Officer  
9 Schaberger gave his life to is something that we  
10 really should honor, and we should honor even  
11 without the sacrifice and the tragic way in which  
12 his life ended.

13 He served our nation in the Navy  
14 for four years, with distinction, and then he  
15 served on the New York City Police Force in my  
16 neighborhood in downtown Brooklyn. And on  
17 March 13, 2011, he was called, just a routine  
18 call -- just another domestic violence dispute,  
19 in fact -- and he was called to a home, and there  
20 he was killed by a serial domestic violence  
21 offender.

22 The person who killed him had had a  
23 variety of -- had been cited or called for  
24 domestic violence 12 times in the decade  
25 preceding. And on this morning he killed

1 Officer Schaberger, he pushed him off of the  
2 stoop, and tragically, Officer Schaberger's life  
3 was lost.

4                   You know, the way in which  
5 Officer Schaberger perished says so much about  
6 everyone who serves in uniform, especially in the  
7 police forces and the armed forces of this  
8 nation. Every day, what is routine -- the  
9 Resolution Calendar, in our life -- what is  
10 routine for them could end up being  
11 life-threatening, could end up leading to a  
12 tragedy. And yet every day these folks, these  
13 noble public servants, put on their uniforms and  
14 they go out and they operate to keep us safe,  
15 with no regard for the risk that they are  
16 facing.

17                   And for Officer Schaberger, for so  
18 many others who served in uniform and have lost  
19 their lives, it is really appropriate for us to  
20 take a moment and honor his life.

21                   Along with Senator Golden on the  
22 other side of the aisle, I have been working  
23 closely with the Schaberger family on a piece of  
24 legislation in his name, in his honor, to crack  
25 down on serial domestic violence offenses. In

1 this state we simply don't do enough to prevent  
2 domestic violence offenders from acting again, to  
3 stop them, until they have committed serious  
4 injury or killed a victim. That has to end.

5           In the name of Officer Schaberger,  
6 in the name of so many other victims, in the name  
7 of everyone who wears a uniform to protect us, we  
8 need to move forward with this resolution and  
9 also with that legislation in order to make our  
10 state a safer place and fully honor their lives.

11           I am very honored today that we are  
12 joined by Officer Schaberger's parents; Paul and  
13 May Schaberger have come up.

14           And as I've said to them on  
15 numerous occasions when Officer Schaberger was  
16 honored as the Cop of the Year in the 84th  
17 Precinct posthumously, when we have had other  
18 celebrations at the 84th Precinct and memorials  
19 for Officer Schaberger's life, when you go  
20 through the sort of tragedy that Mr. and  
21 Mrs. Schaberger have, to turn outward and turn to  
22 the community and try to make something of it and  
23 make a change is an extraordinary thing. It  
24 takes extraordinary strength and is courageous in  
25 its own way.

1                   So I really thank you so much for  
2 being here today and for the work that you're  
3 doing, along with Senator Golden and myself, to  
4 get legislative change in this state as well.

5                   So to Paul and May Schaberger, to  
6 the commanding officer of the 84th Precinct,  
7 Inspector Mark DiPaolo, to everyone who serves in  
8 uniform and to everyone who's been a victim of  
9 domestic violence, let's take a moment to honor  
10 Officer Schaberger and his life.

11                   Thank you very much for being here.

12                   (Standing ovation.)

13                   ACTING PRESIDENT ROBACH:     Senator  
14 Adams.

15                   SENATOR ADAMS:     Thank you,  
16 Mr. President. I just want to add my voice to  
17 Officer Schaberger's life and what it means.

18                   That was my adjacent precinct.  
19 When I was a lieutenant in the Police Department,  
20 I was in the 88th Precinct, next to the  
21 84th Precinct.

22                   And I think that oftentimes we  
23 should be proud of our record on dealing with the  
24 issue of domestic violence, particularly some of  
25 the things that Senator Hassell-Thompson has done

1 throughout the years. This is part of the family  
2 that actually is impacted from domestic  
3 violence. Often people state that, well, it's  
4 just a simple argument, it's just a simple  
5 problem within the household -- when in fact it's  
6 not.

7                   Domestic violence is one of the  
8 most dangerous assignments a police officer can  
9 respond to. He or she receives more injuries  
10 from responding to a domestic violence incident.  
11 And there are mandatory response mechanisms that  
12 police agencies across the country put in place  
13 because they know when an officer responds to a  
14 domestic violence incident, they are likely also  
15 to be a victim of that violence.

16                   So the incident that this  
17 officer responded to was one of the highest  
18 number of crimes that he could respond to. We  
19 often think about burglary and robbery and those  
20 seven major crimes, but let me tell you, when we  
21 pass legislation about ending domestic violence,  
22 we are not only saving the lives of the men and  
23 women inside the household, we're saving the  
24 lives of the men and women who are responding to  
25 those incidents, and we are preventing the family

1 of law enforcement from losing another officer.

2           To lose an officer in this  
3 magnitude, it impacts the entire law enforcement  
4 community. But that impact doesn't stop at the  
5 precinct door, it impacts the family members. A  
6 mother never stops mourning when she loses her  
7 son prematurely to violence. No police officer  
8 or sergeant or commander wants to knock on the  
9 door and tell a family member that your son was  
10 lost while they were on patrol.

11           And I can tell you firsthand, I'm  
12 sure this mother went countless nights about  
13 hearing that phone ring late at night or early in  
14 the morning, hoping and holding her breath that  
15 that wasn't some form of response that she lost  
16 her son.

17           So when we fight for domestic  
18 violence, when we pass legislation, when Ruth  
19 Hassell-Thompson spearheads some of the important  
20 legislation around domestic violence, it's not  
21 only about the family members, it's not only  
22 about husband and wife, it's about are we going  
23 to make our society safer, are we going to  
24 prevent a habitual domestic violence person from  
25 going to the street, taking a firearm and killing



1 an entire family and then killing anyone that is  
2 in his path.

3                   And it's not only husband and wife,  
4 it's boyfriend and girlfriend. We have a high  
5 number of domestic violence incidents of teenage  
6 children in schools, people, young people who  
7 live together. So domestic violence is a real  
8 incident. We can no longer take the belief that  
9 we can ignore it, it's just two people having an  
10 argument, "Go walk it off, young man, and come  
11 back when you're fine." No.

12                   People who abuse their spouses  
13 should be held responsible for that, and our laws  
14 must make sure that they're held accountable.

15                   And so I thank Senator Squadron for  
16 introducing this resolution. I stand in support  
17 of it. And our entire legislative body  
18 understands your pain, the family of your pain,  
19 and we will do all that we can to end the problem  
20 of domestic violence in the spirit of your son.

21                   Thank you very much. Thank you,  
22 Mr. President.

23                   ACTING PRESIDENT ROBACH: Thank  
24 you, Senator Adams.

25                   Senator Zeldin.

1                   SENATOR ZELDIN:    I'm compelled to  
2 stand and offer my condolences as well.

3                   I was actually at the funeral for  
4 Officer Schaberger out in my district. And, you  
5 know, you might think that your family is only as  
6 large as your son and your daughter and your  
7 parents, grandparents. There was a small family  
8 that was around him that day. But what was so  
9 inspiring for me was seeing all of the uniformed  
10 officers that traveled all the way out from  
11 New York City, thousands of them, so well-dressed  
12 and disciplined, to really show the family that  
13 their family is a lot more extended than you  
14 might think, on that day and since.

15                  His loss really impacted a lot of  
16 us. And I'm really happy that Senator Squadron  
17 put forward this resolution to honor the loss of  
18 your son. Domestic violence unfortunately takes  
19 place way too much in each of our districts all  
20 across the state and all across this country.  
21 And hopefully the legacy that he leaves behind is  
22 one that is not in vain or forgotten.

23                  I'm just compelled not only to  
24 offer up my condolences, but to also thank the  
25 NYPD for being there in such force to offer their

1 support for your family. And on behalf of really  
2 all the residents from your area out on  
3 Long Island, we just want to let you know that  
4 we're all here for you as well.

5                   ACTING PRESIDENT ROBACH: I think  
6 before we officially ratify the resolution, it  
7 would be fitting if we all stood and took a  
8 moment of silence on behalf of Officer Alain  
9 Schaberger, his commitment, and his giving the  
10 ultimate sacrifice to the residents of New York  
11 and New York State.

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

14                   ACTING PRESIDENT ROBACH: Thank  
15 you.

16                   On the resolution, all those in  
17 favor signify by saying aye.

18                   (Response of "Aye.")

19                   ACTING PRESIDENT ROBACH: Opposed,  
20 nay.

21                   (No response.)

22                   ACTING PRESIDENT ROBACH: The  
23 resolution is adopted.

24                   Senator Libous.

25                   SENATOR LIBOUS: Mr. President, at

1 this time could we now have the reading of the  
2 noncontroversial calendar, please.

3 ACTING PRESIDENT ROBACH: The  
4 Secretary will read.

5 THE SECRETARY: Calendar Number  
6 91, by Senator Little, Senate Print 5525B, an act  
7 to amend the General Municipal Law.

8 ACTING PRESIDENT ROBACH: Read the  
9 last section.

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

12 ACTING PRESIDENT ROBACH: Call the  
13 roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT ROBACH: Senator  
16 Little to explain her vote.

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

19 This is a very important piece of  
20 legislation to offer some mandate relief to our  
21 local governments. The result of this piece of  
22 legislation will be that it will allow New York  
23 governments to piggyback and to join 48 other  
24 states in a cooperative purchasing venture.

25 What will happen here is that we

1 will have cooperative purchasing, or this would  
2 allow it, between New York's local governments  
3 and the federal, state, and local governments  
4 elsewhere in the entire country.

5           If the procurement has been done  
6 with the procurement process, and it also does  
7 not relieve any government from the obligation to  
8 comply with the Minority and Women-Owned Business  
9 Enterprise program or the preferred source  
10 requirements of Section 162 of the State Finance  
11 Law, it will be allowed.

12           It's a program that will expand and  
13 allow flexibility to our governments. It will  
14 reduce administrative and product costs, it will  
15 increase efficiencies, and it will stretch  
16 shrinking budgets of local governments in these  
17 difficult times.

18           I thank you all for voting for this  
19 measure, and I look forward to it becoming law.

20           Thank you.

21           ACTING PRESIDENT ROBACH:    Senator  
22 Little will be recorded in the affirmative.

23           Announce the results.

24           THE SECRETARY:    Ayes, 57.

25           ACTING PRESIDENT ROBACH:    The bill

1 is passed.

2 THE SECRETARY: Calendar Number  
3 95, by Senator Fuschillo, Senate Print 527, an  
4 act to amend the Penal Law.

5 ACTING PRESIDENT ROBACH: Read the  
6 last section.

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

9 ACTING PRESIDENT ROBACH: Call the  
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes, 56. Nays,  
13 1. Senator Duane recorded in the negative.

14 ACTING PRESIDENT ROBACH: The bill  
15 is passed.

16 THE SECRETARY: Calendar Number  
17 96, by Senator Klein, Senate Print 578, an act to  
18 amend the Penal Law.

19 ACTING PRESIDENT ROBACH: Read the  
20 last section.

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

23 ACTING PRESIDENT ROBACH: Call the  
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 56. Nays,  
2 1. Senator Duane recorded in the negative.

3 ACTING PRESIDENT ROBACH: The bill  
4 is passed.

5 THE SECRETARY: Calendar Number  
6 98, by Senator Addabbo, Senate Print 1242, an act  
7 to amend the Penal Law.

8 ACTING PRESIDENT ROBACH: Read the  
9 last section.

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

12 ACTING PRESIDENT ROBACH: Call the  
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes, 57.

16 ACTING PRESIDENT ROBACH: The bill  
17 is passed.

18 THE SECRETARY: Calendar Number  
19 102, by Senator Skelos, Senate Print 1999, an act  
20 to amend the Criminal Procedure Law.

21 ACTING PRESIDENT ROBACH: Read the  
22 last section.

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

25 ACTING PRESIDENT ROBACH: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes, 55. Nays,  
4 2. Senators Duane and Perkins recorded in the  
5 negative.

6 ACTING PRESIDENT ROBACH: The bill  
7 is passed.

8 THE SECRETARY: Calendar Number  
9 103, by Senator Lanza, Senate Print 2950, an act  
10 to amend the Penal Law.

11 ACTING PRESIDENT ROBACH: Read the  
12 last section.

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

15 ACTING PRESIDENT ROBACH: Call the  
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 57.

19 ACTING PRESIDENT ROBACH: The bill  
20 is passed.

21 THE SECRETARY: Calendar Number  
22 104, by Senator Nozzolio, Senate Print 4472, an  
23 act to amend the Criminal Procedure Law.

24 ACTING PRESIDENT ROBACH: Read the  
25 last section.



1                   THE SECRETARY:    Section 2.  This  
2 act shall take effect on the 90th day.

3                   ACTING PRESIDENT ROBACH:   Call the  
4 roll.

5                   (The Secretary called the roll.)

6                   THE SECRETARY:    Ayes, 57.

7                   ACTING PRESIDENT ROBACH:   The bill  
8 is passed.

9                   THE SECRETARY:    Calendar Number  
10 105, by Senator Fuschillo, Senate Print 6280A, an  
11 act to amend the Executive Law.

12                  ACTING PRESIDENT ROBACH:   Read the  
13 last section.

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

16                  ACTING PRESIDENT ROBACH:   Call the  
17 roll.

18                  (The Secretary called the roll.)

19                  THE SECRETARY:    Ayes, 57.

20                  ACTING PRESIDENT ROBACH:   The bill  
21 is passed.

22                  THE SECRETARY:    Calendar Number  
23 108, by Senator Marcellino, Senate Print 945, an  
24 act to amend the Vehicle and Traffic Law.

25                  ACTING PRESIDENT ROBACH:   Read the

1 last section.

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

4 ACTING PRESIDENT ROBACH: Call the  
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes, 57.

8 ACTING PRESIDENT ROBACH: The bill  
9 is passed.

10 THE SECRETARY: Calendar Number  
11 127, by Senator Griffo, Senate Print 1315 --

12 SENATOR BRESLIN: Lay it aside.

13 ACTING PRESIDENT ROBACH: The bill  
14 is laid aside.

15 THE SECRETARY: Calendar Number  
16 128, by Senator Saland, Senate Print 5560A --

17 SENATOR BRESLIN: Lay it aside.

18 ACTING PRESIDENT ROBACH: The bill  
19 is laid aside.

20 Senator Libous, that concludes the  
21 noncontroversial reading of the calendar.

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

24 May we now have the controversial  
25 reading of the calendar.

1                   ACTING PRESIDENT ROBACH:    The  
2 Clerk will ring the bells and get the members in  
3 the chamber for the controversial calendar.

4                   The Secretary will read.

5                   THE SECRETARY:    Calendar Number  
6 127, by Senator Griffo, Senate Print 1315, an act  
7 to amend the Alcoholic Beverage Control Law.

8                   SENATOR BRESLIN:    Explanation.

9                   ACTING PRESIDENT ROBACH:    An  
10 explanation has been requested.

11                   Senator Griffo.

12                   SENATOR GRIFFO:    Thank you,  
13 Mr. President.

14                   Essentially, this bill is a  
15 reflection of contemporary times, and it  
16 establishes some balance within the Alcoholic  
17 Beverage Control Law.

18                   The current law really protected  
19 wholesalers against large breweries. We see now  
20 times changing, and one of the most rapid sectors  
21 of growth is for small brewers and craft  
22 breweries throughout our state and across the  
23 nation right now. So the current law makes it  
24 very difficult for the craft industry to be  
25 competitive and to be released contractually.

1                   So what this bill will do will  
2 modify that. But also, in order to ensure  
3 fairness, the bill will require that any brewer,  
4 before leaving the contract, to pay fair market  
5 rate to the distributor. And there are other  
6 specifics within the memo.

7                   Thank you.

8                   SENATOR DILAN: Mr. President, on  
9 the bill.

10                  ACTING PRESIDENT ROBACH: Senator  
11 Dilan on the bill.

12                  SENATOR DILAN: This bill was  
13 vetoed in 2008 by Governor David Paterson, citing  
14 concerns that no evidence had been provided that  
15 the termination provisions under the Alcoholic  
16 Beverage and Control Law are not adequate or fair  
17 to the parties to the agreements between brewers  
18 and beer wholesalers to grant such a remedy.

19                  The Governor went on to note, in  
20 his veto message, if a small brewer is  
21 dissatisfied with the sales performance of the  
22 wholesaler, the brewer has a path to remedy  
23 through the current language of Section 55C of  
24 the ABC Law.

25                  Another significant concern is the

1 establishment of fair market value. Since many  
2 of the small breweries are new to the market and  
3 have not been selling for a long time, it would  
4 be nearly impossible to come up with an accurate  
5 estimate of fair market value for terminating an  
6 agreement.

7           The Governor also indicated that  
8 under Section 55C, it is not clear why this bill  
9 is necessary at all.

10           Also, this bill would have an  
11 impact in the New York City area, namely  
12 Kings County, up to maybe possibly 100 to 200  
13 jobs.

14           So I urge my colleagues to vote no  
15 on this bill. Thank you.

16           ACTING PRESIDENT ROBACH: Any  
17 other Senator wishing to be heard?

18           The debate is closed. The  
19 Secretary will ring the bells.

20           I ask all members to please come to  
21 their seat in the chamber.

22           Read the last section.

23           THE SECRETARY: Section 2. This  
24 act shall take effect on the first of January.

25           ACTING PRESIDENT ROBACH: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT ROBACH: Announce  
4 the results.

5 THE SECRETARY: In relation to  
6 Calendar Number 127, those recorded in the  
7 negative are Senators Dilan, Espaillat, Gianaris,  
8 Golden and Sampson.

9 Absent pursuant to Rule 9:  
10 Senators DeFrancisco, Ball and Krueger.

11 Ayes, 51. Nays, 5.

12 ACTING PRESIDENT ROBACH: The bill  
13 is passed.

14 The Secretary will read.

15 THE SECRETARY: Calendar Number  
16 128, by Senator Saland, Senate Print 5560A, an  
17 act to amend the Executive Law.

18 SENATOR BRESLIN: Explanation.

19 ACTING PRESIDENT ROBACH: An  
20 explanation has been requested, Senator Saland.

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

23 Mr. President, this is an  
24 all-Penal-Law-crimes data bank expansion and an  
25 all-felony data bank inclusion. So as a result

1 of this legislation, all felonies and all  
2 Penal Law misdemeanors would be included in our  
3 DNA data bank.

4 Under the current law, all felonies  
5 and 36 misdemeanors are included. And as a  
6 result of that, in excess of 50 percent -- I  
7 believe some 52 percent -- of all Penal Law  
8 crimes are not required to be subjected to the  
9 DNA data bank requirements.

10 Now, there's nothing particularly  
11 complex about this bill. It expands what we  
12 started in 1996. There has been certainly a path  
13 that we have followed from 1996 in the name of  
14 public safety. We started off with homicides and  
15 certain sex offenses. We then went to all  
16 felonies and some misdemeanors. And I believe in  
17 2007 or 2006 we added yet one more misdemeanor to  
18 arrive at the numbers that I alluded to earlier.

19 DNA is both capable of being used  
20 as a sword and as a shield -- or perhaps, as I've  
21 said on other occasions, it's a sword that cuts  
22 both ways.

23 As the Governor mentioned in his  
24 State of the State address, some 2700 people have  
25 been convicted by reason of being able to be

1 traced through the DNA data bank, and some  
2 27 people, nearly 10 percent of all of those who  
3 have been exonerated in this nation, have been  
4 exonerated thanks to the DNA data bank.

5 DNA is truly the cutting edge. For  
6 many, many decades fingerprinting was the marvel  
7 of the criminal justice system; now it's  
8 currently DNA. DNA is based on science, it's  
9 scrutinized, accreditations are required. It is  
10 a very carefully monitored system and one in  
11 which, since its inception, there have been no  
12 abuses or no violations of privacy.

13 ACTING PRESIDENT ROBACH: Excuse,  
14 Senator Saland.

15 Excuse me. Let's just have a  
16 little silence. This is an important topic, and  
17 let's give Senator Saland the courtesy so we can  
18 hear what he has to say.

19 Thank you.

20 SENATOR SALAND: Thank you,  
21 Mr. President.

22 The purpose of this bill, by  
23 expanding it to all crimes, is to take care of a  
24 plethora of reported cases in which people have  
25 been victimized, and often in severe and heinous



1 fashion -- sexual assaults, homicides,  
2 burglaries, robberies -- which effectively,  
3 had we had an all-crimes DNA bill enacted into  
4 law, the commission of an earlier misdemeanor,  
5 which is often a gateway crime, would have helped  
6 resolve those cases.

7                   When we did the expansion back in  
8 2006 and included petit larceny, there have been  
9 nearly 900 hits since then, 900 hits over that  
10 period of time. For sexual assaults, for  
11 homicides, some 51 homicides have been closed,  
12 open homicides have been closed due to the  
13 inclusion of petit larceny in the DNA data bank.  
14 Robberies, burglaries. Serious, serious felonies  
15 that were resolved because we included gateway  
16 crimes; in this case, petit larceny.

17                   The use of DNA will protect the  
18 public by leading to more convictions. It will  
19 protect the innocent by leading to exonerations.  
20 It will protect those who may be removed as  
21 suspects. DNA works, works well, and is accepted  
22 as being state of the art and not merely  
23 scientifically based but scientifically reliable.

24                   With that, Mr. President, I thank  
25 you for the opportunity.

1                   ACTING PRESIDENT ROBACH:    Thank  
2 you, Senator Saland.

3                   Senator Hassell-Thompson.

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

6                   I had thought to offer a hostile  
7 amendment on this bill, but it's been my  
8 experience that even when you have a better  
9 mousetrap it doesn't necessarily work in this  
10 body. So I've just decided that I wanted to just  
11 speak on the bill.

12                  ACTING PRESIDENT ROBACH:    Senator  
13 Hassell-Thompson on the bill.

14                  SENATOR HASSELL-THOMPSON:   Let me  
15 put it in a historical context.

16                  For several years we've attempted  
17 to put a DNA bill in the budget and we've  
18 discussed, at least in this house, how do we move  
19 forward on DNA. And I know that there is this  
20 sense that nobody wants DNA -- or few people  
21 don't want DNA. Everybody thinks that DNA is a  
22 very excellent tool to be used in criminal  
23 investigations.

24                  But what has been said for the last  
25 four years that I'm aware of is that the

1 presenting bills do not allow us the safeguards  
2 that are most necessary to ensure that we have  
3 the best bill possible. Simply, more DNA is not  
4 always better for New York's criminal justice  
5 system. If instead New York State is smart about  
6 how to use and learn from DNA to increase the  
7 fairness and effectiveness of our criminal  
8 justice system, we can then be the model for  
9 other states as we could be.

10           To that, New York State should  
11 advocate for sequential and double-blind lineups  
12 as used by the FBI. We need to enact eyewitness  
13 identification reform to prevent  
14 misidentification. The bill should require that  
15 custodial interrogation be videotaped or  
16 electronically recorded. We should better enable  
17 the wrongfully convicted to prove their innocence  
18 through post-conviction DNA testing.

19           This includes removing needless  
20 barriers to testing, enabling judges to order  
21 comparisons of crime-scene DNA and fingerprints  
22 to DNA and fingerprint databases, enabling the  
23 judge then to order a search and/or inventory of  
24 evidence upon a credible petition for  
25 post-conviction DNA testing and enacting a

1 moratorium on the destruction of biological  
2 evidence until best practices have been  
3 established by the New York State experts.

4               We need to expand jurisdiction of  
5 the New York State Commission on Forensic  
6 Science. Our pioneering commission was once a  
7 leader but has not kept up with its potential to  
8 enable forensic science to provide justice.

9               The commission's reach should be  
10 extended to establish new protocols and best  
11 practices, those standards with regard to  
12 crime-scene investigation, scientific  
13 methodology, laboratory procedures, and report  
14 writing in various forms of forensic analysis,  
15 including those performed in police departments.

16              I have a constituent, Alan Newton,  
17 who was imprisoned for 21 years for a rape he did  
18 not commit. New York City somehow could not find  
19 his evidence in the property clerk's office for  
20 12 years. When the evidence was found and  
21 compared, Newton was exonerated.

22              This shows a need for legislation  
23 regarding the collection and preservation of the  
24 evidence containing DNA. We need to prohibit all  
25 DNA databases not explicitly established by

1 statute and enact legislative guidelines for the  
2 practice of familial or partial-match DNA  
3 database searches. We need to enable innocent  
4 persons wrongfully convicted due to  
5 police-induced false confession to receive  
6 compensation as others do.

7           There is no same-as for this bill  
8 in the Assembly -- not because the Assembly does  
9 not want to pass a DNA bill, but the Assembly  
10 knows, as I do, we can and should do a better  
11 bill as the Empire State.

12           DNA has incredible probative value  
13 to solve crimes. Fortunately, New York already  
14 uses its database of convicted felons and other  
15 serious offenders as one way to enhance justice  
16 and safety.

17           Yet simply focusing on the status  
18 quo is not enough. We must heed the lesson about  
19 how wrongful convictions happen when we have  
20 learned from DNA exonerations if we are to  
21 prevent future wrongful convictions, recognize  
22 wrongful convictions where they may have  
23 occurred, and prevent future victims at the hands  
24 of unidentified real perpetrators. Doing so  
25 simply makes our criminal justice system more

1 accurate and effective as well as fair.

2           Our existing DNA database has  
3 tremendous potential to solve crimes and prevent  
4 wrongful convictions, much of which is wasted.  
5 Judges are not empowered to order comparisons of  
6 crime-scene DNA and DNA databases. DNA database  
7 hits often don't turn into convictions, and the  
8 state typically does not even know why that is  
9 the case.

10           Fresh DNA database hits to solved  
11 crimes are typically ignored, although they can  
12 indicate a wrongful conviction and identify the  
13 real perpetrator of these crimes.

14           DNA is only probative in about  
15 10 percent of crimes. Reforms can increase  
16 accuracy of all investigations. Each wrongful  
17 conviction proven with the certainty of  
18 post-conviction DNA testing is not only a tragedy  
19 but also an opportunity to learn what misled  
20 police, prosecutors, judges, and jury to believe  
21 that an innocent person was guilty of a heinous  
22 crime.

23           Expanding DNA databases in New York  
24 exacerbates racial disparities and  
25 inefficiencies. New York already enjoys a robust

1 convicted-offender database. As the New York  
2 Civil Liberties Union notes, studies of the UK's  
3 DNA database expansion show clearly diminishing  
4 returns because most people are unlikely to  
5 commit serious crimes for which DNA evidence  
6 might be relevant.

7           Because people of color are more  
8 likely to be stopped, searched, arrested,  
9 prosecuted and convicted of low-level crimes also  
10 committed by others, the disproportionate racial  
11 impact of the criminal justice system is  
12 exacerbated by the expansion to lower levels of  
13 crime.

14           Familial searching, particularly if  
15 performed without proper protocols, can extend  
16 the racial disparity and disproportionality to  
17 innocent family members. Local DNA databases and  
18 the practice of familial or partial-match  
19 searches must be regulated by this legislation.

20           Many of the things that I've asked  
21 for -- most of the things that I've asked for are  
22 not included in this database. If the idea of  
23 the State of New York is to achieve justice, then  
24 a better bill is required.

25           Thank you, Mr. President.

1                   ACTING PRESIDENT ROBACH:    Thank  
2   you, Senator Hassell-Thompson.

3                   Senator Gallivan.

4                   SENATOR GALLIVAN:    Thank you,  
5   Mr. President.   On the bill.

6                   ACTING PRESIDENT ROBACH:    On the  
7   bill.

8                   SENATOR GALLIVAN:    As a former law  
9   enforcement officer, I can say without hesitation  
10   that the use of DNA evidence in criminal  
11   investigations has proven to be the most  
12   effective tool in law enforcement at its disposal  
13   for identifying, arresting, and prosecuting  
14   criminals since the advent of fingerprinting.

15                   Since the state established the DNA  
16   data bank in 1994 there have been no reported  
17   breaches of security or breaches of privacy that  
18   we are aware of.

19                   Since the data bank was expanded in  
20   2006, the DNA data bank has thus far assisted in  
21   over 2700 convictions and, as important, 27  
22   exonerations.

23                   And I would like to bring to my  
24   colleagues' attention just one case in Western  
25   New York.   In early 1991, an individual was



1 charged and convicted with patronizing a  
2 prostitute. Had DNA evidence been used back then  
3 to the extent we're proposing today, it would  
4 have been discovered that this individual was the  
5 notorious Western New York serial killer and  
6 rapist known as the Bike Path Rapist.

7                   Ultimately, DNA evidence collected  
8 through other means led to the conviction of this  
9 individual as the Bike Path Rapist in 2007, but  
10 not until after an intervening 16 years. Many  
11 more women were brutalized, women were murdered,  
12 and a man was falsely accused and convicted and  
13 spent nearly 20 years in prison.

14                   This law will ensure justice is  
15 served and, as important, injustice is prevented.

16                   Thank you, Mr. President.

17                   ACTING PRESIDENT ROBACH: Thank  
18 you, Senator Gallivan.

19                   Senator Marcellino.

20                   SENATOR MARCELLINO: Thank you,  
21 Mr. President.

22                   Earlier today I attended a press  
23 conference at which Senator Saland spoke,  
24 Senator Skelos, Senator Gallivan and others  
25 spoke. And at that press conference were members

1 of the law enforcement community from all over  
2 the state and all levels of the law enforcement  
3 community. They spoke with one voice in support  
4 of this legislation.

5           The key theme was that this  
6 legislation will free the innocent, will  
7 exonerate the wrongfully accused, and will  
8 convict the guilty. That's absolutely an  
9 imperative. The bonus, the bonus you just heard  
10 from Senator Gallivan: It will prevent other  
11 crimes from being committed by career criminals,  
12 these people who go out and do it all the time.  
13 The minor crimes that sometimes we catch them on  
14 are just side issues. They've committed many,  
15 many others during and before.

16           So this data bank is an imperative  
17 issue, and law enforcement really needs this tool  
18 in order to keep our communities safe. The whole  
19 idea is to make our communities safe, where  
20 people can raise their families in peace and  
21 security.

22           This bill may not be the most  
23 perfect bill in the world, but this bill,  
24 according to law enforcement and according to  
25 other levels of government, will go a long way

1       towards doing that.

2                       I urge support, and I urge a yes  
3       vote, and I intend to vote for this bill,  
4       Mr. President.

5                       ACTING PRESIDENT ROBACH:     Thank  
6       you, Senator Marcellino.

7                       Senator Golden.

8                       SENATOR GOLDEN:     I too rise,  
9       Mr. President, to congratulate my colleague  
10      Senator Saland, and of course my leader Dean  
11      Skelos, and all of the Democrats and the  
12      Republicans in this conference that will be  
13      voting for this bill, because it makes good  
14      sense.

15                      This bill, if you take a look at  
16      crimes that were committed and the homicides that  
17      were committed in the City of New York in the  
18      1980s and the 1990s, we were killing 2,100 and  
19      2,200 people in 1992-1993, and over 900,000  
20      crimes were being committed.

21                      This was put together, this bill,  
22      the DNA bill, in 1993. This bill helped to put  
23      10,000 people into jail for crimes that they  
24      they'd committed -- 3500 sexual assaults,  
25      900 homicides. And since we've expanded this

1 bill in 2006, another 1400 people have gone to  
2 jail because of being able to identify those that  
3 were committing those crimes.

4           Had we had this earlier, all those  
5 people that suffered, that suffered because we  
6 didn't have this tool for the police  
7 department -- and as we've seen by the Senator  
8 explaining how this rapist in upstate New York,  
9 Pat Gallivan, how we went in there and they were  
10 able to take this guy off the street. Had they  
11 had the information and the tools before, they  
12 could have taken him off earlier off the street,  
13 and people would not have been raped and killed.

14           This is an important bill to move  
15 forward. It's a bill that's good for our city  
16 and for our state. It does what's right for the  
17 families and for the children and for our  
18 communities, and it brings safety to our  
19 communities and to our families.

20           So I will vote yes on this bill,  
21 and I applaud my colleague for this bill and the  
22 colleagues that will be voting for it.

23           ACTING PRESIDENT ROBACH: Seeing  
24 no other Senator wishing to be heard, debate is  
25 closed.

1                   Can we ring the bells to get the  
2 members to the chamber for the vote.

3                   Read the last section.

4                   THE SECRETARY:    Section 3.  This  
5 act shall take effect October 1, 2012.

6                   ACTING PRESIDENT ROBACH:   Call the  
7 roll.

8                   (The Secretary called the roll.)

9                   ACTING PRESIDENT ROBACH:    Senator  
10 Hassell-Thompson to explain her vote.

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

13                   I have heard the supporting  
14 testimonies by many of my colleagues.  And while  
15 I am totally in agreement with them, my  
16 contention is that this is not just far from  
17 perfect, but this is not even the best bill that  
18 we could possibly offer to the people of the  
19 State of New York.

20                   And while I also have members of  
21 law enforcement in my family and those that I  
22 regard highly, their safety and the safety of all  
23 the citizens of this state are of major concern  
24 to me, but at the same time fairness and justice  
25 runs very close alongside that.

1                   Therefore, I think that we should  
2 ask for and require for ourselves the best bill  
3 that we could possibly do, and this is not it. I  
4 will be voting no.

5                   ACTING PRESIDENT ROBACH:     Senator  
6 Hassell-Thompson will be recorded in the  
7 negative.

8                   Senator Duane to explain his vote.

9                   SENATOR DUANE:     Thank you,  
10 Mr. President.

11                   There's simply no data. There is  
12 no data that -- well, there's no data. So  
13 there's no data that proves that there are more  
14 cold-hit convictions.

15                   I think we all know that this  
16 version of a DNA bill is going nowhere.  
17 Obviously we need more discussions generally.  
18 Certainly in this house, both sides; the other  
19 house, both sides.

20                   Those discussions of course should  
21 be around data, of which there is no data that  
22 exists. There just is no -- there's no data. It  
23 does not exist. So until we have real  
24 discussions and we have real data, I'm going to  
25 vote no. And so obviously on this bill I am

1 voting no.

2 Thank you, Mr. President.

3 ACTING PRESIDENT ROBACH: Senator  
4 Duane will be recorded in the negative.

5 Senator Perkins to explain his  
6 vote.

7 SENATOR PERKINS: Thank you very  
8 much.

9 You know, in the course of the  
10 debate it was pointed out that this is not a  
11 perfect bill. And the concern I have is when  
12 it's not a perfect bill, who suffers the  
13 imperfection?

14 And I raise that because, you know,  
15 in case we forget, there was a case that resulted  
16 in a great tragedy because of imperfect use of  
17 technology. Some of you may remember the Central  
18 Park Five case in which five young men from my  
19 neighborhood, from my district, some of whom  
20 lived in the same development that I lived in,  
21 were railroaded because of racial reasons into  
22 confessing on videotape that they raped the  
23 Central Park jogger. Technology, you might say,  
24 convicted them.

25 The fact of the matter is that

1 those tapes, upon closer review by organizations  
2 like the Innocence Project, ultimately revealed  
3 that they were innocent, because in fact the  
4 tapes were not done properly.

5           But because of the railroading and  
6 the rush to judgment, and the racial climate that  
7 was taking place at the time -- very often which  
8 we still see when we talk about stop-and-frisk  
9 and mass incarceration -- we cannot always assume  
10 that some technology that may be state of the art  
11 is actually going to be used in the way that it  
12 should be used, and in fact whether or not it's  
13 truly the state of the art.

14           So clearly just the notion, just  
15 the recognition that this science is not perfect  
16 raises for me the concern as to who will become  
17 the victims of its imperfection. And  
18 unfortunately, in the context in which we are  
19 today as far as justice is concerned, as far as  
20 policing and other kinds of such efforts are  
21 concerned, the victims tend to be, for the most  
22 part, people of color.

23           And so I cannot at this point  
24 support this particular bill, not to mention that  
25 it's a one-house bill on top of it. But I think



1 that there are opportunities for us to look at  
2 this bill closer. We should be having hearings  
3 around a bill like this, we should be hearing  
4 from other experts, others who are in the civil  
5 rights and the civil justice community, before we  
6 begin to rush and pass a very, very touchy bill  
7 such as this.

8                   It was earlier mentioned others who  
9 supposedly had DNA evidence that would have  
10 released them from having served, and that DNA  
11 evidence was lost until after that person had  
12 served -- his name was Alan Newton -- had served  
13 a substantial amount of time.

14                   So I think we should take a much  
15 more careful look at this, to the extent that we  
16 would not be able to say this is not a perfect  
17 bill, because then we would be opening up the  
18 door for those imperfections to be affecting  
19 someone and especially people of color. And  
20 that's a very big concern of mine.

21                   ACTING PRESIDENT ROBACH: Thank  
22 you, Senator Perkins.

23                   SENATOR PERKINS: Thank you. I'm  
24 going to be voting no --

25                   ACTING PRESIDENT ROBACH: Recorded

1 in the negative --

2 SENATOR PERKINS: -- and I look  
3 forward to revisiting this at a time in the  
4 future.

5 ACTING PRESIDENT ROBACH: Senator  
6 Perkins to be recorded in the negative.

7 Senator Saland.

8 SENATOR SALAND: Thank you,  
9 Mr. President. Just to briefly explain my vote  
10 and perhaps clear up some misconceptions.

11 Number one, when one takes DNA, the  
12 only thing that DNA basically tells you regarding  
13 physical characteristics is gender. It doesn't  
14 tell you anything about race, ethnicity, color of  
15 your eyes, color of your hair, anything else.

16 Number two, many of the things that  
17 have been referred to here on the floor are  
18 totally extraneous to the issue of taking of  
19 DNA. Some of the things that the Innocence  
20 Project have in the Assembly bill just have no  
21 relationship whatsoever to the taking of DNA.

22 They want to ensure that  
23 confessions are videotaped. That has no  
24 relevance whatsoever to DNA. It's totally  
25 extraneous. That takes up a large part of the

1 Assembly bill to which allusion was made earlier.

2 We do not allow the taking of  
3 familial DNA. The law doesn't permit it. So  
4 that takes care of that one.

5 This is supported not only by law  
6 enforcement but by victims' advocacy groups. The  
7 bottom line is that this bill is a bill that  
8 ensures public safety to a greater degree than it  
9 currently is, a vastly greater degree.

10 And I would merely point out two  
11 statistics provided through the offices of DCJS.  
12 Approximately 89 percent of the 3,547 offenders  
13 linked to a sexual assault through DNA were in  
14 the data bank for a non-sex crime such as petit  
15 larceny or trespassing.

16 Expanding the DNA data bank will  
17 help bring justice to victims of color. In 2010,  
18 86.7 percent of the victims of nondomestic  
19 homicide were black or Hispanic. Holding their  
20 attackers accountable will make their communities  
21 and the whole of New York State safer.

22 I vote in the affirmative.

23 ACTING PRESIDENT ROBACH: Announce  
24 the results.

25 THE SECRETARY: In relation to

1 Calendar 128, those recorded in the negative are  
2 Senators Breslin, Duane, Hassell-Thompson,  
3 Montgomery, Parker, Perkins, Rivera, and Serrano.

4 Absent from voting: Senator  
5 Espaillat.

6 Absent from voting pursuant to  
7 Rule 9: Senators DeFrancisco, Dilan, Krueger,  
8 and Nozzolio.

9 Ayes, 47. Nays, 8.

10 ACTING PRESIDENT ROBACH: The bill  
11 is passed.

12 Senator Libous.

13 SENATOR LIBOUS: Thank you,  
14 Mr. President. Is there any further business at  
15 the desk?

16 ACTING PRESIDENT ROBACH: There is  
17 none.

18 SENATOR LIBOUS: Mr. President,  
19 I'm calling an immediate meeting of the Health  
20 Committee in Room 124. There will be an  
21 immediate meeting of the Health Committee in  
22 Room 124.

23 There being no further business  
24 before the Senate today, I move that we adjourn  
25 until Monday, February 6th, at 3:00 p.m. -- the

1 day after the Giants will win the Super Bowl,  
2 Mr. President -- intervening days being  
3 legislative days.

4                   ACTING PRESIDENT ROBACH:    On  
5 motion, the Senate stands adjourned until Monday,  
6 February 6, at 3:00 p.m., intervening days being  
7 legislative days.

8                   (Whereupon, at 12:49 p.m., the  
9 Senate adjourned.)

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