NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 30, 2004

3:10 p.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 29, the Senate met pursuant to adjournment. The Journal of Saturday, March 27, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Local Governments Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Local Governments Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Velella, from the Committee on Labor, reports the following bill:

Senate Print 6536, by Senator Velella, an act to amend the Labor Law and the Arts and Cultural Affairs Law.

Said bill ordered direct to third reading.

ACTING PRESIDENT McGEE: Bill reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

On page 36 I offer the following amendments to Calendar Number 585, Senate Print Number 6386A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendments are received, and the bill will retain its place on Third Reading Calendar.

SENATOR WRIGHT: Madam President, on behalf of Senator Morahan, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Numbers 676, 679, 681, 1349, 1767, 1769, 2106, 2113, and 2114.

ACTING PRESIDENT McGEE: So ordered.

Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

I wish to call up Calendar Number

360, Assembly Print Number 2822.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 360, by Member of the Assembly Sidikman, Assembly Print Number 2822, an act to amend the Real Property Law.

SENATOR WRIGHT: I now move to reconsider the vote by which this Assembly bill was passed for Senate Print Number 1348 on March 3rd.

ACTING PRESIDENT McGEE: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

SENATOR WRIGHT: I now move that Assembly Bill Number 2822 be recommitted to the Committee on Aging and my Senate bill be recommitted to the Committee on Aging with instructions to strike the enacting clause.

ACTING PRESIDENT McGEE: So ordered.

SENATOR WRIGHT: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Wright.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar at this time.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Legislative Resolution Number

4180, commemorating the 49th Anniversary of Mitchell-Lama Housing.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I ask to be heard on the resolution.

This is a resolution commemorating the 49th anniversary of one of the most successful housing programs in -- not just in the history of New York, but in the history of the United States.

In 1955, then-Governor Averill Harriman signed into law a bill sponsored by State Senator MacNeil Mitchell and Brooklyn Assemblyman Alfred Lama to encourage the development of moderate-income housing across the state.

And to say that this legislation succeeded is really to understate the issue. Some 269 developments were created, with well over 100,000 apartments, as a result of this program.

This is the kind of program that used to be emblematic of the broad vision of

New York State's government to pioneer programs -- not to follow, to be the trailblazer that other states and even the national government would follow in terms of the protection of working people and the improvement of their quality of life. In labor law, in food and health safety protection, and in housing, New York State led the way.

And unfortunately, I would respectfully submit that we have fallen from that position of leadership. Today the Mitchell-Lama program is under assault. There are buildings that long-time residents can no longer afford to live in. There is turmoil in a confusing marketplace where buildings are being bought out, and conflicts where we should have unity among the residents of such developments.

There are a variety of bills that are brought forward in this house every year to address these issues. Many of them are passed in the Assembly. And I would urge that we take a look at the success of this program and not finish this year's legislative session

without doing something to restore the Mitchell-Lama program to its position of prominence and to recommit ourselves, on behalf of the State of New York, to the vision that Governor Harriman and so many other great New Yorkers had before him to make New York a leader in making working people's lives better, a leader in making this a great state to live in even if you're not very wealthy, a leader in addressing the critical issue of housing.

We have that opportunity, and it's appropriate that we pause to talk about this great program and to look forward to renewing our commitment to this program and to others like it.

So I urge everyone to support this resolution, not just with words today but with our votes as the session goes forward.

Thank you, Madam President.

ACTING PRESIDENT McGEE: On the resolution, all those in favor of adopting the resolution will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed,

nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Madam President, can we now move to the reading of the noncontroversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 15, by Senator Larkin, Senate Print 5659A, an act to amend the Real Property Tax Law, in relation to collection and disposition of delinquent taxes.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 23, by Senator LaValle, Senate Print 924D, an act to amend the Highway Law, in relation to designating the "North Fork Wine Trail," the "Hamptons Wine Trail," and the "Long Island Wine Region."

ACTING PRESIDENT McGEE: Could we please have some quiet.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 118, by Senator Kuhl, Senate Print 3033A, an act in relation to requiring the Commissioners of Motor Vehicles, Transportation, and Education.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 181, by Senator Maziarz, Senate Print 5733, an act to amend the Real Property Tax Law, in relation to the definition of real property.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as Chapter 539 of the Laws of 2003.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 216, by Senator Balboni, Senate Print 514, an

act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 254, by Senator Robach, Senate Print 1199, an act to amend the Family Court Act, in relation to the placement of youths at youth facilities.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 302, by Senator DeFrancisco, Senate Print 5967, an act to amend the Public Authorities Law, in relation to contracts.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 402, by Senator Libous, Senate Print 2182, an act to amend the Mental Hygiene Law, in relation to directing the State Commission on Quality of Care.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Excuse me. In relation to Calendar Number 402: Ayes, 57. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 446, by Senator Seward, Senate Print 5969, an

act in relation in legalizing, validating, ratifying and confirming certain acts and proceedings.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 447, by Senator Saland, Senate Print 6200, an act to authorize payment of transportation aid to the Poughkeepsie City School District.

ACTING PRESIDENT McGEE: There is a local finance note at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 465, by Member of the Assembly Gromack, Assembly Print Number 9660, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to permanently authorizing state breds.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 491, by Senator Golden, Senate Print 1504A, an act to amend the Penal Law --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 526, by Senator Wright, Senate Print 5342, an act to amend Chapter 519 of the Laws of 1999, amending the Alcoholic Beverage Control Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 530, by Senator Farley, Senate Print 5894, an act to amend the Tax Law, in relation to the mortgage recording tax in the county of Fulton.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 553, by Senator Bonacic, Senate Print --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

Senator Morahan, that completes the noncontroversial reading of the calendar.

SENATOR MORAHAN: Thank you, Madam President.

May we now start the reading of the controversial calendar, and start with Calendar 254.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 254, by Senator Robach, Senate Print 1199, an act to amend the Family Court Act, in relation to the placement of youths at a youth facility.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR SCHNEIDERMAN:

Explanation.

ACTING PRESIDENT McGEE: Senator Robach, an explanation has been requested.

SENATOR ROBACH: Through you, Madam President. This bill permits a Family Court judge to increase the period of confinement for youths at a youth facility from the present 18 months to 36 months. It mandates that a minimum of half the sentence be served and mandates a restrictive placement where serious physical injury has been inflicted in our more violent crimes.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Hassell-Thompson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR MORAHAN: Madam President.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Yes, could we please go back to Calendar 216 and recognize Senator Dilán and just have the last section read.

ACTING PRESIDENT McGEE: Senator Dilán, just one moment.

The Secretary will read.

THE SECRETARY: Calendar Number 216, by Senator Balboni, Senate Print 514, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dilán.

SENATOR DILAN: No.

ACTING PRESIDENT McGEE: Senator Dilán will be recorded in the negative.

The Secretary will withdraw the roll call.

Senator Morahan.

SENATOR MORAHAN: If we could continue in the regular order, Madam President.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 491, by Senator Golden, Senate Print 1504A, an act to amend the Penal Law, in relation to increasing penalties.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Hassell-Thompson recorded in the

negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 553, by Senator Bonacic, Senate Print 5479A, an act to amend the Vehicle and Traffic Law and the Labor Law, in relation to fingerprinting of ambulette drivers.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. If we could just stand at ease for a few moments, please.

ACTING PRESIDENT McGEE: The Senate will stand at ease for a few moments.

(Whereupon, the Senate stood at

ease at 3:28 p.m.)

(Whereupon, the Senate reconvened at 3:29 p.m.)

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Madam President, will you please recognize Senator Montgomery and then Senator Parker.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like unanimous consent to change my vote on Calendar 491 to a no vote.

ACTING PRESIDENT McGEE: Without objection.

SENATOR MONTGOMERY: And I would like unanimous consent to be recorded in the negative on Calendar 254.

ACTING PRESIDENT McGEE: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT McGEE: Senator Parker.

SENATOR PARKER: Yes, Madam President. I'd like unanimous consent to be

recorded in the negative on Calendar Number 491.

ACTING PRESIDENT McGEE: Without objection.

SENATOR PARKER: Thank you very much.

ACTING PRESIDENT SEWARD: Senator Morahan.

SENATOR MORAHAN: Senator Seward, could we return to the controversial reading of the calendar, please.

ACTING PRESIDENT SEWARD: The Secretary will read.

THE SECRETARY: Calendar Number 216, by Senator Balboni, Senate Print 514, an act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions against victims.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Yes, thank you, Madam President.

This bill is a bill that has been

around quite some time. As a matter of fact, looking through my notes, I recall that I first became involved with this issue, prohibiting convicted felons from suing as a result of injuries received during their course of conduct, back in 1993.

And during that time it has been an exercise in futility to even get the introduction of this bill in the other house, much less any constructive comments as to how the bill could be improved. And of course there seems to be a lot of that going around these days. And I think that that's a poor statement on the process.

But nonetheless, we have the bill here today. And as the Senate has done since 1998, and even before that in other versions, hopefully we're going to consider this bill favorably today.

What this bill does, it amends the laws as they relate to civil actions. And it basically says that if you're going to come into someone's home and commit a felony, if you're going to go in and you're going to stick a gun to somebody's head, steal their

property, and then, as you're running out of their house, you slip and fall on somebody's toy for their child or slip down a flight of stairs, you then can't turn around and sue the property owner.

And again, as I give that set of facts, there are people who perhaps sit back and say: Oh, that's ridiculous, how could that possibly be the case. And then of course I point to the case in Ballston Spa several years ago, where someone was walking on top of the school building and the skylights were painted over and the person walked on top of the skylight, fell through, and then sued the school district. What was he doing on top of the school building? Well, he had burglar tools in his hand. Nonetheless, he was able to sue.

And throughout the years this debate has devolved -- has revolved around whether or not this should be about civil rights or whether or not this should be about the proper definition of what is committing a crime. But at the end of the day, Madam President, what this bill is really about is

common sense, bringing confidence back to our criminal justice and civil justice system and not allowing anybody who has decided to step outside the bounds of law to step back into it to use our own courts against us.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Through you, if the sponsor would yield for some questions.

ACTING PRESIDENT McGEE: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: I hear the sponsor's frustration and his desire for constructive criticism to make this a better bill, and we will do what we can do to oblige.

This legislation would amend the current law by changing the rule established in the case of Barker v. Kallash; is that not true?

SENATOR BALBONI: Yes, that is the intent, Mr. Schneiderman. Current law.

SENATOR SCHNEIDERMAN: And the current law under Barker v. Kallash provides as follows. It provides that a plaintiff in a civil action whose injury is a direct result of a criminal act that the plaintiff was committing, and it's a serious act, that plaintiff is barred from recovery.

I read now from the Court of Appeals decision. And I would note that the example you just gave appears in the Court of Appeals decision in Barker v. Kallash establishing the current law.

"When a plaintiff's injury is the direct result of his knowing and intentional participation in a criminal act, he cannot seek compensation for the loss if the criminal act is judged to be so serious an offense as to warrant denial of recovery."

Then the court goes on to say: "Thus a burglar who breaks his leg while descending the cellar stairs due to the failure of the owner to replace a missing step cannot recover compensation from his victims."

That's the law of the State of New York right now.

Now, I would like to know how your bill will change the rule set forth by the Court of Appeals that when a plaintiff's injury is a direct result of his knowing and intentional participation in a criminal act, he cannot seek compensation for the loss if the criminal act is judged to be so serious an offense as to warrant denial of recovery. How will your bill change that rule of law?

SENATOR BALBONI: Madam President, in response to the gentleman's questions --

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: -- I would quibble with one aspect of his underlying assumption. When he says that this is the law of the State of New York, I disagree. It is the common law of the State of New York. In other words, it is only enunciated in case law, not in statutory law.

Now, the effect of that is that we have codified -- that is, legislatively

mandated -- so many different aspects, so many different court cases. And to not legislate this particular court case because you have so eloquently stated the reason why we should is really an offense, an affront against all those law-abiding, taxpaying, court system-using individuals of the state.

In other words, you can't just have a Court of Appeals decision because it doesn't allow you to make motions for summary judgment at the outset of court, it doesn't allow you to say to everybody else here is the law of the land.

And in fact, there are some courts that do not want to follow Barker v. Kallash. And this is not anecdotal, from another person's perspective; this is actual experience that I have had in the courtroom. That notwithstanding the citation of Barker v. Kallash and the law that someone who participates in a criminal act should not be able to sue later on, courts will say: No, this is really a question of fact for the jury. So let's put everybody through that, because it is not enunciated in statute.

And that is the point of this bill today, to articulate and codify what the Court of Appeals has already stated.

SENATOR SCHNEIDERMAN: Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman. On the bill?

SENATOR SCHNEIDERMAN: Wishful thinking.

No, if the sponsor would yield for another question.

ACTING PRESIDENT McGEE: Senator Balboni, will you continue to yield?

SENATOR BALBONI: Nice try, Madam President. I am happy to yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: So just to clarify the situation, is it the intent of this legislation to change the rule in Barker v. Kallash, or is it the intent of this legislation to codify precisely the rule enunciated by the court in Barker v. Kallash?

SENATOR BALBONI: To codify.

SENATOR SCHNEIDERMAN: Thank you,

Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I thank the sponsor for his answers.

This is the seventh year this bill has come before the Senate in its current form. I would respectfully submit, in the spirit of the request for constructive criticism, that the defect in this legislation is that in fact it would substantially change the rule of Barker v. Kallash, and for the worse.

This legislation states: "In an action to recover damages, any culpable conduct of the plaintiff resulting in a felony conviction shall be a complete bar to recovery."

What has changed in the current law, which I think is far superior to this particular drafting of an effort to codify the law in this area, what's missing is two things. One, the current law requires it to be a serious violation of the law. And that's just a matter of fact and enables a court or a

jury to balance the relative culpability, which I would respectfully submit is a good thing.

The second is that unlike Barker v. Kallash and all the cases following it, this statute contains no requirement that the culpable conduct have any particular connection to the civil suit. All this states is any culpable conduct resulting in a felony conviction shall be a bar to recovery. It doesn't say culpable conduct in the commission of the act. It doesn't say culpable conduct when.

Under this provision, someone could steal something from a store -- say they stole a watch -- and come out of the store, bump into someone who then breaks their jaw, and be barred from recovery, even if that person, the third party, had nothing to do with an effort to punish the victim or didn't have anything to do with the crime, the crime scene, or the victim of the crime.

This says any culpable conduct shall be a complete bar. It doesn't tell you when. The law as enunciated by the Court of

Appeals says when a plaintiff's injury is a direct result of his knowing and intentional participation in a criminal act.

And again, in another section, it says the courts will not entertain a suit if a plaintiff's conduct constitutes a serious violation of the law and the injuries for which he seeks recovery were the direct result of that violation.

There's nothing in this provision that indicates that the plaintiff's injuries should be the result of his culpable conduct. There's no nexus here. And I do think I raised this issue last year. I think this is a drafting error that could be remedied.

But -- and I would urge the sponsor if we want to try and move this forward, maybe we could do something that came a little closer to actually codifying the rule of Barker v. Kallash if that is his intent.

It is absolutely clear that this changes the rule in two separate ways. This is bad law. This is bad public policy. There is no question that the rule as enunciated by the court that the courts should not be open

to someone who commits a crime and whose injuries that they're seeking to sue for in a civil action are the direct result of the commission of that crime -- that's the law now. That's a good law. That's a good rule. It's worked well.

Are there some judges who may have erred on the side of favoring the plaintiff in certain situations that some fight find offensive? Yes. But the goal of this Legislature should not be to take things away from judges and juries when there are these kinds of factual determinations to make.

This is an effort, through a very strangely worded statute with no causal connection between the culpable conduct and the action for personal injuries, to take things away from the judge and jury that properly belong before a judge and jury.

I would argue that there is no reason for us to impose this onerous a restriction where any felony, no matter how minor, would serve as a bar to any sort of civil action by someone before the felony or after the felony. This would mean that if

someone -- once again, say someone steals something from a store and walks out on the street and some third party shoots him 12 times. There would be no action for recovery against that third party.

That's bad law. Let's let this go to the judge and jury as it has been going. Let's let the law evolve as it has been evolving. And if we're going to codify Barker v. Kallash, let's put forward a statute that actually would codify the rule now.

I'm going to vote no. I encourage everyone to vote no. And I do believe that if we want to sit down and draft a bill that does codify Barker v. Kallash, we might actually have a chance of getting a hearing in the other house. But I see no reason for them to put on the floor this bill with the confusing and, frankly, inconsistent language that doesn't connect up the culpable conduct in any way, shape, or form, with no preposition, with no modifier to the action for civil damages that this would bar.

I vote no, Madam President, and I respectfully suggest that everyone vote no.

SENATOR BALBONI: Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Would the gentleman yield for a question?

ACTING PRESIDENT McGEE: Senator Schneiderman, will you yield for a question?

SENATOR SCHNEIDERMAN: Okay.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BALBONI: Madam President, does the gentleman believe in the action and the rationale enunciated by the Court of Appeals in Barker v. Kallash?

SENATOR SCHNEIDERMAN: Madam President, I actually have some criticisms of the doctrine as it's evolved there also.

What I was really pointing out was that the sponsor stated this is an effort to codify Barker v. Kallash. And I was just pointing out the differences between his statute and Barker v. Kallash.

I think there has been some room for criticism. And I must admit that there

are some individual cases in which the application of the law strikes me as having been improper.

Although I must say that not having been there, I have to fall back on my fundamental belief in the people of the State of New York in juries and on the judges of the State of New York to do justice in particular cases based on the facts that are before them.

SENATOR BALBONI: Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would yield.

ACTING PRESIDENT McGEE: Senator Balboni, will you yield for Senator Krueger?

SENATOR BALBONI: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BALBONI: I'll attempt to answer a little bit more clearer than the last answer.

SENATOR LIZ KRUEGER: We'll work

on that.

Thank you, Madam President.

I'm listening to the debate, and I'm admitting that, you know, I'm not an attorney, as I've said before, and I've certainly not practiced either criminal or civil litigation in relation to your bill. But my concern is it's such a broad arena. You're talking anyone involved with any felony could, by definition, never find fault with something else that was done to them.

So I'm reading through the list of felonies in New York State, so I just want to ask you -- so, for example, since patronizing a prostitute is a felony in New York State, someone who was participating in the patronizing of a prostitute and then anything happened to them during that, they could -- because, by definition, they were caught in the act, so to speak, of visiting a prostitute, anything else that anyone else did to them during that act or at that time could never be used in a civil trial.

Is that your understanding of the law?

SENATOR BALBONI: Madam President, to answer the Senator's question, let's take your hypothetical. And as we all know, bad cases make bad law. But notwithstanding that admonition and concern, if the individual who -- the john, as it were, were engaged in a felony and then the prostitute stabbed him in the heart, okay, but he survived -- let's see, what would his remedies be? He could put that person -- that person would be put in jail. And yes, if in fact it was found to be as a part of the act, he would not be able to sue.

Now, if that really challenges your sense of fairness, that's fine. But again, you know, what we're talking about here -- and the real problem is not so much whether or not it's in the commission itself, it's whether or not the police conduct that follows the case and results in police brutality, that has always been a focus of this bill. If in fact that is a reason that we should not have this, because what if the police commit police brutality.

And my response in that regard has

always been that you are, in fact, able to go to the criminal courts, put the police officer in jail. And you are able to use the Civil Rights Law as against the offending police officer and recover civil damages.

What we mustn't do here with this bill is try to elevate a civil remedy beyond what common sense would dictate should be the proper remedy. You know, violence should be jail. It's not necessarily about recovering monetary damages. Monetary damages won't bring back many of the things that you want.

And again, what is the message we send to everybody else who hasn't committed a felony, who hasn't stepped outside -- and, by the way, I want to correct the gentleman's characterization of Barker v. Kallash when he talked about serious crimes. I can't consider any more serious crime than a felony. We specifically changed the bill not to have it relate to misdemeanors. And that's in keeping with the spirit of the Court of Appeals decision.

And so the concern you raise is a valid one when you try to find a somewhat

benign course of conduct like the commission of a felony involving prostitution. But of course I don't find any felony to be benign. Because, again, what this bill does is it codifies common sense. And there should be a place in our state where we say no, if you commit a felony, you can't use the court system for your own benefit. That's really what this says.

SENATOR LIZ KRUEGER: Madam President, thank you --

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: -- if the sponsor would yield, please.

ACTING PRESIDENT McGEE: Senator Balboni, will you continue to yield?

SENATOR BALBONI: I continue to yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Just for clarification, I read your bill and I don't see that it's explicitly or uniquely for cases of police brutality or explicitly related to

violence.

So are you -- perhaps I misread your bill. I thought it was in any situation of a felony being committed and the --

SENATOR BALBONI: That's correct.

SENATOR LIZ KRUEGER: Okay. So in fact it's much broader than just the scenario that you used as an example?

SENATOR BALBONI: I didn't say otherwise. I didn't say otherwise.

SENATOR LIZ KRUEGER: Okay. Thank you.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

This bill is much broader than just a question of police brutality or violence committed in the process of a felony. And it's why I would argue yet again that we should leave this to the discretion of the courts.

And while it is true that felonies are more severe than misdemeanors, they are not all violence-related. And there are

innumerable numbers of felony charges -- I was just reading through our laws as I was listening to the debate -- that I think common sense would argue that there might be circumstances where somebody would justifiably have a civil case even though they were in the process of having committed and found guilty of committing a felony.

And to, just for the record, highlight a few issues that perhaps are slightly different analyses than Senator Balboni's in the examples he gave for his bill: Falsifying business records is a felony. Desecration of a cemetery -- a terrible thing -- is a felony. I'm not sure that if you were caught desecrating a cemetery or if you were a young person involved with some -- what you might think of as an inappropriate prank and then found yourself hurt or shot or attacked in response to that, that you should be recognized as a violent felon guilty of anything that happens to you.

Computer tampering is a felony. Duplication of computer materials is a felony. Criminal interference with religious

worship -- certainly something we would all be opposed to, but nonetheless not the same as a murder. The crime of mischief, criminal mischief can actually be a felony charge in this state. Eavesdropping can be a felony in this state. Filing a false instrument. Forgery. Promotion of gambling. We in the Legislature might have to explore that question for ourselves. Patronizing a prostitute, as I said. Rent-gouging.

That's just a simple list of some of the issues that can be felonies and some of the circumstances, not just the example given by Senator Balboni, that lead me to understand why it's a decade later and we still have not passed this bill through both houses of the Legislature, because it is not as simple and clear-cut as he describes.

And in fact, when you make broad-brush-stroke decisions that you're going to take away people's legal rights and legal protections, you need to think through the fact that there could be an extraordinarily diverse set of circumstances, even if you are claiming it is only for people who have

committed felonies.

So I will continue to vote no on this bill and urge my other colleagues to.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. If we could just have a little order.

Thank you, Madam President.

ACTING PRESIDENT McGEE: You're welcome, Senator.

SENATOR DUANE: Thank you, Madam President.

Even though this is a one-house bill, I would be remiss if I didn't comment that a victim of police brutality would most likely bring forward a federal civil rights case.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: Thank you, Madam President. I've listened to the debate, and

it's been interesting. But, you know, I think I'm going to vote no against this bill, because I think we're losing sight of basic principles and I think the sponsor perhaps has.

Every time you're injured, it doesn't mean you can recover damages. There are basic, fundamental principles of tort law. You have to show, yes, that certain conduct caused your injuries, but you have to show that the person who caused -- who engaged in that conduct was negligent, that they had a duty toward the victim or the public and they failed to carry out that duty or they violated that duty in causing the injury.

You know, looking at the active list today, it says that this bill prohibits civil actions against crime victims in certain instances. And I read the bill, and I don't see where it is limited to crime victims.

It doesn't limit the exemption, so to speak, from tort law to instances where the convicted felon inflicts damage on the victim of his or her crime. It just provides a blanket bar to a claimant who has engaged or

is convicted of a felony.

And I can think of instances where the tortfeasor, so to speak, had a duty to -- even a felon, for example, as Senator Krueger pointed out, the case of someone patronizing a prostitute or, indeed, the prostitute who rented the apartment from which she or he, I suppose, are engaging in the felonious conduct of prostitution.

What if that building exploded because there was a faulty boiler installed? Why can't they, no matter why they were in the building, sue whomever one would sue in those circumstances just as well as their neighbors who were engaging in ordinary conduct?

The cause of the injury is totally unrelated to the felony, yet by the language of this bill, those victims would be told: Oh, you can't, you were engaged in a felony you were patronizing a prostitute, you were engaging in prostitution.

The victim hasn't been damaged, the victim of the felony. It is -- I think we all acknowledge, well, it's debatable. But it's one of those things usually viewed as a

victimless crime because both participants usually are consensually engaged. But I won't debate that. There are other ways of evaluating who is and who is not a victim and what they are a victim of. They're clearly not a victim of the kind of person who would be protected -- or barred, certainly, from suing.

There are other reasons why someone could be in a premises. I mean, even a real bad guy selling drugs from a room in an office building where the building could collapse and injure many, many people because of some, you know, totally incompetent, negligent architectural or engineering work -- what did that felonious conduct have to do with the injury or the incident?

And I'm not suggesting -- you know, I point these out because Senator Balboni cites situations that do tend to get your ire up, like "that's not right." But forgetting that of course in any court case you convince a jury that when you're engaged in an armed robbery and somehow or other get injured by some means quite proximate to that robbery,

that you're not going to recover anything. Who are we kidding? No jury in their right mind is going to give the armed robber money because he stumbled and fell running out of the candy store.

You know, you look at the one or two what we used to call "sport cases"; they seem to come out of nowhere. But I've cited other examples where I don't think any fair-minded person would say that that person, albeit they're guilty of a felony, albeit that in that collapse that injured person who is selling drugs may be found with a lot of drugs, charged and later convicted -- I think we'd say but the injuries they sustained, the same injuries as all their neighbors did in the same building, caused by the same boiler defect or architectural negligence, they should have the same opportunity to be compensated for their injuries, which includes the medical care and other things they need.

So that's why I'm going to vote no. I don't think this bill is drafted to be limited. It's -- the description of it on the active list I think is misleading. It's not

only to bar recovery against crime victims, it's to bar recovery against anybody.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam Speaker, just real quick. This is the last comment -- maybe -- on the bill. I've just got to correct a couple of things.

I misunderstood Senator Krueger's analogy or scenario. And of course I picked up on it when Senator Connor spoke. There is no felonious patronizing of a prostitute. There's a felony for pimping. You could be a pimp. But I don't think it -- that doesn't rise to a felony. I don't know if that changes the circumstance, but ...

And as far as Senator Connor's concern that perhaps outrageous situations don't really happen, well, then I would draw his attention to the case of McCummings, the McCummings case. Remember this one, Senator Connor? This is the $4.3 million award to a mugger stands after the appellate division reviewed it. And you know what I got a chance to do? I got a chance to talk to Jerome

Sandusky. Do you know who Jerome Sandusky is? He's the victim. He was the guy who this creep McCummings threw on the ground and banged his head off of the cement. In New York City, by the way; I think it was Brooklyn. And then he gets up and he sues him, he sues the police and he wins $4.3 million.

Now, I guess what we've clarified -- we haven't codified the law, but certainly we've codified a sentiment here. Let's get the record straight. There's some in this chamber who might believe that even a drug pusher has rights. I disagree. I don't think they have rights to use our civil justice system.

And you know what? Maybe some people who believe that should take a look at the current law. Because you know what? We have a law called civil death. If you're convicted of a felony, you can't vote, you can't get a federal job. There are lots of jobs you can't get. Does that offend your sense of fairness?

We also have an unworthy heir

doctrine, Section 675 of the Banking Law, that if you're convicted of a felony you can't inherit from your estate. Maybe that offends your sense of justice.

This is common sense, ladies and gentlemen. Perhaps you trifle with the language. Yes, maybe there can be a better product. But come on, it's such common sense.

And what I want to do is I want to get the Assembly engaged. Come on, guys. You don't like it, give me better language. Please don't hide behind the technicalities.

And I guess what really has become clear today is that in an overlitigious society, we're not going to change a thing. We're not going to carve out any piece of the litigation pie, God forbid.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, just a clarification, if I might.

ACTING PRESIDENT McGEE: Are you asking Senator Balboni for a clarification?

SENATOR LIZ KRUEGER: No, I'd like to offer a clarification to his previous

comment.

Patronizing prostitutes is a felony D and E under Section 230.06 and 230.05 of the Penal Law. But you are correct, promoting prostitution is also a felony, a separate felony. And that's under Sections 230.32, 30 and 25. So I stand that it is a felony.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Thank you --

ACTING PRESIDENT McGEE: Pardon me, Senator Schneiderman?

SENATOR SCHNEIDERMAN: Okay. I'm just trying to get order on the back bench.

(Laughter.)

SENATOR SCHNEIDERMAN: On the bill again, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill again.

SENATOR BALBONI: Twice?

SENATOR SCHNEIDERMAN: Yes, twice. You did.

Let's clarify things and bring the

tone of the rhetoric down. I appreciate the sincerity of the sponsor in his efforts to deal with what is perceived to be a problem in the law. But let's talk about the facts as they relate to -- and I respectfully submit that the McCummings case he just cited is a good example of why we should not enact his statute.

Again, let's come back to the facts. For all of his rhetorical flourishes relating to the commentary by Senator Connor, he's not addressed the fundamental point raised by Senator Connor, that this is not limited to actions against the victim of a crime. This opens the door to third parties, before or after the commission of a crime, to commit torts and not face civil liability.

In the McCummings case, the criminal did not sue the victim, the criminal sued the MTA police who shot him in the back after the crime had been committed. And it's exactly the kind of complex scenario that should go a judge and should go to a jury that does under the present circumstances. He was not shot by the victim, he was shot by police

officer Manuel Rodriguez and, as a result as a result of the shootings, McCummings, who was paralyzed, sued the City of New York. Maybe the judge and jury erred, but that's something that should go to the judge and jury.

There's been no response to the fact, as raised by Senator Connor, this opens the door to actions barring recovery against third parties. There's been no response, frankly, to the fact that -- and this I find personally frustrating, because I am trying to offer some constructive advice -- that you need to have some preposition providing causal nexus between the culpable conduct and the action for damages, which is not in this statute. Which I assume is a drafting error and not an intentional effort to mislead and confuse the courts and the public.

But let's bring it down to what this is. Either you believe in the civil justice system or you don't. If someone is paralyzed, they have a right to a jury. And this is a system that has worked well, I would submit, in our democracy for a very long time. The tort system is a primary system of

regulating social conduct. And when you study torts, you study a complex series of considerations as to who should bear the burden in any particular circumstances.

I believe in the tort law. I believe in the civil justice system. I think that recovery of monetary damages against tortfeasors is a good thing. If you don't believe in that, then let's just say that and try and get rid of the civil justice system. But let's not criticize people who raise objections to a questionably drafted statute that does not codify the law in the case it purports to codify. Let's respect disagreements.

I think we should try and get something on this issue into play if it's necessary. I have not, other than a few misleading recitations of facts from cases that I don't think reflect the sponsor's comments, heard a reason to do so. I'm against the bill even more conclusively than I was at the start of this debate.

So perhaps we can move on and try and get something the other house will

consider. But we're not going to get it by passing the same bill seven years in a row. And this is not a criticism of the sponsor, who I know has made sincere efforts to come up with innovative solutions.

We have been here since January. This is the 25th -- 26th working day of our session. So far this year we've gotten 11 bills signed into law. Three were local tax and revenue bills. Three were chapter amendments covering details in 2003 chapters. Two bills authorized specific BOCES programs to enter into leases setting the maximum post-retirement earnings of public employees.

We're not getting a lot done with the system of the Assembly passing the same bills every year and us passing the same bills every year. While we've only passed 11 laws, the Senate has passed 235 one-house bills, and the Assembly has passed 495 one-house bills. Maybe less rhetoric, less attacking the other house and a little more work on drafting and negotiation would be in order if we want to serve our constituents.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm going to vote no on this bill, and for several reasons, many of them already discussed.

It seems whenever we have a blanket rule, there's always a case that comes up that shows that a blanket rule is not good. Look at the Rockefeller Drug Laws that we're struggling with 30 years after the fact where we give judges no discretion to do anything depending upon the specific circumstances of the case.

That's true with the tort law as well. You can't come up with every single circumstance that has to be addressed, because you're going to find situations where unfairness takes place. That's exactly why we

have the tort structure, we have the tort law, to have a jury, a judge and appeals courts see the facts and circumstances of each case and dispense justice. Probably 99 percent of the case where someone is injured in the course of committing a felony, there's no recovery. But there may be that 1 percent of the case that makes sense.

And lastly, if somebody is paralyzed, even if they happen to have committed a crime, who should be paying that expense? The people of the State of New York, because they can't recover from the individual who caused it, or the person who caused it, under a body of law that's been in existence for hundreds of years?

So I would vote against this bill for those reasons.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 216 are Senators Andrews, Brown, Connor, DeFrancisco, Dilán, Duane, Hassell-Thompson, L. Krueger, Marchi, Montgomery, Parker, Paterson,

Schneiderman, and Stavisky. Ayes, 47. Nays, 14.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Madam President, would you recognize Senator Duane, please.

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

ACTING PRESIDENT McGEE: You're welcome.

SENATOR DUANE: I'd like unanimous consent to be recorded in the negative on Calendar Numbers 254, 491, and 553.

ACTING PRESIDENT McGEE: Without objection.

SENATOR DUANE: Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Morahan, that completes the controversial reading of the calendar.

Senator Ada Smith.

SENATOR ADA SMITH: Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 553, Senate Print 5479A.

ACTING PRESIDENT McGEE: Without objection.

SENATOR ADA SMITH: Thank you.

ACTING PRESIDENT McGEE: Senator Morahan.

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

ACTING PRESIDENT McGEE: Yes, there is.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I wish to call up Calendar Number 285, Senator Maziarz's bill, Assembly Print Number 9701.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 285, by Member of the Assembly Schimminger,

Assembly Print Number 9701, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Madam President, I now move to reconsider the vote by which this Assembly Bill was substituted for Senator Maziarz's bill, Senate Print Number 5857, on March 23rd.

ACTING PRESIDENT McGEE: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

SENATOR MEIER: Madam President, I now move that Assembly Bill Number 9701 be recommitted to the Committee on Commerce Economic Development, and Small Business, and that the Senate bill be restored to the order of third reading.

ACTING PRESIDENT McGEE: So ordered.

SENATOR MEIER: Madam President, I now offer the following amendments.

ACTING PRESIDENT McGEE: The

amendments are received and adopted.

SENATOR MEIER: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Meier.

Senator Morahan.

SENATOR MORAHAN: Madam President, would you please recognize Senator Diaz. I believe there's a petition at the desk.

ACTING PRESIDENT McGEE: Motion to petition out of committee.

The chair recognizes Senator Diaz.

SENATOR DIAZ: Thank you, Madam President.

I just take this opportunity to motion a petition for Bill Number 3826. And this is a bill very important to me, very important to the community that I represent. This is a bill that would provide an alien who is a defendant in a criminal justice system to be advised that the acceptance of a guilty plea might be grounds for deportation or denial.

Number two, this bill further

provides that if the courts fail to so advise the defendant, he or she will have the right to withdraw the guilty plea.

This is something, an injustice that has been done, and we try to correct that injustice. Many families has been divided when an immigrant, believing that by pleading guilty he would be done with the case, sometimes that guilty plea might caught cause him to be deported, he or she to be deported, and families are divided.

I know that this bill won't go anywhere here. I appreciate my fellow Senators for listening. I appreciate your time, the time that I'm taking to introduce this bill. I know that I will not get the support for this bill. But this is a bill that is very important for the Hispanic community, for immigrants, for the black community, for all kind of immigrants in the city and the state of New York.

People have been divided, families have been divided. I think that many individuals who are not citizens and are accused of a crime under state law are not

aware of the fact that acceptance of a guilty plea could constitute grounds for deportation or denial of naturalization.

This measure will ensure that such injustice are avoided and that immigrants who enter a guilty plea do so with full knowledge of the consequences of that guilty plea. I urge my colleagues to join with me in supporting this important common-sense measure.

I thank you, Madam President. I thank all of you. I hope, I wish, I pray that I could get support for this bill. If I could only get your vote, Madam President.

ACTING PRESIDENT McGEE: Those in favor of the canvass will raise their hands.

Thank you, Senator Diaz.

(Laughter.)

SENATOR DIAZ: Thank you, Madam President.

I want your support. I need your support.

ACTING PRESIDENT McGEE: Thank you, Senator Diaz.

SENATOR DIAZ: Balboni?

(Laughter.)

THE SECRETARY: Those recorded in agreement are Senators Andrews, Connor, Diaz, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The petition is lost.

SENATOR DIAZ: Madam President, I stand before you defeated.

(Laughter.)

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Is there any more business at the desk, Madam President?

ACTING PRESIDENT McGEE: No, there is not.

SENATOR MORAHAN: Okay. Therefore, there being no further business before the Senate, I make a motion that we adjourn until Wednesday, March 31st, at 3:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until

Wednesday, March 31st, at 3:00 p.m.

(Whereupon, at 4:12 p.m., the Senate adjourned.)