NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 17, 2005

3:18 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, May 16, the Senate met pursuant to adjournment. The Journal of Sunday, May 15, 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 bill direct to third reading:

Senate Print 5356, by Senator Robach, an act to provide for the adjustment.

THE PRESIDENT: So ordered, without objection.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Spano, on page 16 I offer the following amendments to Calendar 246, Senate Print 2271, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: Madam President, on behalf of Senator Nozzolio, on page 27 I offer the following amendments to Calendar Number 510, Senate Print 3121, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Libous.

SENATOR LIBOUS: Are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 5, Senator Maziarz moves to discharge, from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 6435 and substitute it for the identical Senate Bill Number 3171, Second Report Calendar 926.

On page 13, Senator Seward moves to discharge, from the Committee on Local Government, Assembly Bill Number 7688 and substitute it for the identical Senate Bill

Number 593A, Third Reading Calendar 135.

On page 33, Senator LaValle moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 1794A and substitute it for the identical Senate Bill Number 1856, Third Reading Calendar 611.

On page 51, Senator Flanagan moves to discharge, from the Committee on Tourism, Recreation and Sports Development, Assembly Bill Number 6014 and substitute it for the identical Senate Bill Number 4126, Third Reading Calendar 829.

And on page 60, Senator Golden moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 6281A and substitute it for the identical Senate Bill Number 3659B, Third Reading Calendar 922.

THE PRESIDENT: Substitutions ordered.

Senator Libous.

SENATOR LIBOUS: Madam President, may we please adopt the Resolution Calendar.

THE PRESIDENT: All in favor of adopting the Resolution Calendar please

signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Libous.

SENATOR LIBOUS: Madam President, there's a previously adopted resolution at the desk, Number 1729, by Senator Golden. May we please have the title read.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 1729, memorializing Governor George E. Pataki to proclaim May 17, 2005, as Elder Abuse Awareness Day in the State of New York.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam President.

I rise today to talk about (A) the 3 million seniors that live across this great state -- and some of them are up here from Kings County, from the Ridge Slope Travelers,

the Verizon retirees. And I want to thank them for being here today. And they came to a forum that we had downstairs and a set of tables that we had set up for the Elder Abuse Week, and today being Elder Abuse Day.

And what we did was point out that millions of elderly citizens residing in the State of New York have contributed to the great welfare of the state by helping to preserve the customs, convictions and traditions of the many ethnic backgrounds of the citizens of the great State of New York.

The more than 3 million citizens of the State of New York considered to be the elderly citizens are vital and integral parts of our society.

It has been estimated that there are over 1.8 million abused elders in the United States of America, in a 1996 report. Estimates report that elder abuse affects 30,000 New Yorkers annually every year.

Because elder abuse is still largely hidden under the shroud of family secrecy, elder abuse is grossly underreported. Only one out of 14 domestic elder abuse

incidents come to the attention of the authorities.

The 30,000 domestic elder abuse cases reported to state adult protective services agencies in New York represent only the tip of the iceberg. And the number of elder abuse cases is growing every year.

Any elderly person may become the victim of abuse. Males and females of any income level, any culture or ethnic group, persons in good health or persons incapacitated in some way may be abused by someone close to them.

The abusers can be anyone, but they are most commonly family members with whom the abused person is living. Studies have estimated that over half the elderly people reported to have been abused were living with persons who abused them.

The legislators here in the State of New York will have before them shortly in this conference a bill, the Senior Antiviolence Enforcement Act. And that will help us to start to deal with this outrageous abuse of our seniors, the dirty little secrets

that are hidden across this state.

Our seniors deserve more. They worked all their lives so that they could bring up their families and live in this great city and great State of New York. It's about time that we treated them with the respect that they deserve.

So this week is about those abuses. This is awareness week, so that we can focus in on those terrible, terrible incidents that are going around this city and state. So hopefully we can bring that number down and to start treating those seniors, like I said, with the respect that they deserve.

Thank you, Madam President.

THE PRESIDENT: This resolution was previously adopted on May 10th.

Senator Libous.

SENATOR LIBOUS: Madam President, there's a resolution at the desk, Number 1863, by Senator Maziarz. May we please have the resolution read in its entirety and move for its adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1863, honoring Trooper Anthony S. LaRock upon the occasion of his designation as the recipient of the Brummer Award on May 18, 2005.

"WHEREAS, The quality and sanctity of community life are cherished values worthy of safeguarding, and this Legislative Body is moved to honor those individuals who serve to preserve and protect such values, lauding particularly their unwavering courage and dedication in the daily performance of their duties; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, it is the sense of this Legislative Body to honor Trooper Anthony S. LaRock upon the occasion of his designation as the recipient of the Brummer Award on May 18, 2005, to be presented at a special ceremony at the New York State Police Academy in Albany, New York, on Wednesday, May 18, 2005; and

"WHEREAS, the Brummer Award is the highest recognition afforded a New York State

police officer for valor and bravery in the line of duty. The recipient's actions must be one of personal bravery or outstanding courage so noteworthy as to clearly distinguish the trooper and enhance the prestige of the New York State Police. Each recommendation for this award is considered by the Honor Board on the standard of extraordinary merit; and

"WHEREAS, Trooper Anthony S. LaRock, a Western New York and Niagara County native who has been a New York State trooper for nearly 11 years, placed himself amidst a flaming, exploding inferno while ingesting fumes, attempting to save the lives of three people; and

"WHEREAS, on April 4, 2004, at about 11:00 p.m., the Niagara County Sheriff's Department dispatched the State Police Niagara Patrol to a three-car personal injury accident on Ridge Road in the Town of Lewiston, New York. Dispatchers advised that one of the vehicles involved was overturned and engulfed in flames; and

"WHEREAS, Trooper LaRock was the

first patrol to arrive on the scene. Recognizing that the overturned, burning vehicle was occupied, he attempted to quell the fire with an extinguisher; and

"WHEREAS, the fire, however, was too intense for the extinguisher to fully put out the blaze. Trooper LaRock then entered the engulfed vehicle, located the driver, cut the seat belt restraint, and dragged him a safe distance from the burning wreck; and

"WHEREAS, He then returned to the vehicle and located a partially ejected passenger who was face down in water at the bottom of a ditch. He untangled her from the vehicle, stabilized her neck, and pulled her a safe distance away from the flames; and

"WHEREAS, Without regard for his own safety, Trooper LaRock returned to the vehicle a third time and attempted to rescue the remaining passenger. With the assistance of Trooper Danny J. Cullen, who provided a second extinguisher, another attempt was made to slow the fire enough to extricate the third victim, but the valiant attempt was not successful as the fumes, flames and heat were

now overpowering; and

"WHEREAS, Trooper LaRock saved two lives that day despite multiple injuries to himself which required eventual surgery and a long recuperation and healing period; and

"WHEREAS, Trooper LaRock, son of Steven and Claudia LaRock, is a graduate of Wilson Central School in Wilson, New York. He is a United States Army veteran and holds an associate's degree from Niagara County Community College and a bachelor's degree from Niagara University; and

"WHEREAS, He lives in Niagara County with his wife, Deborah, and their two children; and

"WHEREAS, It is appropriate to recognize and commend such outstanding law enforcement officers as Trooper Anthony S. LaRock for their valued contributions to the community; and

"WHEREAS, It is the sense of this Legislative Body that those dedicated public servants who unselfishly devote their lives to the preservation of order and the protection of others are worthy and due full praise for

their commitment and noble endeavors; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Trooper Anthony S. LaRock upon the occasion of his designation as the recipient of the Brummer Award on May 18, 2005, and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Trooper Anthony S. LaRock."

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President and my colleagues.

It's an honor for me to rise here today and to welcome to the floor of this body Trooper Anthony "Tony" LaRock from Niagara County.

As was pointed out in the resolution, on April 14th, late in the evening, 11 o'clock in the evening, on what was going to be a normal, routine -- if there ever is such an evening in any law enforcement officer's daily life -- Trooper LaRock received a call that there was a car accident,

that one of the vehicles was overturned and engulfed in flames.

He immediately rushed to the scene and not once, not twice, but three times -- three times -- despite being severely burned himself, entered the vehicle and was successful in pulling two injured people, one of whom in the overturned vehicle was partially submerged in a pond, out of the vehicle, off to a safe area, sparing both of their lives.

Trooper LaRock returned to this vehicle three times and was successful in saving two individuals. As was pointed out in the resolution, Trooper LaRock sustained severe injuries and was off work with multiple surgeries for over 11 months.

It's an honor for me to recognize what we consider in Niagara County to be a true hero, what the families of those accident victims I know consider to be a true hero.

I've known Trooper LaRock's family, his dad and his mom, for many years, and I can fully attest to his appreciation for serving the people of the State of New York. And the

Brummer Award I think is truly given to that outstanding service and has been truly deserved by Trooper LaRock.

Anthony, congratulations.

(Standing ovation.)

THE PRESIDENT: Trooper Anthony S. LaRock is here with his wife, Deborah; his children, Jade and Nicholas; his parents, Steven and Claudia LaRock.

And at this time we will now vote on the resolution.

All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

And I can think of no higher tribute or justification for this tribute than your act of valor. Thank you for your courage and dedication to your job.

(Applause.)

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Madam President,

may we now have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 149, by Senator Skelos, Senate Print 484A, an act to amend the Education Law, in relation to restricting.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 157, by Senator Winner, Senate Print 1844A, an act to amend the Penal Law, in relation to establishing the crimes of criminal possession.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 466, by Senator Nozzolio, Senate Print 3511, an act to amend the Penal Law, in relation to clandestine laboratory operations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 488, by Senator Maltese, Senate Print 1363, an

act to amend the Administrative Code of the City of New York, in relation to loans.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: There is a home-rule message at the desk on the last vote.

The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 627, by Senator Volker, Senate Print 4121, an act to amend the Civil Practice Law and Rules, in relation to admissibility.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 641, by Senator Robach, Senate Print 3184A, an act to amend the Civil Service Law, in relation to reduction.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 656, by Senator Nozzolio, Senate Print 3689A, an act to amend the Executive Law, in relation to eliminating.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 741, by Senator Wright, Senate Print 2532, an act to amend the New York State Defense Emergency Act, in relation to driver's license renewals.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 745, by Senator Balboni, Senate Print 3968, an act to amend the Executive Law, in relation to reporting.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 746, by Senator Balboni, Senate Print 4496, an act to amend the Executive Law, in relation to directing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Balboni, to explain your vote.

SENATOR BALBONI: Madam President, in 1995 Timothy McVeigh caused one of the most horrific acts of violence on American soil by the use of ammonium nitrate. That same substance was also used in the 1993 bombing of the World Trade Center.

And yet, to this day, only three states have enacted any sort of regulation of this material, one of those states being Oklahoma.

This bill would set up, for the first time in this state, the regulation of ammonium nitrate. And what was just highlighted by the Suffolk County District Attorney, ammonium nitrate can be bought in large amounts right now in the State of New York without any questions asked.

This bill would set up security requirements, registration requirements, and would go a long way in protecting all of us from the use of this substance as a fertilizer bomb.

I vote aye, Madam President. Thank you.

THE PRESIDENT: You will be so recorded as voting in the affirmative, Senator Balboni.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 788, by Senator Leibell, Senate Print 4762, an act to amend the --

SENATOR LIBOUS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 795, by Senator Spano, Senate Print 5214, an act to amend the Executive Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 829, substituted earlier today by Member of the Assembly Englebright, Assembly Print Number 6014, an act to amend the Parks,

Recreation and Historic Preservation Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 840, by Senator LaValle, Senate Print 419, an act to amend the Education Law, in relation to requirements.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 847, by Senator Saland, Senate Print 4168, an

act to amend Chapter 942 of the Laws of 1983 and Chapter 541 of the Laws of 1984.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 851, by Senator Leibell, Senate Print 4549, an act to amend the Labor Law, in relation to requiring.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

852, by Senator Fuschillo, Senate Print 4890, an act to amend the Labor Law, in relation to the violation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 853, by Senator Maziarz, Senate Print 5194, an act to amend the Labor Law, in relation to asbestos.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 922, substituted earlier today by Member of the Assembly Abbate, Assembly Print Number 6281A, an act to amend the Retirement and Social Security Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1008, by Senator Robach, Senate Print 5356, an act to provide for the adjustment of stipends.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is

passed.

Senator Libous, that completes the reading of the calendar.

SENATOR LIBOUS: Madam President, could we return to the reports of standing committees, so that the Finance nominations can be read, please.

THE PRESIDENT: 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 Battery Park City Authority, David B. Cornstein, of New York City.

As a member of the Small Business Advisory Board, Daniel E. Clark, of Malone.

As members of the Empire State Plaza Art Commission, Judith A. Barnes, Ph.D., of Troy; Kate Johns, of Old Chatham; and Dolores Sarno, of Saratoga Springs.

As members of the Board of Directors of the New York Convention Center Operating Corporation, Edward P. Kane, of

Rockville Centre, and David M. Schwartz, Esquire, of Brooklyn.

As director of the New York State Urban Development Corporation, Kevin S. Corbett, of New York City.

As a member of the State Council on the Arts, Ruth W. Houghton, of New York City.

As members of the State Hospital Review and Planning Council, Joyce A. Salimeno, of Rock Hill, and David O. Simon, Esquire, of Chappaqua.

And as a member of the Board of Visitors of the New York State Home for Veterans and their Dependents at Batavia, Richard G. Oleksyn, of Rochester.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Madam President, move the nominations.

THE PRESIDENT: All in favor of the nominations please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are all hereby confirmed.

Senator Libous.

SENATOR LIBOUS: Madam President, is there any further business at the desk?

THE PRESIDENT: No, there isn't, Senator.

SENATOR LIBOUS: Madam President, then there being no further business to come before the Senate, I move that we adjourn until Wednesday, May 18th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate now stands adjourned until Wednesday, May 18th, 11:00 a.m.

(Whereupon, at 3:43 p.m., the Senate adjourned.)