NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

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3:04 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, February 26th. The Senate met pursuant to adjournment. The Journal of Thursday, February 25, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

SENATOR SKELOS: Madam President,

if I could just interrupt. There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

THE PRESIDENT: All right. There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from State officers.

Motions and resolutions.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I move to commit Senate Print Number 1350, Calendar Number 197 on order of third reading to the Committee on Finance.

THE PRESIDENT: So ordered.

SENATOR SKELOS: Madam President, I believe there's a privileged resolution at the desk by Senator Bruno. I ask that the title be read and moved for its immediate

adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Concurrent Resolution 465 of the Senate and Assembly authorizing the Senate and Assembly of New York State to purchase copies of the New York Red Book for 1999-2000.

The Senate sends for concurrence Assembly Resolution Number 187 identical with Concurrent Resolution Number 465.

Senator Bruno now moves that the Assembly Concurrent Resolution be substituted for his identical Senate Concurrent Resolution.

THE PRESIDENT: Substitution ordered.

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The resolution is adopted.

Senator Meier.

SENATOR MEIER: Madam President, at this time, may we have the reading of the

non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 77, by Senator Skelos, Senate Print 1016, an act to amend the Penal Law in relation to increasing the penalties for custodial interference.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 15th day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41. Nays 1.

Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 110, by Senator Maziarz, Senate Print 131, an act to amend the Alcoholic Beverage Control Law in relation to requiring the publication of notice.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 60 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 136, by Senator DeFrancisco, Senate Print 1148, an act to amend the Parks, Recreation and Historic Preservation Law in relation to requiring the completion of improved snow mobile safety course.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 137, by Senator DeFrancisco, Senate Print 1153, an act to amend the Parks, Recreation and Historic Preservation Law in relation to the operation of a snowmobile.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 164, by Senator Nozzolio, Senate Print 135, an act to amend the Civil Practice Law and Rules and the Court of Claims Act in relation to prisoner litigation reform.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is set -- is laid aside.

THE SECRETARY: Calendar Number

166, by Senator Johnson, Senate Print 760, an act to amend the Penal Law in relation to aggravated harassment of a court clerk by an inmate.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 167, by Senator Meier, Senate Print 922, an act to amend the Penal Law in relation to permitting a court to impose a sentence.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 169, by Senator Padavan, Senate Print 1047, an act to amend the Penal Law in relation to including police officers in the violent

felony offense of aggravated assault.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 172, by Senator Goodman, Senate Print 1109, an act to amend the Penal Law in relation to computer networks.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

174, by Senator Wright, Senate Print 1223, an act to amend the Penal Law in relation to assault with a noxious material.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

Senator Meier, that completes the non-controversial reading of the calendar.

Senator Meier.

SENATOR MEIER: Madam President, I believe Senator DeFrancisco would like to be recognized.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I just wanted everyone in the chamber to note that, from time to time, we honor special guests who come to visit us in the chambers. I'd like to

recognize Senator Mike Balboni up in the gallery and thank him for showing up at this particular meeting.

Thank you.

(Laughter and applause.)

THE PRESIDENT: So recognized.

Senator Meier.

SENATOR MEIER: Well, now that we've taken care of that, may we now have the controversial calendar, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 164, by Senator Nozzolio, Senate Print 135, an act to amend the Civil Practice Law and Rules and the Court of Claims Act in relation to prisoner litigation reform.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Nozzolio, an explanation has been requested.

SENATOR NOZZOLIO: Thank you, Madam President.

I would be pleased to describe this measure as a good faith attempt to insure that inmates with meritorious claims are not denied

the right to bring such action but to provide a mechanism where we can eliminate or at least limit the frivolous cases brought by prison inmates today while at the same time preserving their ability to pursue legitimate claims by requiring inmates exhaust their administrative remedies prior to bringing an action in court establishing a modest filing fee in the Court of Claims to, in effect, filter out those claims which are presented with lack of seriousness by prison inmates.

SENATOR WALDON: Question.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President, would the gentleman yield?

Has he concluded his statement?

THE PRESIDENT: Senator Nozzolio, are you prepared to yield?

SENATOR NOZZOLIO: Is Senator Waldon asking me to yield, Madam President?

THE PRESIDENT: Yes, he has, Senator Nozzolio.

SENATOR NOZZOLIO: I'd be happy to yield.

SENATOR WALDON: Thank you very

much, Madam President.

THE PRESIDENT: You may proceed, Senator Waldon.

SENATOR WALDON: Senator Nozzolio, was this action brought for the $660,000 settlement that I read in the paper over the weekend, was it brought in our state court or was it brought in a federal court?

SENATOR NOZZOLIO: Madam President, I believe the action referred to by Senator Waldon, is an action which took place through the previous half year, which, this last week, awarded the slayer of Police Officer Edward Byrne, the same police officer who is memorialized by the Edward Byrne Anti-Crime Funds. In his honor monies distributed to police departments throughout this state. That officer was, unfortunately, the victim of a crime. He was murdered and the perpetrator of that murder was sent to prison. That inmate was also given solitary confinement. Some federal judge, through lack of wisdom and foresight, provided a $660,000 award to the slayer of Police Officer Edward Byrne.

This bill would do nothing to impede that process of inmates providing themselves an opportunity to sue in court. The measure we passed last week, I might add, unanimously by this Senate, is a measure that I think would impede that type of litigation because it would require, Senator Waldon -- I know you supported the legislation, I think you would like to know -- that the proceeds of that award, unfortunately, under our current law, only go to the inmate who brought the suit, not one cent to the crime victim, not one cent to the crime victim's family. That, hopefully, you, Senator Waldon, and others on that side of the aisle, will encourage your colleagues in the State Assembly to enact the measure which we enacted unanimously last week that got to the heart of taking those awards that inmates do receive and insuring first that crime victims are protected.

But, Senator, to answer your question, that matter which you referred to was brought in federal court.

SENATOR WALDON: Madam President, would the gentleman yield again?

THE PRESIDENT: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: I'd be happy to yield.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Senator Nozzolio, Edward Byrne was a police officer in a precinct that's in Southeast Queens. In fact, where he was killed is in the district of the distinguished Senator, Senator Ada Smith, on this side of the aisle. We were all troubled and horrified by his assassination. None of us condoned that kind of behavior. All of our hearts bleed for the family of Police Officer Byrne and any police officer so assassinated anywhere in this country.

But what you're proposing, if I may address it more directly, is to have the inmates pay to have the right to sue and to really hassle their ability to bring the suit whether it is meritorious or not, as I view it. And the point I was trying to make when

asking the question about the federal jurisdiction, which you meandered us through very well and was a nice journey that you took us on, whether or not that was the place where this suit arose. And, if so, if -- your answer was yes, finally. But, again, if you would revisit it, if that is the case, then what would this proposal do to preclude an inmate from suing in federal court where the federal judge may feel that he has a right or she has a right to sue?

SENATOR NOZZOLIO: Senator, Madam President, through you, that Senator Waldon is correct, we do not have jurisdiction to provide filing fees on federal court matters. What this does is provide a filing fee requirement for those inmates who are suing in state courts. And that we've seen a tremendous backlog in those cases in New York State court, this is a partial filing fee and it's for civil wrongs against the State of New York that we're talking about, those types of actions; property damage, other types of claims.

We're saying, simply, that a

prisoner needs exhaust his administrative remedies first, go through the inmate grievance procedure. Now the inmate grievance procedure may not be perfect, however, it is in place and it should be utilized. We're saying do that first. After you've done that and still do not have the satisfaction, you have the right then to go to the New York State courts and sue the State of New York, as many inmates do. We have a 15,000 case backlog in our state courts today. And what we're saying is that now the, the prisoner, who, growing in litigation, we have at least a third of the cases in New York State courts today are brought by prison inmates. That is something that is incredible, when you think about it, that 33 percent, over 33 percent of our cases are brought by inmates.

We're simply saying they have the right to bring the case, but they need to present at least a partial filing fee to access the court, just as you or I, Senator, or any of your constituents or my constituents would have to present if they sought redress through the state courts. Again, emphasizing,

the filing fee is a partial filing fee. Let me also state that, if there is indigencies, that there is a place where, a method, where the inmate may seek to waive that fee. So we have that opportunity as well.

SENATOR WALDON: Madam President, if I may, on the bill.

THE PRESIDENT: Senator Waldon, on the bill.

SENATOR WALDON: Thank you very much, Madam President.

Thank you, Senator Nozzolio.

I'm troubled when we want to put so many hurdles in the path of someone who, for his or her own sanity, may feel that they have a meritorious cause. I'm troubled when someone is in a very insular environment, as a prison may be. I know I visit them on a somewhat frequent basis, and I know the esteemed Senator, because of his chairmanship, probably visits them much more so than I. But when I visit the prisons, I do not see people always, not that I've never seen them, but always who feel very comfortable in going against those that are there to guard them. I

meet many people inside the prisons who feel that the system is against them and that, if they have the nerve to rail against the system, that the system will come down upon them and be very, very oppressive. And so I feel that to create such an ominous hurdle, as you must pay the fee and you must exhaust all administrative remedies first, no matter how meritorious you feel your cause is, is too much of an impediment for these people who are in prison to have their rights, if you will.

And so I would encourage my colleagues to recognize that there may be one person in prison who has a meritorious cause of action and who is so intimidated by the system that he or she will not file because of an impediment like this if this were to become law. And that even someone in prison should have hope, even someone in prison should be allowed the luxury of hope. It doesn't cost anything. And under our system, we are a nation which has encouraged hope. So would I hope that my colleagues will hear what I'm saying and will vote down this proposal. I do not think it is a timely measure at this

moment.

I thank you very much, Madam President.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson. Excuse me.

SENATOR PATERSON: Thank you, Madam President. Would the Senator yield on a few questions related to the bill before us?

SENATOR NOZZOLIO: Yes, Madam President, I would be glad to yield.

THE PRESIDENT: All right. Senator Paterson, you may proceed.

SENATOR PATERSON: Thank you. Through you, Madam President.

Senator, do you know or would you like to give us any statistics related to the explosion in these cases that are being brought by people who are currently incarcerated in our state prison system?

SENATOR NOZZOLIO: Yes. I would be happy to go through some numbers that I

have regarding this issue for Senator Paterson and my colleagues. But before I do, Senator, if I also may, a point Senator Waldon made that I'd also think you'd find interesting relevant to that issue.

The inmate grievance procedure may have some inmates intimidated, but the fact of the matter is that it is a procedure which is being kept sacrosanct by the court system that the State of New York was just charged with over a hundred thousand dollars in penalties because in some of the facilities in our state the inmate grievance procedure was not being kept too intact, the way we would like to see it, the way it was designed to be kept intact. In other words, that grievance procedure is being continually oversought, continually reformed.

There are approximately 95 percent of all prison inmate litigation is dismissed. There are, in terms of the escalation of inmate litigation, we have seen enormous increases over the past 10 years, that we are providing numbers of suits from -- over the last 20 years, we've seen the number of suits

rise from approximately 30 to over 7,000. Those suits in number are increasing. Of course, during that time, the prison population in this state also increased a great deal. It almost doubled during that period of time. But, still, the number of litigations in state court have increased dramatically.

As I said earlier, Senator Paterson, all prison litigation accounts for approximately one-third of the defense load in the New York State court system that -

SENATOR PATERSON: Would the Senator yield for another question?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Since the prison population has risen in the last 10 years from approximately 38,000 to over 70,000, it would seem sequential that there'd be an increase in the number of cases. So,

therefore, what might bring us closer to a definition of how severe the increase is, would be if you might be able to provide us as to what the per capita number of suits that's being brought by the inmates might be.

SENATOR NOZZOLIO: Well, if -- as I side, the number of suits, it's almost 7,000 suits for 70,000 inmates, I guess that's one in 10. There will be a lawsuit, one lawsuit per every 10 inmates. That contrasts with a much markedly different role, even though the prison population doubled, the suits, as I said, Senator, went from less than a hundred, closer to 70, closer to 50, rather, all the way up to now 7,000. So exponentially, the number of suits have gained a great deal.

And I think what we need to do, though, is say, not to -- we're not trying to simply cut off litigation. The United States District Court for the Northern District of New York established a partial filing fee program for inmates a couple of years ago. And as a result, we've seen a 46 percent decrease in meritless prisoner litigation actions. That we're only saying that, if you

want to access the courts, you need to do so at some expense. If you're indigent, if you have no funds available to you, then the court could waive this filing fee and the filing fee could be taken out of the award offered to a prison inmate if he's successful.

What we're saying here is, let's establish a system of equity, one where prison inmates are not treated any differently than citizens are, except in a sense getting a 50 percent break on the cost of a filing fee. That's only fair.

We're not talking about litigation that gets to the length of incarceration or the type of incarceration. We're only getting here to grievances against the state for some type of perceived fault that the -- during the incarceration.

So I think you need to take a look at the fact that we're not limiting access to the courts. We're only saying that, if Joe Q. Citizen has to spend X amount of dollars to access the state courts, then why shouldn't a prison inmate have to spend a portion of that filing fee in order to do the same thing.

SENATOR PATERSON: Thank you, Senator. I understand what you're saying and, certainly, frivolous lawsuits have no place in our judicial system and they really just do nothing more than take a lot of time and waste a lot of resources. And I can understand that. But when I look at this particular situation, at least from some research that's been provided to us by the Prisoners Legal Services and the Legal Aide Prisoners -- and by the Legal Aide Society, I'm sorry -

THE PRESIDENT: Senator Paterson, are you on the bill at this point or do you wish to have more time devoted to your question?

SENATOR PATERSON: No, I'm asking another question, if the Senator would yield.

THE PRESIDENT: All right. Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President, I'd be glad to yield.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: So, therefore, what I'm saying is that there is certainly,

there are some other methods in which other institutions have handled this. In the federal system what they have often done is set up pro se panels by which they review and throw out many of the frivolous cases, and they seem to have a different numerical coefficient of how many frivolous cases there are as opposed to your research. But my question relates to something we just discussed a minute ago.

You said that there were now 7,000 cases provided by 70,000 prisoners and that, although the prison population had doubled, you approximated the original number of cases as somewhere between 50 and a hundred. Now, I was here 10 years ago.

Are you sure that there were only 50 to 100 cases brought 10 years ago by prisoners in our New York State prison system?

SENATOR NOZZOLIO: Madam President.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: In response to Senator Paterson, I didn't say 10 years ago. I said 20 years ago, that the number of

lawsuits has increased from 25 in 1976, that's 23 years ago, to over 7,000 today. That the prison population in 1986, you're saying, was -- I'm not sure what it was, but if you say it was half, that's -- let's take 1985, '84, there were about 6,000, 6300 suits in each of those years back to 1990 -- 1983, '84 years. So it's gone about 500 suits more a year filed today than there was about 10 years ago.

SENATOR PATERSON: Madam President, if the Senator would continue to yield?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Well, Senator, if we're going back to 1976, well, in 1976 the state prison system population was a little more than 15,000. So, in other words, now we're down to one-sixth of -- I'm sorry - one, roughly somewhere between a quarter and

one-fifth, about, I'd say, 23 percent of the current prison population. So that would make the per capita rate much, much higher at that particular time. So the increase wouldn't be quite as much as we might have first thought.

SENATOR NOZZOLIO: Madam President, not to argue with my good friend Senator Paterson about the math, but, David, if we only had 50 cases brought in 1976 with 25 percent of the inmates, I'll gladly quadruple the amount of inmates or the amount of inmate litigation based on that 1976 average.

The way I figured it, if it was four times what the -- commensurate with the inmate population, there would only be 200 lawsuits filed by inmates as opposed to 7,000.

But the point is, we look at the fact that over 32 percent of the defendant cases in our state system today is brought by inmates. Now, that's an awful lot of litigation. And, frankly, what's happening - and, of course, you're going to hear from the prisoners' legal services folks because they want litigation, they're lawyers. They'd

rather sue than go through the litigation process of a grievance procedure. You don't need lawyers to go through the grievance procedure, often. That's what it's set for. You can have a lawyer, but you don't have to have a lawyer. And the fact of the matter is, the grievance procedure is not being utilized to what it should be. And, if anything, the filing fee would encourage inmates to get justice quicker, less expensively and, certainly, less expensively for the taxpayers through the grievance procedure instead of clogging the courts.

So we're saying, let's make the courts a system of last resort, a justice system of last resort, and let's establish a filing fee that's similar to what the federal courts have for prison inmates.

Prison inmates still are accessing, David, the federal court system. There have -- we just -- Senator Waldon mentioned we just had a very large dollar award going to a convicted murderer last week. That was a federal court action. A filing fee didn't seem to deter that action. And, frankly, I

think it wouldn't deter all that much here as opposed to simply making it a better system.

SENATOR PADAVAN: Thank you, Madam President.

Thank you, Senator Nozzolio.

Madam President, on the bill.

THE PRESIDENT: On the bill, Senator. Go ahead.

SENATOR PATERSON: There was a $600,000 award rendered last Friday. Earlier I had heard that it was by a federal judge. But my understanding is it was by a federal jury. And that whoever did it, I find the award to be shocking. It's something that I, honestly, do not understand. And I certainly hope that the family of Officer Byrne will sue in the civil court for whatever they may have been entitled to had the defendant at that time been in position to provide them with a civil recovery.

But we are not here to overturn a jury verdict. We're here to look at the issue of filing fees. And the fact is that, as appalling as we might find that particular verdict, we don't know the evidence in that

case. We didn't listen to it. And I don't know that it's right for us to make presumptions about the judge or the jury, not having been in the position that they were in, which is that we, that they heard the evidence. What we would be well advised to focus on would be just the issue of whether or not there was actually a case. In this particular situation, it related more to who the prisoner was as opposed to what the institutional responsibility may have been. And as much as it kind of offends me that this particular prisoner could receive this type of award after committing such a heinous act 10 years ago, we are still in this country bound to house even those who we find to have engaged in the most egregious conduct in what would be a professional way, in terms of corrective and incarcerated, incarcerative action.

And so, did the actual individual in this case have a case that was valid and should actually be tried? Apparently, having served 1500 days, in excess, of solitary confinement, I guess perhaps they did, whether

or not we agree with the inevitable outcome of the case.

The prisoners legal services and the prisoners rights project of Legal Aid Society have taken some measures right here in New York State to try to limit the number of frivolous lawsuits. There does seem to be some disagreement between them and the work that was conducted by the previous attorney general and the very able Senator who is the sponsor of this bill. But I think that as we go forward, the thing that we have to be most aware of is the fact that, no matter how much we may disdain the acts of certain people who we've incarcerated, this country's democracy is probably tested at its greatest level by how we treat those who we incarcerate. And to that end, there are times that these situations, where there are abuses, not in all cases but certainly in some, not in a number of cases where there has been any kind of court finding, but the fact is that there are some abuses in our correctional facilities and we are mandated to react to them. The best reaction is probably through the judicial

process, since there is a limited way in which the message can get out. There are situations around the country, well documented, where the notion of correction, correctional policy was changed from lawsuits that emanated from those who were actually incarcerated.

And while all of us who are in the Legislature have probably gotten a number of letters that are quite long and in many ways quite euphemistic from prisoners who, apparently, have time to write these long documents, and the, certainly, the notion of what they're trying to express is somewhat cloudy and their perception of what constitutes a valid lawsuit may not be that that we all might agree with, the fact is that, even if we would err slightly, we would want to err on the side of having a democratic system. We do not provide those who are incarcerated with all of the rights of those who live in a democracy, but we do try to assure their physical protection, their acquisition to healthcare and some basic needs that they are entitled to.

And so it is the reason that

Senator Waldon, I think very properly, expressed, that we've got to be very careful in passing this kind of legislation so that we don't limit the actual ability of those who are incarcerated to, in their limited way, still participate in our form of democracy.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President. I would like -- if the sponsor would yield for one question.

THE PRESIDENT: Senator, do you yield?

SENATOR NOZZOLIO: Certainly, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Senator Nozzolio, do you -- are you aware of what is the income of inmates, what we pay them?

I see downstairs we have a wonderful display of the products that are made in our prison facilities by inmates.

What is their income?

Do you -

SENATOR NOZZOLIO: Madam President, I'd like to say that all inmates work in this state. I would like to pass a bill that would force inmates who are able bodied to work. But, unfortunately, all inmates don't work, by choice, their choice. This Legislature does not require them to. I wish it would, but it doesn't. Now, those that do work, however, do make a small amount of money as a wage, which their work doesn't begin to offset the amount that it costs to incarcerate someone.

But, Senator, I'd just like to point out to you, that those inmates that don't have large accounts in the bank, don't have a lot of cash, have the right to apply to the court and ask for a waiver of the fee. This doesn't preclude anyone from bringing litigation because they don't have enough money. That simply by applying to the court an application to the court, the court has the power under this legislation to waive the fee or postpone the fee.

And that, Senator, I know your

concerns are sincere and legitimate regarding those who don't have the amount of money available to them to pay this fee, and I think the legislation takes care of it. It addresses that by providing simply their ability to apply for a waiver, they can obtain the waiver from a court, the court simply can allow them to proceed without paying the fee. But for those inmates that do have accounts, and some do have money, those that are bringing litigation certainly do, that oftentimes they do, that this requires those that do have the funds to pay the fee.

SENATOR MONTGOMERY: All right. Thank you. Thank you, Senator Nozzolio.

Just, Madam President, briefly on the bill. I see that Senator Nozzolio has been very careful to establish a waiver in the bill. But, nonetheless, even with the waiver, there is an intent, as so stated in his memo and in the explanation for, for the bill, that the intent is definitely to reduce the number of cases brought by inmates and to establish that this is one way of trying to have inmates not come or discourage them from coming with

their various suits.

And I just want to remind the Senator that, and my colleagues, that the sentencing, the federal sentencing project, Madam President, when they looked at arrests for one area, and that was use of drugs or crimes related to drugs, there were, I think, 13 percent of the arrests we African-American. But then, when it comes to the sentencing, it's 89 percent of those sentenced for drug-related activities were African-American or Latino. So, clearly, there is something that happens that there is a disparity between arrests, or the number of people who are actually committing the crimes, and this statistic tends to be true for all areas of crime, including murder and on down, that there are more white people, essentially, or at least as many, committing crimes, but the sentencing is very different. So the system really is not, it's not -- there is not a level, there's not equality, there's not a level playing field, if you will, in terms of what happens in corrections, in the justice system. And, furthermore, we have examples

before us, as recently as -- well, right now -- but as recently as a few weeks ago in one of the local prisons, in Nassau County, where, obviously, a person was attacked by people in the prison. And that case, in that case, the person who did the attacking was high enough up that you couldn't possibly expect that the inmate could appeal to the administration, because it's the administration who's doing the excessive force there. So, we can't always rely on access to the administration as the answer for inmates.

We understand that coming into the system and all aspects of it there is an inequality that exists, there is a disparity that exists, there is an attitude about what and how much access to any outside intervention on behalf of inmates that there is. And we also know -- at least I get letters all the time, from inmates asking me to have them transferred to places where there are programs in place so that they can develop a skill, they can do work. So those, even those who don't have money or are not working, certainly, would like to, many of them are.

And the last point that I would like to make, Madam President, is that, since, in the last few, few years, when we've gotten our budget from the Governor, the Governor has proposed that the Prisoners Legal Services Program be cut. Now, the information that I have always received from the Prisoners Legal Services, albeit biased because they have a self-interest in it, but they say that the ability for inmates to bring cases and their involvement with those inmates helps to reduce the number of frivolous cases. Yet, year in and year out, we get a budget from the Governor that cuts the Prisoners Legal Services. So, there is, there is a disconnect here. We want to, on one hand, control the number of frivolous cases that come before the courts, but on the other hand we eliminate the one possibility of making, making it possible for us to save because this organization can help to reduce the number of cases, while at the same time not making it appear that we want to discourage inmates to have the right to do that.

So, I join my colleagues, Senator

Waldon, Senator Paterson, in opposing this legislation because I think that it makes the wrong statement. It is not necessary for us to do this. There are other ways more efficient, more effective and fairer to do it, so I'm voting no on this legislation, Madam President.

THE PRESIDENT: All right. Read the last section.

SENATOR WALDON: Explain my vote.

THE SECRETARY: Section 4. This act shall take effect on the 1st day of January.

THE PRESIDENT: Senator Waldon, to explain your vote.

SENATOR WALDON: Thank you very much, Madam President. The point made by -

THE PRESIDENT: Senator, if I - Senator -

SENATOR WALDON: -- Senator Montgomery was absolutely brilliant -

THE PRESIDENT: Senator Waldon, before we do that, we should call the roll, sir.

SENATOR WALDON: Okay.

THE PRESIDENT: Excuse me.

SENATOR WALDON: All right.

THE PRESIDENT: Go ahead. Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: The point made by my esteemed colleague, Senator Montgomery, was absolutely brilliant, when the resources for defending people, not just within the prison system, but across the criminal justice system, are dramatically reduced, there is no buffer to the processes which they find, meaning the prisoners in this instance, find oppressive.

When I first came to the Legislature in 1983, there was talk of rehabilitation, but in recent years, across the nation, rehabilitation is no longer in vogue. It is now punishment, punishment and more punishment. And if you have an increase in the numbers of those who are in prison, you're going to have, at the very least, perhaps, a proportional or proportionate increase in the number of suits filed. But if

it happens that the system itself has become more oppressive since 1983, then it will not just be an kind increase in the numbers of cases filed, but an even great, an even greater number because the pain and suffering of those who are in prison has increased and intensified.

For all of those reasons, I think that we have to disagree with the proposal of Senator Nozzolio and we have to try to create a mindset in the state which recognizes that, despite the fact that people are in prison, they are, too, human beings. They also are human. They hurt. They have needs. They have loved ones who are concerned about them. And if we take away that thing that is called hope from those who are in prison, we're creating problems not only for the prisoner but for the guards who are mandated to guard them on a daily basis. So why victimize the guards with foolish proposals, in my opinion, like this? This is not an attack to Senator Nozzolio, but I just think this is a foolish idea and we should dismiss it as such and vote it down.

Thank you very much, Madam President.

THE PRESIDENT: Senator Waldon will be recorded as voting in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 164 are Senators Connor, Duane, Montgomery, Paterson, Schneiderman, Seabrook, Smith, Satvisky and Waldon.

Ayes 46. Nays 9.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 166, by Senator Johnson, Senate Print 760, an act to amend the Penal Law in relation to aggravated harassment of a court clerk by an inmate.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Madam President, this merely adds to the category of persons who would be guilty of aggravated

harassment of an employee by an inmate, adding to the employees of a mental facility or a correctional facility or probation officer, the court clerks in those jurisdictions.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Madam Chair, Madam President, would the sponsor yield to a question, please, or two?

THE PRESIDENT: Senator Johnson, will you yield to a question?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

This isn't a new question. I raised this in the committee and I was hoping that maybe I could be provided with an answer.

I'm wondering how many circumstances there have been of this throwing of feces or urine at, at these members of the court staff.

SENATOR JOHNSON: Of course, the original bill to which this is an amendment

was enacted because of instances of this type taking place in correctional facilities. Subsequently, it was added probation officers. And now this is going to add court officers. And the reason is because court officers actually are those persons to whom custody is given when he's delivered to the court by the correction officers or the police. The court officers take charge, at that point he would be in a similar position as a correction officer and subject to possibly the same type of activity by the inmate.

SENATOR DUANE: I'm still unsure, Madam President, if anyone has actually ever brought up a number of these kinds of cases and I remain hopeful that someone could do so if such a harassment -- it's, by the way clerks, if this, you know, if such a problem exists, if we could finally have some numbers on how many clerks have actually been impacted by this.

Madam President, if the sponsor would yield to another question?

THE PRESIDENT: Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: This is the second time that we have in the session so far this year had these feces and urine, body fluid pieces of legislation. I'm wondering if it might not be more productive if we had sort of an omnibus or dedicated a day to feces and urine, something like that, rather than doing it in a piecemeal way. Because, if it's a problem, then it's a problem. And if it's not such a problem, then I think we should do it sort of in a more encompassing kind of way. But I don't think it's productive to do it in this way, you know, sort of personnel line by personnel line, but it would be better if this is a problem, because as Madam President and the sponsor know, I believe that this is much more of a mental health issue than it is a felonious issue, and I think that we need to have a discussion on it on that basis.

And I'm wondering if any thought had been given to sort of putting all of these

categories together into one piece of legislation so we could debate it in that way.

SENATOR JOHNSON: Senator, if that's a question, my answer is that this has been requested by the court officers, as it has previously been requested by the probation officers, to be added to the category of protected members in this type of a bill.

Now, I don't know of all the possible groups or individuals you could add. Perhaps you could add all their fellow inmates into the category as well. But, really, Senator, I don't know how far to go, but I would say that this is a good move, it should be done because they stand in a position to be injured in a similar manner or assaulted in a similar manner as the other categories which are already in the law.

And if you know of any categories that would be added, Senator, I would say that you should advance that motion on your own, perhaps, not at this time, but, I mean, in the form of a bill or other type of suggestion to other members if you'd like to carry a bill like that. But this takes care of this

particular situation which was brought to our attention at this moment.

SENATOR DUANE: Madam President, on the bill.

I do strongly believe that, in the absence of having statistics on how large a problem this is with clerks, with probation officers, with various court and correctional personnel, that we should not continue to vote on these pieces of legislation but look at this and see whether it is, in fact, a problem, if it's a problem of our criminal justice system or if it's, indeed, a problem of the mental health situation that some of our incarcerated people have. And I intend on voting no on this legislation.

Thank you, Madam President.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I'm going to vote in favor of Senator Johnson's bills, but it just strikes me as terribly ironic that, in this instance

where we have, I believe, maybe one case in the history of this state, we're going to create a statute that says this is a form of aggravated harassment and, yet, we know for sure there are thousands of cases of women seeking access to healthcare in this state who, every single day, undergo harassment and annoyance in an attempt to discourage them from something that they're constitutionally entitled to do and, yet, this body can't pass a bill to protect them. We're protecting a hypothetical court clerk somewhere in this state from the possibility that it may some day happen, but when we know that something is happening every single day in this state that effects women's constitutional rights, this body, which two weeks ago had an opportunity to provide the same kind of protection for women seeking healthcare, the protection from annoyance, the protection from harassment, this body turned down the opportunity to do that.

Senator Johnson, I think this bill is the right thing to do, but there's a bigger and better right thing to do. We should have

done it two weeks ago.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Thank you, Madam President.

Would the sponsor yield for one question?

THE PRESIDENT: Senator, do you yield? Senator Johnson?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Okay. Go ahead, Senator Smith.

SENATOR SMITH: Senator, the court officers and the court clerks both have lobbyists and they usually send out memorandum. I don't see a memorandum. Have you received one from either one of these associations?

SENATOR JOHNSON: I don't have one in my folder, Senator, but they have been in touch with us about this. This bill was advanced a year ago, originally. It may be a stale memorandum in your file somewhere.

SENATOR SMITH: Well -

SENATOR JOHNSON: But they are in

favor of it, yes.

SENATOR SMITH: Madam President, on the bill.

For all our records indicate that there is no memorandum. And if the court officers and the court clerks and their associations were so concerned about this bill, I think they would have taken the time to write a memo. And, therefore, I don't see any need for this bill if they're not interested.

THE PRESIDENT: All right. Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 166 are Senators Duane, Montgomery and Smith.

Ayes 53. Nays 3.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk.

THE PRESIDENT: All right. Now that, Senator Skelos, we have completed the controversial reading of the calendar, the Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills direct to third reading:

Senate Print 2833, by the Senate Committee on Rules, an act making an appropriation to pay Elaine Present, widow of the late Jess J. Present, member of the Senate from the 56th Senatorial District; and

Senate Print 2770, by the Senate Committee on Rules, an act making an appropriation to pay Joyce Genovesi, widow of the late Anthony J. Genovesi, member of the Assembly from the 39th Assembly District.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to accept the report of the Rules Committee.

THE PRESIDENT: All those in favor of accepting the report of the Rules Committee, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Skelos.

SENATOR SKELOS: If we could take up Calendar Number 199, Senate 2770.

THE PRESIDENT: Thank you, Senator Skelos.

The Secretary will red.

THE SECRETARY: In relation to Calendar 199, Senator Bruno moves to discharge from the Committee on Rules, Assembly Bill Number 4888 and substitute it for the identical Third Reading Calendar 199.

SENATOR SKELOS: Madam President, is there a message -

THE PRESIDENT: Substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Is there a

message at the desk?

THE PRESIDENT: Yes, Senator Skelos there is.

SENATOR SKELOS: Move to accept the message of appropriation.

THE PRESIDENT: All those in favor of accepting the message of appropriation, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Read the last section.

The Secretary will read.

THE SECRETARY: Calendar Number 199, by the Assembly Committee on Rules, Assembly Print 4888, an act making an appropriation to pay Joyce Genovesi, widow of the late Anthony J. Genovesi.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, could we please take up Calendar Number 200, Senate 2833.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 200, Senator Bruno moves to discharge from the Committee on Rules, Assembly Bill Number 5117 and substitute it for the identical Third Reading Calendar 200.

SENATOR SKELOS: Madam President, is there a message of approp -

THE PRESIDENT: Substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Is there a message of appropriation at the desk?

THE PRESIDENT: Yes, Senator Skelos, there is.

SENATOR SKELOS: Move to accept

the message or appropriation.

THE PRESIDENT: All those in favor of accepting the message of appropriation, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

The Secretary will read.

THE SECRETARY: Calendar Number 200, by the Assembly Committee on Rules, Assembly Print 5117, an act making an appropriation to pay Elaine Present, widow of the late Jess J. Present.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you please recognize Senator Mendez.

THE PRESIDENT: Of course.

Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President, and thank you, Senator Skelos.

I was out of the chamber. I'm asking for unanimous concent to be recorded in the negative in Calendar Number 164.

Also, Madam President, I want to announce that there will be an immediate Minority Conference in Room 7 -- Room 314.

THE PRESIDENT: All right. Without objection, Senator Mendez, you will be recorded as voting in the negative.

And there will be an immediate meeting of the Minority Committee in Room 314.

SENATOR SKELOS: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Saland, please place a sponsor star on Calendar Number 36.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, on behalf of Senator Bruno, I hand up the following committee assignment change and ask that it be filed in the Journal.

THE PRESIDENT: Notice will be filed in the Journal.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping?

THE PRESIDENT: No, there is not, Senator.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Tuesday, March 2nd, at 3 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, March 2nd, 3 p.m.

(Whereupon, at 4:03 p.m., Senate adjourned.)