NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

December 13, 2006

12:10 p.m.

EXTRAORDINARY SESSION

SENATOR JAMES W. WRIGHT, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT WRIGHT: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT WRIGHT: The chair hands down a proclamation from the Governor calling for the extraordinary session, and waives its reading.

The Secretary will call the roll to ascertain a quorum.

THE SECRETARY: Senator Alesi.

(No response.)

THE SECRETARY: Senator Andrews.

(No response.)

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Here.

THE SECRETARY: Senator Bonacic.
(No response.)
THE SECRETARY: Senator Breslin.
SENATOR BRESLIN: Here.
THE SECRETARY: Senator Bruno.
SENATOR BRUNO: Here.
THE SECRETARY: Senator Connor.
SENATOR CONNOR: Here.
THE SECRETARY: Senator Coppola.
SENATOR COPPOLA: Here.
THE SECRETARY: Senator DeFrancisco.
(No response.)
THE SECRETARY: Senator Diaz.
SENATOR DIAZ: Aqui.
THE SECRETARY: Senator Dilan.
SENATOR DILAN: Present.
THE SECRETARY: Senator Duane.
(No response.)
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Here.
THE SECRETARY: Senator Flanagan.
(No response.)
THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Here.
THE SECRETARY: Senator Golden.
(No response.)
THE SECRETARY: Senator Gonzalez.
SENATOR GONZALEZ: Here.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Here.
THE SECRETARY: Senator Hassell-Thompson.
SENATOR HASSELL-THOMPSON: Here.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Here.
THE SECRETARY: Senator Klein.
SENATOR KLEIN: Yes.
THE SECRETARY: Senator L. Krueger.
SENATOR LIZ KRUEGER: Yes.
THE SECRETARY: Senator C. Kruger.
(No response.)
THE SECRETARY: Senator Larkin.
(No response.)
THE SECRETARY: Senator LaValle.
SENATOR LaVALLE: Here.
THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Yes.
THE SECRETARY: Senator Libous.
(No response.)
THE SECRETARY: Senator Little.
SENATOR LITTLE: Present.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Present.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Present.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Present.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Present.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Present.
THE SECRETARY: Senator Montgomery.
SENATOR MONTGOMERY: Here.
THE SECRETARY: Senator Morahan.
SENATOR MORAHAN: Here.
THE SECRETARY: Senator Nozzolio.
(No response.)
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: I rise to

explain my presence.

(Laughter.)

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Here.

THE SECRETARY: Senator Padavan.

(No response.)

THE SECRETARY: Senator Parker.

(No response.)

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Here.

THE SECRETARY: Senator Rath.

SENATOR RATH: Here.

THE SECRETARY: Senator Robach.

SENATOR ROBACH: Here.

THE SECRETARY: Senator Sabini.

SENATOR SABINI: Here.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Here.

ACTING PRESIDENT WRIGHT: Senator Bruno, a quorum is present.

Senator Bruno.

SENATOR BRUNO: Mr. President, I have two resolutions at the desk. I would ask that they be read in their entirety and move

for their immediate adoption.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Senate Resolution Number 1, appointing a committee to inform the Governor that the Senate is convened in Extraordinary Session.

"RESOLVED, That a committee of two be appointed to inform the Governor that in compliance with his proclamation of December 13, 2006, the Senate is convened in Extraordinary Session and is ready to proceed with business.

"The Temporary President appointed as such committee Senators Spano and Andrews."

ACTING PRESIDENT WRIGHT: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WRIGHT: Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The resolution is adopted.

The chair appoints Senators Spano and Andrews to wait upon the Governor that the Senate is ready to proceed.

The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Senate Resolution Number 2, appointing a committee to inform the Assembly that the Senate is convened in Extraordinary Session.

"RESOLVED, That a committee of two be appointed to wait upon the Assembly and inform that body that in compliance with the proclamation of the Governor on December 13, 2006, the Senate is convened in Extraordinary Session and is ready to proceed with business.

"The Temporary President appointed as such committee Senators Meier and Coppola."

ACTING PRESIDENT WRIGHT: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WRIGHT: Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The

resolution is adopted.

The chair appoints Senators Meier and Coppola to wait upon the Assembly that the Senate is ready to proceed.

Recognize Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there are two more resolutions at the desk. I would ask that the titles only be read and move for their immediate adoption.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Senate Resolution Number 3, empowering the Temporary President to appoint officers and employees necessary for the Extraordinary Session.

And by Senator Bruno, Extraordinary Session Senate Resolution Number 4, providing for the introduction of bills in the Senate during the Extraordinary Session.

ACTING PRESIDENT WRIGHT: The question is on the resolutions. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WRIGHT:

Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The resolutions are adopted.

Senator Bruno.

SENATOR BRUNO: I would ask for an immediate meeting of the Rules Committee in the Majority Conference Room.

And I would ask that the Senate stand in recess for a very short period of time while the Rules Committee meets, and then we will rejoin and accept their report.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Thank you, Senator Bruno.

The Senate Rules Committee will convene in the Majority Conference Room. The Senate will stand in a brief recess until the committee meeting is completed.

(Whereupon, the Senate stood in recess at 12:18 p.m.)

(Whereupon, the Senate reconvened at 12:31 p.m.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, I'd like to return to reports of standing committees.

I believe there's a report from the Rules Committee at the desk. I would ask that it be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

Extraordinary Session Senate Print Number 1, by Senator Volker, an act to amend the Mental Hygiene Law and others.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report is accepted.

Senator Bruno.

SENATOR BRUNO: I would ask that the bill have its third reading at this time.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1, by Senator Volker, Extraordinary Session Senate Print Number 1, an act to amend the Mental Hygiene Law and others.

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

ACTING PRESIDENT MEIER: Yes, there is.

SENATOR BRUNO: I would move to accept the message.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

The bill is before the house.

Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

The bill that's before us is the Governor's bill that we have been called into special session to act on.

And this bill, as we all know, has been discussed throughout the year. We in this house passed this bill, or something very, very similar, and it commits sexually violent predators, takes them out of the mainstream of society, protects the public, and keeps them in treatment.

Now, these are violent predators. They are the people who 85, 90 percent of them commit another crime. They cannot live in the society as we know it. They are the rapists, serious Level 3 molesters.

The Supreme Court has held, the courts have held that it is the legislative responsibility to act on behalf of the public. That's what we're doing.

And by way of awareness, transparency, I believe we had three conference committees, chaired by Senator Volker, during this past session, trying to get public exposure, public debate, and get a result. We could not get this bill passed in the Assembly. We couldn't get it passed through regular session. We were ready to come back into special session before. We could not get the Assembly to act on this bill.

So we are, at the call of the Governor, in special session to act on this bill again, to protect your neighbors, to protect your families from people most of whom acknowledge that they are emotionally, mentally incapable of making good choices. And they hurt people, and they violate people, and they can't live in the society. They need treatment and they need to be committed.

So we ask our colleagues here to continue to support this piece of legislation, thank the Governor for sending it in special session, and we ask the Assembly to join us, on behalf of our mutual constituency, to get

this done.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

If I could make one clarification by way of a question to either Senator Bruno or the sponsor.

ACTING PRESIDENT MEIER: Senator Bruno, do you yield for a question?

SENATOR BRUNO: If I can answer it. If not --

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

I just want to clarify, because this was something we discussed in conference. This bill in fact is identical to Senate 6325, which we passed earlier this year; is that not correct?

SENATOR BRUNO: I believe it is. Exactly.

SENATOR SCHNEIDERMAN: Thank you.

SENATOR BRUNO: Thank you.

SENATOR SCHNEIDERMAN: On the bill.

I can feel Senator Bruno's frustration radiating from him like a radioactive cloud across the aisle.

And I think that it is unfortunate that we're here on what may be our last day during this particular era with a legislative special session that appears to be emblematic of the gridlock, recriminations, and dysfunction that have turned a lot of our constituents off from the legislative process.

This is the same bill we passed before. The Assembly has passed another bill. With all due respect to the technicians in the room, the public does not understand why we can't resolve the differences and have a civil confinement bill that's acceptable to both houses.

But I would suggest that simply calling us back into special session to pass the same bill we passed before, without a serious effort to get conference committees going again or to get other meetings going on the part of all three leaders -- and I know

Senator Bruno has called for meetings -- is really a waste of our time and of the public's resources.

We are now passing the same bill we passed before, ladies and gentlemen. We are not moving the process forward. We need to get together with the Governor and the Assembly in order to do so. I'm sorry, and I certainly hope this is not the last action we will take in this year and not the last action we will take during the Pataki era.

I'm going to vote the same way I voted on this bill the last time. I assume my colleagues will probably do the same. But we're right back where we started. I guess we've run out of material for new shows and we are, ladies and gentlemen, going to reruns.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, just by way of clarification.

And you're right, I am frustrated, I'm exasperated on behalf of the innocent people out there in this state.

But, Senator, for clarification,

it's not the same show over and over. The Governor called us into special session. Every single day since then we have met on this issue with the Assembly. Governor-elect Spitzer supports this legislation. Governor Pataki supports it. We passed it.

So Senator, rhetorically I would ask, why is this not in the law now? Why are we here if it's, you think, wasting our time? To try and get a result in the Assembly. And I don't say this in a confrontational way, but I am frustrated.

And, you know, we keep getting tagged as the most dysfunctional legislature in the country. Why is that? Why? I'll tell you why. Because the Assembly sits it out just the way they are on this issue, that's why. And you are part of the most dysfunctional legislature in the country.

And I would correct those that say that, in that the Senate is here, we are back here ready to do the people's work since we adjourned in June. But we need a partner. And constitutionally in this state, for this to become law, has the Assembly passed a bill?

SENATOR SCHNEIDERMAN: Yes.

SENATOR BRUNO: They have not, to my knowledge, passed a bill that would meet the requirements of Governor-elect Spitzer or Governor Pataki.

And to posture, I would submit to you, on an issue that's as important as this one to the people of this state is inappropriate and irresponsible. You don't need to posture on this issue. We need a result to protect the people of this state, the innocent people.

So that's why we're here, Senator. And I applaud the Governor for calling us back, because we need to get this done.

ACTING PRESIDENT MEIER: Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Again, I -- we've got time, Joe.

I just want to make sure that my colleagues are aware and the record is clear, that the Assembly in fact has passed Assembly 9282. It is a different civil confinement bill.

Governor-elect Spitzer, who I think will bring more energy to the effort to reach agreement and move a legislative agenda, supports the principle of civil confinement. He has not said that this particular bill we're voting on now, as opposed to the Assembly bill, is necessarily the be-all and end-all.

The public doesn't understand why we can't reach a compromise. I'm not saying that, Senator Bruno, that we can be doing anything more than we are doing now in the Senate. But we're going to leave here without a bill unless we do something other than just pass the same bill we passed before. I think we all know that in the real world.

The Assembly has to come to the table. I don't know if public meetings are the right answer. We certainly, on our side of the aisle, are ready to do whatever we can do to try and get something done. I don't know what else we can do.

But this is a bill that we've already passed. The Assembly could come back and pass the bill they've already passed, we

leave town with nothing.

Thank you.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Can I just add that I asked the Governor to call a special meeting, public meeting, with the leaders and anyone else that ought to be there today. I asked him to do that as soon as he could, and that was a while ago. And the Governor said if we can't get a result, he's prepared to call a public meeting. And maybe that's what we need.

Eliot Spitzer, the Governor-elect, the present Attorney General, told me personally this bill he supports. He didn't say he supported the other bill. He supports this bill.

And what's wrong with this bill? Why can't it become law? I don't hear any answers.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR MONTGOMERY: Mr. President, to explain my vote.

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I know that I have voted -- I did vote no when we voted on this bill the last time, and it's pretty much the same. And I certainly have the same concerns.

However, I think that we in this state are going to have to come to some agreement on this process and this program. And I was recently in the state of Texas, where they do have a civil confinement law that just went into effect in time to capture or recapture a very serious sex offender in that state.

And I looked at that, and I believe that we in New York State need to do it. I hope that we will come to a conclusion that meets all of the aspects of the constitutionality of an individual.

So I'm going to change my vote. I'm voting yes, with reservations, and hope that we can come to an agreement soon.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, I would ask that this extraordinary session stand in recess.

ACTING PRESIDENT MEIER: The extraordinary session will stand in recess.

(Whereupon, the extraordinary session of the Senate stood in recess at 12:44 p.m.)

(Whereupon, the extraordinary session of the Senate reconvened at 7:55 p.m.)

ACTING PRESIDENT MEIER: The Senate will come to order with regard to the extraordinary session.

SENATOR BRUNO: Mr. President, I have Resolution 5 at the desk. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Senate Resolution Number 5, appointing a committee to inform the Governor that the Senate has completed business and is ready to adjourn.

"RESOLVED, That a committee of two be appointed to inform the Governor that the Senate has completed its business and is ready to adjourn.

"The Temporary President appointed as such committee Senators Rath and Savino."

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

resolution is adopted.

SENATOR BRUNO: Mr. President, I have Resolution 6 at the desk. I ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Senate Resolution Number 6, appointing a committee to inform the Assembly that the Senate has completed business and is ready to adjourn.

"RESOLVED, That a committee of two be appointed to inform the Assembly that the Senate has completed its business and is ready to adjourn.

"The Temporary President appointed as such committee Senators Balboni and A. Smith."

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, I have Resolution Number 7 at the desk. I ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Bruno, Extraordinary Session Concurrent Resolution Number 7, relative to the adjournment of the Extraordinary Session of the Legislature sine die.

"RESOLVED, That the Legislature adjourn the Extraordinary Session sine die on December 13, 2006, at the close of business."

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Pursuant to the resolution, the extraordinary session is adjourned sine die.

(Whereupon, at 7:57 p.m., the extraordinary session of the Senate adjourned.)