NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 31, 2012

11:25 a.m.

REGULAR SESSION

SENATOR JOSEPH E. ROBACH, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT ROBACH: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT ROBACH: The reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

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

ACTING PRESIDENT ROBACH: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

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

ACTING PRESIDENT ROBACH: So ordered.

SENATOR BRESLIN: Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you.

Senator Libous.

SENATOR LIBOUS: Thank you,

Mr. President.

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

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Those opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The Resolution Calendar is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

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

ACTING PRESIDENT ROBACH: The Secretary will read.

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

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

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

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

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

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

"WHEREAS, The team scored 131 goals

in those games, while allowing only seven goals. They shut out their opponents 17 times; and

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Senator

Farley on the resolution.

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

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Thank you.

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

(Laughter.)

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

(Applause.)

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

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Any opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Libous.

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

ACTING PRESIDENT ROBACH: The Clerk will read.

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

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

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

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

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

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

February that deserve to be memorialized include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Senator Sampson.

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

Each February -- it starts

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

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

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

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

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

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

Thank you very much, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Sampson.

Senator Hassell-Thompson.

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

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

States of America.

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

Thank you, Mr. President.

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

Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

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

These are people that half of my

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

ACTING PRESIDENT ROBACH: Thank you.

Senator Perkins.

SENATOR PERKINS: Thank you very much.

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

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

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

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

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

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

Thank you.

ACTING PRESIDENT ROBACH: Thank you, Senator Perkins.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

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

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

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

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

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

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

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

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

colleagues and took over.

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

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

Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Libous.

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

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

ACTING PRESIDENT ROBACH: The Secretary will read.

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Senator

Squadron.

SENATOR SQUADRON: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you very much for being here.

(Standing ovation.)

ACTING PRESIDENT ROBACH: Senator Adams.

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

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

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

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

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

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

of law enforcement from losing another officer.

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

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Thank you, Senator Adams.

Senator Zeldin.

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, at

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

ACTING PRESIDENT ROBACH: The Secretary will read.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator Little to explain her vote.

SENATOR LITTLE: Thank you, Mr. President.

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

What will happen here is that we

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

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

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

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

Thank you.

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

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill

is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the

roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

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

ACTING PRESIDENT ROBACH: Read the

last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

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

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

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

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

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

SENATOR LIBOUS: Thank you, Mr. President.

May we now have the controversial reading of the calendar.

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

The Secretary will read.

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

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT ROBACH: An explanation has been requested.

Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

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

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

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

Thank you.

SENATOR DILAN: Mr. President, on the bill.

ACTING PRESIDENT ROBACH: Senator Dilan on the bill.

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

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

Another significant concern is the

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

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

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

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

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

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

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

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Announce the results.

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

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

Ayes, 51. Nays, 5.

ACTING PRESIDENT ROBACH: The bill is passed.

The Secretary will read.

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

SENATOR BRESLIN: Explanation.

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

SENATOR SALAND: Thank you, Mr. President.

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

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Excuse, Senator Saland.

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

Thank you.

SENATOR SALAND: Thank you, Mr. President.

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

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

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

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

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

ACTING PRESIDENT ROBACH: Thank you, Senator Saland.

Senator Hassell-Thompson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

accurate and effective as well as fair.

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

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

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

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

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

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

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

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

Thank you, Mr. President.

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

Senator Gallivan.

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

ACTING PRESIDENT ROBACH: On the bill.

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Gallivan.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

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

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

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

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

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

towards doing that.

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

ACTING PRESIDENT ROBACH: Thank you, Senator Marcellino.

Senator Golden.

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

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

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

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

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

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

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

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

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

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

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

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

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

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

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

Senator Duane to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

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

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

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

voting no.

Thank you, Mr. President.

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

Senator Perkins to explain his vote.

SENATOR PERKINS: Thank you very much.

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

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

The fact of the matter is that

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

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

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

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

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

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

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

ACTING PRESIDENT ROBACH: Thank you, Senator Perkins.

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

ACTING PRESIDENT ROBACH: Recorded

in the negative --

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

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

Senator Saland.

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

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

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

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

Assembly bill to which allusion was made earlier.

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

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

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

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

I vote in the affirmative.

ACTING PRESIDENT ROBACH: Announce the results.

THE SECRETARY: In relation to

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

Absent from voting: Senator Espaillat.

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

Ayes, 47. Nays, 8.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Libous.

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

ACTING PRESIDENT ROBACH: There is none.

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

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

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

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

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