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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 14, 2006

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESE, Secretary

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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: With us this
afternoon to give the invocation is Reverend
Todd Falk, pastor of Wilton Baptist Church in
Wilton, New York.

REVEREND FALK: Let us pray.
Our Heavenly Father, we come to You
this day a grateful people. And we thank You
for this great state and the greatest nation
on this earth, Lord. We thank You for the
privilege of living in a free society where
every man, woman, and child has the
opportunity to live life to the fullest, to
worship You without fear, to express ourselves
without rebuke, to experience liberty without
violence.

I pray that none of us would take
this for granted and that we would live our

1 lives with responsibility and with the duty to
2 serve.

3 Thank You for these great men and
4 women here today, as we thank You for their
5 duty to this great state.

6 We also lift up our sons and our
7 daughters and our husbands and wives and
8 fathers and mothers and brothers and sisters
9 who are the defenders of this freedom.

10 We especially lift up our men and
11 women of the armed forces, and today of the
12 42nd Infantry Division, who are defending
13 liberty around the world. Lord, we ask that
14 You would watch over them and protect them as
15 they go about defending our freedom and our
16 liberties.

17 Father, we thank You for all that
18 you have done. Lord, we ask that You hold our
19 troops in Your loving hands and, Lord, that
20 You protect them with Your hedge of protection
21 around them. May we remember them always and
22 pray for them continually, for they have
23 earned our respect and our admiration with
24 their blood.

25 Lord, let us never forget the

1 sacrifices of those who willingly laid down
2 their lives to defend our freedom. May this
3 world be a safer place because we as a nation
4 stood for what was right and just. And may
5 this nation never falter in the face of fear
6 and difficult challenges.

7 Father, may You strengthen us in
8 the days to come. May You guide our Senate
9 today, and our Governor, and the leadership of
10 great state to do what's right. May You guide
11 them with Your divine wisdom to do the
12 people's business.

13 And may You guide our
14 commander-in-chief, President Bush, with
15 profound wisdom.

16 May God bless this great State of
17 New York, and may God bless America. In
18 Christ's precious name, amen.

19 THE PRESIDENT: Reading of the
20 Journal.

21 THE SECRETARY: In Senate,
22 Monday, February 13, the Senate met pursuant
23 to adjournment. The Journal of Sunday,
24 February 12, was read and approved. On
25 motion, Senate adjourned.

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

4 Presentation of petitions.
5 Messages from the Assembly.
6 Messages from the Governor.
7 Reports of standing committees.
8 Reports of select committees.
9 Communications and reports from
10 state officers.

11 Motions and resolutions.

12 Senator Bruno.

13 SENATOR BRUNO: Madam President,
14 can we at this time adopt the Resolution
15 Calendar, with the exception of Resolutions
16 3480 and 3481.

17 THE PRESIDENT: All in favor of
18 so adopting the Resolution Calendar please
19 signify by saying aye.

20 (Response of "Aye.")

21 THE PRESIDENT: Opposed, nay.

22 (No response.)

23 THE PRESIDENT: The calendar is
24 so adopted.

25 Senator Bruno.

1 SENATOR BRUNO: Madam President,
2 I believe I have a privileged resolution at
3 the desk, 3481. I would ask at this time that
4 it be read in its entirety and move for its
5 immediate adoption.

6 THE PRESIDENT: The Secretary
7 will read.

8 THE SECRETARY: By Senator Bruno,
9 Legislative Resolution Number 3481, paying
10 tribute to the returning veterans of the 42nd
11 Infantry Division from Operation Iraqi
12 Freedom.

13 "WHEREAS, The courage and bravery
14 of our military personnel since the United
15 States Armed Forces commenced Operation Iraqi
16 Freedom will ensure our continued role as a
17 nation which embodies the ideals of democracy,
18 and as a defender of liberty for people
19 throughout the world; and

20 "WHEREAS, Members of the Armed
21 Services from the State of New York, who have
22 served so valiantly and honorably during
23 Operation Iraqi Freedom, deserve a special
24 salute from this Legislative Body; and

25 "WHEREAS, This Legislative Body is

1 justly proud to pay tribute to the returning
2 veterans of the 42nd Infantry Division from
3 Operation Iraqi Freedom; and

4 "WHEREAS, The returning veterans
5 and their families will be honored at a
6 Freedom Salute to be held at Hudson Valley
7 Community College on Saturday, February 18,
8 2006; and

9 "WHEREAS, There will be three Army
10 National Guard units of the 42nd Infantry
11 Division present for this auspicious event:
12 The 42nd Infantry Division Headquarters, the
13 642nd Military Intelligence Battalion, and
14 Company B of the 1st Battalion, 101st Cavalry;
15 and

16 "WHEREAS, In December of 2003, the
17 Army National Guard launched the 'Freedom
18 Salute Campaign,' an unprecedented program
19 designed to recognize Army National Guard
20 soldiers, their families, and others who have
21 supported them as they answered the call to
22 duty, both at home and abroad; and

23 "WHEREAS, The deployment of the
24 42nd Infantry Division Headquarters from Troy,
25 New York, marked the first time since the

1 Korean War that an Army National Guard
2 division headquarters was deployed to a
3 theater of combat; and

4 "WHEREAS, The 42nd Infantry
5 Division, known as the Rainbow Division and
6 commanded by Major General Joseph J. Taluto,
7 achieved notable success in all lines of
8 operation in North Central Iraq since
9 February 15, 2005; and

10 "WHEREAS, the 42nd Division
11 deployed as a combat task force, known as Task
12 Force Liberty. It drew its name from its
13 New York roots and for its role in helping to
14 bring the first democratic elections to Iraq
15 in more than half a century; and

16 "WHEREAS, The 'Rainbow Division,'
17 as it is known in the Army, received its
18 nickname back in 1917, from then Colonel
19 Douglas MacArthur, because the unit included
20 some of the best National Guard units from
21 across the entire country; and

22 "WHEREAS, For its mission in Iraq,
23 the division also grew to include Army
24 National Guard, Army Reserve and active Army
25 soldiers from some 29 states, Puerto Rico and

1 American Samoa; and

2 "WHEREAS, the 42nd Division
3 Headquarters also served the City and State of
4 New York in the aftermath of the terror
5 attacks of September 11, 2001, when it served
6 as the command and control for the National
7 Guard response in Lower Manhattan; and

8 "WHEREAS, 3,000 soldiers from the
9 42nd Infantry Division were deployed to Iraq,
10 including approximately 400 from the Capital
11 Region; and

12 "WHEREAS, The Rainbow Division was
13 part of the 23,000-soldier Task Force Liberty
14 that was in charge of security in four
15 provinces across North Central Iraq, a
16 27,000-square-mile region, half the size of
17 New York, with a population of 6.3 million.
18 The soldiers found and removed more than
19 425 weapons caches in the region, destroyed
20 44 percent of all improvised explosive devices
21 (IEDs) set against U.S. soldiers, helped
22 task-force engineers complete 1,400
23 reconstruction projects valued at \$757 million
24 in North Central Iraq, and trained and
25 equipped 18 battalions (600 soldiers per

1 battalion) of Iraqi Army soldiers; and

2 "WHEREAS, The command and control
3 of more than 23,000 soldiers in North Central
4 Iraq passed from the 42nd Infantry Division to
5 the 101st Airborne Division during a transfer
6 of authority ceremony on November 1, 2005; and

7 "WHEREAS, The banner of freedom
8 will always wave over our beloved New York and
9 all of America, the Land of the Free and the
10 Home of the Brave; and

11 "WHEREAS, Residents of this great
12 state must never forget the courage with which
13 these men and women served their country, and
14 must especially recognize that no greater debt
15 is owed to those who gave their lives for
16 their beloved nation and to those who continue
17 to be missing in action; and

18 "WHEREAS, The freedoms and security
19 we cherish as Americans come at a very high
20 price for those serving in the military in
21 times of conflict. It is fitting and proper
22 that we who are the beneficiaries of those who
23 risk their lives, leaving their families
24 behind, express our appreciation and eternal
25 gratitude for their sacrifices and courageous

1 acts; now, therefore, be it

2 "RESOLVED, That this Legislative
3 Body pause in its deliberations to pay tribute
4 to the returning veterans of the 42nd Infantry
5 Division from Operation Iraqi Freedom; and be
6 it further

7 "RESOLVED, That copies of this
8 resolution, suitably engrossed, be transmitted
9 to the veterans of the 42nd Infantry Division
10 from Operation Iraqi Freedom."

11 THE PRESIDENT: Senator Bruno.

12 SENATOR BRUNO: Thank you, Madam
13 President.

14 It really is an honor and a
15 privilege to add my welcome. You have heard
16 this resolution, you heard the presentation to
17 the officers -- Major General Taluto,
18 officers, and the enlisted men of the 42nd
19 Infantry Division, which is headquartered in
20 Troy, New York, the 43rd Senatorial District.

21 And let me tell you, they make me
22 awfully proud to have them headquartered
23 there. And they make everyone in this chamber
24 and everyone in this state proud. This
25 outfit, the Rainbow Division, is the first

1 division to be sent into a combat zone since
2 Korea.

3 Now, you look up at these brave men
4 and women that are part of the 42nd. They
5 left their homes, they left their jobs, wives,
6 husbands, children, neighbors, and I believe
7 spent up to 18 months in Iraq, several not
8 returning. Any one of them could not have
9 returned. Being willing to lay themselves out
10 there. For what purpose? To defend freedom,
11 to defend the people there, to make this
12 country continue to be the free country, to
13 fight for freedom throughout the world.
14 That's what it's all about. That's what it's
15 still all about.

16 So these brave men and women left
17 and are back. And we celebrate their victory,
18 we celebrate their return, your courage, your
19 commitment, your dedication, your patriotism.
20 It's an honor to welcome you in this chamber
21 as we pass this resolution recognizing your
22 valor and your courage and all the good things
23 that you do on behalf of people who cannot do
24 it for themselves. It's the greatest
25 sacrifice that can be made.

1 We are hosting a reception, I
2 believe there's 400-some troops, General, in
3 the Capital Region, out of 3,000-plus in the
4 division. And we're going to host a reception
5 in Troy at headquarters at 2 o'clock.

6 And we would welcome any of the
7 Senators that are here in for the weekend to
8 join us there, although I know that all of you
9 are diligent in your districts recognizing all
10 of the people that have done so much on behalf
11 of freedom here for New York, for America, and
12 for people throughout the world.

13 So thank you, Madam President. And
14 again, congratulations and thank you.

15 (Standing ovation.)

16 THE PRESIDENT: Senator Farley.

17 SENATOR FARLEY: Thank you, Madam
18 President.

19 I have to apologize, I have
20 laryngitis. But I want to applaud my Majority
21 Leader for honoring his 42nd Infantry Division
22 from Troy -- your hometown, Madam President.

23 Although this is a Troy operation,
24 these soldiers come from the entire Capital
25 District, many of whom are my constituents.

1 And I can't say how proud we are of you and
2 what you've accomplished on behalf of our
3 nation.

4 I'm so delighted to see you here,
5 Major General Taluto, who has been a dear
6 friend, and your organization. Your division,
7 Major, is truly a credit to not only the
8 Capital District in New York State but to the
9 United States in itself. The Rainbow Division
10 has an incredible history, and you have added
11 to it. And we're very, very proud of you.

12 And I congratulate you, and I
13 congratulate the Majority Leader for throwing
14 a party for you tomorrow. That's something
15 else.

16 All the best to you, and Godspeed.

17 THE PRESIDENT: Senator Balboni.

18 SENATOR BALBONI: Thank you,
19 Madam President.

20 Senator Bruno, I got a chance, with
21 Governor Pataki and a whole bunch of other
22 people, to visit the Rainbow Division before
23 you deployed, where we announced -- remember
24 that, guys? -- remember we announced the
25 Patriotic Act that we were going to do here

1 with this Legislature to make it easier for
2 you citizen-soldiers to leave your jobs and
3 your homes and go and fight for us and come
4 back.

5 Well, I don't know if you've heard,
6 but thanks to your good work, that's been
7 done, and to Senator Bruno's leadership.

8 And I enjoyed that day, and I
9 proudly display in my office that photograph
10 of my getting the chance, the honor to address
11 you. But I have to tell you, as much as I
12 enjoyed that day, I enjoy this a lot better.

13 Welcome back. Job well done.

14 THE PRESIDENT: Senator Diaz.

15 SENATOR DIAZ: Thank you, Madam
16 President.

17 At the age of 18, I joined the
18 Army, voluntary, in Puerto Rico, in 1960. And
19 there was the Vietnam conflict. When I came
20 back to Puerto Rico, there was, in those
21 times, a lady called Jane Fonda, Hanoi Jane,
22 and others that made us ashamed.

23 When I came back from the -- to
24 Puerto Rico, I didn't get a reception. I
25 almost had to hide myself. And there was like

1 people making fun of us.

2 So, Senator Bruno, where were you
3 in 1960? We needed you then. And I admire
4 you, and I congratulate you because today, out
5 there, there are others trying to make these
6 heroes feel guilty of defending this nation.

7 And I'm so honored and so proud
8 that we have like you, Senator Bruno, that
9 take into consideration people like me.
10 Because in my time, I needed that. I needed
11 someone to welcome me, to tell me that it
12 wasn't in vain. I volunteered, but it wasn't
13 there. We didn't have it at that time.

14 And today, there are some today,
15 like the Al Gores of this day, the Kennedys of
16 this day, and all those people making --
17 trying to make our heroes feel ashamed and
18 treat them bad.

19 And I'm proud that today in this
20 body you, Senator Bruno, take into
21 consideration the heroism of these people. I
22 congratulate you, and I congratulate all of
23 those. And I envy them because I didn't have
24 you in 1960.

25 Thank you, Senator Bruno.

1 THE PRESIDENT: Senator Seward.

2 SENATOR SEWARD: Thank you, Madam
3 President.

4 Since my Senate district includes
5 counties of Schoharie and Greene, I consider
6 myself a Capital District Senator as well.
7 And I'm very proud to rise in support of
8 Senator Bruno's resolution and the comments of
9 a number of my colleagues as we honor the
10 42nd Infantry Division upon their return from
11 Operation Iraqi Freedom.

12 That word "freedom" is one that far
13 too many Americans take for granted. But as I
14 watch, on the television, those pictures of
15 the Iraqi people, when given the opportunity
16 to flock to the polls to select for the first
17 time their leaders, to write for the first
18 time an actual constitution so that their
19 future and their destiny is now in the hands
20 of the Iraqi people, that would not be
21 possible without the members of the 42nd
22 Infantry Division and the many other Americans
23 serving in Iraq today and in the past.

24 And so for that, we say thank you
25 and God bless you. It's important work to

1 spread freedom and give, in this case, the
2 Iraqi people that opportunity that we have had
3 in this country for so long to direct our own
4 destiny as citizens and as people and not
5 leave it up to an oppressive dictator.

6 Thank you, and God bless all of
7 you.

8 THE PRESIDENT: As president of
9 the Senate, and as a Troy resident as well as
10 native, I see a lot of familiar faces up
11 there. But many of you I did not know in your
12 military capacity. And I want to thank you,
13 on behalf of the people of the state. Pastor
14 Falk also has returned recently from Iraq.

15 We can't really fathom the depth of
16 sacrifice you made. Major General, all of
17 you, we are certainly in debt to you for what
18 you have done to spread freedom around the
19 world. We're delighted to have you home. We
20 know your families have also sacrificed. And
21 we wish you the best, on behalf of the people
22 of New York State. Thank you so much.

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

25 (Response of "Aye.")

1 THE PRESIDENT: Opposed, nay.

2 (No response.)

3 THE PRESIDENT: The resolution is
4 adopted.

5 Best wishes to all of you.

6 (Standing ovation.)

7 THE PRESIDENT: Senator Bruno.

8 SENATOR BRUNO: Madam President,
9 can I ask that all the names of all the
10 members be added to this resolution unless
11 they selectively request otherwise.

12 And the reception, by the way, is
13 Sunday at 2:00, not tomorrow, at headquarters.
14 We don't want you showing up two days.

15 Thank you, Madam President.

16 THE PRESIDENT: Any member who
17 does not wish to cosponsor the last
18 resolution, please notify the desk.

19 Senator Bruno.

20 SENATOR BRUNO: Madam President,
21 can we at this time have the title read on
22 Resolution 3480 and move for its immediate
23 adoption.

24 THE PRESIDENT: The Secretary
25 will read.

1 THE SECRETARY: By Senator
2 Marchi, Legislative Resolution Number 3480,
3 honoring the 1st Battalion, 101st Cavalry,
4 New York Army National Guard, upon the
5 occasion of their homecoming from Iraq, to be
6 celebrated on March 3, 2006.

7 THE PRESIDENT: Senator Marchi.

8 SENATOR MARCHI: Madam President,
9 it's a contagion.

10 Senator Bruno brought this very
11 uplifting information about people in his
12 district. It's not something new. I was
13 discussing with Senator Larkin just recently,
14 and he's a -- both of us were veterans of
15 World War II. Some cruel people have said
16 that I was probably in the Civil War.

17 (Laughter.)

18 SENATOR MARCHI: But not Senator
19 Larkin.

20 Senator Larkin was also in World
21 War II, and I had four years of that. And
22 I've seen so much, so much that gives us, that
23 evokes the kind of response that Senator Diaz
24 over there reflected. It's a contagion. And
25 you feel that it gives you something to be

1 proud of.

2 And I am proud of the folks in my
3 district who have served on behalf of the
4 armed forces in the Operation Iraqi Freedom.
5 And they went over in great numbers. These
6 were all volunteers, of course. They were
7 products of a volunteer expression.

8 And they are going to be -- and
9 incidentally, they're the 1st Battalion,
10 101st Cavalry, Army National Guard, these are
11 people that are not unknown to Senator Bruno.

12 And we have had so many people from
13 my own district going in great numbers. We
14 never needed a draft down there. We never
15 needed anything that would aid and abet those
16 who were willing to come to the aid of their
17 country even when a formal declaration was
18 still absent.

19 So we're proud to commend the 1st
20 battalion of the 101st Cavalry, Army National
21 Guard. And this is going to produce an
22 embarrassment of riches, because they will be
23 honoring that battalion of the National Guard
24 with their homecoming from Iraq, and that will
25 take place, to the members of that group, that

1 will also take place on Sunday.

2 So I -- we're going to have an
3 embarrassment of traffic control here. But
4 it's an embarrassment of riches. It's people
5 from this area, people from my own area, and
6 there are people from other areas that are
7 there visibly, risking their lives for the
8 preservation of freedom and to see that it is
9 defended.

10 So it is with great pride, Madam
11 President, that we extend the same courtesy
12 and decision of this body to praise and thank
13 them for their service to their country. And
14 maybe some of us will be able to travel back
15 and forth from Troy to Staten Island. That
16 would be a trick.

17 But all those who -- you have your
18 pick, you can go upstate or you can come down
19 to Staten Island. And we'll be happy to see
20 you in the exercise of this appreciation
21 springing from this Legislature for those who
22 are willing to risk their lives, as so many of
23 them have, some with great mortal losses.
24 Nevertheless, freely. And they continue to go
25 in great numbers in the defense of freedom.

1 THE PRESIDENT: All in favor of
2 the resolution please signify by saying aye.
3 (Response of "Aye.")
4 THE PRESIDENT: Opposed, nay.
5 (No response.)
6 THE PRESIDENT: The resolution is
7 adopted.
8 Senator Bruno.
9 SENATOR BRUNO: Are there any
10 substitutions at the desk, Madam President?
11 THE PRESIDENT: Yes, there are,
12 Senator.
13 SENATOR BRUNO: Can we make those
14 at this time.
15 THE PRESIDENT: The Secretary
16 will read.
17 THE SECRETARY: On page 12,
18 Senator Maziarz moves to discharge, from the
19 Committee on Labor, Assembly Bill Number 5771A
20 and substitute it for the identical Senate
21 Bill Number 5749, Third Reading Calendar 118.
22 THE PRESIDENT: Substitution
23 ordered.
24 Senator Nozzolio.
25 SENATOR NOZZOLIO: Madam

1 President, on behalf of Senator Leibell, on
2 page 20 I offer the following amendments to
3 Calendar Number 219, Print Number 4761.

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

7 SENATOR NOZZOLIO: Thank you.

8 THE PRESIDENT: Senator Skelos.

9 SENATOR SKELOS: Madam President,
10 if we could go to the noncontroversial reading
11 of the calendar.

12 THE PRESIDENT: The Secretary
13 will read.

14 THE SECRETARY: Calendar Number
15 11, by Senator Marcellino, Senate Print 2852,
16 an act to amend the Criminal Procedure Law.

17 THE PRESIDENT: Read the last
18 section.

19 THE SECRETARY: Section 2. This
20 act shall take effect on the 30th day.

21 THE PRESIDENT: Call the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 57.

24 THE PRESIDENT: The bill is
25 passed.

1 THE SECRETARY: Calendar Number
2 106, by Senator LaValle, Senate Print 3744A,
3 an act to amend the Education Law.

4 THE PRESIDENT: There is a local
5 fiscal impact note at the desk.

6 Read the last section.

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

9 THE PRESIDENT: Call the roll.
10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes, 58.

12 THE PRESIDENT: The bill is
13 passed.

14 THE SECRETARY: Calendar Number
15 108, by Senator Trunzo, Senate Print 1682, an
16 act in relation to requiring state agencies.

17 THE PRESIDENT: Read the last
18 section.

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

21 THE PRESIDENT: Call the roll.
22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 58.

24 THE PRESIDENT: The bill is
25 passed.

1 THE SECRETARY: Calendar Number
2 111, by Senator Robach, Senate Print 4258, an
3 act to amend the Civil Service Law.

4 THE PRESIDENT: Read the last
5 section.

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

8 THE PRESIDENT: Call the roll.
9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 58.

11 THE PRESIDENT: The bill is
12 passed.

13 THE SECRETARY: Calendar Number
14 117, by Senator Trunzo, Senate Print 4562, an
15 act to amend the Labor Law.

16 THE PRESIDENT: Read the last
17 section.

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

20 THE PRESIDENT: Call the roll.
21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 57. Nays,
23 1. Senator Meier recorded in the negative.

24 THE PRESIDENT: The bill is
25 passed.

1 THE SECRETARY: Calendar Number
2 118, substituted earlier today by Member of
3 the Assembly Weinstein, Assembly Print Number
4 5771A, an act to amend the Labor Law and
5 others.

6 THE PRESIDENT: Read the last
7 section.

8 THE SECRETARY: Section 6. This
9 act shall take effect on the 120th day.

10 THE PRESIDENT: Call the roll.
11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes, 58.

13 THE PRESIDENT: The bill is
14 passed.

15 THE SECRETARY: Calendar Number
16 129, by Senator Maziarz, Senate Print 701A, an
17 act to amend the Penal Law.

18 THE PRESIDENT: Read the last
19 section.

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

23 THE PRESIDENT: Call the roll.
24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 57. Nays,

1 1. Senator Montgomery recorded in the
2 negative.

3 THE PRESIDENT: The bill is
4 passed.

5 THE SECRETARY: Calendar Number
6 132, by Senator Volker, Senate Print 880, an
7 act to amend the Criminal Procedure Law.

8 THE PRESIDENT: Read the last
9 section.

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

13 THE PRESIDENT: Call the roll.
14 (The Secretary called the roll.)

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

17 THE PRESIDENT: The bill is
18 passed.

19 THE SECRETARY: Calendar Number
20 136, by Senator Golden, Senate Print 2214, an
21 act to amend the Criminal Procedure Law.

22 THE PRESIDENT: Read the last
23 section.

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

1 THE PRESIDENT: Call the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes, 58. Nays,
4 1. Senator Montgomery recorded in the
5 negative.

6 THE PRESIDENT: The bill is
7 passed.

8 THE SECRETARY: Calendar Number
9 148, by Senator Skelos, Senate Print 6524, an
10 act to amend the Criminal Procedure Law.

11 THE PRESIDENT: Read the last
12 section.

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

15 THE PRESIDENT: Call the roll.
16 (The Secretary called the roll.)

17 THE PRESIDENT: Senator Klein, to
18 explain your vote.

19 SENATOR KLEIN: To explain my
20 vote, Madam President.

21 I rise today in support of this
22 legislation. And it's almost identical to an
23 amendment that I attempted to pass several
24 weeks ago. I guess many in the chamber did
25 hear part of my argument, because here's a

1 bill before us today.

2 I've done a lot of work on this
3 issue over the years, and I think it's
4 something very, very important that we do
5 immediately, not only in the State Senate but
6 I'm hopeful it will pass the Assembly as well.

7 For many in our chamber who may not
8 know, we're one of the few states that still
9 has an antiquated law on the books of a
10 five-year statute of limitations. It was
11 something that was actually implemented in New
12 York State in the 1800s.

13 I think, quite frankly, by still
14 having this law on the books in New York
15 State, we're discriminating against women.
16 Because what we're telling women throughout
17 our state is that the crime of rape is not as
18 serious as the crime of murder, arson, or
19 kidnapping, other crimes which have no statute
20 of limitations.

21 One of the things that my office
22 did, actually on Father's Day of last year,
23 was release a survey. What we did was we
24 looked at all 62 counties of the state, and we
25 found that overwhelmingly all the district

1 attorneys around the state are in favor of
2 getting rid of the five-year statute in some
3 shape or form, some when there's DNA evidence
4 available, some when there's other types of
5 physical evidence that would withstand the
6 test of time.

7 The alarming fact that I did find
8 is the large number of unsolved rape cases
9 around the State of New York. What we found
10 was totally the number of open cases in the
11 New York City metropolitan area is 1,669.
12 Actually, the total in the New York City metro
13 area that are approaching or past the
14 five-year statute is 809.

15 If we look at the cases that are
16 actually quickly approaching the five-year
17 statutory limitation -- which means unless we
18 pass a law, we'll never actually bring these
19 individuals to justice -- in New York City,
20 Westchester, and Nassau County there's
21 689 cases approaching the five-year statutory
22 limitation. If we look at it statewide, the
23 number grows to 833.

24 Those are individuals who will
25 never be brought to justice. And I think what

1 we're saying -- again, as I said earlier -- is
2 I think anyone here who understands the
3 serious crime of rape, how long a woman has to
4 deal with that horrible memory, but yet what
5 we're doing is giving a get-out-of-jail-free
6 card to individuals once it approaches that
7 five-year statutory limitation.

8 I think it's worth talking about
9 something that many of you may know. It was
10 in most of the papers, it was on TV, it was
11 something that was investigated by District
12 Attorney Morgenthau. It was the case of a man
13 named Clarence Williams.

14 Clarence Williams committed over
15 23 rapes in New York City, Maryland, and
16 New Jersey. The only way they finally found
17 him, over 32 years later, he tried to get a
18 gun permit in Atlanta, Georgia. They did a
19 background check, they found out about all the
20 outstanding warrants. And lo and behold, he
21 committed two rapes in New Jersey, nine in
22 Maryland, and there was nine women who came
23 forward and positively identified Mr. Williams
24 about committing a rape many years ago.

25 Unfortunately, in New York State,

1 we weren't able to bring any case. Thank God
2 New Jersey and Maryland have no statutory
3 limitation on rape and he's presently being
4 prosecuted for his crimes there.

5 I'm glad also this legislation goes
6 beyond just the requirement of DNA evidence.
7 While I think with the advent of DNA we can
8 prosecute cases five, 10, 15, even 30 years
9 into the future, I don't think we should limit
10 it just to DNA evidence.

11 One of the things that comes to
12 mind is the National Organization of Women,
13 who's supporting this legislation, and they
14 came up with a scenario where one of the
15 women -- who's the president of the New York
16 City Chapter, happens to live in my
17 district -- when she was a Queens ADA, she
18 couldn't prosecute a case which was 10 years
19 old even though she had evidence -- actually,
20 it was a tape taken off a video machine --
21 which positively identified the rapist.

22 I think it's important we do a
23 piece of legislation like this today because
24 there's other types of evidence that can
25 withstand the test of time. And I think we

1 owe that to the women of New York State.

2 So I vote yes, and I'm going to do
3 everything possible -- I know Senator Skelos
4 will join me -- in making sure also this
5 legislation comes to fruition in the State
6 Assembly as well.

7 Thank you, Madam President.

8 THE PRESIDENT: You will be
9 recorded, Senator Klein, as voting in the
10 affirmative.

11 Senator Skelos.

12 SENATOR SKELOS: Madam President,
13 to explain my vote.

14 In the last several years this
15 Majority has attempted to sway the Assembly
16 Democrat leadership into understanding what we
17 are trying to do in terms of eliminating the
18 statute of limitations in certain instances.

19 The legislation we are passing
20 now -- and I thank the membership for their
21 support -- eliminated rape in the first
22 degree, criminal sexual act in the first
23 degree, aggravated sexual abuse in the first
24 degree, course of sexual conduct against a
25 child in the first degree. These crimes are

1 all Class B violent felony offenses.

2 Senator Golden's bill, which passed
3 prior to this -- and has passed on other
4 occasions, Senator Klein -- would cover this
5 but cover all violent B felonies. That has
6 passed.

7 And shortly we'll be passing my
8 legislation, Calendar 239, that would toll the
9 statute of limitations when the use of DNA can
10 be found for the reason.

11 I point this out because we are
12 giving the Assembly a variety of choices, yet
13 we do not see them pass these types of
14 legislation. There cannot be a joint
15 conference committee until they pass something
16 similar that we can go to joint conference
17 committee and have an open public discussion.

18 So, Senator Klein, I would urge you
19 to talk to the Assembly Democrat leadership,
20 where you served for a number of years, and
21 ask them please do something, do something
22 positive so that we could either pass the
23 bill -- because it's a very simple bill. It
24 just adds these crimes where there's no
25 statute of limitations. I don't know what

1 there is to discuss.

2 So I would urge you to go to the
3 Speaker, go to the Assembly leadership, pass
4 these bills. And certainly we will be doing
5 something very positive and good for the
6 people that suffer these types of crimes.

7 THE PRESIDENT: Senator Skelos,
8 you will be recorded as voting in the
9 affirmative.

10 The Secretary will announce the
11 results.

12 THE SECRETARY: Ayes, 60. Nays,
13 1. Senator Montgomery recorded in the
14 negative.

15 THE PRESIDENT: The bill is
16 passed.

17 THE SECRETARY: Calendar Number
18 156, by Senator DeFrancisco, Senate Print 41,
19 an act to amend the Surrogate's Court
20 Procedure Act.

21 THE PRESIDENT: Read the last
22 section.

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

25 THE PRESIDENT: Call the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 61.

3 THE PRESIDENT: The bill is
4 passed.

5 THE SECRETARY: Calendar Number
6 177, by Senator Little, Senate Print 1756A, an
7 act authorizing the payment of ordinary
8 disability retirement benefits.

9 THE PRESIDENT: Read the last
10 section.

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

13 THE PRESIDENT: Call the roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes, 61.

16 THE PRESIDENT: The bill is
17 passed.

18 THE SECRETARY: Calendar Number
19 233, by Senator Balboni, Senate Print 5917A,
20 an act to amend the Public Health Law.

21 THE PRESIDENT: Read the last
22 section.

23 THE SECRETARY: Section 2. This
24 act shall take effect on the same date and in
25 the same manner as a chapter of the Laws of

1 2005.

2 THE PRESIDENT: Call the roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 61.

5 THE PRESIDENT: The bill is
6 passed.

7 THE SECRETARY: Calendar Number
8 236, by Senator Hannon, Senate Print 6630, an
9 act to amend the Public Health Law and the
10 Executive Law.

11 THE PRESIDENT: Read the last
12 section.

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

15 THE PRESIDENT: Call the roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes, 61.

18 THE PRESIDENT: The bill is
19 passed.

20 THE SECRETARY: Calendar Number
21 239, by Senator Skelos, Senate Print 5342, an
22 act to amend the Executive Law.

23 THE PRESIDENT: Read the last
24 section.

25 THE SECRETARY: Section 10. This

1 act shall take effect immediately.

2 THE PRESIDENT: Call the roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 60. Nays,

5 1. Senator Duane recorded in the negative.

6 THE PRESIDENT: The bill is
7 passed.

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

10 SENATOR SKELOS: Madam President,
11 is there any further business at the desk?

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

14 SENATOR SKELOS: There being
15 none, I move we stand adjourned until
16 Wednesday, February 15th, at 11:00 a.m.

17 THE PRESIDENT: On motion, the
18 Senate now stands adjourned until Wednesday,
19 February 15th, 11:00 a.m.

20 (Whereupon, at 3:45 p.m., the
21 Senate adjourned.)

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