

1 NEW YORK STATE SENATE

2
3
4 THE STENOGRAPHIC RECORD

5
6
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 Schabberger, he pushed him off of the
2 stoop, and tragically, Officer Schabberger's life
3 was lost.

4 You know, the way in which
5 Officer Schabberger 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 Schabberger, 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 Schabberger 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 Schabberger, 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.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25