ALBANY, NEW YORK

May 28, 1997

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would you please rise and join me in the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Tuesday, May 27th. The Senate met pursuant to adjournment. The Journal of Saturday, May 24th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Lack,

from the Committee on Judiciary, hands up the following nomination:

As a judge of the New York State Court of Claims, Russell P. Buscaglia, of Erie County.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Russell P. Buscaglia, of Erie County, who has been nominated by the Governor as a judge of the New York State Court of Claims. Mr. Buscaglia has been examined by myself and the staff of the committee. His credentials have been found to be certainly honorable. He appeared before the committee this morning, was unanimously voted to the floor of the Senate, and it's with pleasure that I -- where is Senator Rath? -- that I yield for the purpose of a seconding to Senator Rath.

ACTING PRESIDENT MARCELLINO: The Chair recognizes Senator Rath.

SENATOR RATH: Yes, it gives me great pleasure to rise on behalf of a friend and a colleague from Erie County, Russ Buscaglia, as

he ascends to the bench. Let me say, by way of background, Mr. Buscaglia served in the United States Attorney's office, the Erie County District Attorney's office, served in private practice, and has served in many and varied community organizations and activities.

He, of course, went to SUNY Buffalo which all of us take with great pride when one of our folks from SUNY-Buffalo ascends to the bench. It's with great pleasure and pride that I second the nomination of Russ Buscaglia.

ACTING PRESIDENT MARCELLINO: Senator Volker.

SENATOR VOLKER: Yes, if I may say also that I want to offer my congratulations to the Governor for the nomination of Russ Buscaglia, who is one of the most prominent attorneys in the Buffalo area, super prosecutor as we called him, in both the district attorney and the federal attorney's office as well as head of the Medicaid Fraud Unit of the Attorney General for some time.

There is no question that the Court of Claims is getting a person who's

probably as competent as any that has ascended to that office to deal with some of the criminal problems of the state. He comes from a wonderful family, father, who I understand is here and whose wife is also here. We wish him the very best and I think he is one of the very best, and I know he will make a super Court of Claims judge.

ACTING PRESIDENT MARCELLINO: The question is on the confirmation of Russell Buscaglia as judge of the Erie County Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

All opposed nay.

(There was no response.)

Russell Buscaglia is hereby confirmed as judge of the Erie County Court of Claims. Congratulations, Judge Buscaglia.

(Applause).

The judge is joined by his father George Buscaglia, his sister Angela Marranca, niece and nephews Lindsey, Paul and Russell, friends John Long and Dawn Warsaw. We congratulate you on a long and successful tenure in your new position.

Secretary will read.

THE SECRETARY: As judge of the Westchester County Court, Mark C. Dillon, of Yorktown.

ACTING PRESIDENT MARCELLINO: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Mark C. Dillon, of Yorktown, who has been nominated by the Governor to the position of judge of the Westchester County Court. Judge Dillon's credentials have been scrupulously examined by the Judiciary Committee, have been found to be completely in order. He appeared before the committee this morning and was unanimously moved from the committee to the floor, and I would yield for purposes of a second to Senator Leibell.

ACTING PRESIDENT MARCELLINO: Chair recognizes Senator Leibell.

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

As Senator Lack noted, we had the opportunity this morning to, at the Judiciary

Committee, to consider the qualifications of Mark Dillon to be moved to the County Court judge as -- County Court Judge of Westchester County.

I'm very pleased to rise. I've had the opportunity to know Judge Dillon on a personal basis and professionally for a great many years. He is extremely well qualified. New York educated, he has had an extensive legal career including -- commencing in the Westchester County District Attorney's office and currently serving with one of the most prominent law firms in Westchester County.

He has also served as a town judge for many years, now in the town of Yorktown which is within my district, and in that capacity has handled literally thousands of cases, both civil and criminal, that have come before him, besides which he has also served as an instructor to other judges throughout our area.

Mr. President, I'm immensely pleased to have the opportunity today to stand here and to move this nomination of Judge Mark Dillon.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Spano.

SENATOR SPANO: Thank you, Mr. President.

The -- it's my pleasure to join with Senator Lack and Senator Leibell in seconding the nomination of Judge Dillon. A person who has served with distinction as a village justice, and, of course, the Judiciary Committee has taken a look at his legal experience which is expected, but the real mark of a person is to take a look at the activities that he's been involved in in the community back in Westchester County, as a member of the National Eagle Scouts Association and his involvement with the Boy Scouts of America and the Council; the time that he has put in as a director of the Great Hunger Foundation, the putting time as a lector of the church and also being the president of the Young JCs. Mark Dillon has really demonstrated the type of commitment and the type of person, human person, that he is to deal with the issues facing the County Court in Westchester County.

He's continued to serve to the present time as the co-chairman of the Westchester County Council on Domestic Violence and working on an issue that so many of us are so concerned about. So it's just my pleasure to second this nomination and to commend the Governor for his selection of someone who really deserves the unanimous support of all the members of the Senate in his confirmation for the County Court of Westchester County. He will certainly make us proud.

Judge Dillon, congratulations.

ACTING PRESIDENT MARCELLINO: The question is on the confirmation of Mark Dillon as judge of the Westchester County Court. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

Mark Dillon is hereby confirmed as judge of the Westchester County Court. We congratulate you, Judge Dillon, and we note that you are here with your wife Michelle and your three daughters Maura, Monica and Megan, and before I suggest a round of applause for you, I

say Maura? O.K.

Congratulations once again and I hope your service is long and well respected.

(Applause)

Return to reports of select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I have a motion on behalf of Senator Hannon to restore an amended Senate bill. I move to amend Senate Bill Number 4361 A, by striking out the amendments that were made on May 27th and restoring it to its original print number, which is 4361.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Skelos, the resolution calendar? Hello!

SENATOR SKELOS: Mr. President, prior to taking up the Resolution Calendar, we should take up the non-controversial calendar.

ACTING PRESIDENT MARCELLINO: May we take up the non-controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 143, by Senator Wright, Senate Print 1659-A, an act to amend the Vehicle and Traffic Law, in relation to creating the crime of aggravated driving while intoxicated.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 334, by member of the Assembly Vitaliano, Assembly Print 1484, an act to amend the Civil Service Law.

ACTING PRESIDENT MARCELLINO: Lay this bill aside for the day.

THE SECRETARY: Calendar Number 434, by Senator Seward, Senate Print 3267, an act to amend the Town Law, in relation to non-resident volunteer firefighters.

ACTING PRESIDENT MARCELLINO: Read the last section. Ah, I tried.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: All

right, Senator. Lay it aside.

THE SECRETARY: Calendar Number 456, by Senator Marcellino, Senate Print 3679-A, an act to amend the Environmental Conservation Law, in relation to scup and black sea bass.

SENATOR GOLD: Lay it aside.

(Inaudible comment by a member.)

ACTING PRESIDENT MARCELLINO: This is a lay aside from yesterday. (Inaudible) This is Calendar Number 456 that was laid aside yesterday for the day. It is on the calendar.

SENATOR SKELOS: The supplemental active.

SENATOR GOLD: No, it isn't there.

ACTING PRESIDENT MARCELLINO: The Supplemental Active List Number 1, page number 1. (Inaudible) Bill is laid aside.

THE SECRETARY: Calendar Number 664, by Senator Nozzolio, Senate Print Number 4084-A, an act to amend the Civil Practice Law and Rules.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: Lay

it aside.

THE SECRETARY: Calendar Number 819, by Senator Lack, Senate Print 3479, an act to amend the General Municipal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT MARCELLINO: Lay it aside, please.

THE SECRETARY: Calendar Number 821, by Senator Alesi, Senate Print 3569, an act to amend the Real Property Tax Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay it aside.

THE SECRETARY: Calendar Number 822, by Senator Libous, Senate Print 3721.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 829, by Senator Rath, Senate Print 4357, an act to amend the Real Property Law and the Agriculture and Markets Law.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 846, by Senator Present, Senate Print 4112, an act to enact the Private Activity Bond Allocation Act of 1997.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 848, by Senator Rath, Senate Print 4852, an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 862, by Senator Volker, Senate Print 4478, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 870, by Senator Volker, Senate Print 5180, an

act to amend the Penal Law, in relation to establishing the crime of absconding from a residential treatment facility.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside belatedly, please.

THE SECRETARY: Calendar Number 886, by Senator Goodman, Senate Print 3651, an act to amend the Alcoholic Beverage Control Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside. This one, the one that was just read? Bill will be laid aside for the day at the request of the sponsor.

THE SECRETARY: Calendar Number 898, by Senator Goodman, Senate Print 4259-A, an act to amend Chapter 674 of the Laws of 1993.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Bill will be laid aside for the day at the

request of the sponsor.

THE SECRETARY: Calendar Number -

ACTING PRESIDENT MARCELLINO: Ladies and gentlemen, if we please could have some order in the house, we take the conversa tions out of the room, please. It's very difficult to hear the lay asides.

Secretary will continue to read.

THE SECRETARY: Calendar Number 901, by Senator Cook, Senate Print 4568, an act to amend the Arts and Cultural Affairs Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 910, by Senator Marchi, Senate Print 4015-A, an act to amend the Navigation Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 913, by Senator Nozzolio, Senate Print 1965, an act to amend the Executive Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay

the bill aside, please.

THE SECRETARY: Calendar Number 915, by Senator Nozzolio, Senate Print 2779, an act to amend the Correction Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 920, by Senator Nozzolio, Senate Print 3429, an act to amend the Correction Law.

SENATOR STACHOWSKI: Lay aside.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 931, by Senator Marcellino, Senate Print 5079-A, an act to amend the Navigation Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT MARCELLINO: I'm sorry, I couldn't quite hear. Lay the bill aside? You're sure about that? Lay it aside.

THE SECRETARY: Calendar Number 944, by Senator Skelos, Senate Print 5149, an act to amend the Domestic Relations Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay bill aside, please.

THE SECRETARY: Calendar Number 945, by Senator Skelos, Senate Print 5150, an act to amend the Domestic Relations Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 964, by Senator Marchi, Senate Print 713, an act to amend the Public Authorities Law.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 968, by Senator Levy, Senate Print 919, an act to amend the Public Authorities Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 980, by Senator Cook, Senate Print 2648, an act to amend the Highway Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay

the bill aside.

THE SECRETARY: Calendar Number 984, by Senator Leibell, Senate Print 3551, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 1030, by member of the Assembly Stringer, Assembly Print 5635, an act to amend the Election Law.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 1031, by Senator Present, Senate Print 4511-A, an act to amend the Election Law.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 1043, by Senator Marchi, Senate Print 3584, an act to amend the Business Corporation Law.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number

1050, by Senator Marchi, Senate Print 4085, an act to repeal provi...

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

SENATOR SKELOS: Mr. President, lay aside for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside -- 1050? -- for the day.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Excuse me. Senator Gold.

SENATOR GOLD: Yeah. I looked in the wrong place in my notes. If you want to call 980, we can pass that. I laid that aside. It's up to you.

ACTING PRESIDENT MARCELLINO: O.K. We'll go back to that as soon as we finish the last one on the calendar.

THE SECRETARY: Calendar Number 1055, by Senator LaValle, Senate Print 4431, an act to amend the Education Law, in relation to sharing of information.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay bill aside, please.

Senator Skelos, should we go back to 980, at your pleasure?

SENATOR SKELOS: Mr. President, would you -- Calendar Number 822, would you lay that aside for the day at the request of the sponsor.

ACTING PRESIDENT MARCELLINO: Calendar Number 822 will be laid aside at the request of the sponsor.

SENATOR SKELOS: And could you take up Calendar Number 980.

ACTING PRESIDENT MARCELLINO: Secretary will read Number 980.

THE SECRETARY: Calendar Number 980, by Senator Cook, Senate Print 2648, an act to amend the Highway Law, in relation to use of town-owned highway machinery, tools and equipment.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that is -- that is the reading of the non-controversial calendar.

SENATOR SKELOS: Would you take up the controversial calendar, please.

ACTING PRESIDENT MARCELLINO: Starting with Calendar Number 143, the Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 143, by Senator Wright, Senate Print 1659-A, an act to amend the Vehicle and Traffic Law, in relation to creating the crime of aggravated driving while intoxicated.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Wright, an explanation has been asked by Senator Stachowski.

SENATOR WRIGHT: Thank you, Mr. President.

The bill amends the Vehicle and Traffic Law, adding a new section establishing the crime of aggravated driving while intoxicated, which is determined with a blood alcohol content count of .20, establishes penalties relating to that, as well as mandatory revocation provisions.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 434, by Senator Seward, Senate Print 3267, an act to amend the Town Law, in relation to non-resident voluntary firefighters.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO:

Senator Seward, an explanation has been asked for by Senator Paterson.

SENATOR SEWARD: Certainly, Mr. President.

This legislation would amend the Town Law. Currently the Town Law provides that the percentage of non-resident membership of a fire district, a fire company, may not exceed 45 percent, and the Legislature has over the years statutorily granted exemptions from this provision to a few fire districts across the state to meet a particular local need.

Now, this bill would provide that the Secretary of State would have the authority to grant future exemptions and thus not require special legislation every time that a fire district finds itself not being able to meet the servicing of the fire district and meet this 55 percent requirement that they be resident volunteer firemen.

(Inaudible comment).

ACTING PRESIDENT MARCELLINO: Senator Seward, will you yield to Senator Dollinger?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: Yes, he yields.

SENATOR DOLLINGER: Senator, we in the course of the last two or three years have taken a number of steps to encourage membership in volunteer fire-fighting companies. We've -- there have been proposals on the floor of this chamber to create real property tax incentives, to create improvement in the point system to benefit firefighters.

My question is, do you have any evidence that those measures have had any success? In -- as I understand this bill, this is to remedy situations where there aren't enough people in the local community if they have a fire-fighting force and they have to draw from outside. Is there a tie between those two, I mean do you see any benefit or any new membership or increase in membership because of those efforts?

SENATOR SEWARD: Well, we continue to see a problem with the level of membership in some of the volunteer organiza tions, I think all volunteer organizations and particularly fire departments and ambulance

squads, but they -- by and large, I think volunteer fire departments, while they may have their problems in terms of retention and of members and of gaining new ones, it's still a very strong -- strong force there.

This legislation is not tied, in my mind, directly to that type of recruitment and retention problem as it is to meet the needs of specific circumstances such as what we've seen in the past where exemptions have been granted, perhaps there would be a district where there are large industrial or other types of employers, a number of people that are working three shifts and companies that have three shifts. Yet there aren't a lot -- a great deal of numbers in terms of residents, local residents, of that fire district so we would have to depend on those volunteers who may be actually working in the community versus actually living in the community.

That would be one circumstance that this bill would be helpful in. There are others, of course, with very small fire districts that may not just -- may not have the numbers, and so it's -- it's -- the

circumstances are many and varied. This bill is directed to give the Secretary of State the authority to grant the exemption to meet the wide variety of circumstances that may be out there.

SENATOR DOLLINGER: Again through you, Mr. President. I think your suggestion about either living or working in a community is a good one. You know whether this bill would be needed if we simply changed the law to allow the Secretary of State to recognize not only those who live in the community that they would be participating in, but those who work in it as well? I know in suburban Monroe County there are many people who work in the suburban communities who don't actually live there who would be closer to a fire in the district in which they work, at least during daytime hours, most of the daytime hours, rather than in the community in which they sleep and maintain their residence. Wouldn't that be another way to do it, and what effect would that have?

SENATOR SEWARD: Well, Mr. President, the Senator is suggesting a -- one change that strikes me that, if we were to make

that change would deal with that particular set of circumstances. The difficulty is there are other circumstances out there that your suggested amendment would not cover; so my view is that we should proceed with this legislation to give the Secretary of State the authority to grant the exemption depending on whatever the local circumstances are that do not allow a local fire department to come up with at least 55 percent of their members being actual residents and 45 percent being non-residents.

SENATOR DOLLINGER: One final question through you, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator? He yields, sir.

SENATOR DOLLINGER: Has -- in proposing this legislation has the issue of consolidation of the volunteer fire companies been discussed or been considered as a way to overcome this problem as well, that in many cases these fire companies may be small, they may be difficult to find the recruits because of the changing complexion of their community? Is there any consideration underlying this bill or in considering this bill, did you consider the

possibility of trying to set up a system of incentives for the consolidation of volunteer fire districts?

SENATOR SEWARD: Mr. President, we have not dealt with that issue in conjunction with this legislation. There are provisions out there that would allow for consolidation and mergers, if you will. That remains to be a local decision that could be made, and this bill wouldn't alter that in any way.

We're simply trying to stream line the process for fire departments to get the exemption under the -- under the law.

SENATOR DOLLINGER: Thank you, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Will the gentleman yield to a question, please?

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield to Senator Gold?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR GOLD: Yeah. Senator, I am not embarrassed to tell you that I am not anywhere near as familiar as you are with the machinations and working of these volunteer fire departments, and I don't believe, as some people have suggested, that you're not very sophisticated if you think the volunteer fire departments are organized to put out fires, which is one of the reasons -- but, Senator, what is the basic philosophy by which the state would care whether or not it's 55 percent or any other number of residents that participate if the idea of the volunteer fire department is to be exactly that, on hand to help a community put out fires? What's the philosophy?

SENATOR SEWARD: Well, Mr. President, and Senator Gold, the philosophy behind having these residency requirements at all has its roots in the fact that, even though the fire -- the members of the fire department are strictly volunteers, the fire district does, in fact, have the -- they do have taxing authority for -- there are contract employees. Local taxpayers pay for such things as equipment purchases, and perhaps the cost of a fire hall

and that kind of thing, and so the residency requirements have its roots in the idea that there are -- there is taxing authority here so that the local -- the local residents/taxpayers would also be the members of the fire department, so that's the logic behind that.

SENATOR GOLD: Mr. President, will the Senator yield to a question?

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR GOLD: Senator, you used two different phrases, and I'd like to clarify how you use them. One, you indicated that there are contracts which is what my little understanding is, that a volunteer fire department would have some kind of contractual arrangements whereby they would get funding from an area, whatever.

The other phrase you used was "taxing authority". Are you telling me that the volunteer fire department has taxing authority, can actually levy their own taxes in

a community?

SENATOR SEWARD: Yes, if they're a fire district. That -- that's one way that they are organized. The other way is that the -- when I used the term "contracts" I was referring to the arrangement whereby the local municipality actually has a contract to provide the fire service with the local fire company, so I use -- that's why I used depending on what the local organization is.

SENATOR GOLD: Well -

SENATOR SEWARD: Whether it be a district or a municipality contracting with a fire department.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: I believe he does, sir.

SENATOR GOLD: Thank you. Senator, when you talk -- let's take the first situation. You talk about them having a contract. I assume from what you just told me

and the education I'm getting, that you do not need a fire district, that a municipality can contract with the ABC Volunteer Fire Department and they will pay them under the contract in a certain way, and they will take care of a designated area, I guess, pursuant to a contract, is that right?

SENATOR SEWARD: Yes, that's one of the ways of doing it.

SENATOR GOLD: All right. Now, Senator, having said that, how do we get to the district situation? Is there -- is there an advantage or is there -- does it require a law of this Legislature in order to create a district and give that district taxing authority?

SENATOR SEWARD: Mr. -- Mr. President, there is a -- there are provisions in the law if a locality wishes to actually set up a fire district and then there are commissioners that are elected. That's all prescribed by state law.

SENATOR GOLD: All right.

SENATOR SEWARD: Every situation does not require an act of this Legislature.

SENATOR GOLD: All right. Will the Senator yield to one more question, Mr. President?

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: I believe he yields, sir.

SENATOR GOLD: Yeah, yeah. Senator, if a locality determines that it wants to establish a fire district, that I gather from what you're telling me is by referendum or some kind of a vote or authority and then you indicated that there are commissioners for that fire district. Are there residency requirements, generally speaking, to be a commissioner of the fire district?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: Yes, there are.

SENATOR GOLD: Well, if the Senator would yield to a question, Mr. President?

ACTING PRESIDENT MARCELLINO:

Will the Senator yield for one more -- one more question?

SENATOR SEWARD: Yes, certainly.

SENATOR GOLD: Senator, now that we've got a view of this structure, I understand less why there's the to-do over the residency. If the taxes -- if you do have a contractual situation, then the municipality has within its control what its expenditures will be. If you have the fire district set up and the commissioners of the fire district are elected and are resident, it seems to me that the fire district is again protected because you've got resident taxpayers who are the commissioners, so I don't know what difference it would make if 60 percent of your actual volunteers didn't live in the district. Your control of the cost expenditures and taxing authority are still in the hands of residents.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: Well, we could be debating, I suppose, all day long in terms of the need for any kind of residency requirement.

SENATOR GOLD: O.K.

SENATOR SEWARD: We are, which perhaps is why you're raising these questions.

SENATOR GOLD: No, no, no.

SENATOR SEWARD: I could debate that question all day long. But seriously, the -- this legislation is strictly dealing with trying to streamline the process for those districts that find themselves in circumstances where they cannot meet the residency requirements. The vast majority of fire companies throughout the state are getting along just fine. There are plenty of local people who wish to be members of the fire company. They - they're well in excess of the 55 percent requirement under law.

We're simply, under this bill, trying to deal with those very select few that cannot meet that requirement and thus we're streamlining the process for an exemption to be granted. That's the very limited scope of this bill.

Perhaps you'd like to have your discussion, you know, looking at the issue in a more wide-ranging way, but certainly that's your right, perhaps to introduce legislation to deal

with the general scope.

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

ACTING PRESIDENT MARCELLINO: Senator Gold, on the bill.

SENATOR GOLD: Senator Seward, first of all, thank you for the information. It's obvious to me that you know this field and maybe you should be running the entire volunteer department for the state. You've got a real grasp of it.

But, Senator, what I think is amazing, is that when we find it convenient and I don't mean this in any way to be a criticism of you, Senator, I mean it, we amend laws creating exemptions to situations without stopping for a minute and taking a deep breath and saying, why do we have that law and what is the real practical application of those exemptions; and I dare say that while we are very critical of the state agencies and the amount of paperwork we put people through, and we have all kinds of legislation -- I know Senator Stafford had a bill yesterday which we debated dealing with the standardization of

forms -- I'm willing to bet you, Senator Seward, that if we passed 50 percent of our legislation each year under the title of "repealer", we could clear out an awful lot of our statutes, cut the size of the books, cut the printing bills and what people had to read because a lot of it is just -- builds and builds on itself for no reason.

Now, I am not involved with the volunteer fire departments, although I will tell you that I tremendously admire the citizens who do that kind of volunteer work as I do admire citizens who do volunteer ambulance work and citizens who do anything to be helpful within their own communities. These are great people because while we talk about civics and civil service, these people are doing it for nothing because they live in a community. They have my total admiration.

I don't know whether or not somebody from Rockland County is going to volunteer to be a member of the Ithaca Volunteer Fire Department if they've got one, and Ithaca probably has its own fire department, but just as an example, it doesn't make any sense. I

would assume that people have volunteers in fire departments where they live or, as Senator Dollinger pointed out, where they work, so that it has some sensibility to it.

It also is quite clear to me from your explanation, which I have no reason to doubt at all, that the fire departments either have a contract with a municipality so the municipality has a grasp of what the costs are going to be, or that you have a taxing fire district where you elect the commissioners and those are your neighbors and your residents, so I don't know why we start out to have a law to begin with that says that you must have, quote, 55 percent of the people who participate in a volunteer fire department as being residents. If that is an active healthy volunteer fire department and it turns out that three people moved and all of a sudden your percentages are 53 or 54 percent, why that should cause havoc in a community, I don't know and I'm just suggesting to you, Senator Seward, that I'm not going to oppose the concept of giving exemptions. I just think that you might be doing us all a favor by putting some kind of

repealer in to get rid of this.

Now, if there's a common sense reason for it, I'm for the 55 percent or whatever else, but I really haven't heard of any common sense reason and maybe my distinguished leader who's just risen wants to give me one or ask me to yield.

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Yes, Mr. President. If Senator Gold would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Gold, do you yield to Senator Paterson?

SENATOR GOLD: Any time, sir.

ACTING PRESIDENT MARCELLINO: I'm shocked.

Senator Paterson.

SENATOR PATERSON: Mr. President, my question to Senator is that the 45 percent limit on non-resident volunteer firefighters was established, I thought, to ensure that the majority of the fire company came from the - from the -- from the tax district and since you've been -- taken an interest in this

legislation, my question is, what would ensure with the passage of this legislation that that objective would not be disregarded all over the state?

SENATOR GOLD: Well, Senator, I -- I can't answer for Senator Seward but the way I read it, I don't see anything. The way I read this bill, upon application, I assume every single volunteer fire district in the state could apply for and receive an exemption.

What I -- what I was -- the point that I was making, Senator Paterson, and I see you grasped it very well, which is not a surprise to anyone in the chamber, is that there ought to be a rationale for something or else we ought to get rid of it. I mean we pass in this house roughly 15-, 1600 bills a year. The Assembly does the same. The cross-overs there's something like 1,000, 1100 bills. Each house passes 5-, 6-, 700 one-house bills; but we add after you filter out vetos and some of the bills that the leaders of both houses decide to not even send to the Governor but use for fodder in the fires, we wind up each year with probably 8 or 900 new chapters, 7-, 8-, 900 new chapters,

and what I'm saying is that I don't know whether there's a great public need to keep expanding the size of our laws. Maybe one of the things we could go -- I know Senator Rath who we all admire greatly, has suggested changes in administrative regulations to tighten things up. Maybe we ought to have a committee that tightens up all our laws instead of having these volumes after volumes which do nothing more than change a line or a word and creating exemptions to an exemption because we have a main law and no one wants to change the main law.

So, Senator Paterson, I agree with you, I think under this law, every volunteer fire department in the state could wind up with an exemption, and I don't know why we don't get rid of all this and just maybe we ought to have a situation where a volunteer fire department applies to the Secretary of State, gives its percentages, gives its rationale and let them approve it in each case, because I think, Senator, that's exactly what's going to happen anyway.

Last section.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEIER: The bill is passed.

Secretary will read Calendar Number 456.

THE SECRETARY: Calendar Number 456, by Senator Marcellino, Senate Print 3679-A, an act to amend the Environmental Conservation Law, in relation to scup and black sea bass.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

This bill extends the Department's authority to adopt regulations for the management of scup, or porgy, and black sea bass, which would expire on June 1st, 1997. This legislation will extend the Department's

authority until December 31st, 1999.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Senator yield for a few questions?

ACTING PRESIDENT MEIER: Will the Senator yield for a question?

SENATOR MARCELLINO: It will be my pleasure.

ACTING PRESIDENT MEIER: The sponsor yields.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. I'm curious about a few things. I'm sure this is an excellent bill but, as Senator Marcellino knows, I've developed a new interest in fish in our waters around the state.

Now, on April 8th, the Governor signed a very similar bill which extended DEC's authority for -- to manage scup and black sea bass for two months. Now, why do we do a two-month extender and are we now extending the exact same bill for two and a half years, or were there changes that you wanted to see in the two-month bill that did or did not get into the

two and a half-year bill?

SENATOR MARCELLINO: Mr. President, through you, Senator Oppenheimer, our colleagues in the other house had some thoughts about modifying the legislation before the last expiration date so we accommodated them and agreed to a two-month extension so that we could negotiate changes.

The negotiations, quite frankly, never took place and the suggestions never came forward. Consequently we have agreed upon and the other house is entering a same act bill as the one you see here for a two-year extender to the authority in DEC to monitor these fisheries.

SENATOR OPPENHEIMER: Through you, Mr. President, were there things that you wanted to see changed in the bill from the two-month bill to the two and a half-year bill, or is this the bill that you wanted from the beginning?

SENATOR MARCELLINO: Senator, this is the bill that we think is a good idea. We think a two-year period of time is sufficient for us to go back and relook at this issue

without having to do this too often. We think this is the appropriate legislation and the appropriate manner to handle this particular issue.

SENATOR OPPENHEIMER: Through you, Mr. President, I wonder if you could explain why the scup and the black sea bass mortality rates are so very high.

SENATOR MARCELLINO: It's a combination of factors, Senator, the factor of over-fishing and over-taking of the species. We have become extremely capable at taking these organisms at a much faster rate than they're capable of replenishing. In some cases, in the case of the black sea bass they've become the fish of choice at many of the sushi bars and are being taken in sizes that precede their ability to spawn, so we need to protect and preserve this particular species of fish and, in fact, both species of fish.

In some areas -- I remember when I was a young boy being able to fish in the Rockaways off the jetty and you could catch porgy and bass without too much problem. Today you cannot. The -- it's -- they are, for the

most part, fished out of existence in many areas. We are attempting to preserve these two fisheries by managing carefully the species.

We're talking about a $1.7 million industry to the state of New York. That is the amount of landings and the amount of sales of these particular species that have taken place, so this is not an insignificant part of our economy.

SENATOR OPPENHEIMER: Senator, if you will yield.

ACTING PRESIDENT MEIER: Senator Oppenheimer, are you asking Senator Marcellino to continue to yield?

SENATOR OPPENHEIMER: Yes.

ACTING PRESIDENT MEIER: Will the Senator yield?

SENATOR MARCELLINO: My pleasure.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR OPPENHEIMER: I have just a couple of questions from what you just said. Number one, do we not have some of kind of limit on the inches that the fish may be taken at and, secondly, is this -- where is this basically

fished; where -- where -

SENATOR MARCELLINO: These are two coastal water fishes, fisheries. They're not deep sea as such, but they are coastal in their appearance and in their locality, and I believe there are size restrictions on both species that are taken. It's very difficult to monitor, especially if they're taken in a commercial -- in a commercial setting, extremely difficult to monitor size of these creatures, but we feel, with the time we have and the DEC's watching and the ability to put people on boats that go out now, we are capable of preserving the species and we have seen some comeback on the part of these organisms with these regulations in place.

Without this legislation, we're afraid the EPA will simply shut down the fisheries. If they don't feel that the state is monitoring and carefully watching this particular activity, then they will take over and their method of operation is simply to shut it down. We don't feel it's necessary, and we don't -- we certainly wouldn't want them to come in and shut it down for reasons we mentioned

before. Both recreational and commercial fishermen do partake of this sport and the economy is necessary for our state, so we feel we want to monitor it ourselves.

SENATOR OPPENHEIMER: If you would yield for another question.

ACTING PRESIDENT MEIER: Senator Marcellino, do you continue to yield?

SENATOR MARCELLINO: Yes, I do, sir.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR OPPENHEIMER: Could you tell me if the taking requirements that are set by the Atlantic States Marine Fishery Commission, are they providing sufficient protection for our fishery resources and if not, why don't we permit the DEC to establish more stringent regulations than are in place?

SENATOR MARCELLINO: At this point in time, Senator, from our people at the DEC, they feel the issue is being properly handled with the regulation and controls that we have on now. The purpose, as I said before, of this legislation is to continue that

capability. If we felt that there was the need to move in and impose stricter requirements, we would do so without hesitation.

SENATOR OPPENHEIMER: Then you would say that we would give the DEC permanent authority to manage these fish? Why wouldn't the DEC take permanent authority to manage the fish as long as it's consistent with the Atlantic States Marine Fishery Commission? Why couldn't we be more stringent in New York State?

SENATOR MARCELLINO: Well, we could always be more stringent if we chose. There just doesn't seem to be a need. The existing rules and regulations and requirements are meeting the need. To be more stringent would give us literally nothing at this point in time.

SENATOR OPPENHEIMER: Now, on a peripheral question if you'd -

ACTING PRESIDENT MEIER: Senator Oppenheimer, are you asking that the Senator yield to a question?

ACTING PRESIDENT MEIER: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Yes, I do,

sir.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR OPPENHEIMER: I'd like to know if there are conflicts between the recreational and the commercial harvesters of the scup and the black sea bass. This certainly was an issue that came up a couple of weeks ago with the mossbunker or menhaden fish industry where the recreational and the commercial fishermen were at odds with one another.

Is that true in the scup and the black sea bass?

SENATOR MARCELLINO: Yes, I think, Senator, Mr. President, through you, you will see that there is always that conflict and there is always that natural friction that comes up between two different entities, if you will, where they come together at a particular point. Commercial fisheries people feel they never get enough and the sportsmen always want to get more and also feel the commercial guys are taking too much away from them, so there is this natural give and take between them.

What we have done here is try to

walk a middle course in giving both sides the ability to do what they have to do and to be capable of enjoying the sport and enjoying the commercial success of their operations, so that they can provide food for restaurants and people at various locations.

Right now these two needs are being met, and there doesn't seem to be any outside need to go out and favor one or the other. We feel we are accomplishing the task.

SENATOR OPPENHEIMER: And my last question, if you will yield.

ACTING PRESIDENT MEIER: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR OPPENHEIMER: Would you say that the main markets, the commercial fishermen that are catching the porgies, is that essentially for restaurant usage; it's not for reduction like with the menhaden, is it?

SENATOR MARCELLINO: No, porgy is not a food fish like menhaden would be in the use. It's caught for the oil product it

produces for cat food or dog food, things like that. The porgy may have some aspect of that to it, but for the majority of it, it is a food fish for human consumption.

SENATOR OPPENHEIMER: For restaurants.

SENATOR MARCELLINO: Or personal consumption, yeah.

SENATOR OPPENHEIMER: Or other commercial usage. Thank you very much. That was very informative.

SENATOR MARCELLINO: Thank you, Senator.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT MEIER: The bill is passed.

Secretary will read Calendar Number 664.

THE SECRETARY: Calendar Number 664, by Senator Nozzolio, Senate Print 4084-A, an act to amend the Civil Practice Law and Rules, in relation to establishing a complete bar to recovery by persons injured.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been requested by Senator Paterson.

SENATOR NOZZOLIO: Thank you, Mr. President.

Senator Paterson, my colleagues, the Crime Victims Protection Act is the measure before us. It's an important legislative initiative. It says, in effect, that if you use legitimate self-defense in defense of yourself or your family against a criminal intruder during the commission of that crime, that you should not be placed in any type of liability.

Rightly so, the assumption of the risk of injury in the course of criminal conduct through this action before us places it right where it belongs, with the criminal.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Nozzolio would yield for a question.

ACTING PRESIDENT MEIER: Senator yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio yields.

SENATOR PATERSON: Thank you, Mr. President.

Senator Nozzolio, the purpose of this legislation is certainly sustained by a number of situations that have occurred that we've read about in the newspapers and even in legal cases where victims of crimes were actually sued by the perpetrator for some act that was taken against them and the purpose of your legislation in order to protect victims is certainly admirable.

However, an outright bar to recovery could be seen as somewhat excessive and that's the nature of my question. Do you want to establish the circumstance where the trier of

fact, meaning the court, would be unable to make any determination of contributing information and, therefore, create an insulated situation where the law is overarching the entire circumstance and the trier of fact has absolutely no jurisdiction?

SENATOR NOZZOLIO: Mr. President, to respond to the Senator's question, that the measure before us places the assumption of risk and liability where it belongs, not with the victim of the crime but with the perpetrator of the crime. I submit, Senator Paterson, that your question certainly is one that is - provokes, I believe, response, an illustration.

The illustration is one that could take place not too far from here where a business owner was found liable when a robber comes into his business through a late night break-in, where the business owner pursued the perpetrator in flight. The robber fell through some rotted stairs of the business establishment and broke several bones. He sued then, the business owner, and what was seen was the liability of the insurer who had the policy that covered the business owner, in effect that

liability may have not been rested in a court of equity. Maybe a court would have seen the circumstances and said that an owner of a building, when you have a robber perpetrating into that building, the commission of a crime and happens to get injured during the commission of a crime, you shouldn't hold the business owner or the property owner liable and maybe we would have a court deciding that, but as you know, Senator, just to defend a case like this, it takes a lot of money and the insurance companies have to go through all kinds of discovery, depositions, and that sort of thing.

And so what we're saying is let's make it clear that anyone who comes into a building for the commission of a crime or enters onto an individual's property with the intent of committing a crime that that person, if injured, will certainly bear the risk and that's what we're trying to do here, Senator, make it very clear from the threshold that this is the policy of the state of New York and that we are to protect law-abiding property owners and that if the criminals get injured during the commission of a crime, that's their tough luck and so be

it.

Thank you, Mr. President.

SENATOR PATERSON: Mr. President, when I listen to Senator Nozzolio's explanation I'm frustrated to the point that he must have been which caused him to raise those types of situations are why we might want to address through legislation some of these types of issues, and I see that one of the aspects of the legislation, Mr. President, that Senator Nozzolio has offered us is to allow for the defendant to recover legal costs in these particular cases assuming that the plaintiff is unsuccessful. So you know, that is definitely a step in the right direction.

However, let's take this example, Senator Nozzolio. Let's say we have a car that is being stolen by a 12-year-old, and at a certain point the adult who is the owner of the car sees the 12-year-old and rather than admonishing the youth or taking some other action to prevent the youth from stealing the car, the adult shoots and kills the 12-year old. At this point it would seem to me that under your legislation we have really prescribed

a situation where there's a bar to any recovery on the part of the family of the deceased because of this legislation we're passing.

So if I could get some feedback from you on how you would view this scenario in the view of your legislation, I could better determine whether or not this legislation really wouldn't create as many problems as it would solve.

SENATOR NOZZOLIO: Senator, to answer your question, there are other laws as you well know. We make a change in law here, there is other body of laws which also governs. We're not eliminating that other body of law; we're not eliminating the issues of direct force and meeting force with force, the degree of force, the degree of, certainly as you describe it in your hypothetical, I would think that a court would look at the force used under the hypothetical you described, Senator, and say that was certainly not appropriate.

However, to change your metaphor a little bit, if someone -

SENATOR PATERSON: I'm sorry. I just didn't hear the last part of what Senator

Nozzolio said.

SENATOR NOZZOLIO: Senator, to change your metaphor just a bit, let's say someone was stealing a car and during the commission of that crime started to use deadly force, turning the car on its top and using the car to attack its owner in flight, to flee the circumstances of the crime and certainly then you can see where use of deadly force would be justified.

I think you have to understand that this law establishes a threshold of liability, a threshold of protection, and it is not meant to circumvent or alter directly other types of mitigating statutory provisions which deal with deadly force and the use of deadly force.

SENATOR PATERSON: Mr. President, if Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The Senator continues to yield. Senator Paterson.

SENATOR PATERSON: Senator

Nozzolio, the addendum that you made to the example that I gave you would certainly create a situation that we would understand why deadly force might be used against the operator of a vehicle who is turning the vehicle into a weapon which is one of the reasons that I didn't make that part of the example that I suggested which is that I was talking about a situation which is not speculative or remote to what we're talking about, something that has happened, and it hasn't happened because the owner of a car is necessarily trying to kill a young person who is stealing the car, but you have a crime in progress, you have panic in a particular situation and perhaps you have poor judgment exercised in a situation, but what may allow for the explanations under the criminal law would have a different standard under the civil law. There are even different standards by which we assess responsibility under the civil law, and I do not know the body of law that you are referring to that would address a situation where an owner of a vehicle would shoot a young person that was attempting to steal the vehicle and at that point, according to you, there are

other bodies of law where there could be sought some kind of justice, and what I'm just trying to figure out is, which body of law you're referring to would the family of the victim go to, to cure this kind of a problem?

SENATOR NOZZOLIO: Certainly, Senator, the courts would have to weigh whether deadly force was -- was applicable, appropriate in that sort of situation. What this -- what this law does, if a 12-year-old steals the car and then hits a street light and injures himself that you as the owner of that car is not going to be liable.

Now, that's what this law is trying to focus on and to address. Under the law we have today liability, for instance, for that business owner who had his robber fall through the steps of his business, sues -- then the robber sues the business owner for having faulty steps.

That's what this type of legislation is dealing with, Senator. That's the right we're trying to wrong and, frankly, I think that is something that has been remiss in the past and we need to address it.

SENATOR PATERSON: Thank you very much, Senator Nozzolio, for your response and what it -- what I'm inferring from what you've said is that perhaps the legislation, as well intended as it may be, is written a little too broadly because when you take a look at this kind of situation, let's say, for example, the recovery against Rodney -- the recovery that Rodney King sought, if you take that scenario, the police officers are chasing him or if you took a situation where there was a excessive choke hold as we had in Bronx County in a case that was just decided about six month ago. Would you care to comment on how those two situations where excessive force was used by agents of law enforcement would factor into the civil recovery in those particular cases?

ACTING PRESIDENT MEIER: Senator yield to that question? Senator Nozzolio.

SENATOR NOZZOLIO: Senator, under the -- the normal procedures of the house, you ask to yield prior to asking the question, and I must say, Senator, I was -- I did not hear the completeness of your question. I would be glad to yield to Senator Paterson, but -

ACTING PRESIDENT MEIER: Senator Paterson, the Chair was under the impression that you were proceeding until you wished to pose a question. We didn't hear it.

SENATOR PATERSON: My apology, Mr. President. Senator Nozzolio, what I was saying was that perhaps the legislation is written too broadly, and what I wanted to ask you is, if you took the example of excessive chokeholds used by a law enforcement agent, such as a police officer that used the chokehold in a case in Bronx County that occurred within the last six months, or if you took the fact pattern as it unfolded in the Rodney King case in 1991, do you think that either of those two defendants under the civil law would have any recovery against the officers in a scenario that would be similar to those?

SENATOR NOZZOLIO: Mr. President, based on the facts as I understand them, in a case like Rodney King, as referenced by Senator Paterson, I certainly don't believe that this law is intended or would have the effect of changing any type of civil recovery that would be appropriate in a case such as -- as one

described in the facts relative to Rodney King.

Again, Senator, I understand your concerns, and there are times when force used is inappropriate force. Certainly this bill does not eliminate those types of recovery where they are appropriate. What we are trying to do is simply insulate crime victims from further victimization through the legal process, adding insult to injury when a victim is sued by the perpetrator of the crime for injuries that occurred through the perpetrator's fault, so that's the type of address that this nature gets to. Certainly the civil and criminal wrongs associated with the Rodney King beating, that certainly is not what we're talking about here, and I'm glad that we've at least had the opportunity in our legislative dialogue to create history on this measure because certainly it's not the intention of this drafter nor I think this body to restrict to that extent and certainly not supersede other recoveries that may be available.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President. If Senator Nozzolio would continue to yield.

ACTING PRESIDENT MEIER: Senator continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR PATERSON: Senator, what I appreciated about your original explanation was that your interest is that you would like to clarify this particular situation, and I think perhaps where you and I are in a little bit of disagreement is how much you can actually clarify the delineation in different fact patterns.

Now, based on your explanation of the legislation, it's fine with me, because I think that you have articulated very well what you're trying to get at. You want to stop these situations where victims who on top of everything else -- I'm sorry, where perpetrators who on top of every other violation of public policy that they've committed, crime that they were in the process of committing and outright

often unethical and immoral behavior have the audacity to come back later on and actually sue the poor individual who was the object of often their violence or certainly their unlawful activities, and are going to sue them because they had a misfortune such as falling down a bad flight of stairs while they were robbing a building, and it really is absurd to some degree to actually believe that there are personalities that feel comfortable coming into court with these types of allegations, and the fact that you would like to cure us as a society of not having to read these legal briefs and even have to see these rather disreputable people anywhere near a courthouse is certainly something that I am in agreement with.

But what I'm saying is that as we went through a few fact patterns in the Rodney King case, and I believe that perhaps as Senator Waldon might illuminate us a little more on that or perhaps the case of an excessive chokehold as was the case in the Baez case that occurred in the Bronx or the scenario that I gave about a young victim, we recognize why these laws were established in the first place, such as where

the owner of property sets up a zip gun and anyone that comes through the door gets shot by it, and so a firefighter who is coming in the building to put out a fire got hit with a discharge from a zip gun once, and it created quite a lawsuit. So what I'm saying is that the realities of life as they impinge on our concept of justice make it very difficult for appellate courts to uphold the statute when you have such over-broad language as I find in your legislation, even though at the end of the day you and I are in total agreement about what should probably happen to people who engage in this kind of behavior.

What I'm suggesting to you -

ACTING PRESIDENT MEIER: Senator Paterson, you asked for the Senator to yield for the purpose of asking a question. Is there a question in there?

SENATOR PATERSON: I haven't gotten to the question yet, but since the last time Senator Nozzolio hadn't heard the question I just wanted to alert him to the fact that at the end of this discourse, there would be a question.

SENATOR NOZZOLIO: Appreciate your definition.

SENATOR PATERSON: The question is, would you consider recommitting this legislation to the Codes Committee so that the type of language that would make it clear that there are cases where the court -- and the fact that you said the court would have to consider these exceptions is exactly the reason that I tend to think the legislation isn't particularly right as it's written because you are granting at least in conversation that the court should have some jurisdiction, but I don't see it clearly delineated in your legislation, so my question is either can you explain to me how it does -- in other words, read to me the section of the bill that shows how the court would have jurisdiction or would you consider perhaps rewriting the section so the sum of what you've offered us in conversation could be codified as law?

SENATOR NOZZOLIO: I wouldn't consider amending this measure. We have changed the bill, Senator. Your counsel may not have read the amended version, but the -- this deals

with only the victims of the crime. They're the only ones withstanding that type of insulation which I wouldn't apply to Rodney King in any case. That is a beating of police officers, as I understand it. The peace officers were not the victims of a crime perpetrated by Rodney King. In effect, only victims of crime would be allowed this type of information by the facts that are before us.

So Senator, as much as I commiserated with you on your hypothetical, I should also indicate very clearly that this section of law would not apply at all if that type -- and God forbid that it does happen - but if that circumstance ever occurred in New York, but the perpetrators of that crime, certainly against Rodney King, the police officers, would not have been subject to the protections of this legislation.

SENATOR PATERSON: Mr. President, just as a point of inquiry, the Rodney King case, the police officers in the -

ACTING PRESIDENT MEIER: Senator Paterson, are you asking the sponsor to yield for a question?

SENATOR PATERSON: Yes, Mr. President, I'm asking the sponsor to yield. O.K.?

ACTING PRESIDENT MEIER: Just a moment, Senator Paterson. Senator Nozzolio, Senator Paterson has asked if you would continue to yield.

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: Sponsor yields to Senator Paterson.

SENATOR PATERSON: Mr. President, I would like to advise you and Senator Nozzolio that I would like to answer something that Senator Nozzolio said, prior to asking my question.

ACTING PRESIDENT MEIER: Senator Paterson, the rules of the Senate provide, I believe I'm correct, that a member wishing to speak, that member has the floor so you either yield to the question or you ask him to yield for a question, or you take the opportunity to speak on the bill.

SENATOR PATERSON: Well, Mr. President, I'm going to ask him a question.

ACTING PRESIDENT MEIER: Well, then the proper procedure, Senator Paterson, is to ask whether the member holding the floor will yield to a question.

SENATOR PATERSON: And he yielded, Mr. President. So my question -

ACTING PRESIDENT MEIER: Well, Senator Paterson, not so much that, but you indicated you wanted to make a point, so the member, Senator Nozzolio, now yields to your question.

SENATOR PATERSON: Thank you, Mr. President.

Senator Nozzolio, in the Rodney King case, the police officers were not convicted of a criminal offense regarding the assault on Rodney King. When Rodney King was arrested he was charged with resisting arrest, assaulting police officers, which had they not been able to view a videotape or even if you did, this was an actual charge that was made against Rodney King along with many others, and so, therefore, why would it make the police officers victims of a crime, and I can't see it any other way than that and, as a matter of

fact, from the court that had jurisdiction there in Simi Valley, that still to this day would be the ruling in that particular case. The only alternative that Rodney King, as a perceived victim, had was -- would have been a civil suit against the police officers.

Now, they did have eventually a federal civil rights action that was taken, but if you just disregard that, the acts -- the situation is that under your legislation, I don't feel Rodney King can bring a lawsuit in a civil court, and my question is, can you explain to us where it says in your bill which we did indeed change it, perhaps that's all I need to know, so that we can go ahead and release this to members for a vote, where it is in your bill that enables Rodney King to sue in that particular -- in a case such as that?

SENATOR NOZZOLIO: Mr. President, this measure is termed -- I am not going to respond, Senator, to the facts in the Rodney King case because I'm not totally conversant in all of those facts. I certainly read about some of them, yes, heard about them in the newspapers. The whole incident is reprehensible

to me, as I understand it, but I do not understand all the facts. So, Senator, I'm not going to subject this measure to the four corners of that hypothetical because there may be some facts in that hypothetical that I just don't know.

I think, Senator, appropriately this measure bars recovery by a person who is injured while he or she themselves is committing a crime. One committing a crime should not be allowed to sue the victim of that crime because the perpetrator of that crime is injured during its commission. That's the four corners of this action that's before us today, and either hypothetically, Senator, I stood before you for at least 25 minutes and tried to deal with your questions.

I think the sum and substance of this legislation is to protect those who are victimized by crime from being further victimized by the insult of the civil lawsuit on what, in fact, is no fault of their own for that injury to have taken place.

So, Senator, that's how I answer your question. I cannot get into the

hypothetical that I do not know all the entire facts of, and it does a disservice to the bill before us, and I respectfully wish you to accept that answer as a response to your question.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator.

SENATOR PATERSON: Thank you, Mr. President. I accept that answer as defensive. Will the Senator yield to another question?

ACTING PRESIDENT MEIER: Does the sponsor continue to yield?

SENATOR NOZZOLIO: Yes, sir.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR PATERSON: Senator Nozzolio, it's certainly not incumbent upon you to know all the facts of any particular case. I just used as an example a hypothetical of an actual case, and so all I'm really asking is what happens in the particular situation under your bill -- we won't use any examples -- just the general question: What happens where there is certainly a feeling on the part of the victim of the attack that there was a gross negligence on the part of the perpetrator who, in this

case, was a victim of a crime, but in defending themselves went too far?

For instance, someone who was conversant in some sort of martial arts, who was being attacked who could have avoided the situation but rather was violent to the point of exacting permanent injury on the person who was trying to rob them. So my point is in this - can you explain to me in this legislation where, so I just know, it explains that there can be an opportunity for civil recovery that we're not just insulating the system such that the aggrieved does not have any recourse to come to court, that the trier of fact has no opportunity to speak on this matter. Where does your legislation open the door?

Now, you have all of these claims that it opens the door to the extent that it has to be a situation where a crime is being committed against a victim. I understand that, but even victims of crime would be perceived to have some responsibility once they have taken themselves out of danger, not to then go on the offensive and perhaps cripple or in some way permanently injury the perpetrator.

SENATOR NOZZOLIO: Senator, I believe the question you ask is a very valid point. That is a very valid point that is talked about in virtually every law school in this nation, during discussions of force, deadly force, of the use of deadly force meeting other forces. Certainly these are questions for judges to ferret out when their staffs come before them and they're legitimate questions, Senator.

I think the answer to your question, though, is that this measure does not in any way mitigate the doctrine of, in my view, in terms of the issue of force, terms of the judge's ability to deal with those questions that we're talking about, issues that are appropriate when the commission of a crime occurs, that the victim of that crime would be given peace of mind and would be not subject to civil litigation that would, in effect, further victimize themselves.

These issues you discuss, Senator, really, I believe are issues that individual triers of fact, individual judges must weigh. I don't believe this bars those

types of discussions in courts of equity when the cases are brought before those tribunals. We are dealing here, I think, with another issue, and this issue, in my view, does not eliminate totally the discussions that -- when the circumstances you describe are put before a judge.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Finally, if Senator Nozzolio would yield for one last question.

ACTING PRESIDENT MEIER: Does the Senator yield?

SENATOR NOZZOLIO: For one last question.

ACTING PRESIDENT MEIER: With that qualification that Senator Paterson added, the Senator yields for one last question.

SENATOR PATERSON: Senator, we have an action that's brought in a court of law, a tort action which means a wrong, which is civil in -- in our way of rectifying these types of issues, and we have a person that comes into

court with this kind of allegation, one sitting in the fact pattern of the scenarios that we discussed here.

At that point, the trier of fact has to make a determination as to whether or not this case can go forward, and what I'm saying is, can you give me the language in the legislation that makes it clear that this is not a blanket bar? In other words, even if the trier of fact, and I think that you gave us quite a sufficient answer just then and explained it well, but what I'm just suggesting to you is that what you're explaining actually can't happen if the legislation becomes law.

At that point, even if you have, Senator Nozzolio, where the trier of fact and you looked at a situation and you just said, Oh, wow! The plaintiff should certainly be allowed to sue; this side doesn't have to go shooting at kids because he was opening a car door, but you had found as the judge in that case that you would have to rule in such a way as to dismiss the case because in the particular state, New York, where there is a bar to these types of cases being brought, in other words what you've

done in the legislation, in my opinion, is you've eliminated the trier of fact from having the same decision that you suggested that the trier of fact would make in the three examples that I gave to you; and so my question is, so that I can be relieved and many of us here who are concerned will understand that what you're saying will be borne out by the legislation because what you're saying, I have actually no problem with it, it makes perfect sense, and if we could write the law the way you're saying it, I'll vote for the legislation, but what I'm reading in the actual bill is that, even though the judge may be well intended and even though you may be well intended and see the situation where the plaintiffs' case should stand for trial, the law that this state would adopt would actually prohibit it, because it actually creates what would be a bar to the action being brought.

SENATOR NOZZOLIO: Senator, Mr. President, in response to the Senator's question, I think your counsel, Senator, in response to your question, I believe your counsel and you should look at those individual

acts of excessive force that you've described except in criminal acts themselves which they are in the statutes of this state and that that would trigger removal of the entire liability protection because, in effect, your victim becomes a perpetrator if under the facts you describe, excessive force is used. That is a separate criminal act; that is retaliation, in effect, becomes a criminal act in and of itself.

Let's get to the bottom line of this statute, Senator. The bottom line is that we're trying to protect innocent victims from being further victimized. That's the bottom line of this statute. We can talk about how many lawyers stood on the edge of a pin all day long, but the bottom line is that if you were victimized by a crime and the criminal fleeing from your house fell from your porch, you wouldn't want to face an action against that criminal because your porch wasn't put together right. That's what we should be considering, Senator, and that's the focus about lawyers and hypotheticals and hypotheticals.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator Nozzolio.

Senator Paterson.

SENATOR PATERSON: Senator Nozzolio, as you know -

ACTING PRESIDENT MEIER: Are you speaking on the bill, Senator Paterson?

SENATOR PATERSON: I absolutely am. I'm barred from asking any further questions by making that the last question, and I think that there are two points that I think need clarity, and I would hope that in the future that we try to pass legislation on the theory that's mindful of both of them.

The first one is what Senator Nozzolio and I refer to as the trier of fact actually in these types of situations. Prior to the case actually being -- being heard, the judge has to make a decision as to whether or not, when the defense attorney brings a motion to dismiss, whether or not there actually is a case here, whether or not there's actually a standing for the case to go forward, and in that situation, the judge makes a decision on the law, not the fact, and the decision on the law

is whether or not the action that is being brought by the plaintiff is actually permissible under the laws of our state, and what I'm saying is that what Senator Nozzolio's legislation creates is a situation where a motion to dismiss would be sustaining because there is no way to try this case because Senator Nozzolio in taking that away from the plaintiff, with good intent where the victim was concerned, but over reaching in terms of what would allow a plaintiff to go forward, so when Senator Nozzolio said that the plaintiff had other options unfortunately, the plaintiff does not have other options and the judge who, in this case, is the trier of the law, has absolutely no other course if they are going to follow the rules that this Legislature has passed by creating laws and the judge has got to throw this case out. This case, these cases, the ones I describe have got to be thrown out.

And the other point that I would like to make, Mr. President, is one on just the issue of what Senator Nozzolio suggests is that in some of these cases they're actually criminal acts. Well, that may be, Senator Nozzolio, and

certainly the individual who might commit those acts will be in many ways prosecuted. However, that doesn't afford any protection to what is now a new victim of a different crime. In other words, the victim of the crime is now in a -- in no position to seek any kind of criminal - civil damages because, as I just explained, the statute would bar any kind of recovery, and so for those two reasons, I can't at this point find that this legislation should pass, a piece of legislation of this magnitude. Not because there's anything wrong with its intent but because its effect is over-reaching and that Senator Nozzolio himself will look up one day and see a situation where you've got a person who may have been doing something that was unlawful, wound up totally and permanently disabled from the action of someone who became unreasonable in their attempt to defend themselves or their property.

These are difficult kinds of situations. The King case is probably the most famous situation and is a case in point exactly. And we're all trying to create a circumstance where we would be able to protect

people who are victims of crimes from any kind of action that would be taken against them when they're put in a position of defending themselves, and so it's my suggestion to my colleagues and to Senator Nozzolio that we should take a look at all the facts of some of the famous cases that have provided information on this particular issue, and we should recommit this legislation, and I certainly feel that until we take a look to further delineate how the language should be adopted in compliance with what we're trying to accomplish, that this will not become law because too many people are concerned about allowing a situation to be computerized when the trier of facts which would be the judge that would be supervising the civil case would be the best arbiter of what should happen in this situation. Otherwise all that judge can do is to make a legal ruling on whether the action is outside of the statute and all of the scenarios I describe, as egregious as they may have been, including the Rodney King case, would fall right within that ambit of law that would force the judge to throw the case out.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

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

Would the learned gentleman yield for a question or two?

ACTING PRESIDENT MEIER: Will you yield?

SENATOR NOZZOLIO: I yield.

SENATOR WALDON: I apologize, Senator Nozzolio. I was out of the room focusing on other issues and I only caught the tail end of the debate, so I may need some edification in helping me to understand what you're attempting to do.

One, is this applicable only to situations where the victim of the criminal action takes action against the aggressor?

SENATOR NOZZOLIO: Senator, in response, Mr. President, to Senator Waldon's question, this measure applies to those who are victimized by crime and the action of the perpetrator of the crime is brought in civil court against the victim of the crime.

I used a hypothetical, Senator, and I'll just use it again briefly. This is a real shock situation. An individual in their business had a perpetrator of the crime come in and break in. The victim scared the perpetrator away. The perpetrator of the crime ran out of the building and fell into the porch. Upon falling he broke his leg and sued the victim, the owner of the building, for damages. So it's that type of action, Senator, where some criminal is trying to profit from the injury that occurred during the perpetration of the crime.

It's four square within that limitation. It bars those who are perpetrating crimes from the civil action and then the victims of those crimes for injuries sustained only during that crime or fleeing the crime scene.

SENATOR WALDON: Mr. President, if the gentleman would yield again?

ACTING PRESIDENT MEIER: Would the gentleman yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The

gentleman yields.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator.

If I understand you correctly, Senator Nozzolio, this hypothetical would not be within the four squares of the situation you're talking about, the one I'm presenting to you for your knowledge and reaction. Joe Criminal robs a bank. He gets in his car, drives away a distance, parks the car and is walking across the street, any intersection, it doesn't matter. At that same moment that he's crossing the street, someone who is drunk, someone who is speeding, someone who goes through a red light kills him as a result of the impact of the car wrongfully driven while intoxicated, going through a red light. This would not apply, meaning the family of that victim, criminal first, pedestrian second, could not sue the driver of that car; is that what you're saying?

SENATOR NOZZOLIO: Mr. President, Senator, in my opinion, the injured party, the killed party, the murdered party in your hypothetical, Senator Waldon, would not be barred from recovering against that driver. But

he would be barred from recovering against the bank if an injury took place to the perpetrator. Let's say the bank clock fell on his head as he was leaving the bank and knocked him out cold. That's the -- or knocked him out, and he broke a couple of ribs. That type of injury is what we're talking about, not the chain of causation, or the chain that's been brought up two or three times in your hypothetical, Senator, that he might then be barred from recovery against the perpetrator of the drunk driving accident.

SENATOR WALDON: Mr. President, would the gentleman yield to a couple more questions?

ACTING PRESIDENT MEIER: Will the Senator yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: Senator yields.

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. I appreciate your patience.

Let's suppose that the person - let's suppose that the person who is injured has

not left the scene and suffers a severe injury, but the injury is caused by the negligence of the owner of the building, meaning that somehow the building itself has not been maintained in a condition required by law. Would the person still be barred from recovery?

SENATOR NOZZOLIO: Senator, what we're trying to do in responding to your question is that we can hypothetical to death, but I think what we're trying to do is focus on the assumption of risk of injury in the course of the criminal conduct, in the course of the criminal trespass. When you're entering into a place to commit a crime, that is by definition criminal trespass.

SENATOR WALDON: How about definition of burglary?

SENATOR NOZZOLIO: Well, that trespass, in effect, is something that is barred, would be barred under this statute for an individual getting civil relief because he was injured in a particular spot while he was committing a crime. Yes, he would be barred from bringing the action against the building - owner of the building rendered during the

commission of a crime. That's the whole point. We want to bar criminals from suing a building owner where they get injured going into a building and, if that's committing a crime, the person is committing a crime, that's available right now, is it not?

SENATOR NOZZOLIO: No, Mr. President, it isn't for those criminals who are looking at this. If the person who is in this situation in the first place -

SENATOR WALDON: I'm sorry.

SENATOR NOZZOLIO: It's exactly why we need this statute so we can deal with those who are committing crimes and happen to be injured and then suing their victims.

SENATOR WALDON: Mr. President, I did not understand. I thought he said justice and the courts are blind, is that what you said, Senator?

SENATOR NOZZOLIO: I said a number of things, and let me repeat.

SENATOR WALDON: Yes, and just let me make sure I understand you correctly. I thought you said sometimes the people, sometimes the court is blind.

SENATOR NOZZOLIO: No, what I said was -

SENATOR WALDON: I'm not going to knock that. I thought what you said was -

SENATOR NOZZOLIO: I said in these circumstances the court is blind to the reason why the person is in this particular position in the first place, that what we're trying to do is say to the court the Legislature doesn't want a perpetrator of a crime who happens to get injured during that crime to sue the victim of the crime for civil liability and we're saying that criminals assume the risk of their criminal conduct and that's what this legislation clearly defines. It establishes this level.

SENATOR WALDON: Thank you very much, Senator Nozzolio. If I may, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon, on the bill.

SENATOR WALDON: I trust the court. I trust that you your can, when information and facts of a case are presented to them, can determine who is negligent, who is not, who is a criminal and who is not. I think

that what Senator Nozzolio is proposing is a bit redundant, simply because the court is capable of managing these affairs right now.

I notice in the accompanying material to the proposal that the cases were from other states, other jurisdictions, not necessarily circumstances which have been judged the same by the judges who sit in New York State. I have very high regard for our justices. I think that our judges would have come down differently on these cases from the facts presented in the accompanying material.

I see no need to burden judges with our will -- pardon me, with Senator Nozzolio's will on this particular issue. I think the judges will do the right thing if given the right facts. I think that those who are criminals will be found to be so, and will be found in the amount that they are contributorily negligent in their injuries, that that's how the courts will come down. I see no reason to go through this exercise. It appears to me to be somewhat an exercise in futility.

I will have to oppose it and vote against it.

Thank you, Mr. President. Thank you, Senator Nozzolio.

ACTING PRESIDENT MEIER: Senator Gold, Senator Stavisky had previously asked -

SENATOR GOLD: Oh, no, I yield.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: I will yield to Senator Gold.

ACTING PRESIDENT MEIER: All right. Senator Gold.

SENATOR GOLD: Would the distinguished gentleman from Cornell yield for a question?

SENATOR NOZZOLIO: Surely, Senator.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR GOLD: Senator, just a couple of questions. I understand that Senator Paterson asked you how this would relate to the Rodney King case and some others, and I think you said in all fairness you weren't familiar with all of the details, but what -- let's take a for instance, Senator. I mean if you have a

situation, an undisputed situation where somebody is stopped by the police for traffic or whatever, things get out of hand. The individual goes past the line and let's say commits a simple assault, a misdemeanor assault on one of the police officers and takes that fact pattern, that at that point there are a number of police officers who get involved with huge amounts of excessive force.

The way I read this construction, Senator, I think that person has a problem in a civil court. Now, do they or do they not have a civil problem? Would they or would they not be able to recover under your bill?

SENATOR NOZZOLIO: Senator, as we discussed with Senator Paterson -

SENATOR GOLD: I'm sorry.

SENATOR NOZZOLIO: As we discussed with Senator Paterson, the triggering effect here is the commission of an additional crime, additional criminality. I'm not sure I understand totally your hypothetical.

SENATOR GOLD: Well, Senator, that's fair, and I think that you're entitled to have me be clear on the example, and I'll try to

restate it. Forget Rodney King, forget anyone. Let's create our own laboratory situation so we're clear.

An individual is stopped for a traffic light. For one reason or another, things get out of hand and that individual violates the law and slaps a police officer causing no particular damage but going far enough so that it's a misdemeanor. He assaulted a police officer. No damage to the police officer, at which point that policeman uses excessive force to -- slams him in the head with something and creates major damage to that individual.

SENATOR NOZZOLIO: Senator, let me respond. At that point I believe that we have at least a new crime. The crime is not the misdemeanor.

SENATOR GOLD: Sorry, Senator. The new crime what?

SENATOR NOZZOLIO: The crime is not the misdemeanor that becomes the special event. It becomes -- the crime of excessive force becomes the new threshold event. I think it's an intervening crime, and it's excessive

force by your definition which is criminal conduct. That supersedes the different sources of the initial misdemeanor violation, Senator, that you describe.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT MEIER: Senator, do you yield? Senator yields.

SENATOR GOLD: Senator, for one, I am proud as a human that you are sensitive to the fact that there is a problem here, but, Senator, as you and I know, Senator Farley is only partially right when he says we debate ideas here. We really are supposed to be debating laws, and in the law that you're proposing it says that if the -- the defendant or rather if the plaintiff has been convicted of the crime, he's out of court, and it also talks here, Senator, about the crime or leaving the crime or whatever happens after that, and what I'm saying to you, Senator, is that if the person who is -

ACTING PRESIDENT MEIER: One second, Senator Gold, Senator Nozzolio.

SENATOR NOZZOLIO: Senator, I

have -

ACTING PRESIDENT MEIER: Could we have order in the chamber, please. Could the members take their conversations outside of the chamber.

Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Senator, if the individual driving the car is found guilty of the misdemeanor of slapping the officer unprovoked, then you've got a conviction under your section and then following through with your section, since the excessive force causes the damage, Senator, I don't see anything in your bill that talks about intervening acts following felonies. None of that is in your bill.

Your bill just says if you have perpetrated a crime, the person that you have perpetrated it upon has a perfect defense if you're convicted of the crime. In the situation I gave you, the individual is convicted of slapping a police officer, and a police officer thereupon bashes in his brains, leaves him, God forbid, a quadriplegic and, under this bill, we

have created a total defense to that.

Now I'm not saying, Senator - Senator, listen to me -- that the police officer cannot be convicted of a crime. This is a bill dealing with civil liability.

SENATOR NOZZOLIO: Mr. President, this question is one that I would like to address.

SENATOR GOLD: Yeah.

SENATOR NOZZOLIO: We've heard it and we're talking about when the personal injury or injury to property occurs while the plaintiff is engaged in the conduct constituting a crime. Now, that conduct, once the misdemeanor, once the -

SENATOR GOLD: Or flight.

SENATOR NOZZOLIO: Or flight therefrom, a hypothetical. The misdemeanor violation takes places in the custody of the police. He's now committing a crime. He's not in a place, so, Senator -

SENATOR GOLD: Senator, your comments are fair, your comments are fair but if I may, Mr. President, he slaps the police officer.

SENATOR NOZZOLIO: New crime.

SENATOR GOLD: No, no, he slaps the police officer.

SENATOR NOZZOLIO: New crime.

SENATOR GOLD: Wait a minute, wait a minute. You slap him, new crime. He slaps the officer and at that point it gets out of hand. He slaps the police officer and it's a misdemeanor.

SENATOR NOZZOLIO: New crime.

SENATOR GOLD: It's the first time.

SENATOR NOZZOLIO: Senator, Mr. President, if I -- really, you got to keep track of your own -

SENATOR GOLD: I'm -- you're giving -- Mr. President.

ACTING PRESIDENT MEIER: We need to have some order.

SENATOR GOLD: Well, I'm trying to give him the question but I'm being interrupted.

Senator, the man is driving the car, he does nothing wrong. He does no crime. He stops the car; it gets out hand and he slaps

the police officer for the first time. He realizes he slaps the police officer and he turns around to flee, whereupon he gets bashed in the head with a gun, and the police officer continues to bash him, and that is the flight from the crime, exactly what your bill is talking about.

SENATOR NOZZOLIO: I thought, Senator, we've got two crimes. The first crime is the bopping on the head. The second crime is the flight. So, Senator, I think that it's your -- what you need to focus on here, in understanding the measure, is that any successively intervening crimes occurs that triggers a new set of circumstances, a new cast of characters, and I think for you to concern yourself with the intervening crimes without understanding that this is on an individual issue, that rather than clarify the issue, you're thinking of too many. Each crime is a new set of circumstances, Senator, and I believe the legislation adapts appropriately to those new circumstances.

SENATOR GOLD: Thank you. Will the Senator yield to a question?

ACTING PRESIDENT MEIER: Will the Senator yield?

SENATOR NOZZOLIO: Yes, sir.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GOLD: Senator Nozzolio, no matter how many times you say to me that it's a new crime and I'm misreading the bill, there are a lot of people listening and they know who's misreading and who's not misreading, Senator, and I know it's your legislation and I know you're proud of it, but the fact is that I'm still entitled to the proper answers.

The fact is, if somebody slaps the police officer and at that point does nothing else, he's there, he hasn't been arrested or whatever, and the police officer in the middle of the slap, three-quarters of the way, commits an offense and hurts this man, Senator, any way you want to look at it, your bill as I read it, protects a police officer from not only over-reacting but huge over reacting, huge over-reacting.

Now, it may be, Senator, that you say to me that's O.K. if it happens once because

whoever is doing it but, Senator, to say it doesn't when it's clear to everybody that it absolutely justifies civilly, not criminally, it absolutely justifies civilly over-reaction by the police department -

SENATOR NOZZOLIO: Senator, in response to that question, I don't see how you negate the fact that excessive force is not a separate crime. Excessive force by the police officer would not be a separate intervening crime here.

Senator, I think that that triggers a new plaintiff, a new defendant, and that if I believe that, we're (inaudible) rather than generating a victim of the crime who was the original driver of your car in your hypo thetical.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT MEIER: Does the Senator yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GOLD: Senator, I just

had an interesting thing happen, the first time in all of my time in the Senate. A judge wrote a decision -- it was a federal judge and he interpreted a statute that we passed, all of us, and he quoted from the debate and he said that I asked a question of somebody and based upon that he got some idea of legislative intent. So these questions, Senator, while sometimes we don't think they're important, they're starting to show up in court decisions.

Senator, did you just tell me for the purpose of legislative intent that if somebody commits a crime and is convicted of that crime but the officer involved uses excessive force, that's a separate crime and then the first -- the criminal, who is the guy in the first crime, can sue even in spite of your law?

SENATOR NOZZOLIO: Mr. President, Senator, in response to your question, excessive force by definition is a crime. Is that not correct, Senator?

SENATOR GOLD: My question is, are you saying as a matter of legislative intent that if a police officer over-reacts to a

criminal, even if the criminal is convicted, under your law, the criminal can still sue him.

SENATOR NOZZOLIO: Senator, if that over-reaction that you characterize rises to the definition of separate criminal conduct. If your definition of excessive force equals the definition of a crime, then, yes, Senator, that's exactly what I'm saying.

SENATOR GOLD: Will the Senator yield to another question?

ACTING PRESIDENT MEIER: Will the Senator yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GOLD: Senator, supposing that the initial criminal is prosecuted but as a result of motion practice, the case is thrown out -- the crime could have been a terrible crime and as a matter of fact, it could have been, God forbid, rape. It could have been serious criminal conduct and in leaving this, the scene of a rape, the father sees it and he goes bananas and the criminal is really injured

very badly -- which he may have deserved but as a result of motion practice, the case is thrown out and there's no conviction. Under your statute, I assume the criminal can sue the father, isn't that true?

SENATOR NOZZOLIO: Senator, I believe that that action which occurred while the claimant was engaged in some conduct constituting a crime would be an issue for a judge, the trier of fact, to determine, that the title of this section is assumption of risk by persons convicted of a crime. As such, I think that certainly we're -- our intent is to focus only on conviction. However, a trier of fact, I could see talking -- analyzing the facts and making a separate determination possibly beyond the definitions that we propose.

SENATOR GOLD: Will the Senator yield to one more question?

ACTING PRESIDENT MEIER: Will the Senator yield to one more question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GOLD: Senator -- and just listen to the question. Supposing that one of the tenants in Senator Bruno's district was in their home and somebody entered that property and I'm sure -- let's say it's one of these large apartment houses, 15 stories, a few hundred tenants, the typical thing you find in Rensselaer County, and the individual pulls out a gun, holds up the tenant, robs money from the tenant and then in fleeing from the property is injured because a board or something is defective in the floor and he falls into the floor. The individual, having fell into the floor, breaks his leg. He is captured and he's convicted of the robbery. May he sue the landlord for the broken leg because of the defect in the floor?

SENATOR NOZZOLIO: Mr. President, under the provisions of the statute, that plaintiff would be barred from successful completion of his litigation.

SENATOR GOLD: Okay. Well, Senator, if you'd yield to one more question. I don't think so.

SENATOR NOZZOLIO: Last question.

SENATOR GOLD: Because, Senator, what your law says -- and maybe you can answer this. What your law says is that if the defendant in the case was the victim of the crime, then the defense applies. The victim of the robbery was the tenant. The landlord was not the victim of the robbery and if there was no plea to a count of trespass, the landlord, even under your bill, is, I assume, responsible and has no defense.

SENATOR NOZZOLIO: Mr. President.

SENATOR GOLD: And I know that this landlord -

SENATOR NOZZOLIO: Mr. President, even though that wasn't -- even though Senator Gold promised that the question before was to be his last question, I would be glad to answer this question. This question presupposes that the individual entered this building in a valid way. Isn't the victim of a criminal trespass the owner of that building?

SENATOR GOLD: Not unless there's a conviction for it, Senator. Read your bill.

SENATOR NOZZOLIO: I thought you said he was convicted.

SENATOR GOLD: If the person was charged with robbery and was convicted of the robbery but was not charged or did not plead guilty to criminal trespass, then there's no criminal trespass victim of the owner of the building and even in Rensselaer County with its huge apartment buildings and its huge tenant population, that would, I think, be the law.

SENATOR NOZZOLIO: Senator, is that -- is that a question?

SENATOR GOLD: Yeah. I was asking you to respond.

ACTING PRESIDENT MEIER: The Senator did not ask you to yield to a question, actually.

SENATOR GOLD: Oh, all right.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR GOLD: I have a great sympathy for the problem that is being addressed by Senator Nozzolio, and I think as Senator Paterson pointed out, there was a case in New York which happened, I believe in the subway system. So that has to be New York because, while Rensselaer has huge apartment buildings,

it doesn't have a subway system. So that example could only be in New York and many of us were really rather taken that Mr. Sandusky wound up with nothing and the criminal in that case wound up with a rather substantial award and so, Senator Nozzolio, I agree with you that we ought to do something to open up that door and/or certainly close the door when it comes to the criminal cashing in, so to speak, on a series of events that were started by the criminal, but I really do believe, Senator, that the bill has a lot of drafting problems and when I say it's got drafting problems, don't misunderstand me. I don't think you're wrong in trying to tackle this problem. I think you're on the right track to tackle the problem. I think it's a problem that should be dealt with, but I think that what happens -- and I must refer to my friend Senator Fo... Senator Fo... I don't know why I'm messing this thing up. Senator Farley. I don't know why I would say Foley. Where was I getting Foley? My friend, Senator Farley, if it was a question -- just warming up -- if it was a question, Senator Nozzolio, of debating an issue, I don't think anybody on this side of the

aisle or on your side of the aisle would have an argument with you on the issue and if we were having cocktails -- and it's after 5:00 and I know we all wish we were -- and we were discussing this generally and I said do you think somebody who commits a crime and they happen to get hurt or injured during the crime, do you think they should be able to recover, nobody on this planet is going to deny that you are on the right track when you say what you say but, Senator, there's no such way of passing laws.

The way we pass laws is by specific bills with specific wording in them and all we're saying to you, Senator Nozzolio, is this could become a law and it could be the Nozzolio Law but why don't we do it the right way?

If the suggestions made by Senator Paterson were yielded to, it's not going to become the Paterson Law. It's still going to be your pen certificate. You'll still be the one standing by the Governor and with the Attorney General and everybody around carrying the Flag, the Conservative Party and everybody

else, it's still your law. It's just we're suggesting that you make it a little better and in that regard, Senator, there are flaws in this law and what is going to happen, if this were to become the law, is that this probably, Senator -- and this is just a guess. Nobody knows - 80 percent -- 80 percent of the time this law will be used, it will be used against people perhaps in the civil rights movement. It will be against people of minorities who are stopped improperly or in situations where you, Senator, if you were in a similar situation, would not be involved.

So I think we owe it in drafting such a law to make sure that we get the bad guys and we keep the money away from the bad guys but that we do it in a way that protects those people who really should be protected.

ACTING PRESIDENT MEIER: Any other Senator -- Senator Abate.

SENATOR ABATE: Would Senator Nozzolio yield to a question?

ACTING PRESIDENT MEIER: Will the Senator yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR ABATE: Yes, Senator, I agree with the concept of this bill that victims who act reasonably to safeguard their life and limb should not be faced with civil lawsuits that -- in that effort when they do injure a defendant. I'm concerned, however -- and I wonder if you will entertain laying this bill aside and looking at tightening this language. I know there have been suggestions by Senator Gold and Senator Paterson.

My concern is -- and correct me -- your prior statement said that if a victim acted in self-defense and reasonably, there would be a bar to any civil recovery by the defendant if that defendant was convicted in the courts. Does this bill address in any language if they acted unreasonably or did not act in self-defense?

The example is someone burglarized their home. They wake up. The defendant leaves -- leaves the premises and the victim chases -- the victim chases the defendant down the street four, five blocks away, shoots

the defendant in the back. Now, clearly it seems by the intent of your legislation you do not envision that that would be reasonable conduct or that would be reasonable and legitimate self-defense.

So would you consider, Senator Nozzolio -- because I agree with the concept. Many victims are unfairly facing this civil recovery. Would you consider tightening up this language so it only covers reasonable conduct, legitimate self-defense, et cetera?

SENATOR NOZZOLIO: Senator, in response to your question, I believe the statute before us does take into consideration that very well. As I explained to Senator Gold and Senator Paterson, when there is a superseding criminal event, that changes the makeup of the cast of characters under this bill. The victim, if he's convicted of excessive force, becomes, in effect, a criminal by definition and those definitions, as they change -- if you're defining excessive force as criminal excessive force, that sufficiently changes the characters in this that are impacted by this legislation. I believe it's taken care of sufficiently.

SENATOR ABATE: Would Senator Nozzolio yield to another question?

ACTING PRESIDENT MEIER: Does the Senator yield? The Senator yields.

SENATOR ABATE: But, Senator, if, in fact, that's the intent of this legislation -- and many of us feel that the wording of this legislation is ambiguous and could be interpreted in different ways -- why not in plain English ensure that this will be interpreted correctly to ensure that we're talking about reasonable conduct, legitimate self-defense on the part of the victim?

SENATOR NOZZOLIO: Senator, I don't see how that would do anything but -

SENATOR ABATE: How would that -

SENATOR NOZZOLIO: Senator, let me respond to your question. We have already set in our criminal statutes definitions for excessive force for those types of issues that you seem to be concerned with. If someone is convicted of excessive force, that changes -- I sound like a broken record, but that changes the definition of that individual. He becomes no longer the victim but the perpetrator of a

crime. So, therefore, he does not, as perpetrator of the crime, have the protections afforded by this measure. It's not -- we've already set forth the definitions of excessive force. We've already clearly defined them. I think that to further tinker with them doesn't add clarity to our statutes or this measure and, therefore, I reject that request -

SENATOR ABATE: But, Senator -

SENATOR NOZZOLIO: -- respect fully.

SENATOR ABATE: Senator Nozzolio, would you agree -

ACTING PRESIDENT MEIER: Senator Abate, do you wish the Senator to continue to yield?

SENATOR ABATE: Yes.

ACTING PRESIDENT MEIER: Senator, do you yield?

(Senator Nozzolio nods head.)

ACTING PRESIDENT MEIER: He continues to yield.

Senator Abate.

SENATOR ABATE: Senator, I'm glad that your legislative intent is one that I can

embrace. My concern is, if we added this language, which in my mind would be needed to clarify it, how would that in any way be inconsistent with the legislative intent of this bill? You may not think it's necessary but is it inconsistent with the intent?

SENATOR NOZZOLIO: Mr. President, I would have to -- before responding to that, Senator, I would have to see the specific language you're proposing. I would also recommend the assistance of you and your colleagues on that side of the aisle to get this measure introduced and passed in the Assembly, that the members of your party in the Assembly have chosen not to protect victims in this sort of way and certainly, if they did, there was a bill that came before us that had that definition and certainly recommend a Conference Committee that we look at that difference but, frankly, we do not have action in the Assembly to protect victims like -- as we are taking here.

SENATOR ABATE: On the bill.

ACTING PRESIDENT MEIER: Senator Abate, on the bill.

SENATOR ABATE: I will support the bill because I agree with the concept and I agree with the legislative intent as outlined by Senator Nozzolio. I hope by Senator Nozzolio's statement this is an invitation by some of us to work with him to maybe reach a compromise on language that better accomplishes the intent of the sponsor.

So as the ranking member on Crime Victims, Crime and Correction, I hope to be working with you and your staff so this is not a one-house bill. This is a bill that can be embraced not just by the Senate but also by the Assembly. I think in that effort we can help victims and do it in a responsible way.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT MEIER: A slow

roll call has been requested. Are there five members standing who wish to request a slow roll call?

The Secretary will call the roll.

THE SECRETARY: Senator Abate.

SENATOR ABATE: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

(Affirmative indication)

THE SECRETARY: Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote. I too feel that this is a -- the legislative intent of this bill is good legislative intent and I'm going to support the bill and vote yes, but I do want to state for the record that I believe that there are some

flaws in the language that hopefully will be corrected as it goes forward because under this bill right now, it's conceivable that an individual who strikes someone and is retaliated against by the initial victim by way of having their arm blown off cannot sue that individual for blowing his arm off but that individual who used the excessive force could actually be convicted of a crime.

Now, there's something basically inconsistent about that approach. The concept is good, but I think it needs a little bit more refinement.

I'll vote yes, assuming that that will happen.

ACTING PRESIDENT MEIER: Senator DeFrancisco will be recorded in the affirmative.

The Secretary will resume the roll call.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just to explain my vote. I concur completely with Senator DeFrancisco.

I vote yes with the same

reservations.

ACTING PRESIDENT MEIER: Senator Dollinger, in the affirmative.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gentile.

(There was no response.)

Senator Gold.

(There was no response.)

Senator Gonzalez.

(There was no response.)

Senator Goodman.

(There was no response.)

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann, excused.

Senator Holland.

SENATOR HOLLAND: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

(There was no response.)

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.
SENATOR LACHMAN: Aye.
THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
(Affirmative indication)
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Mr. President, to explain my vote. There's a real gap in this bill between what the sponsor says he's seeking to do and what the bill does. Even supporters of the bill have said this is a flawed bill.
The point is it's so easy to correct this bill. We have any number of measures during the course of a year where we may immunize somebody from their action in committing simple negligence but provide that they're not immunized from gross negligence and if you put that provision in the bill, it would probably pass 61 to nothing and it's only the sort of attitude that we get here that once a

bill is put out on the floor, it has greater sanctity than the works of the Apostles. It can't be changed. It can't be improved upon. So we're going to pass a bill that even the supporters -- and I suspect some of them feel they don't -

ACTING PRESIDENT MEIER: Excuse me one moment, Senator Leichter. Can we have some order in the house, please.

Senator Leichter.

SENATOR LEICHTER: I suspect that some of the supporters feel uncomfortable as I do in certain respects. You know, we're voting to assert the rights of criminals instead of protecting the victims, but the fact of the matter is that we want a good, workable bill and this one -- this one just doesn't do it and it's not enough to say, Well, the bill has some flaws but the intent is clear. If the bill says black, no matter how much the sponsor says I intend white, the court has to interpret it as black.

So I'm afraid that until Senator Nozzolio comes back and decides that what he put out in the first instance wasn't the most

infallible perfect piece of legislation ever written and write something that carries out his intent, I'm constrained to vote against the bill.

I vote nay.

ACTING PRESIDENT MEIER: Senator Leichter in the negative.

Resume the roll call.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.
THE SECRETARY: Senator Mendez.
SENATOR MENDEZ: No.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: No.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Yes.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Aye.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Aye.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: Yes.
THE SECRETARY: Senator Paterson.
SENATOR PATERSON: Mr. President, it is very likely that one day an appellate court is going to review this legislation and something that Senator Gold said -- not that he needs to be complimented any more because he is -- well, yeah. Senator Gold, who, in my opinion, there's no one that works harder in

government right now, he pointed out in this discussion that there was recently an appellate case where the legislative intent entailed an examination of the legislative discussion and the judges actually went through the transcript. If they went through the transcript today and they heard what Senator Nozzolio intends to happen through this legislation, we'll be in a lot better shape than if we pass the legisla tion. There are a number of people who have described problems they have with the legisla tion and decided they wanted to vote for it.

This is the type of law that, if you vote against it, you are pilloried and cajoled as someone who doesn't want to protect crime victims, but there is something that is very important in this American government and it has to do with our right to have our disputes settled in a court of law and in certain situations, we might bar an action in a court of law because we feel that there is no just claim. This is not one of those situations and no matter how well it may seem and how well intended it may be, there is no language in this bill that talks about supervening crimes which

Senator Nozzolio referred to. There's nothing in this bill -

ACTING PRESIDENT MEIER: Senator Paterson, could you suspend just a second. Can we have some order in the house. Can the members please stop their conversation so we can hear Senator Paterson and continue the roll call.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

The -- there's nothing in the actual language of the legislation that provides for some of the protections and the cures that Senator Nozzolio assured us were within his contemplation when he wrote the legislation and that's not extraordinary that that happens and it's also not -

ACTING PRESIDENT MEIER: Senator Paterson, the time limit on the rules to explain the vote has expired. Would you state your vote, sir, so we can continue the roll call.

SENATOR PATERSON: My vote is no, Mr. President.

ACTING PRESIDENT MEIER: Senator

Paterson in the negative.

Resume the roll call.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Rosado.

SENATOR ROSADO: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator

Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Yes.

THE SECRETARY: Senator Stavisky.

(There was no audible response.)

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

(There was no response.)

Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Explain my vote.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

If this were a perfect world, then what Senator Nozzolio has proposed, we could all accept because when there is perfection, no mistakes are made but this is not a perfect world and many mistakes are made and

my fear is that the mistakes made by the over-zealous grocer, when a kid takes a bag of potato chips, as happened in California, and is killed for a bag of potato chips, that is too far -- going too far.

My fear is that -- and I support police and everyone here knows it, but what about the over-zealous police officer who, in apprehending a criminal, forgets his training, forgets the restrictions placed upon him and over-zealously chokes someone, as the young man in the Bronx, Baez, was choked or shoot someone in the back as was Cedeno. Too far mistakes are made.

For those reasons, because we are in an imperfect world and mistakes are made, I cannot support this proposal and vote in the no.

ACTING PRESIDENT MEIER: Senator Waldon in the negative.

Resume the roll call.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MEIER: Call the absentees.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Aye.

THE SECRETARY: Senator Gentile.

(There was no response.)

Senator Gold.

SENATOR GOLD: Mr. President, to explain my vote.

Mr. President, I really feel badly about this particular bill because, while there are different involvements that we all have with legislation as things go along, the Sandusky-Cummings case was one that I not only knew about but the judge in that case was a fraternity brother of mine in college and one of the things that was involved in that case was the "Son of Sam" Law that I wrote and I know the issues, and it's no different now than what I said some 20 minutes ago.

If it's a question of what to do with the general concept. Senator Farley's right. We can all make an easy vote and get out of here, but it's a shame that we are put in a position, as we so often are in this house, where the Majority, in its sloppiness, not our sloppiness -- you know, we pass some 5-, 600 bills. You can only blame two of the

sloppinesses on us. All the rest of the junk is ours. Because of the sloppiness, you put us on the horns of these dilemmas.

Senator Nozzolio, I am going to vote with my ranking member, Senator Abate. I will support the concept but I hope, Senator, that in the traditions of that great place in Ithaca that you and I both know about, that your ears and eyes and mind are not closed to some meaningful discussions so that we can put something together that might be an effective law.

I very reluctantly, in the Senator Farley tradition, will vote yes.

ACTING PRESIDENT MEIER: Senator Gold in the affirmative.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

(There was no response.)

Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

ACTING PRESIDENT MEIER: Announce

the results.

THE SECRETARY: Ayes 50, nays 8.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 819, by Senator Lack, Senate Print 3479, an act to amend the General Municipal Law, in relation to filing of a notice of claim.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Lack, an explanation has been requested.

SENATOR LACK: Thank you, Mr. President.

This bill is simple. It would provide that where a notice of claim to a municipality is late, an application can be made to a District Court, a City Court or the New York City Civil Court in addition to what's currently permitted, Supreme Court or County Court.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT MEIER: The bill is passed.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions on the calendar.

ACTING PRESIDENT MEIER: We will return to the order of business, motions and resolutions.

SENATOR BRUNO: Can we move to adopt the Resolution Calendar.

ACTING PRESIDENT MEIER: There is a request by the sponsor to open up Resolution 1401 to all members of the Senate.

Senator Levy -- on the motion to adopt the Resolution Calendar, all those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Senator Maltese would like to open sponsorship of Resolution 1502 honoring the Italian Congressional Medal of Honor recipients and other Americans of Italian descent. Unless there's an objection, we'll put all members on it. If somebody would not like to sponsor the resolution, they should notify the desk.

ACTING PRESIDENT MEIER: Without objection, so ordered.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there's no housekeeping at the desk.

SENATOR SKELOS: There being no further business, I move we adjourn until Thursday, May 29th, at 10:00 a.m.

ACTING PRESIDENT MEIER: There being no further -- on the motion of Senator Skelos to adjourn, all in favor aye -- the Senate is adjourned until 10:00 o'clock -- the Senate is adjourned until 10:00 o'clock,

Wednesday, May 29th -- Thursday, May 29th.

(Whereupon, at 5:37 p.m., the Senate adjourned.)