

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ALBANY, NEW YORK

May 28, 1997

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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,

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

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

6 THE PRESIDENT: Senator Lack.

7 SENATOR LACK: Thank you, Madam  
8 President.

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

21 ACTING PRESIDENT MARCELLINO: The  
22 Chair recognizes Senator Rath.

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

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

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

13 ACTING PRESIDENT MARCELLINO:  
14 Senator Volker.

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

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

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

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

13 (Response of "Aye.")

14 All opposed nay.

15 (There was no response. )

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

19 (Applause).

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

1 Secretary will read.

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

5 ACTING PRESIDENT MARCELLINO:  
6 Senator Lack.

7 SENATOR LACK: Thank you, Mr.  
8 President.

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

20 ACTING PRESIDENT MARCELLINO:  
21 Chair recognizes Senator Leibell.

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

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

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

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

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

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

1 Thank you.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Spano.

4 SENATOR SPANO: Thank you, Mr.  
5 President.

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

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

12                   Judge Dillon, congratulations.

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

17                   (Response of "Aye.")

18                   Opposed nay.

19                   (There was no response. )

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

1 say Maura? O.K.

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

4 (Applause)

5 Return to reports of select  
6 committees.

7 Communications and reports from  
8 state officers.

9 Motions and resolutions. The  
10 Chair recognizes Senator Farley.

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

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

19 ACTING PRESIDENT MARCELLINO: So  
20 ordered.

21 Senator Skelos, the resolution  
22 calendar? Hello!

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

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

3                   The Secretary will read.

4                   THE SECRETARY: Calendar Number  
5 143, by Senator Wright, Senate Print 1659-A, an  
6 act to amend the Vehicle and Traffic Law, in  
7 relation to creating the crime of aggravated  
8 driving while intoxicated.

9                   SENATOR PATERSON: Lay aside.

10                  ACTING PRESIDENT MARCELLINO: Lay  
11 the bill aside.

12                  THE SECRETARY: Calendar Number  
13 334, by member of the Assembly Vitaliano,  
14 Assembly Print 1484, an act to amend the Civil  
15 Service Law.

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

18                  THE SECRETARY: Calendar Number  
19 434, by Senator Seward, Senate Print 3267, an  
20 act to amend the Town Law, in relation to  
21 non-resident volunteer firefighters.

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

24                  SENATOR PATERSON: Lay aside.

25                  ACTING PRESIDENT MARCELLINO: All

1 right, Senator. Lay it aside.

2 THE SECRETARY: Calendar Number  
3 456, by Senator Marcellino, Senate Print 3679-A,  
4 an act to amend the Environmental Conservation  
5 Law, in relation to scup and black sea bass.

6 SENATOR GOLD: Lay it aside.

7 (Inaudible comment by a member.)

8 ACTING PRESIDENT MARCELLINO:

9 This is a lay aside from yesterday. (Inaudible)  
10 This is Calendar Number 456 that was laid aside  
11 yesterday for the day. It is on the calendar.

12 SENATOR SKELOS: The supplemental  
13 active.

14 SENATOR GOLD: No, it isn't  
15 there.

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

19 THE SECRETARY: Calendar Number  
20 664, by Senator Nozzolio, Senate Print Number  
21 4084-A, an act to amend the Civil Practice Law  
22 and Rules.

23 SENATOR PATERSON: Lay it aside,  
24 please.

25 ACTING PRESIDENT MARCELLINO: Lay

1 it aside.

2 THE SECRETARY: Calendar Number  
3 819, by Senator Lack, Senate Print 3479, an act  
4 to amend the General Municipal Law.

5 ACTING PRESIDENT MARCELLINO:  
6 Read the last section.

7 SENATOR PATERSON: Lay that  
8 aside.

9 ACTING PRESIDENT MARCELLINO: Lay  
10 it aside, please.

11 THE SECRETARY: Calendar Number  
12 821, by Senator Alesi, Senate Print 3569, an act  
13 to amend the Real Property Tax Law.

14 SENATOR PATERSON: Lay aside.

15 ACTING PRESIDENT MARCELLINO: Lay  
16 it aside.

17 THE SECRETARY: Calendar Number  
18 822, by Senator Libous, Senate Print 3721.

19 SENATOR GOLD: Lay aside.

20 ACTING PRESIDENT MARCELLINO: Lay  
21 the bill aside, please.

22 THE SECRETARY: Calendar Number  
23 829, by Senator Rath, Senate Print 4357, an act  
24 to amend the Real Property Law and the  
25 Agriculture and Markets Law.

1                   SENATOR PATERSON: Lay aside,  
2                   please.

3                   ACTING PRESIDENT MARCELLINO: Lay  
4                   the bill aside.

5                   THE SECRETARY: Calendar Number  
6                   846, by Senator Present, Senate Print 4112, an  
7                   act to enact the Private Activity Bond  
8                   Allocation Act of 1997.

9                   SENATOR PATERSON: Lay aside.

10                  ACTING PRESIDENT MARCELLINO: Lay  
11                  the bill aside.

12                  THE SECRETARY: Calendar Number  
13                  848, by Senator Rath, Senate Print 4852, an act  
14                  to amend the State Administrative Procedure Act.

15                  SENATOR GOLD: Lay aside.

16                  ACTING PRESIDENT MARCELLINO: Lay  
17                  the bill aside.

18                  THE SECRETARY: Calendar Number  
19                  862, by Senator Volker, Senate Print 4478, an  
20                  act to amend the Criminal Procedure Law.

21                  SENATOR GOLD: Lay aside.

22                  ACTING PRESIDENT MARCELLINO: Lay  
23                  the bill aside, please.

24                  THE SECRETARY: Calendar Number  
25                  870, by Senator Volker, Senate Print 5180, an

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

4 ACTING PRESIDENT MARCELLINO:  
5 Read the last section.

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

8 SENATOR PATERSON: Lay aside.

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

11 THE SECRETARY: Calendar Number  
12 886, by Senator Goodman, Senate Print 3651, an  
13 act to amend the Alcoholic Beverage Control  
14 Law.

15 SENATOR PATERSON: Lay aside.

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

20 THE SECRETARY: Calendar Number  
21 898, by Senator Goodman, Senate Print 4259-A, an  
22 act to amend Chapter 674 of the Laws of 1993.

23 SENATOR PATERSON: Lay aside.

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

1 request of the sponsor.

2 THE SECRETARY: Calendar Number -

3 ACTING PRESIDENT MARCELLINO:

4 Ladies and gentlemen, if we please could have  
5 some order in the house, we take the conversa  
6 tions out of the room, please. It's very  
7 difficult to hear the lay asides.

8 Secretary will continue to read.

9 THE SECRETARY: Calendar Number  
10 901, by Senator Cook, Senate Print 4568, an act  
11 to amend the Arts and Cultural Affairs Law.

12 SENATOR PATERSON: Lay aside.

13 ACTING PRESIDENT MARCELLINO: Lay  
14 the bill aside, please.

15 THE SECRETARY: Calendar Number  
16 910, by Senator Marchi, Senate Print 4015-A, an  
17 act to amend the Navigation Law.

18 SENATOR PATERSON: Lay aside.

19 ACTING PRESIDENT MARCELLINO: Lay  
20 the bill aside, please.

21 THE SECRETARY: Calendar Number  
22 913, by Senator Nozzolio, Senate Print 1965, an  
23 act to amend the Executive Law.

24 SENATOR STACHOWSKI: Lay aside.

25 ACTING PRESIDENT MARCELLINO: Lay

1 the bill aside, please.

2 THE SECRETARY: Calendar Number  
3 915, by Senator Nozzolio, Senate Print 2779, an  
4 act to amend the Correction Law.

5 SENATOR STACHOWSKI: Lay aside.

6 ACTING PRESIDENT MARCELLINO: Lay  
7 the bill aside, please.

8 THE SECRETARY: Calendar Number  
9 920, by Senator Nozzolio, Senate Print 3429, an  
10 act to amend the Correction Law.

11 SENATOR STACHOWSKI: Lay aside.

12 SENATOR GOLD: Lay aside.

13 ACTING PRESIDENT MARCELLINO: Lay  
14 the bill aside.

15 THE SECRETARY: Calendar Number  
16 931, by Senator Marcellino, Senate Print 5079-A,  
17 an act to amend the Navigation Law.

18 SENATOR STACHOWSKI: Lay aside.

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

22 THE SECRETARY: Calendar Number  
23 944, by Senator Skelos, Senate Print 5149, an  
24 act to amend the Domestic Relations Law.

25 SENATOR STACHOWSKI: Lay aside.

1                   ACTING PRESIDENT MARCELLINO: Lay  
2 bill aside, please.

3                   THE SECRETARY: Calendar Number  
4 945, by Senator Skelos, Senate Print 5150, an  
5 act to amend the Domestic Relations Law.

6                   SENATOR PATERSON: Lay aside.

7                   ACTING PRESIDENT MARCELLINO: Lay  
8 the bill aside, please.

9                   THE SECRETARY: Calendar Number  
10 964, by Senator Marchi, Senate Print 713, an act  
11 to amend the Public Authorities Law.

12                  SENATOR GOLD: Lay aside.

13                  ACTING PRESIDENT MARCELLINO: Lay  
14 the bill aside, please.

15                  THE SECRETARY: Calendar Number  
16 968, by Senator Levy, Senate Print 919, an act  
17 to amend the Public Authorities Law.

18                  SENATOR PATERSON: Lay aside.

19                  ACTING PRESIDENT MARCELLINO: Lay  
20 the bill aside, please.

21                  THE SECRETARY: Calendar Number  
22 980, by Senator Cook, Senate Print 2648, an act  
23 to amend the Highway Law.

24                  SENATOR PATERSON: Lay aside.

25                  ACTING PRESIDENT MARCELLINO: Lay

1 the bill aside.

2 THE SECRETARY: Calendar Number  
3 984, by Senator Leibell, Senate Print 3551, an  
4 act to amend the Vehicle and Traffic Law.

5 SENATOR PATERSON: Lay aside.

6 ACTING PRESIDENT MARCELLINO: Lay  
7 the bill aside, please.

8 THE SECRETARY: Calendar Number  
9 1030, by member of the Assembly Stringer,  
10 Assembly Print 5635, an act to amend the  
11 Election Law.

12 ACTING PRESIDENT MARCELLINO: Lay  
13 the bill aside, please.

14 THE SECRETARY: Calendar Number  
15 1031, by Senator Present, Senate Print 4511-A,  
16 an act to amend the Election Law.

17 SENATOR STACHOWSKI: Lay aside.

18 ACTING PRESIDENT MARCELLINO: Lay  
19 the bill aside, please.

20 THE SECRETARY: Calendar Number  
21 1043, by Senator Marchi, Senate Print 3584, an  
22 act to amend the Business Corporation Law.

23 ACTING PRESIDENT MARCELLINO: Lay  
24 the bill aside, please.

25 THE SECRETARY: Calendar Number

1 1050, by Senator Marchi, Senate Print 4085, an  
2 act to repeal provi...

3 SENATOR PATERSON: Lay aside.

4 ACTING PRESIDENT MARCELLINO: Lay  
5 the bill aside, please.

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

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

10 SENATOR GOLD: Mr. President.

11 ACTING PRESIDENT MARCELLINO:  
12 Excuse me. Senator Gold.

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

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

20 THE SECRETARY: Calendar Number  
21 1055, by Senator LaValle, Senate Print 4431, an  
22 act to amend the Education Law, in relation to  
23 sharing of information.

24 SENATOR STACHOWSKI: Lay it  
25 aside.

1                   ACTING PRESIDENT MARCELLINO: Lay  
2 bill aside, please.

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

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

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

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

14                   ACTING PRESIDENT MARCELLINO:  
15 Secretary will read Number 980.

16                   THE SECRETARY: Calendar Number  
17 980, by Senator Cook, Senate Print 2648, an act  
18 to amend the Highway Law, in relation to use of  
19 town-owned highway machinery, tools and  
20 equipment.

21                   ACTING PRESIDENT MARCELLINO:  
22 Read the last section.

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

25                   ACTING PRESIDENT MARCELLINO:

1 Call the roll.

2 (The Secretary called the roll. )

3 THE SECRETARY: Ayes 42.

4 ACTING PRESIDENT MARCELLINO: The  
5 bill is passed.

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

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

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

14 THE SECRETARY: Calendar Number  
15 143, by Senator Wright, Senate Print 1659-A, an  
16 act to amend the Vehicle and Traffic Law, in  
17 relation to creating the crime of aggravated  
18 driving while intoxicated.

19 SENATOR STACHOWSKI:  
20 Explanation.

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

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

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

8                   ACTING PRESIDENT MARCELLINO:  
9                   Read the last section.

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

13                  ACTING PRESIDENT MARCELLINO:  
14                  Call the roll.

15                  (The Secretary called the roll. )

16                  THE SECRETARY: Ayes 53.

17                  ACTING PRESIDENT MARCELLINO: The  
18                  bill is passed.

19                  THE SECRETARY: Calendar Number  
20                  434, by Senator Seward, Senate Print 3267, an  
21                  act to amend the Town Law, in relation to  
22                  non-resident voluntary firefighters.

23                  SENATOR PATERSON: Explanation,  
24                  please.

25                  ACTING PRESIDENT MARCELLINO:

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

3 SENATOR SEWARD: Certainly, Mr.  
4 President.

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

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

21 (Inaudible comment).

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

25 SENATOR SEWARD: Certainly.

1                   ACTING PRESIDENT MARCELLINO:

2           Yes, he yields.

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

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

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

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

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

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

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

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

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

1           that change would deal with that particular set  
2           of circumstances. The difficulty is there are  
3           other circumstances out there that your  
4           suggested amendment would not cover; so my view  
5           is that we should proceed with this legislation  
6           to give the Secretary of State the authority to  
7           grant the exemption depending on whatever the  
8           local circumstances are that do not allow a  
9           local fire department to come up with at least  
10          55 percent of their members being actual  
11          residents and 45 percent being non-residents.

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

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

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

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

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

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

14 SENATOR DOLLINGER: Thank you,  
15 Mr. President.

16 SENATOR GOLD: Mr. President.

17 ACTING PRESIDENT MARCELLINO:  
18 Senator Gold.

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

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

23 SENATOR SEWARD: Certainly.

24 ACTING PRESIDENT MARCELLINO: He  
25 yields, Senator.

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

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

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

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

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

11 SENATOR SEWARD: Certainly.

12 ACTING PRESIDENT MARCELLINO:  
13 Senator yields.

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

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

1 a community?

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

11 SENATOR GOLD: Well -

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

15 SENATOR GOLD: Will the Senator  
16 yield to a question?

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

19 SENATOR SEWARD: Certainly.

20 ACTING PRESIDENT MARCELLINO: I  
21 believe he does, sir.

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

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

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

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

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

23 SENATOR GOLD: All right.

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

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

4                   ACTING PRESIDENT MARCELLINO:  
5 Senator, do you yield?

6                   SENATOR SEWARD: Yes.

7                   ACTING PRESIDENT MARCELLINO: I  
8 believe he yields, sir.

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

18                   SENATOR SEWARD: Yes.

19                   ACTING PRESIDENT MARCELLINO:  
20 Senator Seward.

21                   SENATOR SEWARD: Yes, there are.

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

25                   ACTING PRESIDENT MARCELLINO:

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

3 SENATOR SEWARD: Yes, certainly.

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

20 ACTING PRESIDENT MARCELLINO:

21 Senator Seward.

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

25 SENATOR GOLD: O.K.

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

3                   SENATOR GOLD: No, no, no.

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

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

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

1 with the general scope.

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

4 ACTING PRESIDENT MARCELLINO:  
5 Senator Gold, on the bill.

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

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

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

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

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

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

5 It also is quite clear to me from  
6 your explanation, which I have no reason to  
7 doubt at all, that the fire departments either  
8 have a contract with a municipality so the  
9 municipality has a grasp of what the costs are  
10 going to be, or that you have a taxing fire  
11 district where you elect the commissioners and  
12 those are your neighbors and your residents, so  
13 I don't know why we start out to have a law to  
14 begin with that says that you must have, quote,  
15 55 percent of the people who participate in a  
16 volunteer fire department as being residents.  
17 If that is an active healthy volunteer fire  
18 department and it turns out that three people  
19 moved and all of a sudden your percentages are  
20 53 or 54 percent, why that should cause havoc in  
21 a community, I don't know and I'm just  
22 suggesting to you, Senator Seward, that I'm not  
23 going to oppose the concept of giving  
24 exemptions. I just think that you might be  
25 doing us all a favor by putting some kind of

1 repealer in to get rid of this.

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

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

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

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

15 SENATOR GOLD: Any time, sir.

16 ACTING PRESIDENT MARCELLINO: I'm  
17 shocked.

18 Senator Paterson.

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

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

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

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

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

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

24 Last section.

25 ACTING PRESIDENT MEIER: Read the

1 last section.

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

5 ACTING PRESIDENT MEIER: Call the  
6 roll.

7 (The Secretary called the roll. )

8 THE SECRETARY: Ayes 55.

9 ACTING PRESIDENT MEIER: The bill  
10 is passed.

11 Secretary will read Calendar  
12 Number 456.

13 THE SECRETARY: Calendar Number  
14 456, by Senator Marcellino, Senate Print 3679-A,  
15 an act to amend the Environmental Conservation  
16 Law, in relation to scup and black sea bass.

17 ACTING PRESIDENT MEIER: Senator  
18 Marcellino.

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

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

1 authority until December 31st, 1999.

2 ACTING PRESIDENT MEIER: Senator  
3 Oppenheimer.

4 SENATOR OPPENHEIMER: Senator  
5 yield for a few questions?

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

8 SENATOR MARCELLINO: It will be  
9 my pleasure.

10 ACTING PRESIDENT MEIER: The  
11 sponsor yields.

12 Senator Oppenheimer.

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

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

1 two and a half-year bill?

2 SENATOR MARCELLINO: Mr.

3 President, through you, Senator Oppenheimer, our  
4 colleagues in the other house had some thoughts  
5 about modifying the legislation before the last  
6 expiration date so we accommodated them and  
7 agreed to a two-month extension so that we could  
8 negotiate changes.

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

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

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

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

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

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

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

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

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

10 SENATOR OPPENHEIMER: Senator, if  
11 you will yield.

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

15 SENATOR OPPENHEIMER: Yes.

16 ACTING PRESIDENT MEIER: Will the  
17 Senator yield?

18 SENATOR MARCELLINO: My pleasure.

19 ACTING PRESIDENT MEIER: Senator  
20 yields.

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

1       fished; where -- where -

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

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

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

5 SENATOR OPPENHEIMER: If you  
6 would yield for another question.

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

9 SENATOR MARCELLINO: Yes, I do,  
10 sir.

11 ACTING PRESIDENT MEIER: Senator  
12 yields.

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

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

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

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

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

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

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

23                          ACTING PRESIDENT MEIER:  Senator  
24          Marcellino, do you yield?

25                          SENATOR MARCELLINO:  Yes, I do,

1 sir.

2 ACTING PRESIDENT MEIER: Senator  
3 yields.

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

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

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

25 What we have done here is try to

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

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

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

13 ACTING PRESIDENT MEIER: Senator  
14 Marcellino, will you yield?

15 SENATOR MARCELLINO: Sure.

16 ACTING PRESIDENT MEIER: Senator  
17 yields.

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

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

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

5 SENATOR OPPENHEIMER: For  
6 restaurants.

7 SENATOR MARCELLINO: Or personal  
8 consumption, yeah.

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

12 SENATOR MARCELLINO: Thank you,  
13 Senator.

14 ACTING PRESIDENT MEIER: Read the  
15 last section.

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

18 ACTING PRESIDENT MEIER: Call the  
19 roll.

20 (The Secretary called the roll. )

21 THE SECRETARY: Ayes 56.

22 ACTING PRESIDENT MEIER: The bill  
23 is passed.

24 Secretary will read Calendar  
25 Number 664.

1 THE SECRETARY: Calendar Number  
2 664, by Senator Nozzolio, Senate Print 4084-A,  
3 an act to amend the Civil Practice Law and  
4 Rules, in relation to establishing a complete  
5 bar to recovery by persons injured.

6 SENATOR PATERSON: Explanation.

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

10 SENATOR NOZZOLIO: Thank you, Mr.  
11 President.

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

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

24 ACTING PRESIDENT MEIER: Senator  
25 Paterson.

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

3                   If Senator Nozzolio would yield  
4                   for a question.

5                   ACTING PRESIDENT MEIER: Senator  
6                   yield?

7                   SENATOR NOZZOLIO: Yes, Mr.  
8                   President.

9                   ACTING PRESIDENT MEIER: Senator  
10                  Nozzolio yields.

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

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

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

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

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

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

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

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

1           it.

2                           Thank you, Mr. President.

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

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

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

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

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

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

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

1 Nozzolio said.

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

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

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

20           ACTING PRESIDENT MEIER: Senator,  
21 do you yield?

22           SENATOR NOZZOLIO: Yes.

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

25           SENATOR PATERSON: Senator

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

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

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

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

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

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

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

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

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

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

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

1 described in the facts relative to Rodney King.

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

23                           ACTING PRESIDENT MEIER: Senator  
24 Paterson.

25                           SENATOR PATERSON: Thank you, Mr.

1 President. If Senator Nozzolio would continue  
2 to yield.

3 ACTING PRESIDENT MEIER: Senator  
4 continue to yield?

5 SENATOR NOZZOLIO: Yes, Mr.  
6 President.

7 ACTING PRESIDENT MEIER: Senator  
8 continues to yield.

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

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

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

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

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

15 What I'm suggesting to you -

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

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

1                   SENATOR NOZZOLIO: Appreciate  
2 your definition.

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

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

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

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

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

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

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

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

8                   SENATOR NOZZOLIO:  Yes, Mr.  
9    President.

10                  ACTING PRESIDENT MEIER:  Sponsor  
11    yields to Senator Paterson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Thank you, Mr. President.

6 ACTING PRESIDENT MEIER: Senator.

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

10 ACTING PRESIDENT MEIER: Does the  
11 sponsor continue to yield?

12 SENATOR NOZZOLIO: Yes, sir.

13 ACTING PRESIDENT MEIER: Senator  
14 continues to yield.

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

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

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

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

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

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

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

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

8 ACTING PRESIDENT MEIER: Senator  
9 Paterson.

10 SENATOR PATERSON: Thank you, Mr.  
11 President.

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

14 ACTING PRESIDENT MEIER: Does the  
15 Senator yield?

16 SENATOR NOZZOLIO: For one last  
17 question.

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

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

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

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

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

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

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

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

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

25 Thank you, Mr. President.

1                   ACTING PRESIDENT MEIER: Thank  
2                   you, Senator Nozzolio.

3                   Senator Paterson.

4                   SENATOR PATERSON: Senator  
5                   Nozzolio, as you know -

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

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

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

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

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

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

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

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

1                   SENATOR GOLD: Mr. President.

2                   ACTING PRESIDENT MEIER: Senator  
3 Waldon.

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

6                   Would the learned gentleman yield  
7 for a question or two?

8                   ACTING PRESIDENT MEIER: Will you  
9 yield?

10                  SENATOR NOZZOLIO: I yield.

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

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

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

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

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

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

22 ACTING PRESIDENT MEIER: Would  
23 the gentleman yield?

24 SENATOR NOZZOLIO: Yes.

25 ACTING PRESIDENT MEIER: The

1 gentleman yields.

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

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

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

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

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

15 ACTING PRESIDENT MEIER: Will the  
16 Senator yield?

17 SENATOR NOZZOLIO: Yes.

18 ACTING PRESIDENT MEIER: Senator  
19 yields.

20 Senator Waldon.

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

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

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

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

16 SENATOR WALDON: How about  
17 definition of burglary?

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

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

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

11                        SENATOR WALDON: I'm sorry.

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

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

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

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

1                   SENATOR NOZZOLIO: No, what I  
2           said was -

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

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

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

19                   ACTING PRESIDENT MEIER: Senator  
20          Waldon, on the bill.

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

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

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

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

24               I will have to oppose it and vote  
25      against it.

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

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

5                   SENATOR GOLD: Oh, no, I yield.

6                   ACTING PRESIDENT MEIER: Senator  
7                   Stavisky.

8                   SENATOR STAVISKY: I will yield  
9                   to Senator Gold.

10                  ACTING PRESIDENT MEIER: All  
11                  right. Senator Gold.

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

15                  SENATOR NOZZOLIO: Surely,  
16                  Senator.

17                  ACTING PRESIDENT MEIER: Senator  
18                  yields.

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

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

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

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

17 SENATOR GOLD: I'm sorry.

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

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

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

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

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

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

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

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

5 SENATOR GOLD: Will the Senator  
6 yield to a question?

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

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

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

25 SENATOR NOZZOLIO: Senator, I

1 have -

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

6 Senator Gold.

7 SENATOR GOLD: Thank you, Mr.  
8 President.

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

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

1 have created a total defense to that.

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

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

9 SENATOR GOLD: Yeah.

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

16 SENATOR GOLD: Or flight.

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

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

1 SENATOR NOZZOLIO: New crime.

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

4 SENATOR NOZZOLIO: New crime.

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

10 SENATOR NOZZOLIO: New crime.

11 SENATOR GOLD: It's the first  
12 time.

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

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

18 ACTING PRESIDENT MEIER: We need  
19 to have some order.

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

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

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

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

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

1                   ACTING PRESIDENT MEIER: Will the  
2           Senator yield?

3                   SENATOR NOZZOLIO: Yes, sir.

4                   ACTING PRESIDENT MEIER: The  
5           Senator yields.

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

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

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

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

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

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

18                   SENATOR GOLD:  Will the Senator  
19      yield to a question?

20                   ACTING PRESIDENT MEIER:  Does the  
21      Senator yield?

22                   SENATOR NOZZOLIO:  Yes.

23                   ACTING PRESIDENT MEIER:  The  
24      Senator yields.

25                   SENATOR GOLD:  Senator, I just

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

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

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

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

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

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

9 SENATOR GOLD: Will the Senator  
10 yield to another question?

11 ACTING PRESIDENT MEIER: Will the  
12 Senator yield?

13 SENATOR NOZZOLIO: Yes, Mr.  
14 President.

15 ACTING PRESIDENT MEIER: The  
16 Senator yields.

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

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

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

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

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

22 SENATOR NOZZOLIO: Yes, Mr.  
23 President.

24 ACTING PRESIDENT MEIER: The  
25 Senator yields.

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

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

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

25                   SENATOR NOZZOLIO:  Last question.

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

11                  SENATOR NOZZOLIO: Mr. President.

12                  SENATOR GOLD: And I know that  
13                  this landlord -

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

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

24                  SENATOR NOZZOLIO: I thought you  
25                  said he was convicted.

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

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

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

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

16                  SENATOR GOLD:  Oh, all right.

17                  ACTING PRESIDENT MEIER:  Senator  
18                  Gold.

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

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

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

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

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

1        else, it's still your law.  It's just we're  
2        suggesting that you make it a little better and  
3        in that regard, Senator, there are flaws in this  
4        law and what is going to happen, if this were to  
5        become the law, is that this probably, Senator  
6        -- and this is just a guess.  Nobody knows -  
7        80 percent -- 80 percent of the time this law  
8        will be used, it will be used against people  
9        perhaps in the civil rights movement.  It will  
10       be against people of minorities who are stopped  
11       improperly or in situations where you, Senator,  
12       if you were in a similar situation, would not be  
13       involved.

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

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

21                    SENATOR ABATE:  Would Senator  
22       Nozzolio yield to a question?

23                    ACTING PRESIDENT MEIER:  Will the  
24       Senator yield?

25                    SENATOR NOZZOLIO:  Yes.

1                   ACTING PRESIDENT MEIER: The  
2                   Senator yields.

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

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

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

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

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

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

1                   SENATOR ABATE:  Would Senator  
2                   Nozzolio yield to another question?

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

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

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

16                  SENATOR ABATE:  How would that -

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

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

9 SENATOR ABATE: But, Senator -

10 SENATOR NOZZOLIO: -- respect  
11 fully.

12 SENATOR ABATE: Senator Nozzolio,  
13 would you agree -

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

17 SENATOR ABATE: Yes.

18 ACTING PRESIDENT MEIER: Senator,  
19 do you yield?

20 (Senator Nozzolio nods head.)

21 ACTING PRESIDENT MEIER: He  
22 continues to yield.

23 Senator Abate.

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

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

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

23                    SENATOR ABATE: On the bill.

24                    ACTING PRESIDENT MEIER: Senator  
25      Abate, on the bill.

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

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

16                  ACTING PRESIDENT MEIER: Read the  
17                  last section.

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

20                  ACTING PRESIDENT MEIER: Call the  
21                  roll.

22                  (The Secretary called the roll.)

23                  SENATOR PATERSON: Slow roll  
24                  call.

25                  ACTING PRESIDENT MEIER: A slow

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

4 The Secretary will call the  
5 roll.

6 THE SECRETARY: Senator Abate.

7 SENATOR ABATE: Yes.

8 THE SECRETARY: Senator Alesi.

9 SENATOR ALESI: Yes.

10 THE SECRETARY: Senator Breslin.

11 (There was no response.)

12 Senator Bruno.

13 SENATOR BRUNO: Yes.

14 THE SECRETARY: Senator Connor.

15 (Affirmative indication)

16 THE SECRETARY: Senator Cook.

17 SENATOR COOK: Yes.

18 THE SECRETARY: Senator

19 DeFrancisco.

20 SENATOR DeFRANCISCO: To explain

21 my vote. I too feel that this is a -- the

22 legislative intent of this bill is good

23 legislative intent and I'm going to support the

24 bill and vote yes, but I do want to state for

25 the record that I believe that there are some

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

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

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

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

18                   The Secretary will resume the  
19       roll call.

20                   THE SECRETARY: Senator  
21       Dollinger.

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

25                   I vote yes with the same

1 reservations.

2 ACTING PRESIDENT MEIER: Senator  
3 Dollinger, in the affirmative.

4 THE SECRETARY: Senator Farley.

5 SENATOR FARLEY: Aye.

6 THE SECRETARY: Senator Gentile.

7 (There was no response.)

8 Senator Gold.

9 (There was no response.)

10 Senator Gonzalez.

11 (There was no response.)

12 Senator Goodman.

13 (There was no response.)

14 Senator Hannon.

15 SENATOR HANNON: Yes.

16 THE SECRETARY: Senator Hoffmann,  
17 excused.

18 Senator Holland.

19 SENATOR HOLLAND: Yes.

20 THE SECRETARY: Senator Johnson.

21 SENATOR JOHNSON: Aye.

22 THE SECRETARY: Senator Kruger.

23 (There was no response.)

24 Senator Kuhl.

25 SENATOR KUHL: Aye.

1 THE SECRETARY: Senator Lachman.

2 SENATOR LACHMAN: Aye.

3 THE SECRETARY: Senator Lack.

4 SENATOR LACK: Aye.

5 THE SECRETARY: Senator Larkin.

6 SENATOR LARKIN: Aye.

7 THE SECRETARY: Senator LaValle.

8 SENATOR LAVALLE: Aye.

9 THE SECRETARY: Senator Leibell.

10 (Affirmative indication)

11 THE SECRETARY: Senator Leichter.

12 SENATOR LEICHTER: Mr. President,

13 to explain my vote. There's a real gap in this  
14 bill between what the sponsor says he's seeking  
15 to do and what the bill does. Even supporters  
16 of the bill have said this is a flawed bill.

17 The point is it's so easy to  
18 correct this bill. We have any number of  
19 measures during the course of a year where we  
20 may immunize somebody from their action in  
21 committing simple negligence but provide that  
22 they're not immunized from gross negligence and  
23 if you put that provision in the bill, it would  
24 probably pass 61 to nothing and it's only the  
25 sort of attitude that we get here that once a

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

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

10 Senator Leichter.

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

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

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

5 I vote nay.

6 ACTING PRESIDENT MEIER: Senator  
7 Leichter in the negative.

8 Resume the roll call.

9 THE SECRETARY: Senator Levy.

10 SENATOR LEVY: Aye.

11 THE SECRETARY: Senator Libous.

12 SENATOR LIBOUS: Aye.

13 THE SECRETARY: Senator Maltese.

14 SENATOR MALTESE: Aye.

15 THE SECRETARY: Senator

16 Marcellino.

17 SENATOR MARCELLINO: Aye.

18 THE SECRETARY: Senator Marchi.

19 SENATOR MARCHI: Aye.

20 THE SECRETARY: Senator

21 Markowitz.

22 SENATOR MARKOWITZ: Yes.

23 THE SECRETARY: Senator Maziarz.

24 SENATOR MAZIARZ: Yes.

25 THE SECRETARY: Senator Meier.

1 SENATOR MEIER: Yes.

2 THE SECRETARY: Senator Mendez.

3 SENATOR MENDEZ: No.

4 THE SECRETARY: Senator

5 Montgomery.

6 SENATOR MONTGOMERY: No.

7 THE SECRETARY: Senator Nanula.

8 SENATOR NANULA: Yes.

9 THE SECRETARY: Senator Nozzolio.

10 SENATOR NOZZOLIO: Aye.

11 THE SECRETARY: Senator Onorato.

12 SENATOR ONORATO: Aye.

13 THE SECRETARY: Senator

14 Oppenheimer.

15 SENATOR OPPENHEIMER: Aye.

16 THE SECRETARY: Senator Padavan.

17 SENATOR PADAVAN: Yes.

18 THE SECRETARY: Senator Paterson.

19 SENATOR PATERSON: Mr. President,

20 it is very likely that one day an appellate

21 court is going to review this legislation and

22 something that Senator Gold said -- not that he

23 needs to be complimented any more because he is

24 -- well, yeah. Senator Gold, who, in my

25 opinion, there's no one that works harder in

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

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

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

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

9 Senator Paterson.

10 SENATOR PATERSON: Thank you, Mr.  
11 President.

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

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

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

25 ACTING PRESIDENT MEIER: Senator

1 Paterson in the negative.

2 Resume the roll call.

3 THE SECRETARY: Senator Present.

4 SENATOR PRESENT: Aye.

5 THE SECRETARY: Senator Rath.

6 SENATOR RATH: Aye.

7 THE SECRETARY: Senator Rosado.

8 SENATOR ROSADO: No.

9 THE SECRETARY: Senator Saland.

10 SENATOR SALAND: Aye.

11 THE SECRETARY: Senator Sampson.

12 SENATOR SAMPSON: Aye.

13 THE SECRETARY: Senator Santiago.

14 SENATOR SANTIAGO: Yes.

15 THE SECRETARY: Senator Seabrook.

16 SENATOR SEABROOK: No.

17 THE SECRETARY: Senator Seward.

18 SENATOR SEWARD: Yes.

19 THE SECRETARY: Senator Skelos.

20 SENATOR SKELOS: Yes.

21 THE SECRETARY: Senator Smith.

22 SENATOR SMITH: No.

23 THE SECRETARY: Senator Spano.

24 SENATOR SPANO: Aye.

25 THE SECRETARY: Senator

1 Stachowski.

2 SENATOR STACHOWSKI: Yes.

3 THE SECRETARY: Senator Stafford.

4 SENATOR STAFFORD: Yes.

5 THE SECRETARY: Senator Stavisky.

6 (There was no audible response.)

7 Senator Trunzo.

8 SENATOR TRUNZO: Yes.

9 THE SECRETARY: Senator Tully.

10 SENATOR TULLY: Aye.

11 THE SECRETARY: Senator Velella.

12 (There was no response.)

13 Senator Volker.

14 SENATOR VOLKER: Yes.

15 THE SECRETARY: Senator Waldon.

16 SENATOR WALDON: Explain my vote.

17 ACTING PRESIDENT MEIER: Senator

18 Waldon.

19 SENATOR WALDON: Thank you, Mr.

20 President.

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

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

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

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

18 ACTING PRESIDENT MEIER: Senator  
19 Waldon in the negative.

20 Resume the roll call.

21 THE SECRETARY: Senator Wright.

22 SENATOR WRIGHT: Aye.

23 ACTING PRESIDENT MEIER: Call the  
24 absentees.

25 THE SECRETARY: Senator Breslin.

1 SENATOR BRESLIN: Aye.

2 THE SECRETARY: Senator Gentile.

3 (There was no response.)

4 Senator Gold.

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

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

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

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

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

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

15           ACTING PRESIDENT MEIER: Senator  
16 Gold in the affirmative.

17           THE SECRETARY: Senator Gonzalez.

18           SENATOR GONZALEZ: Yes.

19           THE SECRETARY: Senator Goodman.

20           (There was no response.)

21           Senator Velella.

22           SENATOR VELELLA: Yes.

23           THE SECRETARY: Senator Kruger.

24           SENATOR KRUGER: Yes.

25           ACTING PRESIDENT MEIER: Announce

1 the results.

2 THE SECRETARY: Ayes 50, nays 8.

3 ACTING PRESIDENT MEIER: The bill  
4 is passed.

5 The Secretary will read.

6 THE SECRETARY: Calendar Number  
7 819, by Senator Lack, Senate Print 3479, an act  
8 to amend the General Municipal Law, in relation  
9 to filing of a notice of claim.

10 SENATOR PATERSON: Explanation.

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

13 SENATOR LACK: Thank you, Mr.  
14 President.

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

22 ACTING PRESIDENT MEIER: Read the  
23 last section.

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

1                   ACTING PRESIDENT MEIER: Call the  
2                   roll.

3                   (The Secretary called the roll.)

4                   THE SECRETARY: Ayes 60.

5                   ACTING PRESIDENT MEIER: The bill  
6                   is passed.

7                   ACTING PRESIDENT MEIER: Senator  
8                   Bruno.

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

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

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

17                  ACTING PRESIDENT MEIER: There is  
18                  a request by the sponsor to open up Resolution  
19                  1401 to all members of the Senate.

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

23                  (Response of "Aye".)

24                  Opposed, nay.

25                  (There was no response.)

1                   The Resolution Calendar is  
2           adopted.

3                   Senator Skelos.

4                   SENATOR SKELOS: Senator Maltese  
5           would like to open sponsorship of Resolution  
6           1502 honoring the Italian Congressional Medal of  
7           Honor recipients and other Americans of Italian  
8           descent. Unless there's an objection, we'll put  
9           all members on it. If somebody would not like  
10          to sponsor the resolution, they should notify  
11          the desk.

12                  ACTING PRESIDENT MEIER: Without  
13          objection, so ordered.

14                  SENATOR SKELOS: Is there any  
15          housekeeping at the desk?

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

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

Wednesday, May 29th -- Thursday, May 29th.  
(Whereupon, at 5:37 p.m., the  
Senate adjourned.)