NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 12, 2005

3:12 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 please 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, Monday, April 11, the Senate met pursuant to adjournment. The Journal of Sunday, April 10, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations:

As a member of the State Board of Parole, James B. Ferguson, Jr., Esquire, of Pelham Manor.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: I stand to recommend the nomination of the new member, James B. Ferguson, to the State Board of Parole.

I had the privilege of working with his father in the New York City Police Department. The head of the Emerald Society, he's done an outstanding job in his career in the New York City Police Department.

I had the privilege of knowing his son, an outstanding attorney who has done great work in the area of workmen's comp and

will truly be a great asset to the workmen's comp and to the City and State of New York.

Thank you, and good luck.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President and my colleagues.

I rise to add my support for this great nomination. That Mr. Ferguson came before the Crime Victims, Crime and Corrections Committee. The committee thoroughly reviewed his qualifications and were impressed significantly by his in-the-field actions, his career in law enforcement, and his roots, family roots in law enforcement.

It's an excellent appointment, and the committee was extremely impressed with his qualifications.

Thank you, Madam President.

THE PRESIDENT: The question is on the nomination of James B. Ferguson, Jr., to the New York State Board of Parole. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations, and best wishes to you.

(Applause.)

THE PRESIDENT: Mr. Ferguson is here this afternoon with his fiancee, Angie Vushaj; Monica Camovic, his stepdaughter -- I apologize, I'm sure, for the pronunciations -- Jean Ferguson, his mother; Barney Ferguson, his father; Andrew Ferguson, his brother; and Tracey Ferguson, his sister-in-law.

Have a great celebration.

The Secretary will read.

THE SECRETARY: As a member of the Workers' Compensation Board, Donna Ferrara, of Albany.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Please recognize Senator Marcellino first.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

It is my pleasure to rise and second the nomination of my good friend Donna Ferrara to be nominated to the Workers' Compensation Board.

I've known Donna for a number of years, and I remember walking in an election when she first ran for the Assembly, and she was walking door-to-door and walking so earnestly she forgot to watch where she stepped and actually broke her leg and had to finish the initial campaign on one leg -- and did so, and won handily in that election.

She has represented our district exceptionally well in the Assembly, lo these many years. And I know that she leaves the Assembly with mixed emotions. It is a part of her life that she dealt with with great intensity and great aplomb, and I think she handled herself well under very difficult circumstances, being in the minority in the Assembly.

However, she rose up as a ranking member of the Insurance Committee and did very well there and is well-known for her legislative packages.

And I think she will serve and I know she will serve with great dignity on the Workmen's Comp Board and be a credit to our Governor and to our state.

I wholeheartedly endorse her candidacy and, again, am proud to second the nomination. And with regards to her husband, Bob, and their two lovely children.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

That certainly taught her a lesson, never to walk again with Senator Marcellino on the campaign trail.

I rise to second the nomination as well and compliment Governor Pataki on this. And I think if I had to describe Assemblywoman Ferrara, it would probably be class, dignity, and professionalism in every facet of her life.

I've known her for many years. She's with her two beautiful children and her husband. Besides the distinguished career she's had in the Assembly, and certainly a champion of women's rights, Donna is a great mother and a great human being. And I know she'll carry all the traits in her personal life and professional life to the Workers' Compensation Board.

Donna, I wish you the best of luck, and congratulations.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I think when you read the nomination you said Donna Ferrara from Albany. So I think that she's probably moved from the Island and now considers the Albany area her home.

But I've had the pleasure over the past six years to sit as the ranking Democrat on Insurance while Donna has served as the ranking member on Insurance in the Assembly. And I have found her to be all the qualities that have been expressed by Senators Fuschillo

and Marcellino. She's bright, she's sensitive, she's caring, she's thorough, and she happens to be a wonderful person.

It's the Assembly's loss and workmen's comp's gain by having her. She's really a credit to this whole body, and I wish she and Bob and their two children every success in moving from my home district down to, what was it, Long Island or someplace out there.

Congratulations, Donna.

THE PRESIDENT: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

I rise to support the nominee. I think the Governor should be applauded for this nomination.

Donna Ferrara has a terrific background, having served as a staff member here in the Senate, an Assembly member and ranking member on the Insurance Committee. So it gives her the tools that she needs to really do a topnotch job. And we know that when she gets spirited and focused on something, the job gets done in a first-class

way.

So I wish Donna much luck and success. And she may have started her career in Nassau, but she's going to finish her career in the great county of Suffolk.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: I rise, Madam President, to second the nomination of Donna Ferrara. I got to know her working together with the Italian-American Legislators Association, but was always impressed by her ability and her expertise, her desire to do that -- to take that extra step on behalf of not only her constituents but Italian-Americans.

And to see her, always smiling, always pleasant, and especially when the two children came, carrying the children, being an expert not only at being a legislator, being an expert representative of her constituents, but at the same time a wife and mother. She made it seem easy, although I'm sure it isn't easy and I'm glad I never had to take her place.

I am very proud to second the

nomination, Madam President.

THE PRESIDENT: Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

I would like to commend the Governor on this great nomination. I believe that Donna Ferrara has the temperament, the ability, and the will to serve in this capacity. And it's only befitting that this should happen today, on the birthday of her daughter, Kathleen Lillian.

Donna has pulled together something that many of us have attempted to do and did not do well, and that was to both have a career and to raise our families. I applaud her for that. I applaud her for all that she has done in the Assembly.

And I look forward to working with her in her new capacity, because I know that she will do it well.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. On the nomination.

I rise with great pride and enthusiasm to support this excellent

nomination. Governor Pataki again has provided the Legislature with a great opportunity to support a great candidate, and that's what we're doing here today in supporting this nomination.

Donna Ferrara has served with distinction in the Assembly. It was a pleasure to work with her during those legislative years. And that I know she will serve with great distinction on the New York State Board of Workers' Compensation.

Congratulations to the new commissioner, and thank Governor Pataki for providing this nomination for us to support.

Thank you, Madam President.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Yes, Madam President, I too rise to second the nomination of Donna Ferrara.

As I said in the committee earlier today, I had the good fortune of meeting her when she was an intern for my predecessor, so I saw the government person when we were first starting out. And then years later, after she

went to law school and served as a private practice attorney, our paths crossed again when I was here and she came to the Assembly.

So I think that her background as a lawyer and a mother and a good legislator will serve her well in this new job. And I think the Governor did an outstanding choice in picking Donna Ferrara for this position.

THE PRESIDENT: Senator Winner.

SENATOR WINNER: Thank you, Madam President. I rise in support of my friend Donna Ferrara.

Donna, you know we served together for a long time, your entire career in the Assembly. And you served with me for many, many years on the Assembly Republican Leadership Team. You obviously had a great contribution to the Assembly Republican Conference, and you've always been a great friend.

And I know you'll do a great job in your new position, and I wish you all the best.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam

President, I too join my colleagues in seconding this nomination of Donna Ferrara. She's done an outstanding job while she was an Assemblywoman, an outstanding job as a mother.

And I want to really commend the Governor. He makes some outstanding appointments every once in a while, but this one is exceptional.

And I congratulate him for that, and I wish Donna and her family the very, very best of luck in her new career.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Thank you, Madam President.

I'm very pleased, personally and professionally, to rise in support of our nominee, Donna Ferrara, to be a member of the Workers' Compensation Board.

During the years that Assemblywoman Ferrara was the ranking minority member on the Insurance Committee in the Assembly, we had occasion to be on panels together in front of various insurance groups. And I've always been impressed with Donna's command of the facts and her knowledge of the law and the

process here at the Capitol.

She's been an outstanding member of the Assembly. She's proven herself there. And with this new assignment, I am confident that Donna will go on to even greater service on behalf of the people of the State of New York.

One of Donna's many outstanding qualities is that she is a people person, very warm and genuine. And as a member of the Workers' Compensation Board, she will be dealing with people at a very vulnerable time in their life. And I know that that combination of the command of the law and her compassion for people and her ability to work with people will be great qualities as she goes on to this new service.

So I rise to congratulate, first of all, the Governor for this outstanding nomination, and to congratulate Donna and Bob and their family on this very happy day for them and for the people of the State of New York.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President,

if your name were also up there -- you know, I just want to be candid with you -- if she pleaded with me with tears running down her face and said, "Please, vote against me," I'm still voting for her.

(Laughter.)

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I think this is a tribute to Donna Ferrara, that we are having this extreme lovefest here, because she's been a good friend to so many of us and I've worked with her on the Legislative Women's Caucus.

And I think the thing I find very, very admirable is that she can multitask so many different things and do them all well. Maybe I'm envious. But when she was bringing infants into the chamber and managing to be still a wonderful Assemblywoman and just a wonderful attribute with her constant smile and her interest in you and in the things around her, and the legislation, it's just this is the type of woman that makes us all proud.

So congratulations, Donna.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: I just want to say quickly that I've known Donna for many, many years, and the gain of the Workers' Comp Board is our loss, to tell you the truth. I mean, one of the brightest, most pleasant people, and also one of the -- a good friend.

But I have to tell you a quick story, that she and I were linked in an incident that happened some years ago. And her husband knows about this, so I don't have to -- it was one of these investigative reporters who was running around looking at our -- the times we were off. In other words, they were saying a lot of legislators are not paying attention.

So they listed the number of days that Donna was off, and me, and they said we were the two biggest with days off. And they said that Senator Volker allegedly had cancer surgery, and that Donna Ferrara allegedly had a pregnancy and had a baby.

And I just want to tell you about the allegation. The allegation is definitely

a fact, but it was really kind of comical to say "allegedly" -- they must be kidding us. I mean, the point I'm trying to make is it just goes to show you how those things can happen.

But there's no question the allegation was correct and that Donna, by the way, with a difficult time, the kids being little and so forth, being here -- but she did a great job. And as I said, their gain is our loss.

Good luck to you, Donna. And I'm sorry that you had to move to Suffolk County, but everybody has to do something, and I appreciate it.

Thank you.

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

I first met Donna Ferrara 13 years ago when we both came to Albany as newly elected members of the Assembly. And I spent three years there before I engineered my own escape, and now I see after 13 years the nominee has engineered her own escape as well.

But in the time that we spent

together, I got to know Donna and we became close classmates. We went around the state and pitched reform and many of the things that we're still struggling to do here in Albany. But nobody was more fervent in that effort. And with all of the issues that came before us as members of the minority, nobody was more adept at handling the issues and developing issues as well.

I think that if you look at the way Donna has mastered her life and balanced being a mother, a member of the Assembly, and so many other things, that we can trust without any question that she's going to master this job as well.

And I wish her well, and I'm so happy to see that she has now escaped the Assembly minority as well.

So good luck, Donna. Congratulations.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

Donna, I don't think I've seen such a lovefest in this chamber since we passed on

"Rapp" Rappleyea as a member of the Power Authority.

Donna, I just want to add my voice to the chorus here. And I think for your family you can see, by the members of the minority, the members of the majority, the great respect and love that we have for Donna. I know she's going to do a great job on the Workers' Comp Board.

Congratulations, Donna.

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: Madam President, I just want to add my congratulations.

Donna, Bob, having had the chance to welcome you into the legislative family originally many years ago, it's actually with great regrets that you're not going to continue in the legislative family.

But I know that government will be all the better for your participation, and I wish you Godspeed.

THE PRESIDENT: The question is on the nomination of Donna Ferrara as a member of the Workers' Compensation Board. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is confirmed.

And congratulations, may you have similar success in your new job.

(Extended applause.)

THE PRESIDENT: I've been asked also to acknowledge the presence of her husband, obviously the gentleman sitting next to her, Bob Gregory; her daughter, Kathleen; her son, Brendan; and Carol Cardell, who's also with her this afternoon.

Have a great celebration.

The Secretary will read.

THE SECRETARY: As director of the Municipal Bond Bank Agency, Charles Capetanakis, of Brooklyn.

As a member of the New York State Housing Finance Agency, Jerome M. Becker, Esquire, of New York City.

As a member of the Capital District Transportation Authority, David M. Stackrow, of Wynantskill.

As a member of the Central New York Regional Transportation Authority, H.J. Hubert, Esquire, of Syracuse.

As a member of the Ogdensburg Bridge and Port Authority, James Thew, of Waddington.

As banking members of the State Banking Board, E. Peter Forrestel, II, of Akron, and Jens A. Westrick, of New York City.

As public member of the State Banking Board, Mallory Factor, of New York City.

As a member of the board of directors of the Great Lakes Protection Fund, Michael J. Elmendorf, II, of Latham.

As a member of the State Public Transportation Safety Board, Daniel J. Texeira, of Brooklyn.

As a member of the Finger Lakes State Park, Recreation and Historic Preservation Commission, Paul Hudson, of Canandaigua.

As a member of the Palisades Interstate Park Commission, Ann C. O'Sullivan, of Stony Point.

As a member of the Veterans' Affairs Commission, Patrick Devine, of the Bronx.

As commissioner of the State Insurance Fund, Charles Scott Bowen, of Binghamton.

As members of the Advisory Council on Alcoholism and Substance Abuse Services, Kenneth L. Oakley, Ph.D., of Batavia, and John W. Russell, Jr., of Staten Island.

As members of the Citizens Policy and Complaint Review Council, Thomas K. Cross, of LaGrangeville, and Nicholas D. Labella, of Utica.

As members of the State Hospital Review and Planning Council, Frederick B. Cohen, Esquire, of Buffalo, and James K. Reed, M.D., of Cohoes.

As a member of the Board of Visitors of the Broome Developmental Disabilities Services Office, Nancy Mirabito, of Norwich.

As members of the Central New York Developmental Disabilities Services Office, Anna Maria De Riemer-Gallay, of Ava, and Doris

W. Latimer, of Rome.

As a member of the Board of Visitors of the Central New York Psychiatric Center, John J. Finn, of Clinton.

As a member of the Board of Visitors of the Pilgrim Psychiatric Center, Doris S. Wagner, of West Babylon.

As a member of the Board of Visitors of the St. Lawrence Psychiatric Center, Patrick R. Rourk, of Norwood.

And as a member of the Board of Visitors of the Taconic Developmental Disabilities Services Office, Cheryl Wilcox, of Wassaic.

ACTING PRESIDENT ROBACH: Senator Johnson.

SENATOR JOHNSON: Move the nominations.

ACTING PRESIDENT ROBACH: The question is on the confirmation of the nominees as read by the Secretary. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Any opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The nominees are hereby confirmed.

Senator Skelos.

SENATOR SKELOS: Continue in regular order.

ACTING PRESIDENT ROBACH: The Secretary will read.

SENATOR SKELOS: Communications and reports from state officers, followed by motions and resolutions, if I'm correct.

ACTING PRESIDENT ROBACH: Yes.

SENATOR SKELOS: Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Maziarz, who's sitting next to me, on page 23, Calendar Number 390, Senate Print 1984, I ask that that

bill retain its place on the Third Reading Calendar, and I offer amendments to it.

On behalf of Senator Marcellino, Mr. President, I offer the following amendments to a bill on page 9, Calendar 113, Senate Print 1771A, and I ask that that bill retain its place on the Third Reading Calendar.

On behalf of Senator Maziarz, on page 23 I offer the following amendments to Calendar 392, Senate Print 3102A, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT ROBACH: Thank you, Senator Farley. The amendments are received, and the bills will retain their place on the calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there are substitutions to be made at this time.

ACTING PRESIDENT ROBACH: There are.

The Secretary will read.

THE SECRETARY: On page 9,

Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 5349 and substitute it for the identical Senate Bill Number 760, Third Reading Calendar 111.

And on page 25, Senator Flanagan moves to discharge, from the Committee on Elections, Assembly Bill Number 1221 and substitute it for the identical Senate Bill Number 2914, Third Reading Calendar 426.

ACTING PRESIDENT ROBACH: Substitutions ordered.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar in its entirety.

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

(Response of "Aye.")

ACTING PRESIDENT ROBACH: All those opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President,

if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 16, by Senator Volker, Senate Print 194, an act to amend the Penal Law, in relation to assaults.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 206, by Senator Saland, Senate Print 469, an act to amend the Criminal Procedure Law, in relation to authorizing.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator DeFrancisco recorded in the negative.

SENATOR DeFRANCISCO: No. May I be recognized.

ACTING PRESIDENT ROBACH: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, to explain my vote. I vote yes.

The confusion was I was attempting to vote no on Calendar Number 16, and I didn't jump quick enough.

And I would like to -- I don't know if I could have unanimous consent to vote in the negative on Calendar 16, since I've been present all the way through the proceedings up to this point in time. And I'm also short, so you may not have seen me when I tried to rise and raise my hand.

ACTING PRESIDENT ROBACH: Without objection.

SENATOR DeFRANCISCO: Apparently there may be an objection to me doing that under the new improved reform rules that don't allow me to vote while I'm in session continuously.

So what I'd like to say is that had I been taller and been able to raise my hand quicker, I would have voted in the negative on Calendar 16.

ACTING PRESIDENT ROBACH: The record will so reflect.

Read the last section on Calendar 206.

THE SECRETARY: In relation to Calendar Number 206: Section 3. This act shall take effect immediately.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT ROBACH: Senator

Oppenheimer.

SENATOR OPPENHEIMER: On behalf of short people, I would like -- had I been not excused, I would have voted against two bills, and I would like to name them: Calendar 192, that's Number 838; and Calendar Number 415, that is Senate 1324.

ACTING PRESIDENT ROBACH: The record will so reflect.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 207, by Senator Saland, Senate Print 470, an act to amend the Criminal Procedure Law, in relation to expanding the offenses.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding the 30th day.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The

bill is passed.

THE SECRETARY: Calendar Number 212, by Senator Balboni, Senate Print 930, an act to amend the Civil Practice Law and Rules, in relation to prohibiting.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

THE SECRETARY: Calendar Number 219, by Senator LaValle, Senate Print 1626, an act to amend the Criminal Procedure Law, in relation to the commission of crimes.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 334, by Senator Paterson, Senate Print 1313,

an act to amend the Criminal Procedure Law, in relation to admissibility.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 336, by Senator Padavan, Senate Print 2174, an act to amend the Criminal Procedure Law, in relation to statements.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 338, by Senator Libous, Senate Print 2499, an act to amend the Penal Law, in relation to increasing the penalties.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 349, by Senator DeFrancisco, Senate Print 3287, an act to amend the Criminal Procedure Law, in relation to statements at sentencing.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 451, by Senator Volker, Senate Print 1524, an act to amend the Criminal Procedure Law, in relation to expanding.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 518, by Member of the Assembly Destito,

Assembly Print Number 6714, an act to amend the Public Officers Law, in relation to the date.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT ROBACH: The bill is passed.

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

SENATOR SKELOS: Thank you. If we could go to the controversial calendar.

But prior to taking up Senator Balboni's bill, if we could have the bells rung at this time.

ACTING PRESIDENT ROBACH: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 212, by Senator Balboni, Senate Print 930, an

act to amend the Civil Practice Law and Rules.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR BALBONI: Thank you, Mr. President.

As everybody knows, this bill was one of the first bills I introduced when I came to the State Senate. Because when I was in the Assembly, as Mr. Klein will remember, I couldn't get this bill considered at all. So I passed it back then, and we've passed every year for seven years. This is the eighth year we're considering this bill.

And at this point I feel like Henry VIII's seventh wife, who remarked, "I know what to do, I just don't know how to make it interesting."

And that is in fact the case we have today: How do we go through the basic concepts of fairness that continue to defy expectations?

Now, we've talked about the Bernard McCummings case, or the subway mugger, when

after the guy on the IRT subway robbed someone, he got shot and sued and won, in the Appellate Division, $4 million.

We talked about the Barker v. Kallash case, which is a famous Court of Appeals decision where they got one right, where they essentially said that two kids who made a pipe bomb, when the bomb blows up, the one kid cannot sue the other kid. That was a good decision. And that's the case law in this state, but we've never put it into statute.

And of course a year ago Thursday the New York Sun published the following article: "Drug Smuggler Sues Queens Hospital. Queens doctors extracted heroin" -- now, I'm going to read you this, because you just -- you can't believe this fact pattern, but it's true.

"A convicted drug smuggler suing a Queens hospital for operating on him to remove some of the 51 condoms filled with heroin that he had swallowed testified on videotape yesterday that he was forced to undergo the surgery.

"Speaking on a video made from federal prison, William Kanyi described desperately pleading with doctors not to operate. Then the Ghanaian native pulled up his shirt to reveal the scar on his stomach, lowered his head and cried.

"At the time of the operation in March of 1998, Kanyi had just been caught at Kennedy Airport smugging 51 condoms filled with heroin that he had swallowed in Ghana. At that time he was arrested and taken to a Queens hospital, where doctors performed an emergency operation to remove the heroin that remained inside of him and that they feared was leaking and going to kill him."

It says here that his urine tested positive for heroin, a good indication that in fact one of the condoms was leaking. And as you know, heroin in somebody's stomach will kill you.

So they performed the emergency surgery, they saved his life, and he turns around and he brings a $5 million lawsuit against the hospital. There you go, folks. That's our current justice system.

And on the other side the argument comes back: Well, wait a minute, why don't we simply have the jury decide what's right and what's wrong? The problem with that is, again, process.

Before coming to this august body, I was a defense attorney. I defended the County of Nassau. And many times I had cases in which, if we could have gotten summary judgment, we wouldn't have had to have witnesses testify, we wouldn't have had to empanel a jury, we wouldn't have had to have all the resources of the municipality go focus on that first trial.

There is a cost associated with trial work that could be avoided if you simply shut the door of the courthouse to the convicted felon. We're not talking about misdemeanants here, we're not talking about negligence here. We're talking about folks who go out and intentionally commit a felony, are convicted and then found to be culpable and denied the ability to sue.

Now, there's also been raised, in past years, the issue about police brutality.

Well, what do you do if the individual victim is the victim of police brutality?

I have always argued, and most police officers I talk to tell me that the threat of being sued is not what will deter police brutality. What deters police brutality is the thought of going to prison. And that's what happens in police brutality.

In addition to which, the federal civil rights violations are still available and, frankly, are a lot more effective when bringing a case against a municipality. You get more money, you get attorneys' fees, it's a lot better in terms of your recovery.

So this is holdover from the days back in 19 -- I think it's 1975, when we changed from the former system where we considered if someone did something wrong that they were barred, to a comparative negligence system. And this is a holdover that just frankly doesn't make sense.

And I'll make the case again -- and John DeFrancisco, this is for you, because I know that you agree with me on this point. You've got to give people confidence in the

judicial system. Because that's lacking, frankly. And you've got to give people confidence that the playground -- the playing field is even for everyone. And that if you step outside the bounds of society and commit a crime, you can't step back in and use our court system.

Thank you very much, Mr. President.

ACTING PRESIDENT ROBACH: Senator Balboni, thank you for that brief explanation.

(Laughter.)

ACTING PRESIDENT ROBACH: Senator DeFrancisco.

SENATOR DeFRANCISCO: Will the sponsor yield to a question.

SENATOR BALBONI: With delight.

I went to law school, by the way.

SENATOR DeFRANCISCO: I was going to ask you which law school, but no.

The question is, you think that it's a good thing or all right or acceptable for someone who is a victim of police brutality to bring a lawsuit in federal court and recover more, plus attorneys' fees and so forth, like you just said?

SENATOR BALBONI: Do I think that is right and appropriate? Well, that's for the federal judiciary and for the federal Congress to consider.

SENATOR DeFRANCISCO: So basically, knowing that the doors are already open in the federal courts for this type of lawsuit that you're trying to prevent in New York State, you would close the doors in the New York courts; is that correct?

SENATOR BALBONI: Mr. President, if I may respond to the gentleman, actually in the federal court, as you know, it's a different cause of action than it is in the civil court.

In the federal court, what will happen is they say that you have conspired to deprive someone of their civil rights. As opposed to the civil case that's brought in state court, which is basically negligence or intentional acts.

SENATOR DeFRANCISCO: Okay. May I ask the sponsor another question.

ACTING PRESIDENT ROBACH: Will you continue to yield, Senator Balboni?

SENATOR BALBONI: Yes, I do.

SENATOR DeFRANCISCO: I can't remember what the threshold is for a felony in a larceny case. Do you remember, Senator Balboni? Is it a thousand dollars, $1,500? What is it?

SENATOR BALBONI: I think it's a thousand dollars. Whatever it is. For purposes of your hypothetical, let's assume it's a thousand dollars.

SENATOR DeFRANCISCO: In the same instance that you just talked about, a larceny situation where the person committing the larceny is accosted by someone and injured, does your statute apply to that situation?

SENATOR BALBONI: Well, if it would be a situation like the following. You break into someone's home, you take a thousand dollars from their home, and on the way out you trip on their kids' toys and you break your leg.

Yes, you shouldn't be able to come and use the courts to sue the homeowner, since you committed the crime.

SENATOR DeFRANCISCO: If you --

SENATOR BALBONI: Intentionally.

SENATOR DeFRANCISCO: I'm talking about a larceny. Is a larceny one of the crimes that, if convicted, you would be precluded from suing if you were injured?

SENATOR BALBONI: As I said. That's the crime I described.

SENATOR DeFRANCISCO: There's a difference between a larceny and a burglary.

ACTING PRESIDENT ROBACH: Senators, if you could come through the chair, please.

SENATOR DeFRANCISCO: Okay. What I'm trying to figure out, isn't it true that a burglary is a different crime than a larceny?

SENATOR BALBONI: There were two crimes in there. But it's still -- and the point is, it's a conviction for a felony.

A felony is a bad thing, as you know, Senator. And it is intentional actions that we're taking a look at here.

SENATOR DeFRANCISCO: Let me give you a specific example. I'm talking about a larceny --

ACTING PRESIDENT ROBACH: Senator

DeFrancisco, would you like Senator Balboni to yield?

SENATOR DeFRANCISCO: I would very much like for him to yield.

ACTING PRESIDENT ROBACH: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, I do.

SENATOR DeFRANCISCO: Senator Balboni, let's talk about a larceny, not a burglary. Because I think you will concede that they're two different crimes.

SENATOR BALBONI: That's correct.

SENATOR DeFRANCISCO: All right. So it's a felony larceny where you steal a thousand dollars from somebody. And in response, the person chases you to get their thousand dollars back that you just stole, and they beat the living daylights out of the person and beat that person up to the point where they're near death.

Does that person who's near death as a result of the response by the person committing -- by the person upon whom the larceny was committed, is that person allowed to sue under those circumstances?

SENATOR BALBONI: The answer is, under the bill it depends.

As you know, a motion for summary judgment would be made to the court. The court would decide whether or not the actions of the individual were culpable, that they were culpable -- that they were culpable in their own injuries. If they weren't culpable, they could still sue.

SENATOR DeFRANCISCO: Well, may I ask another question.

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

SENATOR BALBONI: Yes, I do.

SENATOR DeFRANCISCO: Can you explain, under my fact pattern, where the person committing the larceny would not have been considered culpable for his injuries?

SENATOR BALBONI: Sure. They're away from the scene and the act is no longer -- it's not in response to the larceny, it's simply a simple assault.

The court would then decide it's a separate act. And in fact, the individual who committed the assault is going to be

responsible, and they can be sued and be held criminally liable.

SENATOR DeFRANCISCO: May I ask one last question.

ACTING PRESIDENT ROBACH: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT ROBACH: Continue.

SENATOR DeFRANCISCO: Can you conceive, Senator Balboni, of any felony where the reaction by the individual who might harm the felonious person, can you think of any case where the reaction was such that it was way in excess of the need, in that particular crime, that would allow this person not to be able to sue or to prevent the person from suing?

SENATOR BALBONI: Mr. President, through you, it is certainly the sponsor's intent -- and, you know, there's a great Law Review on this subject, by the way, that explored a lot of different cases.

And by going through the case law, what we found is that the courts have been

pretty specific on this and that they're able to decide what is culpable negligence and what is not -- or culpable activity and what is not.

And I believe that under the standards in this bill itself that it would give courts the ability to say, you know what, that's such outrageous behavior on the part of the felon that they've got to close the door.

But also, if there is a question as to whether or not the person who was the victim of the crime went over the top, that the court could come back and say, you know what, that is a question for the jury, there is a question of fact involved. And therefore it survives the motion for summary judgment.

SENATOR DeFRANCISCO: Will the Senator yield to another question, because that raised another question for me.

SENATOR BALBONI: Yes, I would.

ACTING PRESIDENT ROBACH: Will you continue to yield, Senator Balboni?

He continues to yield.

SENATOR DeFRANCISCO: Senator Balboni, if the courts have already drawn

these lines in litigated cases so they could determine on a case-by-case basis which is the excessive culpability and which isn't, why the need for the bill?

SENATOR BALBONI: Mr. President, through you, in the cases that I did on behalf of the County of Nassau, several of the judges who presided over the trials said: You know, this is so frustrating, here's a guy who's convicted of a felony, shouldn't be in this courtroom, but yet because there is a question of fact, regardless of whether or not they committed the crime -- in other words, they wouldn't take, at the motion for summary judgment point in the trial, the fact that they were convicted of a crime and therefore they were excluded from the courtroom.

We have not codified the holding of the Court of Appeals in 1982 in Barker v. Kallash. And that's really all we seek to do here, is take the rule of law as expressed by the Court of Appeals and apply it to statute.

And remember, this is not such a huge departure for this state. Prior to 1975, this was the law for all negligence actions.

It was contributory negligence.

So all we do is revisit that period of our jurisprudence which contemplated that if you committed the felony, that you can't be allowed into the courtroom.

SENATOR DeFRANCISCO: Would he yield to another question.

SENATOR BALBONI: Yes, I would.

ACTING PRESIDENT ROBACH: Senator Balboni will yield.

SENATOR DeFRANCISCO: You're using the rules when we had contributory negligence to justify this particular statute? Is that what you're saying?

SENATOR BALBONI: Yes.

SENATOR DeFRANCISCO: You're talking about when there was contributory negligence -- it could be 1 percent contributory negligence -- you were barred from the court?

SENATOR BALBONI: At that point in time, that's correct.

SENATOR DeFRANCISCO: And that was -- are there any jurisdictions, any states in this nation that have that strict

contributory negligence any longer?

SENATOR BALBONI: Mr. President, through you, I don't have the list here. But when it comes to convicted felons, yes, there are several states.

SENATOR DeFRANCISCO: Thank you, Senator Balboni. I appreciate it.

On the bill.

ACTING PRESIDENT ROBACH: On the bill, Senator DeFrancisco.

SENATOR DeFRANCISCO: Just very briefly, my position is simply this. That if you're a person that does a wrongful act that is injured in the course of that wrongful act, there's many different degrees of wrong. And there's many different degrees -- each case is a different case.

And that's the beauty of the court system, that you plead your case and if a jury believes that you're wrong or if, as a matter of law, the court thinks that you should not be allowed to go forward because of a failure of proof, even giving your facts all credence, that's the way the system should work. Not barring somebody based upon a label.

And if there's a Court of Appeals decision that is already out there, there's no need to codify that Court of Appeals decision, because that's the law of the State of New York.

But that decision I believe gives much more flexibility to the courts than does this rule that is being submitted in the form of a bill by Senator Balboni, so I'm going to vote against this bill.

ACTING PRESIDENT ROBACH: Senator Volker.

SENATOR VOLKER: Mr. President, I just want to say very quickly I agree with Senator Balboni, and I don't agree with Senator DeFrancisco.

So I'm going to vote for the bill.

(Laughter.)

ACTING PRESIDENT ROBACH: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I just hope that we'll be able to memorialize that portion of debate from Senator Volker. And that's what I'd like him to sign when he retires, as my souvenir of his debates here.

That was brilliant and short.

Will the sponsor yield for a question.

ACTING PRESIDENT ROBACH: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT ROBACH: Continue.

SENATOR SCHNEIDERMAN: In a situation where someone committed a white-collar crime and a third party, not the victim of the crime, then injured the person, the felon, would an action against that third party also be barred under your bill?

SENATOR BALBONI: Maybe. Maybe.

SENATOR SCHNEIDERMAN: We can do a specific hypothetical, but is there any -- let me rephrase the question, Your Honor.

(Laughter.)

SENATOR BALBONI: Move to strike.

ACTING PRESIDENT ROBACH: Are you asking Senator Balboni to yield?

SENATOR SCHNEIDERMAN: He's moving to strike me, Mr. President.

(Laughter.)

SENATOR SCHNEIDERMAN: If the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Senator Balboni?

SENATOR BALBONI: Yes, I do.

SENATOR SCHNEIDERMAN: There is no distinction in your legislation between an effort to prevent a felon from recovering against a victim of the felony or against a third party that injures the felon in connection with that felony; is that correct?

SENATOR BALBONI: As you'll see by the language of the bill -- and since it's so short, for everybody listening at home: "In any action to recover damages for personal injury, injury to property, or wrongful death, any culpable conduct of the claimant or decedent resulting in a felony conviction shall be a complete bar to recovery in such action."

So the language of the bill focuses on what the perpetrator does, what the felon does, not what the victim does, whether the victim or a third party. It focuses on your own actions, placing responsibility on the

culpable party.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would continue to yield.

SENATOR BALBONI: I do.

ACTING PRESIDENT ROBACH: Senator Balboni yields.

SENATOR SCHNEIDERMAN: So in the situation such as the McCummings case, where Mr. McCummings was involved in mugging someone in the subway but then, after the crime was over and he was running away unarmed, as the court found, a police officer shot him repeatedly in the back, would Mr. McCummings be barred, under your statute, from bringing an action against the police officer?

SENATOR BALBONI: Mr. President, through you, let's add some color here. You know, Senator Schneiderman is very good at giving a -- color commentary. Color commentary.

(Laughter.)

SENATOR SCHNEIDERMAN: He's making one of my points about McCummings right now.

SENATOR BALBONI: Senator Schneiderman, as he is wont to do as an effective trial attorney, kind of glosses over the initial scene, and that is the actual mugging.

Well, let me just -- if you hadn't heard this before, allow me to tell you what the victim told me. He was standing on an IRT subway platform waiting for a train when Bernard McCummings -- I can't think of enough pejorative words to talk about Bernard McCummings -- grabbed this guy, who was over 62 years old, threw him down on the subway platform, bounced his head off of the cement about seven or eight times, stole his money, and, when the police arrived, fled.

Now, I don't know how many people in this chamber are really that sympathetic to Bernard McCummings. I mean, I'd love for him to go away forever. He was preying upon a senior citizen who was doing nothing but standing waiting for a subway train.

But anyhow -- you know, and by the way, when a police officer says to you "Stop," you're supposed to stop. And so he even

assumed the risk of running away from a lawful order of a police officer.

And, yes, he was shot and was paralyzed. But then he comes and sues and wins $4 million. That, to me, is wrong. That's wrong. And why? Because you know whose responsibility it was for the entire incident? It wasn't the victim's. It wasn't the police officer's. It was McCummings'. He's the one who took the guy and threw him on the ground.

And that's the point here. And that's the message. You know, whether or not Senator DeFrancisco's comments or concern about the level of the felony -- it's a felony. Whether it's a white-collar felony, whether it's a larceny, it's a felony.

If we in this Legislature want to make a policy where, when we enact a new crime, we say it's a felony but it's not that bad a felony, and so if you're involved in a lawsuit, you can still sue -- if we want to do that carve-out, that's one way to approach it. I don't agree with that approach.

But just for a second, Senator

Schneiderman, I would ask you to consider not so much the rights of the criminal but the right of the victim. And I assure you I could come up with scenarios where you might say, you know, it doesn't really quite sound fair.

But if we're going to err on the side -- and as you know, law is imperfect. If we're going to err on any side, let's err on the side of the victim. Let's err on the side of the integrity of the judicial system. Let's not err on the side of the guy who went and attacked somebody.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I will speak now on the bill, in deference to some of my colleagues.

ACTING PRESIDENT ROBACH: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that the problem we have here, very simply, is that inflammatory rhetoric and hard cases often make bad law, in court and in a legislature.

What we have here is a situation in which, in spite of Senator Balboni's artful

effort to evade my last question, this statute would take a well-drafted, carefully constructed rule of law that the Court of Appeals established and replace it with an incomprehensibly drafted, overbroad rule of law to address a problem that, quite honestly, I think is best settled in the courts.

Why do I say that? Very simply, Senator Balboni I think conceded, without saying so, that his statute doesn't just apply to victims, it applies to third parties.

If there was a businessman committing fraud, if there was a member of a legislature in their office committing fraud -- you know, shaking down a contractor -- and then that contractor and legislator walked to their front door and a community activist said, "You guys are committing fraud," and shot both of them and paralyzed them for life, this bill would bar any recovery against those people.

This is absolutely true. It's a felon. Sotto voce. No, no, no. Let me read the statute. And if the sponsor wants to explain it later, he can.

The word "culpable" in this statute does not have any connecting phrase to the conduct of the tortfeasor, the person who injures the felon victim. This says "any culpable conduct of the claimant resulting in a felony conviction." That means culpability for the felony, not culpability related to the tort.

This is drafted in a way that it is clear that "culpable" is related to the term "felony." There is no time frame here. There is no statement that culpable conduct has anything to do with the tort.

If someone steals a thousand dollars, as our distinguished chairman of the Judiciary Committee pointed out, and then a third-party vigilante shoots the person down and they're paralyzed for life, you're not allowed to have a recovery against that third-party vigilante.

Now, let's -- you mentioned police brutality. I'm sorry, Senator Balboni, maybe your experience in Nassau County is different than ours. You stated that what happens in police brutality cases is they get -- police

who abuse their powers get criminally convicted.

Those of us in the City of New York have the view that many police officers, in fact, it's not so easy to get those convictions; it's extremely difficult to get those convictions. And the civil justice system has an extremely important role in ensuring proper conduct.

But let's think about what we're saying here. We're saying that a rule of law, as Senator DeFrancisco pointed out, that works very well, that was established by the Court of Appeals in the Barker v. Kallash case, should be thrown out. That rule of law says that virtually every case of the type that has been discussed here would be -- in virtually every case, the plaintiff, the felon, would be barred from recovery.

This is the law that Senator Balboni would replace: "The courts will not entertain the suit if the plaintiff's conduct constituted a serious violation of the law and the injuries for which he seeks recovery were the direct result of that violation." That is

the law.

What's missing in Senator Balboni's statute is that he has no requirement that the injuries were the direct result of the violation. This statute doesn't make any connection between the felony and the tort.

You can be walking outside your office after committing a white-collar crime, someone shoots you, no action. You can be walking down the street maybe an hour, two hours later. There's no time frame. There's no nexus between the felony and the tort.

This is a poorly drafted statute that has one purpose, and that's to take away issues of fact from a judge and jury so that they can determine is this felon really someone who is so bad that they should be paralyzed for life.

If someone is a mule and is smuggling drugs, a poor person, and they show up at Kennedy Airport and someone beats them to within an inch of their life because he says, you know, "I don't like you because you're from South America and I hate people from South America," that there's no tort

action against that person? That's what this law would do.

And it would take away a rule of law established by the Court of Appeals that allows the court to dismiss the claims brought by the felon if the plaintiff's conduct constituted a serious violation of law and the injuries for which he seeks recovery were the direct result of that violation.

Let's not replace a reasonable rule of law that works pretty well in this state -- as Senator Balboni points out, law is not perfect -- with a rule of law that has absolutely no parameters and is unprecedented, in my view, in the lack of any limitation on the connection between the felony and the tort.

"Any culpable conduct of the claimant or decedent resulting in a felony conviction shall be a complete bar to recovery." As Senator Balboni pointed out in last year's debate, the Court of Appeals decision, which Senator DeFrancisco and I think is a pretty good decision, needs to be changed because -- this is what Senator

Balboni said last year -- "It doesn't allow you to make motions for summary judgment at the outset."

That's the only change that this would make. This would bar anyone from making their case to a court and letting the court consider whether that felony should preclude recovery. It would close the door to a whole category of people, most of whom never recover now under the current state of law, and it would do so in a way that I really think doesn't set enough parameters to limit these sorts of actions.

Think about this before you do it. Let's not take a rule of law that's working pretty well and, because we can use inflammatory rhetoric about how bad criminals are, take away a system of civil justice that helps restrain other citizens from committing additional crimes.

I'm sorry, if someone is committing a white-collar fraud and works out of their office and then they're machine-gunned by a third party, I don't think that they should be precluded from going into court to seek

recovery. I think the rule that is established by the Court of Appeals works well.

And I would urge, Senator Balboni, that eight is enough. If we ever see this statute again, let's at least try and have some language in here, some sort of connective tissue between the phrase about culpable conduct and the tort. After all, that's what this is about.

This is an absolute bar to recovery with no definition of the limits. Presumably, this could refer to a bar of recovery before the felony even takes place, because there's no time frame involved.

Again, the Court of Appeals limits the situation with carefully drafted language. Let's not throw out a good decision and replace it with a bad statute.

I think that there are situations -- you know, there's an expression where, you know, even hypochondriacs get sick. Well, sometimes you can frame a guilty man. There could be two wrongs in one fact scenario. And we shouldn't allow people to

commit an independent wrong with no fear of retribution just because there's another wrong somehow involved in that fact situation.

I vote no, Mr. President, and urge everyone to vote no.

ACTING PRESIDENT ROBACH: Senator LaValle.

SENATOR LaVALLE: I think, Mr. President, we've seen a very spirited debate. Senator Balboni has presented his case here; Senator DeFrancisco and Senator Schneiderman retorted. But I honestly believe that Senator Balboni has made his case for why we should vote for this legislation.

I know as legislators and those of us who are attorneys want to make sure that people under our laws, our Constitution, have their day in court. But if you look at -- and I remember the subway case. I remember people talking about how it was out of the realm of common sense that someone who committed a crime, a mugging, battering someone, who then had the chutzpah to bring a suit against someone. They were a criminal.

And, you know, as we walk around

our Senate districts, we hear things from the constituency that should inculcate in our law-making some common sense. Some common sense.

But in this case we also, as a matter of public policy, say that a criminal should not gain from the fruits of the crime.

So here we're going outside and saying, Well, it's all right to burglarize someone's home, beat someone up and then, if you happen to injure yourself, it's okay to gain under the tort system. It just doesn't make sense. It is not common sense.

Now, Senator Schneiderman, you're making points as an attorney. There may be a comma left, there are things -- there's not a nexus. Senator Balboni has been working on this for eight years. And so in the eight years, it would seem to me that colleagues could come together and make, as both attorneys and colleagues, some suggestions that would bring this together.

But for me, I have to side with Senator Balboni, because I think common sense really has to prevail in the law-making

process. And I hear this over and over again. So when this comes for a vote, I am going to vote in the affirmative.

ACTING PRESIDENT ROBACH: Are any other Senators wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 212 are Senators Andrews, Brown, Connor, DeFrancisco, Dilan, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 45. Nays, 16.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Skelos, that completes the

controversial reading of the calendar.

SENATOR SKELOS: Thank you, Mr. President. If we could just stand at ease.

ACTING PRESIDENT ROBACH: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:23 p.m.)

(Whereupon, the Senate reconvened at 4:54 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Please recognize Senator Krueger.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. I believe I have a motion at the desk. And I'd like to waive reading and speak on it at this time.

ACTING PRESIDENT ROBACH: Senator Krueger, on the motion.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I'm hoping my colleagues will be

joining me as I speak.

Today we are bringing a motion to petition from the Committee on Housing Construction and Community Development, Senate Bill 2735, an act affecting the Local Emergency Housing Rent Control Act in relation to New York City housing policy.

In fact, what we are asking through this bill is repeal of the Urstadt Law and providing the City of New York with home-rule authority over its own housing policies.

Why should we care about housing in New York City? Why should we choose, in Albany, to reverse a law that will give local government in New York City the power to make its own housing policies?

It's because we're in a housing crisis in the City of New York, a set of issues that I would argue most people throughout the rest of the state cannot even comprehend, and perhaps wouldn't want local responsibility for, but our city is asking for it.

Today the City Council speaker, Gifford Miller, and many members of the City

Council held a press conference calling for the repeal of Urstadt and committing to passing a home-rule message. I believe that -- or I hope that New York City Mayor Michael Bloomberg will follow through with his statements that he supports repeal of Urstadt and sign this home-rule message as well.

In the City of New York a report is coming out, I believe today, showing that an average of 57 percent of the income of New Yorkers is being spent trying to pay their rent, that approximately 200,000 low-income households in New York City are paying more than 65 percent of their income just to keep a roof over their heads, which is more than double what the federal government suggests the maximum rent burden should be, of 30 percent.

I spent 20 years in New York City as an advocate on behalf of people who could not find the income to pay their rent or buy food for their families or ended up in the horrendous situation of using their food dollars to pay rent and turning to emergency food programs or using their rent money to pay

for food and health care and losing their homes. I ran eviction prevention programs. I ran emergency food programs. I talked to people every day for decades about the crises that they were facing in their lives.

All the time, Albany had power and control over New York City housing policy, and we failed to take the actions we needed to. We failed to come up with models for expanding affordable housing. We failed to provide New York City the tools to make its own decisions over its own housing destiny.

New York City should have that power to make its own decisions on local issues such as housing and housing laws and housing regulations. And in fact, they had that power until a law called the Urstadt Law was passed under Nelson Rockefeller, a law that took the power away from New York City elected officials and moved it to Albany.

When the Urstadt bill was passed in 1971, it was a controversial bill in this house and in the Assembly. And in fact, it was a package of other housing laws that were so controversial that several of them were

reversed long since then. And yet -- or long since now. And yet today we are still living with the Urstadt Law.

If we repeal the Urstadt Law, all it means is that we, the State Legislature, say the City of New York, the only city with over a million people in the state of New York -- hence, this law would only apply to New York City -- that New York City would have returned to itself the critical decision-making powers over affordable housing and options for what they would choose to do.

It would not be a magic pill to solve the problems of affordable housing; it would simply give the City Council and the Mayor the power to make their own decisions and have their own debates about how best to address the question of expanded need for affordable housing.

In the 33 years, 34 years since the Urstadt Law has prohibited New York City from enacting its own local policies on housing, we have watched a serious housing problem become an epidemic housing crisis. We are in a situation today where the rental vacancy rate

is under 3 percent and, for rents below $500 a month, basically a zero vacancy rate.

We are in situation in New York City with the highest number of homeless people since the Depression, with ever-growing demands on our emergency food providers because people have used up all of their income for rent.

We are in a situation in New York City where not just the lowest-income New Yorkers face housing crises but our working people in New York, our middle class, are losing their homes. Firefighters, nurses, teachers, police officers, construction workers, senior citizens, artists can no longer afford to live in the City of New York.

I explain to the businesses in my community why they have to care about affordable housing, and they agree. They recognize that if anyone who they hope will work for them can't afford to live in New York City, they have no future in business.

And when I explain to them what a huge percentage of the annual income of our citizens is going towards rent, they respond

to me: If all their money goes to rent, how will they be able to afford whatever I'm trying to sell them? There will be no money left.

So I ask for something very simple from this Legislature. I ask for something that in fact historically has been a Republican Party hallmark, recognition of the importance of home rule, of the rights of localities to make their own decisions about land-use issues and local policies.

New York City wants home rule. They want to make their own decisions about housing policy. I would argue many of my colleagues here question why they are making those decisions for New York City's issues of affordable housing.

So I hope that my colleagues will join me today in supporting my bill, which would repeal the Urstadt Law. And I hope that when we get a home-rule message from the City of New York, which I expect before we leave session this year, that my colleagues on both sides of the aisle will respect the right of New York City government and the 8.5 million

people who live in the City of New York to make their own decisions about housing policies in the five boroughs.

If I were to say I wanted the power to make the housing decisions for Senator Johnson's district or Senator Little's district or Senator Marcellino's district, I can imagine the hue and cry in this room about my right to make decisions about your local land-use policies.

And I hope that my colleagues on both sides of the aisle will recognize and respect a parallel argument for the City of New York to determine its own housing policies, its own destiny for its future and for the future of the New Yorkers who want to remain living in the City of New York, who want to work in the City of New York, who want to continue to be taxpayers in the state of New York, tax money that disproportionately comes to us here in Albany.

And so I urge you all to join me in taking a vote for the repeal of Urstadt and for the recognition and respect of the home-rule request.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Krueger.

All those Senators -- I'm sorry, Senator Diaz, the debate is closed.

All those Senators in favor of the petition out of committee please signify by raising their hands.

THE SECRETARY: Those in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, and Stavisky.

ACTING PRESIDENT ROBACH: The petition is not agreed to.

Senator Skelos.

SENATOR DIAZ: I need a point of clarification on something. I need a point of clarification.

ACTING PRESIDENT ROBACH: Senator Diaz, do you have a point of order?

SENATOR DIAZ: Yes, point of order, yes.

My question is, okay, we're supposed to be voting on something. We have Senators present here, and I see all those chairs empty. And we're supposed to have everyone voting. Everyone that's supposed to be voting, they're supposed to be in their seats.

My question is, how come the motion is defeated when nobody is voting?

ACTING PRESIDENT ROBACH: Senator Diaz, because this is a canvass of agreement on those who vote yes.

SENATOR DIAZ: And another question, Mr. President. How come I wasn't allowed to speak on the motion? Please. Please.

ACTING PRESIDENT ROBACH: On motions, the rules are that the sponsor of the petition can speak for 10 minutes, no one else.

No slight to you, Senator. Those are the rules.

Senator Skelos.

SENATOR SKELOS: I believe the canvass was defeated. And the Senate will

stand at ease now.

And there will be an immediate conference of the Majority in the Majority Conference Room.

ACTING PRESIDENT ROBACH: The Senate will stand at ease.

There will be an immediate conference for the Majority.

Senator Gonzalez.

SENATOR GONZALEZ: There will be an immediate meeting of the Minority Conference in Room 314.

ACTING PRESIDENT ROBACH: There will be a conference of the Minority in Room 314 as well.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 5:06 p.m.)

(Whereupon, the Senate reconvened at 8:50 p.m.)

ACTING PRESIDENT FUSCHILLO: Senator Balboni.

SENATOR BALBONI: Mr. President, I would like to call an immediate meeting of the Senate Finance Committee in the Majority

Conference Room at 8:55, in five minutes.

ACTING PRESIDENT FUSCHILLO:

There will be a meeting of the Finance Committee in the Majority Conference Room at 8:55.

Thank you, Senator Balboni.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 8:51 p.m.)

(Whereupon, the Senate reconvened at 9:14 p.m.)

ACTING PRESIDENT BALBONI:

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT BALBONI:

Reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 4270A, Senate Budget

Bill, an act to amend a chapter of the Laws of 2005.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Mr. President, I ask at this time if we could take up the report of the Finance Committee, noncontroversial.

ACTING PRESIDENT BALBONI: The bill is reported directly to the floor without objection.

The Secretary will read.

THE SECRETARY: Calendar Number 560, Senate Budget Bill, Senate Print 4270A, an act to amend a chapter of the Laws of 2005.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT BALBONI: Yes, there is.

SENATOR SKELOS: Move to accept the message.

ACTING PRESIDENT BALBONI: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Opposed, nay.

(No response.)

ACTING PRESIDENT BALBONI: The message is accepted.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BALBONI: Announce the results.

Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This has been a remarkable process this year for getting the budget through. And I have to say that the -- I've heard Senator Bruno's comments earlier today, not happy about us being here tonight, not happy about doing it with a message of necessity.

But I have to say that on the

substance of this, in my view, most of what the Legislature tried to do in the budget bills that we passed earlier still seems to be in here.

There are some things that I have issues with. I am concerned still about a lack of accountability in our state's economic development programs. I think that is an ongoing concern. I am still of the belief that we have a long way to go to stabilize and fund adequately our health care system for all the people of this state.

But in the scheme of things, I think the Legislature has had a very powerful impact on the Governor's proposals and that the bills we're doing tonight reflect that. So I will be voting in support of this legislation.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Senator Schneiderman will be recorded in the affirmative.

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you,

Mr. President.

I partially agree with my colleague Senator Schneiderman. We have accomplished some of our goals here. We have addressed some of the issues we did not in the original budget.

I just want to highlight a few additional concerns. Again, for the record, the tax cuts that we are making are badly designed, targeted to those least in need of the tax cuts, particularly the single sales tax factor proposal.

While there have been some revisions and, quote, unquote, reforms made to Empire Zones, again, I believe the State of New York makes a serious mistake expanding a fatally flawed program for an extended period of time without really asking the hard questions of why are we doing this at all.

I want to reemphasize that we put in, again, a hundred million dollars, approximately, for the SURGE [sic] program, which is a memorandum of understanding at this point, where none of us understand what that memo might do or where that money might

actually be spent.

We put the $250 million back of Governor Pataki's for a nonexplainable new slush fund for, quote, unquote, high-technology businesses. We call everything a high-tech business claim it's good to give them money. I don't think there's evidence of that.

We do seem to have put back some of the lined-out programs in the TANF block grant monies, which I know will make individual programs very happy at this moment in history.

But again, the entire idea of doing a flexible funding block grant with TANF money I believe was a very flawed proposal by the Governor. I'm sorry that this Legislature, both houses, ultimately have agreed at least part of it.

So while I still would argue this is not a good budget from my perspective, the fact that we are moving forward tonight with some of the improvements, some of the negotiated agreements between both houses and Governor, leaves me in the position where I will vote for the bill but, again, want to

highlight for ourselves we still have so much work to do and we still have so many issues we don't discuss in this budget that we just pass on. And we pass on the costs to the voters in our districts, and we owe them better.

So despite my voting yes for this, I still have very serious problems with it.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Senator Liz Krueger will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could stand at ease.

ACTING PRESIDENT BALBONI: The house will stand at ease.

(Whereupon, the Senate stood at ease at 9:19 p.m.)

(Whereupon, the Senate reconvened at 9:33 p.m.)

ACTING PRESIDENT BALBONI:

Senator Skelos.

SENATOR SKELOS: Mr. President, we're in the process of closing down and printing of a bill. Unfortunately, we probably will not be able to start up again until about 10:30.

So if members wish to stay here and chat, that's fine. If they wish to go back to their offices and be productive, that's fine. Whatever you wish to do. But please be back at 10:30.

ACTING PRESIDENT BALBONI: The house will stand in recess until 10:30.

(Whereupon, the Senate stood at ease at 9:34 p.m.)

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT FUSCHILLO: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

The Senate will continue to stand at ease.

(Whereupon, the Senate reconvened at 10:48 p.m.)

ACTING PRESIDENT BALBONI: Senator Skelos.

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

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 4271, Senate Budget Bill, an act to amend a chapter of the Laws of 2005.

ACTING PRESIDENT BALBONI: The bill is reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: If we could take up Calendar Number 561.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 561, Senate Budget Bill, Senate Print 4271, an act to amend a chapter of the Laws of 2005.

ACTING PRESIDENT BALBONI: Senator Skelos.

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

ACTING PRESIDENT BALBONI: There is a message.

SENATOR SKELOS: Move to accept the message.

ACTING PRESIDENT BALBONI: All in favor of accepting the message please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: All those negative.

(No response.)

ACTING PRESIDENT BALBONI: The message is accepted.

Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT BALBONI: There is no housekeeping at the desk, Senator.

SENATOR SKELOS: Mr. President, there being no further business to --

ACTING PRESIDENT BALBONI: Come on, this is important stuff.

SENATOR SKELOS: Mr. President, just to remind you that you're supposed to keep your comments short when you're presiding.

(Laughter.)

SENATOR SCHNEIDERMAN: And otherwise.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Wednesday, April 13th, at 11:00 a.m.

ACTING PRESIDENT BALBONI: The

house stands adjourned until Wednesday, April 13th, at 11:00 a.m.

(Whereupon, at 10:51 p.m., the Senate adjourned.)